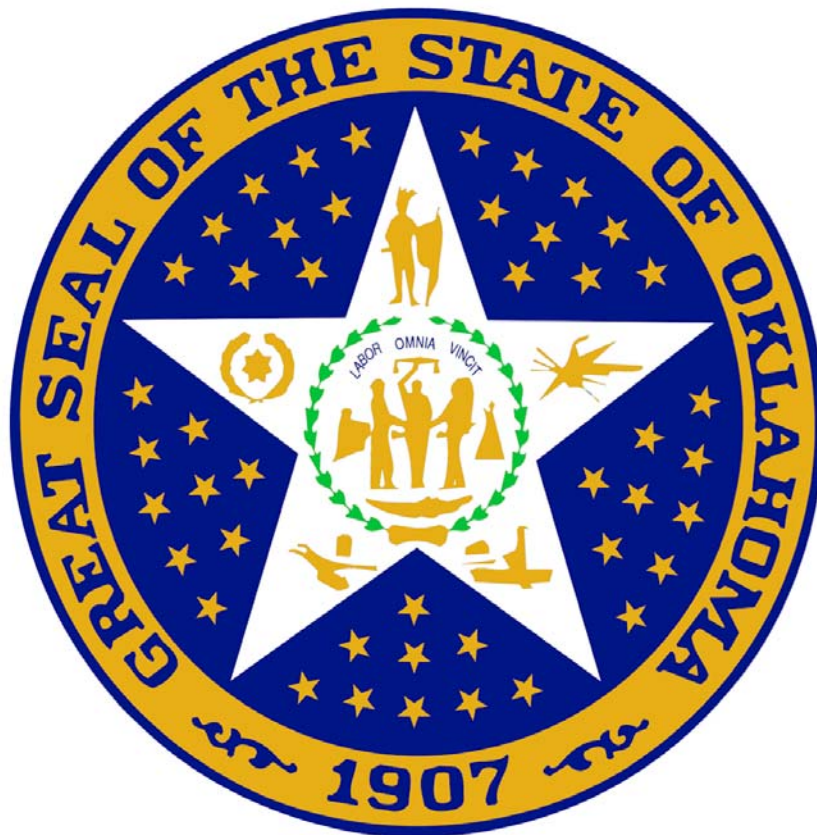


2005 Oklahoma Personnel Act*



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§74-840-1.1. Short title — Content of act.

A. Sections 840-1.1 through 840-6.9 of this title shall be known and may be cited as the “Oklahoma Personnel Act”.

B. All statutes hereinafter enacted and codified within Sections 840-1.1 through 840-6.9 of this title shall be part of the Oklahoma Personnel Act.

§74-840-1.2. Purpose.

It is the purpose of this act to protect the public from improper use of authority, to protect public officials and employees from unwarranted assaults on their integrity and to enforce the protections for classified employees and citizens under the Merit System of Personnel Administration. It is further the general purpose of this act to establish for the state a system to recruit, select, develop and maintain an effective and responsive work force; to provide for administrative flexibility and adequate and reasonable protection and security for those who have entered and will enter into the service of the state; to provide for the preservation and protection of the Merit System; and to provide policies and procedures for the selection, hiring, retention, advancement, career development, job classification, salary administration, discipline, discharge and other related activities, all in accordance with principles of merit and fitness and equal employment opportunity, and to maintain a high level of morale, motivation and productivity among state employees.

§74-840-1.3. Definitions.

As used in the Oklahoma Personnel Act, unless otherwise provided in Sections 840-1.1 through 840-6.9 of this title:

1. “Agency” means any office, department, board, commission or institution of the executive branch of state government;
2. “Employee” or “state employee” means an elected or appointed officer or employee of an agency unless otherwise indicated;
3. “Appointing authority” means the chief administrative officer of an agency;
4. “Classification” means:
 - a. the process of placing an employee into an appropriate job family and level within the job family, consistent with the allocation of the position to which the employee is assigned, or
 - b. an employee’s job family and the level at which work is assigned;

5. “Classification plan” means the orderly arrangement of positions within an agency into separate and distinct job families so that each job family will contain those positions which involve similar or comparable skills, duties and responsibilities;

6. “Classified service” means state employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration;

7. “Entrance examination” means any employment test used by the Office of Personnel Management to rank the names of applicants who possess the minimum requirements of education, experience, or licensure for a job or group of similar jobs on a register of eligibles established by the Office of Personnel Management;

8. “Job” means a position or job family level in a job family;

9. “Job family” means:

- a. jobs which require similar core skills and involve similar work, and
- b. a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills and abilities required, and education and experience requirements;

10. “Job family level” means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience;

11. “Job family descriptor” means a written document that:

- a. describes a job family, including, but not limited to, the basic purpose, typical functions performed, various levels within the job family, and the knowledge, skills, abilities, education, and experience required for each level, and
- b. identifies the pay band assigned for each level;

12. “Promotional examination” means any employment test designated by the Office of Personnel Management to determine further the qualifications of a permanent classified employee of a state agency for employment in a different job for which the employee possesses

the minimum qualifications of education, experience, or licensure within that agency;

13. "Interagency transfer" means an action in which an employee leaves employment with one agency and enters employment with another agency while continuously employed with the state;

14. "Intra-agency transfer" means moving an employee from one position to another position with the same agency either with or without reclassification;

15. "Job-related organization" means a membership association which collects annual dues, conducts annual meetings and provides job-related education for its members and which includes state employees, including any association for which payroll deductions for membership dues are authorized pursuant to paragraph 5 of subsection B of Section 7.10 of Title 62 of the Oklahoma Statutes;

16. "Lateral transfer" means the reassignment of an employee to another state job with the same pay band assignment as the job family level in which the employee was classified prior to the lateral transfer;

17. "Merit Rules" or "Merit Rules for Employment" or "Merit System of Personnel Administration Rules" means rules adopted by the Administrator of the Office of Personnel Management or the Oklahoma Merit Protection Commission pursuant to the Oklahoma Personnel Act;

18. "Noncompetitive appointment" means the appointment of a person to a noncompetitive job level within a job family;

19. "Noncompetitive job" means an unskilled or semiskilled job designated by the Office of Personnel Management as noncompetitive. Noncompetitive jobs do not require written examinations for placement on registers of eligibles;

20. "Permanent classified employee" means a classified service employee who has acquired permanent status in accordance with the Oklahoma Personnel Act, and rules adopted pursuant thereto, and who has the right to appeal involuntary demotion, suspension without pay, and discharge to the Commission;

21. "Presiding official" means a person serving the Oklahoma Merit Protection Commission in the capacity of administrative hearing officer, mediator, or other alternative dispute resolution arbitrator or facilitator;

22. "Progressive discipline" means a system designed to ensure the consistency, impartiality and predictability of discipline and the flexibility to vary penalties if justified by aggravating or mitigating conditions;

23. "Reclassification" means the process of changing a classified employee from one job family to another job family or from one job family level to another job family level in the same job family, resulting in a change in the employee's assigned job code;

24. "Regular and consistent" means, in connection with the work assignments of an employee, the usual and normal work assignments of the employee, excluding incidental, casual, or occasional tasks and activities the employee assumes without direction to do so. Temporary work assignments of less than sixty (60) days in any twelve (12) consecutive months period shall not be considered regular and consistent;

25. "Regular unclassified service employee" means an unclassified service employee who is not on a temporary or other time-limited appointment;

26. "Supervisor" means a classified or unclassified officer or employee who has been assigned authority and responsibility for evaluating the performance of subordinates;

27. "Unclassified service" or "exempt service" means employees and positions excluded from coverage of the Oklahoma Merit System of Personnel Administration;

28. "Merit System" means the Oklahoma Merit System of Personnel Administration;

29. "Administrator" means the appointing authority of the Office of Personnel Management;

30. "Executive Director" means the appointing authority of the Oklahoma Merit Protection Commission;

31. "Office" means the Office of Personnel Management;

32. "Commission" means the Oklahoma Merit Protection Commission;

33. "Veteran" means a person who has been honorably discharged from the Armed Forces of the United States and has been a resident of Oklahoma for at least one (1) year prior to the date of the examination; and

34. "Voluntary out" means the voluntary separation of employees from the state service in exchange for benefits offered by an agency in order to reduce or eliminate the adverse impact

of an imminent reduction-in-force.

§74-840-1.4. Merit System Office and State Personnel Board abolished — Transfer of functions, powers, duties, etc.

A. The Merit System Office and the State Personnel Board are hereby abolished, and the powers, duties and responsibilities exercised by said Merit System Office and State Personnel Board pursuant to law are hereby transferred to the Office of Personnel Management or the Oklahoma Merit Protection Commission as herein created.

B. Upon the transfer of the functions, powers and duties of the Merit System Office and the State Personnel Board pursuant to this act, the Administrator shall make provision for the transfer to the Office of Personnel Management of the employees of the Merit System Office. Employees so transferred shall be transferred without the need to pass further examination or meet additional qualifications and shall retain their respective Merit System classification and status. Any employee, subject to the Merit System of Personnel Administration, who at the time of such transfer has other than a permanent appointment, shall be transferred subject to the same right of removal, examination or termination as though such transfer had not been made.

C. The Merit System Office and the State Personnel Board shall deliver to the Office of Personnel Management all books, papers, records and property of the department and Board pertaining to the functions herein transferred to that office pursuant to this act.

The Merit System Office and the State Personnel Board shall deliver to the Oklahoma Merit Protection Commission, all books, papers, records and property of such department and Board pertaining to the functions transferred to that Commission pursuant to this act.

D. For the purpose of succession to all functions, powers, duties and obligations transferred and assigned to, devolved upon and assumed by it pursuant to this act, the Office of Personnel Management shall be deemed and held to constitute the continuation of the State Personnel Board and the Merit System Office pertaining to the functions and powers herein transferred.

For the purpose of succession to all functions, powers, duties and obligations transferred and assigned to, devolved upon and assumed by it pursuant to this act, the Oklahoma Merit Protection Commission shall be deemed and held to

constitute the continuation of the State Personnel Board and the Merit System Office pertaining to the powers and functions herein transferred.

E. Any business, contracts or other matters undertaken or commenced by the State Personnel Board, or the Merit System Office pertaining to or connected with the functions, powers, obligations and duties hereby transferred and assigned to the Office of Personnel Management or the Oklahoma Merit Protection Commission, and pending on the effective date of this act may be conducted and completed by the Office of Personnel Management or the Oklahoma Merit Protection Commission in the same manner and under the same terms and conditions and with the same effect as if conducted and completed by the former department, commission or administrator. Any encumbrances pertaining to said matters for which the State Personnel Board would have been responsible shall be assumed by the Office of Personnel Management.

F. All rules, regulations, acts, orders, determinations and decisions of the State Personnel Board pertaining to the functions and powers herein transferred and assigned to the Office of Personnel Management or the Oklahoma Merit Protection Commission, in force at the time of such transfer, assignment, assumption or devolution shall continue in force and effect as rules, regulations, acts, orders, determination and decisions of the State Personnel Board until duly modified or abrogated by the appropriate body.

G. No existing right or remedy of any character shall be lost, impaired or affected by reason of this act.

H. No action or proceeding pending at the time when this act shall take effect, brought by or against the State Personnel Board relating to the function, power or duty transferred to or devolved upon the Office of Personnel Management shall be affected by this act, but the same may be prosecuted or defended, and upon application to the court, the appropriate body shall be substituted as a party.

§74-840-1.5. Office of Personnel Management — Liability.

The Office of Personnel Management may purchase or provide, from funds available for the operation of the Office, liability insurance in an amount not to exceed One Million Dollars (\$1,000,000.00) to indemnify the Administrator and such other employees of the Office as may be designated by the Administrator in the per-

formance of their official duties.

§74-840-1.6. Office of Personnel Management — Organization — Personnel.

A. The internal administrative organization of the Office of Personnel Management shall be determined by the Administrator in such a manner as to promote the efficient and effective enforcement of the Oklahoma Personnel Act.

B. The Administrator may employ attorneys, accountants and other personnel as he deems necessary to carry out the duties imposed upon the Office.

C. Employees of the Office shall be subject to the Merit System of Personnel Administration, unless otherwise exempted by Section 840-5.5 of this title.

§74-840-1.6A. Office of Personnel Management.

There is hereby created the Office of Personnel Management. The chief administrative officer of said Office of Personnel Management shall be the Administrator who shall be experienced in the field, theory, and application of personnel administration. The Administrator shall be appointed by the Governor with the confirmation of the Senate, and serve at the Governor's pleasure. In addition to the other duties imposed by law, the Administrator shall:

1. Be responsible for the development of an efficient and effective system of personnel administration that meets the management needs of the various agencies;
2. Effective July 1, 1995, organize the Office to provide both service and regulatory functions that are effective and efficient in meeting the management needs of various state agencies. The Administrator is directed to establish an agency service function to assist agencies with human resource needs based upon the administrative capacity and resources of the various agencies;
3. Prepare, maintain, and revise a classified system of employment designed to assure the impartial consideration of applicants for employment and to protect state employees from arbitrary dismissal or unfair treatment;
4. Develop and maintain a classification and compensation system for all classified positions in the executive branch of state government including those established by the Oklahoma Constitution;
5. Conduct an analysis of the rates of pay prevailing in the state in the public and private

sectors for comparable jobs and report the findings to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives no later than December 1 of each year. Such analysis shall include all forms of compensation including fringe benefits. Information solicited by the Office of Personnel Management from public and private sector employers for such analysis, including but not limited to salaries, benefits, and compensation policies and procedures, shall be confidential and shall not be subject to disclosure under the Oklahoma Open Records Act;

6. Develop a program for the recruitment of qualified persons, including the administration of valid job-related nondiscriminatory selection procedures providing for competitive examinations when practical and for reasonable selection criteria when competitive examinations are not practical. As part of the recruitment program established by this section, the Administrator may identify positions or job family levels for expedited recruitment. Such expedited recruitment jobs may include only those jobs where education, experience or certification requirements substantially limit the pool of available applicants. Applicants who have been certified by the Office of Personnel Management as meeting the minimum qualifications for such jobs may be referred to agencies with vacancies in such jobs without examination or ranking, and may be eligible for appointment upon referral. However, a referral may not occur until the register for the job has been publicly announced for at least fourteen (14) calendar days. The Administrator may remove positions or job family levels from expedited recruitment at any time. The Administrator shall adopt rules to implement expedited recruitment;

7. Implement state affirmative action policies, and assure equal employment opportunity;

8. Develop and implement a reasonable and expeditious method for referral of capable candidates for vacancies, probationary periods of employment, and the employment of individuals on other types of appointments as necessary;

9. Assist state agencies in implementing their duties and obligations pursuant to the Oklahoma Personnel Act, Section 840-1.1 et seq. of this title, and provide standard forms to the agencies if necessary;

10. Develop, in cooperation with appointing authorities, employee training programs, management training programs, a certified public

manager program, a recruiting program, and a system of performance appraisals, and assist appointing authorities in the setting of productivity goals. The Administrator may establish and collect fees for participation in training programs. The Administrator is authorized to purchase awards for presentation to state employees as part of employee recognition activities sponsored by the Office of Personnel Management;

11. Establish rules for leave and pay including, but not limited to, rules for leave, furloughs, performance pay increases, rates for pay differentials, on-call pay, and other types of pay incentives and salary adjustments consistent with the Oklahoma Personnel Act;

12. Prepare and submit an annual budget covering the costs of administering the personnel program;

13. Make an annual report regarding the work of the Office of Personnel Management;

14. Adopt and implement rules necessary to perform the duties imposed by law on the Office of Personnel Management in accordance with the provisions of the Administrative Procedures Act. All rules adopted by the Oklahoma Merit Protection Commission shall remain in full force and effect until modified by the appropriate authority;

15. Assist the Oklahoma Merit Protection Commission and the Executive Director in effectuating their duties, enforcement of the rules of the Merit System of Personnel Administration, and implementation of corrective action issued by the Commission;

16. Be responsible for the development and maintenance of a uniform occupation code system, grouped by job titles or duties, for all classified and unclassified state positions. Said responsibility shall include the establishment of rules governing the identification, tracking, and reporting of all state positions as provided in Section 840-2.13 of this title;

17. Be responsible for advising state agencies on personnel policy and administration;

18. Establish standards for continuing training, including affirmative action, and certification of personnel professionals in the executive branch of state government, excluding institutions within The Oklahoma State System of Higher Education. Employees appointed to professional personnel positions shall complete an initial training program within six (6) months after assuming the professional personnel position. Thereafter, they shall complete annual

training requirements. Each appointing authority shall ensure that all professional personnel employees are notified of, and scheduled to attend, required training programs and shall make time available for employees to complete the programs. The Administrator shall be authorized to bill agencies for the training of personnel professionals pursuant to this paragraph to recover reasonable costs associated with the training. Monies received for such training shall be deposited in the Office of Personnel Management Revolving Fund. Expenditure of such funds collected for the training shall be exempt from any expenditure limit on the Office of Personnel Management established by law;

19. Conduct a study identifying the following, by job family descriptor(s):

- a. selected job family levels with a turnover rate in excess of ten percent (10%),
- b. selected job family levels identified by the Administrator of the Office of Personnel Management with salaries and benefits that are ten percent (10%) or more below the market for such position(s), and
- c. selected job family levels identified by the Administrator of the Office of Personnel Management in which recruitment efforts have yielded a low number of qualified applicants.

The initial study shall be conducted by December 1, 2001, and every two (2) years thereafter;

20. Issue orders directing agencies to:

- a. conform and comply with the provisions of the Oklahoma Personnel Act, the Merit Rules of Personnel Administration, and all memoranda or other written communications issued to agencies explaining the Oklahoma Personnel Act, the Rules, and any other matter relating to the Merit System of Personnel Administration or under the jurisdiction of the Administrator of the Office of Personnel Management, and
- b. take action pursuant to Section 840-6.9 of this title for failure to implement those orders;

21. Establish a workforce planning function within the Office of Personnel Management to assist state agencies in analyzing the current workforce, determining future workforce needs, and implementing solutions so that agencies may accomplish their missions; and

22. Establish a quality management function within the Office of Personnel Management to

assist state agencies in fully integrating quality management concepts and models into their business practices for the purpose of improving the overall efficiency and effectiveness of state government.

§74-840-1.7. Oklahoma Merit Protection Commission — Creation — Membership— Terms — Expenses — Officers — Meetings.

A. There is hereby created the Oklahoma Merit Protection Commission. Whenever the terms "Ethics and Merit Commission" or "Special Counsel of the Ethics and Merit Commission" appear in the Oklahoma Statutes, they shall mean the Oklahoma Merit Protection Commission or the Executive Director of the Oklahoma Merit Protection Commission as may be appropriate to the context in which they appear. The Oklahoma Merit Protection Commission shall consist of nine (9) members who shall be appointed for a term of three (3) years. The members shall be removable only for cause, as provided by law for the removal of officers not subject to impeachment. Two members of the Commission shall be appointed by the President Pro Tempore of the Senate. Two members of the Commission shall be appointed by the Speaker of the House of Representatives. Five members of the Commission shall be appointed by the Governor. No more than four of the appointments made by the Governor shall be from the same political party. Of the initial appointments made to the Commission, one member appointed by the President Pro Tempore, one member appointed by the Speaker and one member appointed by the Governor shall be for a term of three (3) years; and one member appointed by the President Pro Tempore, one member appointed by the Speaker and one member appointed by the Governor shall be for a term of two (2) years. The remaining three initial appointments by the Governor shall be designated to serve a term of one (1) year. At the expiration of the initial term, each new appointee shall serve a three-year term. All initial appointments shall be made prior to July 1, 1982.

B. Members of the Commission shall be entitled to reimbursement for expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act.

C. The Commission shall elect a chairman, to serve a two-year term and such other officers as deemed necessary for the performance of their duties. The Commission shall hold regular meetings not less than once a month and such addi-

tional meetings as called by the chairman as may be required for the proper discharge of its duties.

§74-840-1.8. Executive Director — Appointing authority — Status of employees.

The appointing authority of the Oklahoma Merit Protection Commission shall be the Executive Director. The Executive Director shall be appointed by the Commission to serve at its pleasure. The Executive Director, with the approval of the Commission, may employ and compensate an attorney and shall select, compensate and employ such administrative hearing officers and other personnel as deemed necessary for the proper administration of the duties and functions of the Commission. Effective September 1, 1994, employees of the Commission shall become classified employees, except those employees with less than six (6) months of service from their enter-on-duty date will remain in probationary status until obtaining permanent status in accordance with applicable rules of the Administrator of the Office of Personnel Management or as provided in Section 8 of this act.

§74-840-1.9. Powers and duties of Commission. [Shaded text effective 11/1/05.]

In addition to any other duties expressly set forth by law, the Oklahoma Merit Protection Commission shall:

1. Receive and act on complaints, counsel persons and groups on their rights and duties and take action designed to obtain voluntary compliance with the provisions of the Oklahoma Personnel Act [74:840-1.1, et seq.];
2. Investigate allegations of violations of the provisions of the Oklahoma Personnel Act within its jurisdiction;
3. Investigate allegations of abuses in the employment practices of the Administrator of the Office of Personnel Management or of any state agency;
4. Investigate allegations of violations of the rules of the Merit System of Personnel Administration and prohibited activities in the classified service;
5. Establish and maintain a statewide Alternative Dispute Resolution Program to provide dispute resolution services for state agencies and employees;
6. Establish rules, pursuant to the Administrative Procedures Act as may be necessary to perform the duties and functions of the Commission including, but not limited to, rules to monitor state agency grievance processes to ensure

full compliance with the law. The Commission may also recommend any changes it deems necessary to improve such grievance processes to the appropriate state agency;

7. Establish guidelines for the qualifications, duties, responsibilities, authority, power, and continued employment of the Executive Director, Administrative Hearing Officers, mediators, and other resolution arbitrators or facilitators;

8. Prepare and preserve an audio tape of all proceedings of all hearings conducted by the Commission and furnish transcripts of such tapes upon payment of the costs of such transcripts by the party requesting the transcripts;

9. Submit quarterly, fiscal year reports on workload statistics to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate containing the following information:

a. the number of cases, complaints, and requests for hearing filed, disposed of and pending with the Commission for each month of the quarter,

b. a numerical breakdown of the methods of disposition of such cases, complaints, and requests for hearing,

c. a numerical breakdown of mediations, pre-hearing conferences, and appellate hearings, conducted, and

d. the date of the oldest pending case, complaint, and request for hearing.

Quarterly reports thereafter shall be submitted within thirty (30) days following the last day of the month of the appropriate quarter; and

10. Make all records of the Commission, except those made confidential by law, available for public inspection, copying and mechanical reproduction, or either of them, in accordance with the Oklahoma Open Records Act [51:24A.1, et seq.] and charge a fee not to exceed twenty-five cents (\$0.25) per page as the direct costs of document copying or mechanical reproduction. All fees collected pursuant to the provisions of this paragraph shall be deposited in the Oklahoma Merit Protection Commission Revolving Fund.

§74-840-1.10. Oaths, subpoena and production of books and papers — Reimbursement of employees.

A. A member of the Oklahoma Merit Protection Commission and the Executive Director shall have power to subpoena witnesses and compel the production of books and papers per-

inent to any investigation, dispute resolution or hearing authorized by this act. Members of the Oklahoma Merit Protection Commission, the Executive Director, and their designees shall have the power to administer oaths. Any person who fails to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any such investigation, dispute resolution or hearing or who shall knowingly give false testimony therein upon conviction shall be subject to penalties pursuant to Section 40 of this act.

B. Any state employee subpoenaed by the Executive Director or Commission to appear shall be reimbursed by the employing agency for expenses as provided in the State Travel Reimbursement Act and shall be paid his or her regular salary for each day that the employee is subpoenaed to appear. Said reimbursement and payment shall be in lieu of any witness fees to which the employee might otherwise be entitled by law and a request by a state employee for such fees shall not remove the obligation which the state employee has to honor the subpoena.

§74-840-1.12. Summaries and recordings of appeal hearings.

The Oklahoma Merit Protection Commission is directed to publish summaries of Merit Protection Commission appeal hearings.

The Oklahoma Merit Protection Commission shall charge state agencies, associations and other interested parties for the cost of such summaries and recordings. All monies accruing from the sale of hearing summaries and recordings are to be deposited to the Oklahoma Merit Protection Commission Revolving Fund.

§74-840-1.13. Training and certification program.

The Oklahoma Merit Protection Commission shall establish a training and certification program for all hearing officers employed by the Oklahoma Merit Protection Commission and grievance managers appointed by state agencies. The Commission may also provide training for other agency personnel employees. The Executive Director shall be authorized to bill agencies for the training pursuant to this section to recover reasonable costs associated with the training. Monies received for such training shall be deposited in the Oklahoma Merit Protection Commission Revolving Fund. Expenditure of such funds collected for the training shall be exempt from any expenditure limit on the Okla-

Oklahoma Merit Protection Commission established by law.

§74-840-1.14. Attorney General as legal counsel — Opinions to officers or employees — Representation of Commission — Conflict of interest — Appointment of alternate counsel.

When any officer or employee of the state is in doubt as to the application of the Oklahoma Personnel Act as to himself or to any employee under his supervision, he may submit to the Attorney General a full written statement of the facts and questions he may have. The Attorney General shall then render an opinion to such person and may publish these opinions, or abstracts thereof, with the use of the name of the person advised unless such person requests otherwise in writing. The Attorney General shall be the legal counsel for the Oklahoma Merit Protection Commission and represent it when its decisions are appealed to higher courts. The Office of the Attorney General shall be legal counsel for and represent the Merit Protection Commission notwithstanding its representation of any other state department, agency, board or commission in the same or related matters pending before the Merit Protection Commission or before any court. The Attorney General shall establish internal administrative procedures to ensure that both such agencies are provided independent legal representation, and such simultaneous representation shall not, of itself, be deemed to constitute a conflict of interest. In the event the Attorney General determines an irreconcilable conflict of interest exists, to the extent that he is unable to provide simultaneous representation to both the Merit Protection Commission and another state department, agency, board or commission the provision of Section 18c-2 of this title shall apply.

§74-840-1.15. Delegation of personnel authority — Model human resource projects — Human Resource Management Plan and Self Evaluation Report system.

A. The Administrator shall establish standards and procedures for delegating to appointing authorities the authority to administer human resources functions normally conducted by the Office of Personnel Management. The Administrator shall have the authority to approve delegation applications which shall constitute authority for the agency to implement approved delegations of personnel authority.

B. The Administrator shall create a program to allow agencies to design model human resource projects to test and evaluate the effect of innovative policies, standards, and procedures.

The number and scope of model projects shall be limited only by the capacity of the agency to implement the model projects, the quality of model project applications, and the ability of the Office of Personnel Management to monitor the projects. The Administrator shall have the authority to approve model project applications which shall constitute authority for the agency to implement approved model projects.

C. The Administrator shall create a Human Resource Management Plan and Self-Evaluation Report system for agencies including but not be limited to provisions related to affirmative action; staffing, recruitment, and promotion; classification and compensation; training and staff development expenditures; the reporting of internal agency grievances and discrimination complaints filed, discharges, suspensions without pay and demotions, and number of investigations directed by the Oklahoma Merit Protection Commission and the outcome of all such actions; and strategies for assuring employee participation in the development of agency personnel activities. The self-evaluation should include comparisons with the previous year or years' personnel actions.

§74-840-1.16. Conflicts with federal requirements.

A. If any part of this act is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this act shall be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such findings shall not affect the operation of the remainder of this act in its application to the agencies concerned.

B. Notwithstanding any provisions in this act to the contrary, no regulation shall be adopted which would deprive the state of federal grants or other forms of financial assistance, and the rules and regulations promulgated hereunder shall include standards, provisions, terms and conditions for personnel engaged in the administration of federally aided programs, which shall, in all respects, comply with the necessary requirements for a qualified personnel system under the standards applicable to personnel en-

gaged in the administration of federally aided programs.

§74-840-1.17. Agreements with municipalities to furnish services and facilities.

The Office may enter into agreement with any municipality or political subdivision of the state to furnish services and facilities of the Office to the municipality or political subdivision in the administration of its personnel on merit principles. Any such agreement shall provide for the reimbursement to the state of the cost of the services and facilities furnished. All municipalities and political subdivisions of the state may enter into such agreements.

§74-840-1.18. Payment of administrative costs and expenses.

A. The administrative expenses and costs of operating the Merit System shall be paid by the various divisions of the state government included within the Merit System, and each such agency shall be authorized to include in its budget estimates its pro rata share of such costs, and shall remit such shares quarterly from departmental or agency funds to the Office of Personnel Management who shall deposit such shares to the credit of the General Revenue Fund of the State Treasury.

B. The Administrator shall maintain accurate records reflecting the costs of administering its provisions, and at the close of each quarter-year period shall summarize said costs, and shall bill each department or agency included within the terms of the Oklahoma Personnel Act with a pro rata share of the administrative costs based on the relationship between the quarterly average number of employees in the classified service of such department or agency, and the quarterly average number of employees in the classified service of the state.

C. The Administrator shall separately categorize and estimate expenditures and budget needs for other services performed which are not appropriately charged to state agencies on a pro rata basis.

D. Any state agency for which the Administrator provides payroll services shall pay for such services at a rate established by the Administrator, which shall be based upon the cost to the Administrator of providing such services. Each agency shall remit payment for such services quarterly from departmental or agency funds to the Administrator who shall deposit

such payments into the Office of Personnel Management Revolving Fund created in Section 840-1.20 of this title.

E. No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the state classified service, brought under the Oklahoma Personnel Act unless the payroll voucher or account of such pay bears the certification of the appointing authority or designee, that the persons named therein have been appointed and employed in accordance with the provisions of the Oklahoma Personnel Act and the rules promulgated hereunder. The appointing authority or designee may for proper cause withhold certification from an entire payroll or from any specific item or items thereon.

Any citizen may maintain a suit to restrain a disbursing officer from making any payment in contravention of any provision of the Oklahoma Personnel Act or rules promulgated hereunder. Any sum paid contrary to any provision of the Oklahoma Personnel Act or any rule promulgated hereunder may be recovered in an action maintained by any citizen, from any officer who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment, or from the sureties on the official bond of any such officer. All monies recovered in any such action shall be paid into the State Treasury.

Any person appointed or employed in contravention of any provision of the Oklahoma Personnel Act or any rules or orders promulgated hereunder, whose employment is brought within the terms of the Oklahoma Personnel Act, who performs service for which he or she is not paid, may maintain an action against the officer or officers who purported to appoint or employ the person to recover the agreed pay for such services, or the reasonable value thereof if no pay was agreed upon. No officer shall be reimbursed by the state at any time for any sum paid to such person on account of such services.

If the appointing authority or designee wrongfully withholds certification of the payroll voucher or account of any employee, such employee may maintain an action or proceeding in the courts to compel the appointing authority or designee to certify such payroll voucher or account.

§74-840-1.19. Merit System of Personnel Administration Rules — Distribution.

It shall be the responsibility of each appointing authority to distribute copies of the Merit System of Personnel Administration Rules promulgated and published by the Administrator of the Office of Personnel Management or the Merit Protection Commission, respectively, to all classified employees at the request of the Administrator or the Executive Director.

§74-840-1.20. Office of Personnel Management Revolving Fund.

A. There is hereby created in the State Treasury a revolving fund for the Office of Personnel Management to be designated the "Office of Personnel Management Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of fees received by the Office of Personnel Management for providing training for a certified public managers program and all other monies received by the Office of Personnel Management, except for appropriated monies, monies received as payment for administrative expenses under Section 840.14 of Title 74 of the Oklahoma Statutes, monies placed in the Employee Benefits Revolving Fund, monies placed in the Benefits Council Administration Revolving Fund, and any monies in revolving funds established by the Office of State Finance to support the operation of the Oklahoma Employees Benefits Council or to reimburse the Office of Personnel Management for services the Office provides to the Council. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Office of Personnel Management for defraying the costs incurred in performing the duties and functions of the Office. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

B. Any monies in or obligations against the Certified Public Managers Revolving Fund upon the effective date of this act shall be transferred to the Office of Personnel Management Revolving Fund.

§74-840-1.21. Oklahoma Merit Protection Commission Revolving Fund — Transcriptions for indigent respondents.

There is hereby created in the State Treasury a revolving fund for the Oklahoma Merit Protec-

tion Commission, to be designated the "Oklahoma Merit Protection Commission Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies except appropriated monies received by the Oklahoma Merit Protection Commission. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Oklahoma Merit Protection Commission for the purpose of paying the costs incurred in performing the duties and functions imposed upon the Oklahoma Merit Protection Commission by law.

The Commission is hereby directed to pay from the Fund the costs of transcribing the record of any proceeding before the Commission, which record may be designated by an indigent respondent, if such respondent first establishes indigent condition through execution of an in forma pauperis affidavit upon a form approved by the Commission, provided that if the indigent respondent has a financial recovery, the fund shall be reimbursed from said proceeds.

Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

§74-840.2. Renumbered as § 840-1.2 of this title by Laws 1994, c. 242, § 54.

§74-840-2.1. Affirmative action.

A. All agencies, boards, commissions, departments, and offices of each branch of state government, except institutions within The Oklahoma State System of Higher Education, shall submit an affirmative action plan to the Office of Personnel Management annually by September 1 following the end of the fiscal year ending June 30. Institutions within The Oklahoma State System of Higher Education shall submit an affirmative action plan to the Oklahoma State Regents for Higher Education in accordance with standards established by the Oklahoma State Regents for Higher Education.

B. Said plan for agencies of the executive branch, except institutions within The Oklahoma State System of Higher Education, is subject to the approval of the Administrator of the Office of Personnel Management.

C. The Administrator of the Office of Personnel Management shall analyze the affirmative action plans of executive branch agencies and Equal Employment Opportunity Commis-

sion reports prepared by such agencies, except institutions within The Oklahoma State System of Higher Education, and, on or before March 1 of each year, shall submit a report to the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the Governor. Said report shall state the efforts and progress made by governmental entities in the area of affirmative action, including the status of recruitment, hiring, and promotion of women, men and minorities within job categories.

D. The provisions of this section shall not require an agency, board, commission, department, or office of state government to grant preferential treatment to an individual or group because of race, color, religion, sex, national origin, age, or handicap because of an imbalance which may exist in comparison with the employment statistics of the area involved.

E. It is not a discriminatory practice for the appointing authority of an entity subject to the provisions of this title to adopt and implement an affirmative action plan to eliminate or reduce imbalances with respect to women and minorities if the plan has been approved by the Office of Personnel Management in accordance with rules and guidelines adopted by the Office of Personnel Management. For affirmative action purposes, any person who lists American Indian as his race or national origin shall, within thirty (30) days of his appointment, verify his tribal affiliation by providing a certificate of Degree of Indian Blood from the U.S. Department of Interior, Bureau of Indian Affairs, or by providing the name and address of tribal officials who can verify his tribal affiliation.

F. 1. The Administrator of the Office of Personnel Management shall establish qualification requirements for personnel serving as agency civil rights or affirmative action administrators, officers, coordinators and other personnel responsible for civil rights compliance or affirmative action for executive branch agencies. Such qualification requirements shall include, but not be limited to, knowledge of federal and state civil rights, affirmative action, and equal employment laws and regulations. Such personnel shall be subject to the training requirements specified by the Office of Personnel Management. The Administrator shall be authorized to bill agencies for the training of personnel professionals pursuant to this paragraph to recover reasonable costs associated with the training. Monies received for such training shall be deposited

in the Office of Personnel Management Revolving Fund. Expenditure of such funds collected for the training shall be exempt from any expenditure limit for the Office of Personnel Management established by law. Effective December 1, 1995, complaints of alleged illegal discrimination shall be investigated only by personnel trained pursuant to the requirements of the Administrator, unless otherwise provided by federal or state law. This paragraph shall not apply to such personnel of the Oklahoma Merit Protection Commission or the Oklahoma Human Rights Commission.

2. If, after notice, administrative hearing and determination, pursuant to Article II of the Administrative Procedures Act, Section 308a et seq. of Title 75 of the Oklahoma Statutes, the Administrator finds that an appointing authority of any executive branch agency has failed to make significant progress toward affirmative action goals, or has failed to appoint a civil rights administrator without justifiable reasons, the Administrator may begin requiring remedies as allowed by subsection G of this section and rules promulgated thereto and appropriate to making progress toward affirmative action goals. Such action shall remain in effect until the Administrator determines that significant progress toward affirmative action goals is being made. The provisions of law pertaining to the duties and powers of any agency shall not be construed to deny the Administrator the authority provided for in this paragraph, unless the agency is specifically excluded by law from the provisions of this paragraph.

G. 1. The Administrator of the Office of Personnel Management shall develop rules for the imposition of appropriate remedies for agencies in the executive branch of state government, excluding The Oklahoma State System of Higher Education, when an agency has failed to make significant progress toward affirmative action goals or has been found to have a pattern of noncompliance with affirmative action goals. If, pursuant to Article II of the Administrative Procedures Act, the Administrator finds that an agency has failed to make significant progress toward affirmative action goals or is found to have a pattern of noncompliance with affirmative action goals, remedies that the Administrator may impose shall include:

a. requiring noncomplying appointing authorities to participate in programs for special recruiting efforts,

b. development of training programs to enhance promotability of minorities within agencies and supervisory training in equal opportunity employment, affirmative action, managing workplace diversity, and

c. mandatory review and approval of all hiring and promotion decisions by an appointing authority by the Administrator if the Administrator can document a pattern of non-compliance in previous remedial actions pursuant to this subsection or appointment of a full-time affirmative action officer to any agency in noncompliance with affirmative action remedies.

2. Effective July 1, 1995, if the Administrator determines that a pattern of noncompliance with affirmative action goals exists at an agency and that none of the remedies provided by paragraph 1 of this subsection are appropriate and the Administrator determines the Office of Personnel Management has sufficient resources, the Administrator shall be empowered to remove personnel function(s) relating to recruitment, hiring or promotion from the appointing authority and to place that function with the Administrator of the Office of Personnel Management as provided by this paragraph. Removal of personnel function(s) shall occur only when a pattern of noncompliance with the affirmative action plan can be documented and a vote by two-thirds (2/3) of the Affirmative Action Council recommends to the Administrator to remove personnel function(s). Removal of personnel function(s) shall terminate one (1) calendar year after the Administrator removes such function(s) unless the Administrator is able to demonstrate that the restoration of personnel function(s) to the appointing authority will result in further noncompliance with this section. A vote of two-thirds (2/3) of the Council shall be necessary to continue the removal of personnel function(s) by the Administrator for each additional year. The Administrator must receive approval from the Director of the Office of State Finance to develop recruitment, hiring and promotion actions within budgetary constraints for the affected agencies. The Administrator shall consult with the appointing authority about personnel plans and actions, but the Administrator shall retain final authority for personnel decisions within the scope of the Administrator's authority for the period an agency is operating under removal of the personnel function(s). Nothing in this section shall prohibit the removal of a personnel func-

tion(s) remedy at any time if the Administrator determines the appointing authority and agency have the capability of reassuming the authority that was removed. The provisions of law pertaining to the duties and powers of any agency shall not be construed to deny the Administrator the authority provided for in this paragraph, unless the agency is specifically excluded by law from the provisions of this paragraph. Upon removal of an agency's personnel function(s), the Administrator may employ employees at the Office of Personnel Management to assume the personnel function(s) of the agency as provided by this section.

H. 1. There is hereby created the Affirmative Action Review Council to assist in the implementation of the state's equal employment opportunity and affirmative action efforts mandated by this section. The Administrator of the Office of Personnel Management shall consult with and request the assistance of the Council in developing standards that executive branch agencies shall follow in adopting their affirmative action plans. The Council shall review agency affirmative action plans and assist the Administrator in preparing the annual status report for agencies on equal employment opportunity and affirmative action required by this section. Staff for the Council shall be provided by the Office of Personnel Management.

2. The Affirmative Action Review Council shall consist of six (6) members. The individuals making the appointment shall consider experience in the field, theory, and application of human resources management and affirmative action in making their appointments. Members of the Council shall serve at the pleasure of the respective individuals making the appointments. Two members of the Council shall be appointed by the Governor, two members shall be appointed by the Speaker of the House of Representatives, and two members shall be appointed by the President Pro Tempore of the Senate. Nothing shall preclude the appointment of members of the Legislature. Each individual making appointments shall give consideration to the diversity of the Council's membership when making the appointments and shall not appoint more than one individual who is an employee of the executive branch, excluding The Oklahoma State System of Higher Education. The Governor shall appoint the initial chair from among the Council's membership to serve a two-year term. Thereafter, the chair shall be selected by

the Council from among its membership. The Council shall select a vice-chair from among its membership. All members shall serve two-year terms, unless removed prior to the expiration of a term by the respective individual making the appointment. Any vacancy on the Council shall be filled by the individual who made the original appointment.

Except as provided in subparagraph b of paragraph 4 of this subsection, a majority of the members of the Council shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining members to exercise all of the powers of the Council and every act of a majority of the members present shall be deemed the act of the Council.

3. Members of the Council shall receive no compensation for serving on the Council, but shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act. Any member who is employed in state government shall receive the reimbursement from their employing entity. Any member who is not an employee of state government shall receive the reimbursement from the Office of Personnel Management.

4. a. The Council shall make any recommendations to the Administrator, the Governor, the Speaker of the House of Representatives or the President Pro Tempore of the Senate the Council deems will assist in the attaining of affirmative action goals for state government.

b. The Council shall review agency affirmative action plans for compliance with the standards adopted by the Administrator. The Council shall recommend that the Administrator reject any agency plans which it finds in noncompliance.

c. The Council shall request the Administrator to investigate any agency that the Council believes has violated equal employment opportunity or affirmative action provisions of this section and to conduct hearings to determine if such violations have occurred. If the Administrator finds that an agency is not in compliance with such law and the Council believes that the noncompliance indicates a pattern of noncompliance, the Council, upon a two-thirds vote of its members, may recommend to the Administrator to act in accordance with this section to compel the agency to comply with equal employment opportunity and affirmative action laws. If the Ad-

ministrator decides not to act on the Council's recommendation, the Administrator shall respond in writing within thirty (30) days of the Council's recommendation setting forth the reasons why the Administrator has decided not to act in accordance with said recommendation.

d. Any member who is an employee of an agency that is subject to investigation pursuant to subparagraph b of this paragraph shall disqualify himself or herself from voting on the matter.

e. This paragraph applies to review of issues related to affirmative action. This paragraph does not apply to prohibited discrimination that is within the jurisdiction of the Oklahoma Merit Protection Commission or the Oklahoma Human Rights Commission.

5. The Council shall not have authority to adopt rules pursuant to the Administrative Procedures Act.

I. Affirmative action plans for the judicial branch of government, except the Court of Criminal Appeals and the Workers' Compensation Court, shall be prepared by the Administrative Director of the Courts. The Court of Criminal Appeals shall prepare affirmative action plans for the Court of Criminal Appeals. The Administrator of the Workers' Compensation Court shall prepare affirmative action plans for the Workers' Compensation Court.

J. The Administrator of the Office of Personnel Management is hereby directed to adopt rules necessary to implement the provisions of this section. Such rules regarding affirmative action plans shall include, but not be limited to, a set of specific and result-oriented programs to which an appointing authority commits himself or herself to apply every good faith effort to achieve prompt and full utilization of women and minorities at all levels and in all segments of the work force where deficiencies exist. Such rules shall also include separate provisions for affirmative plans for agencies with fewer than fifteen full-time-equivalent employees.

§74-840-2.2. Affirmative action officers — Supervision.

Any Affirmative Action Officer of an agency of the State of Oklahoma shall be supervised by and report directly to the agency appointing authority or, where there is an Affirmative Action Officer assigned to a subagency, then the Affirmative Action Officer shall be supervised by and report directly to the person administra-

tively responsible for the facility. In no case shall the position or the work performed by the Affirmative Action Officer be supervised either directly or indirectly by the personnel manager of the agency or subagency; provided, however, no Affirmative Action Officer shall have or perform the duties of a grievance manager within an agency of the State of Oklahoma.

§74-840-2.3. Affirmative action officers — Responsibilities and qualifications.

The appointing authority in each agency of each branch of state government is responsible for affirmative action efforts and progress; provided, he or she may employ or assign a person to assist the agency in affirmative action and equal opportunity subject to the following provisions:

1. Any state agency with two hundred or more full-time-equivalent employees shall designate an individual as an affirmative action officer. This provision shall not require the hiring of additional employees.

2. The affirmative action officer shall report directly to the appointing authority. Nothing in this section shall prevent the appointment or designation of assistants to affirmative action officers in agencies as the appointing authority deems appropriate for the implementation of agency affirmative action plans and objectives; and

3. The affirmative action officer shall be knowledgeable of federal and state civil rights and equal opportunity legislation and regulations, of current social and economic conditions and inter-relationships of majority and minority groups, of grievance investigation and interviewing techniques and of report writing. Any person designated as an affirmative action officer shall meet the minimum qualifications and pass all examination requirements as established by the Office of Personnel Management.

§74-840-2.4. Rules and standards for defining progress.

The Administrator of the Office of Personnel Management shall promulgate rules and standards for defining progress toward a balanced and representative work force for state government.

§74-840-2.5. Whistleblower Act — Short title — Purpose — Disciplinary actions — Definitions.

A. This section shall be known and may be cited as the “Whistleblower Act”. The purpose

of the Whistleblower Act is to encourage and protect the reporting of wrongful governmental activities and to deter retaliation against state employees for reporting those activities. No conviction of any person shall be required to afford protection for any employee under this section.

B. For purposes of this section, “agency” means any office, department, commission or institution of the state government. No officer or employee of any state agency shall prohibit or take disciplinary action against employees of such agency, whether subject to the provisions of the Merit System or in unclassified service, for:

1. Disclosing public information to correct what the employee reasonably believes evidences a violation of the Oklahoma Constitution or law or a rule promulgated pursuant to law;

2. Reporting a violation of the Oklahoma Constitution, state or federal law, rule or policy; mismanagement; a gross waste of public funds; an abuse of authority; or a substantial and specific danger to public health or safety;

3. Discussing the operations and functions of the agency, either specifically or generally, with the Governor, members of the Legislature, the print or electronic media or other persons in a position to investigate or initiate corrective action; or

4. Taking any of the above actions without giving prior notice to the employee’s supervisor or anyone else in the employee’s chain of command.

C. Any person who has authority to take, direct others to take, recommend or approve any personnel action shall not take or fail to take any personnel action with respect to any employee for filing an appeal or testifying on behalf of any person filing an appeal with the Oklahoma Merit Protection Commission. This section shall not be construed as prohibiting disciplinary action of an employee who discloses information which the employee:

1. Knows to be false;

2. Knowingly and willfully discloses with reckless disregard for its truth or falsity; or

3. Knows to be confidential pursuant to law.

D. Each state agency, department, institution, board and commission in all branches of state government, including all institutions in The Oklahoma State System of Higher Education, shall prominently post or publish a copy of this section of law in locations where it can reasona-

bly be expected to come to the attention of all employees.

E. As used in this section:

1. "Disciplinary action" means any direct or indirect form of discipline, any dismissal, demotion, transfer, reassignment, suspension, reprimand, admonishment, warning of possible dismissal, reduction in force, reduction in rank, reduction in status, or withholding of work;

2. "Probation" means that period of time, after an officer or employee is found to have violated the provisions of this section and corrective action is ordered, during which time that officer's or employee's performance and conduct is being monitored by the employing agency for further violations of the Oklahoma Personnel Act; and

3. "Mismanagement" means fraudulent activity, criminal misuse of funds or abuse or violation of a well-established, articulated, clear and compelling public policy.

F. Any employee or any former employee aggrieved pursuant to this section may file an appeal with the Oklahoma Merit Protection Commission within sixty (60) days of the alleged violation. The Oklahoma Merit Protection Commission shall promulgate rules to establish procedures for the conduct of investigations. If, after investigation, the Executive Director determines a violation of this section may have occurred, the Executive Director shall appoint a hearing examiner to hear the case as provided for in Section 840-6.6 of this title.

G. If, after the hearing, it is determined that a violation has occurred, the Commission or hearing examiner shall order corrective action pursuant to Section 840-6.6 of this title. Such corrective action shall include, but not be limited to, suspension without pay, demotion or discharge. Any employee found to have violated this section of law, in addition to being suspended or demoted, shall be placed on probation for six (6) months. Such probation shall commence on the date of the final decision filed by the Commission. Any employee who is determined to have violated the Oklahoma Personnel Act, Section 840-1.1 et seq. of this title, while serving said probation shall forfeit the position of the person for one (1) year. Any employee, supervisor or appointing authority of any state agency, whether subject to the provisions of the Merit System of Personnel Administration or in unclassified service, who knowingly and willfully violates the provisions of this section shall

forfeit the position of the person and be ineligible for appointment to or employment in a position in state service for a period of at least one (1) year and no more than five (5) years. The decision of the Commission in such cases may be appealed by any party pursuant to Article II of the Administrative Procedures Act.

§74-840-2.6. Enforcement of employee rights.

The Oklahoma Merit Protection Commission shall be responsible for enforcing the provisions of Section 840-2.5 of this title and shall be responsible for promulgating rules for the enforcement of said section.

§74-840-2.7. Central payroll system — State agencies required to utilize.

Beginning July 1, 1993, all state agencies, boards, commissions, departments and offices, excluding entities within The Oklahoma State System of Higher Education, shall utilize the central payroll system administered by the state Office of Personnel Management. This provision shall not prohibit state institutions of higher education from utilizing the central payroll system at their discretion.

§74-840-2.8. State and county officers and employees — Support, etc. of Constitution and laws of state.

Every state and county officer and state and county employee:

1. Shall support, obey, and defend the Constitution and laws of the State of Oklahoma; and

2. Shall not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or nonperformance of any act or duty pertaining to his or her office, other than the compensation allowed by law.

§74-840-2.9. Discrimination and other prohibited acts.

A. No person in the state service, whether subject to the provisions of the Merit System or in unclassified service, shall be appointed to or demoted or dismissed from any position in the state service, or in any way favored or discriminated against with respect to employment in the state service because of political or religious opinions or affiliations, race, creed, gender, color or national origin or by reason of any physical handicap so long as the physical handicap does not render the employee unable to do the work for which he is employed. The hiring of special disabled veterans pursuant to Sections 401 through 404 of Title 72 of the Oklahoma

Statutes shall not constitute favoritism as herein prohibited.

B. No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure or attempt to secure for any person an appointment or advantage in appointment to a position in the classified service, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any consideration. Letters of inquiry, recommendation and reference for public employees by public officials shall not be considered official authority or influence unless such letter contains a threat, intimidation, or irrelevant, derogatory or false information.

C. No person shall make any false statement, certificate, score, rating or report with regard to any test, certification or appointment made under any provision of the Oklahoma Personnel Act or in any manner commit any fraud preventing the implementation of the provisions of the Oklahoma Personnel Act and rules made pursuant thereto.

D. No employee, examiner or other person shall deny, deceive or obstruct any person in his or her right to examination, eligibility, certification or appointment or furnish to any person any special or secret information for the purpose of effecting the rights or prospects of any person with respect to employment in the classified service.

E. No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or as a result of any appointment, proposed appointment, promotion or proposed promotion to or any advantage in, a position in the classified or unclassified service.

F. Alleged violation of this section shall be reported to the Oklahoma Merit Protection Commission.

§74-840-2.10. State Employee Assistance Program.

A. There is hereby created a State Employee Assistance Program within the Office of Personnel Management. The program may provide assistance to state agencies in their management of employees whose personal problems may have a negative impact on job performance. The program may also provide for assessment, referral, consultation, and problem resolution assistance to state employees and their family members

seeking corrective help with medical or mental health problems, including alcohol or drug abuse and emotional, marital, familial, financial or other personal problems. Participation in the State Employee Assistance Program shall be on a voluntary basis.

B. The Administrator of the Office of Personnel Management is hereby directed to:

1. Promulgate rules necessary for the administration of the State Employee Assistance Program and the maintenance and release of participant records;

2. Conduct training specific to the State Employee Assistance Program; and

3. Establish evaluation methods to assess the effectiveness of the State Employee Assistance Program.

C. Nothing in this act is intended to nullify any agency's existing employee assistance program or to prohibit any state agency from establishing its own employee assistance program; provided, however, such programs established by state agencies shall be subject to compliance with rules promulgated by the Administrator of the Office of Personnel Management to ensure equitable treatment of employees.

D. Records that relate to participation by an individual in the State Employee Assistance Program or an employee assistance program established by a state agency shall be maintained separate and apart from regular personnel records and shall not become part of an employee's personnel file. Such records relating to an individual's participation in an employee assistance program shall be confidential and neither the records nor the testimony of an Employee Assistance Program professional shall be subject to subpoena unless a participant poses a threat to deliberately harm the participant or others. Such determination shall be made by an Employee Assistance Program Professional. A participant in an employee assistance program shall have a right of access to his or her own employee assistance program records.

E. No provision of this section or the rules promulgated pursuant to this section shall be construed to conflict with an appointing authority's responsibility and authority to maintain discipline or to take disciplinary measures against employees for misconduct or unacceptable performance. Further, participation or nonparticipation in any state employee assistance program shall not excuse an employee from discipline or otherwise affect the terms and conditions of such

employee's employment status or opportunities for advancement with the state.

F. 1. There is hereby created the Employee Assistance Program Advisory Council to assist in the implementation of the state's employee assistance program. The Council shall advise the Administrator on policy issues and provide support to expand and improve program services that are available to state employees and their families.

2. The Employee Assistance Program Advisory Council shall consist of the current nine (9) members who shall continue to hold their current positions through June 30, 1995. Effective July 1, 1995, three members shall be appointed by the Governor, three members shall be appointed by the Speaker of the House of Representatives, and three members shall be appointed by the President Pro Tempore of the Senate. All members shall serve two-year terms, unless removed prior to the expiration of a term by the respective individual making the appointment. Any vacancy in office shall be filled by the individual who made the initial appointment. The Council shall select a chair and vice-chair from among its membership. A majority of the members of the Council shall constitute a quorum to transact business, but no vacancy shall impair the right of the remaining members to exercise all of the powers of the Council and every act of a majority of the members present shall be deemed the act of the Council.

3. Members of the Council shall receive no compensation for serving on the Council, but shall receive necessary travel reimbursement by the employing agency for members who are state employees or appointing authorities of agencies pursuant to the State Travel Reimbursement Act. Any member employed in state government shall receive the reimbursement from their employing entity. Members who are not employed in state government shall receive travel reimbursement from the Office of Personnel Management.

4. The Council shall not have authority to adopt rules pursuant to the Administrative Procedures Act.

G. The Legislature and the judicial branch of state government may utilize the services of the State Employee Assistance Program at their discretion.

§74-840-2.11. State employee personal information — Confidentiality.

The home addresses, home telephone numbers, social security numbers, and information related to personal electronic communication devices of current and former state employees shall not be open to public inspection or disclosure without written permission from the current or former state employees or without an order from a court of competent jurisdiction.

§74-840-2.12. Renumbered as § 840-1.6A of this title by Laws 1995, c. 310, § 24, emerg. eff. June 5, 1995.

§74-840-2.13. Personnel Management Information System.

A. The Administrator of the Office of Personnel Management shall establish a Personnel Management Information System to provide various management reports to facilitate decision making within agencies, and to promote the efficient utilization of personnel resources by providing a method for tracking, monitoring and reporting positions and employee transactions. The System shall include information on both the classified and unclassified services within the executive branch of government, but shall not require institutions within The Oklahoma State System of Higher Education to participate.

B. The Administrator of the Office of Personnel Management shall promulgate rules regarding the Personnel Management Information System as necessary to implement the provisions of this section. Such rules shall establish a schedule to ensure the orderly implementation of such Personnel Management Information System.

C. The Personnel Management Information System shall be implemented for all state agencies under the Merit System by July 1, 1993, and for all other executive branch state agencies by July 1, 1994.

D. State agencies shall assist the Office of Personnel Management as necessary to ensure the orderly completion of implementation as provided for in this section.

E. Appointing authorities in the legislative or judicial branches of state government may participate in the Personnel Management Information System at their option.

§74-840-2.14. Management of costs of human resources.

A. The intent of the Legislature is to increase individual agency skill and accountability in managing the costs associated with personnel and in applying controls that will enhance the ability of the State of Oklahoma to manage the overall costs of human resources as efficiently as possible, while continuing to maintain fairness to employees.

B. All agencies, boards, and commissions shall report all reallocation decisions for both classified and unclassified positions and all adjustments to pay grades or salary assignments for classes in the unclassified service to the Office of Personnel Management on a semiannual basis. The Office of Personnel Management shall submit the semiannual reports to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, along with an analysis of statewide reallocation decisions.

C. All agencies, boards, and commissions shall report to the Office of Personnel Management on a semiannual basis all transactions in both the classified and unclassified service involving the establishment of new positions that have not been authorized specifically by legislative action. Agencies shall report the transactions for the six-month period ending June 30 or December 31. The Office of Personnel Management shall forward the semiannual reports to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives, accompanied by an analysis of agency decisions concerning such positions.

D. As a further control on human resource costs, the Governor may declare a financial emergency or implement a freeze in hiring, by declaring this section to be in effect. Comp-Source Oklahoma shall not be subject to the provisions of this subsection. During such periods, no audits of classified positions or reallocation of unclassified positions shall be initiated or conducted at the request of an agency except at the direction of the Governor. The provisions of the Oklahoma Personnel Act relating to agency-requested audits may be suspended during such periods to the extent that they are in conflict with this section. Provided, an audit at the request of an employee who files a classification grievance shall be conducted during such periods in accordance with the provisions of Section 840-4.3 of this title.

E. The Office of Personnel Management shall establish due dates and specify the format for reports required by this section. Agencies that do not respond by the due dates shall be identified in a special section of the semiannual analysis reports forwarded to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives.

F. The provisions of this section shall not be construed to suspend the responsibility of any agency to ensure that the duties and responsibilities assigned to an employee are consistent with the current classification of the employee.

§74-840-2.15. Overtime and compensatory time — Nonexempt employees.

A. The federal Fair Labor Standards Act, 29 U.S.C., Section 201, et seq., provides for minimum standards for both wages and overtime entitlement, and spells out administrative procedures by which covered work time must be compensated. This section is not a comprehensive listing of the provisions of the Fair Labor Standards Act and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations.

B. Any employee receiving compensatory time consistent with the provisions of the Fair Labor Standards Act shall exhaust such compensatory time prior to the taking of annual leave, except where the employee is subject to losing such annual leave due to the application of the accumulation limits in Section 840-2.20 of this title.

C. An employee receiving compensatory time under the provisions of subsection A of this section shall be permitted to use accrued compensatory time within one-hundred-eighty (180) days following the pay period in which it was accrued, provided the taking of compensatory time does not unduly impact agency operations or the health, safety or welfare of the public, or endanger public property. Agencies shall not be allowed to extend this one-hundred-eighty-day time period for employees in an institutional setting. The balance of any unused compensatory time received but not taken during this time period shall be paid to the employee at the employee's current regular hourly rate.

D. As used in this section, "institutional setting" shall mean any agency or part of any agency where twenty-four-hour care, monitoring or supervision is required for patients, clients or inmates to protect public health, safety or property.

§74-840-2.16. Minimum annualized salary.

Except as otherwise provided by law, any classified, unclassified or exempt employee of the state, excluding members of boards and commissions, institutions under the administrative authority of the Oklahoma State Regents for Higher Education, employees of public school districts and elected officials, on July 1, 1991, and earning less than Twelve Thousand Sixty-three Dollars (\$12,063.00) per annum shall receive the necessary grade or salary adjustment to provide for a minimum annualized salary of Twelve Thousand Four Hundred Eighty-three Dollars (\$12,483.00). Any classified, unclassified or exempt employee of the state, excluding members of boards and commissions, institutions under the administrative authority of the Oklahoma State Regents for Higher Education, employees of public school districts and elected officials, employed after July 1, 1991, shall receive a minimum annualized salary of Twelve Thousand Four Hundred Eighty-three Dollars (\$12,483.00). This section shall not apply to those persons employed pursuant to paragraph 12 of Section 840-5.5 of this title or to those persons employed pursuant to Sections 1806.1, 1825 and 1825.1 of Title 74 of the Oklahoma Statutes or those persons employed pursuant to Section 1.6a of Title 53 of the Oklahoma Statutes.

§74-840-2.17. Raises.

A. Unless otherwise provided by the Oklahoma Constitution, language in law which authorizes the setting or fixing of compensation, pay or salary of state officers and employees shall not be construed to authorize any agency, board, commission, department, institution, bureau, executive officer or other entity of the executive branch of state government to award, grant, give, authorize, or promise any officer or employee of the State of Oklahoma a raise, including but not limited to, a cost-of-living raise or any other type of raise that would be given to state employees on an across-the-board basis, except as herein provided. Such raises are prohibited unless authorized by the Legislature and by Merit System of Personnel Administration Rules promulgated by the Administrator. This prohibition applies to all classified and unclassified officers and employees in the executive branch of state government, excluding institutions under the administrative authority of the Oklahoma State Regents for Higher Education.

B. However, nothing in this section shall be construed to prohibit the following actions if the action is made in good faith and not for the purpose of circumventing subsection A of this section, and if the appointing authority certifies that the action can be implemented for the current fiscal year and the subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency:

1. Salary advancements on promotion or direct reclassification to a job family level or class with a higher salary band;

2. Salary adjustments resulting from a pay band change for a job family level or class adopted by the Office of Personnel Management;

3. Increases in longevity payments pursuant to Section 840-2.18 of this title;

4. Payment of overtime, special entrance rates, pay differentials;

5. Payment of wages, salaries, or rates of pay established and mandated by law;

6. Market adjustments for job family levels tied to market competitiveness;

7. Intra-agency lateral transfers, provided that the adjustment does not exceed five percent (5%) and the adjustment is based on the needs of the agency;

8. Skill-based adjustments. Such adjustments, other than lump-sum payments, shall become permanent after twenty-four (24) months from the date such salary adjustment is implemented and may not later be removed from an employee's base salary if a furlough or reduction-in-force is implemented by the appointing authority granting such salary adjustment;

9. Equity-based adjustments;

10. Performance-based adjustments for employees who received at least a "meets standards" rating on their most current performance rating;

11. Career progression increases as an employee advances through job family levels; or

12. Salary adjustments not to exceed five percent (5%) for probationary classified employees achieving permanent status following the initial probationary period and permanent classified employees successfully completing trial periods after intra-agency lateral transfer or promotion to a different job family level or following career progression to a different job family level.

C. Provided, however, any reclassification for one of the purposes provided in subsection B

of this section that would require additional funding by the Legislature shall not be implemented without approval of the Legislature.

D. The pay movement mechanisms described in paragraphs 6 through 11 in subsection B of this section shall be implemented pursuant to rules promulgated by the Administrator of the Office of Personnel Management for the classified service.

E. Appointing authorities may implement the pay movement mechanisms in paragraphs 6 through 12 in subsection B of this section subject to the availability of funds within the agency's budget for the current fiscal year and subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency. Failure by the appointing authority to follow the provisions of this subsection may cause the withdrawal of the use of the pay movement mechanisms provided in paragraphs 6, 7, 9, 10, and 11 of subsection B of this section within the agency during the next appropriations cycle.

F. All agencies, boards, and commissions shall report to the Office of Personnel Management on an annual basis the pay movement mechanisms utilized in paragraphs 6 through 12 in subsection B of this section. The report shall include the pay movement mechanisms type, frequency, amounts provided, affected classifications and job families, and other information as prescribed by the Administrator of the Office of Personnel Management. Agencies shall report this information for the twelve-month period ending December 31 for classified and unclassified employees. Agencies must also report projected pay movement mechanisms and costs anticipated for the balance of the fiscal year. The Office of Personnel Management shall forward the report, which will include findings and recommendations, to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives no later than February 1 of each year.

§74-840-2.18. Longevity pay plan.

A. A longevity pay plan is hereby adopted. This plan applies to all state classified, unclassified, and exempt employees, excluding members of boards and commissions, institutions under the administrative authority of the State Regents for Higher Education, employees of public school districts, and elected officials. The plan shall also apply to those employees of the Oklahoma School for the Blind and the Oklahoma

School for the Deaf who qualify for longevity pay in accordance with subsection D of Section 1419 of Title 10 of the Oklahoma Statutes.

B. The Oklahoma Conservation Commission is hereby authorized to establish a longevity pay program for employees of the conservation districts employed under Section 3-3-103 of Title 27A of the Oklahoma Statutes. Such longevity pay program shall be consistent with the longevity pay program for state employees authorized under this title and payments shall be made in a manner consistent with procedures for reimbursement to conservation districts.

C. To be eligible for longevity pay, employees must have been continuously employed in the classified or unclassified service of the state for a minimum of two (2) years in full-time status or in part-time status working more than one thousand (1,000) hours a year.

For purposes of this section, a break in service of thirty (30) calendar days or less shall not be considered an interruption of continuous service; a break in service of more than thirty (30) calendar days shall mark an end to continuous service. The legislative session employees who have worked for two (2) years or more in part-time status and are eligible for state retirement benefits, but do not receive other longevity payments, shall be eligible and shall be considered to have been continuously employed for purposes of calculating longevity payments, notwithstanding the provisions of subsection E of this section.

D. 1. Longevity pay for the first twenty (20) years of service shall be determined pursuant to the following schedule:

Years of Service	Annual Longevity Payment
At least 2 years but less than 4 years	\$250.00
At least 4 years but less than 6 years	\$426.00
At least 6 years but less than 8 years	\$626.00
At least 8 years but less than 10 years	\$850.00
At least 10 years but less than 12 years	\$1,062.00
At least 12 years but less than 14 years	\$1,250.00
At least 14 years but less than 16 years	\$1,500.00
At least 16 years but less than 18 years	\$1,688.00
At least 18 years but less than 20 years	\$1,900.00
At least 20 years	\$2,000.00

2. For each additional two (2) years of service after the first twenty (20) years an additional Two Hundred Dollars (\$200.00) shall be added to the amount stated above for twenty (20) years of service.

The total amount of the annual longevity payment made to an employee by any and all

state agencies in any year shall not exceed the amount shown on the table corresponding to that employee's years of service with the state, except as otherwise provided by Sections 840-2.27D and 840-2.28 of this title. Further, no employee shall receive duplicating longevity payments for the same periods of service with any and all agencies, except as otherwise provided by Sections 840-2.27D and 840-2.28 of this title.

E. To determine years of service, cumulative periods of full-time employment or part-time employment working more than one hundred fifty (150) hours per month with the state excluding service as specified in subsection A of this section are applicable. Part-time employment, working one hundred fifty (150) hours per month or less for the state, excluding service as specified in subsection A of this section, shall be counted only if:

1. The period of employment was continuous for at least five (5) months; and
2. The person worked more than two-fifths (2/5) time.

Other employment shall not be counted as service for purposes of longevity payments. Further, no period of employment with the state, whether with one or more than one agency, shall be counted as more than full-time service.

F. Years of service under the administrative authority of the State Regents for Higher Education or the administrative authority of the Oklahoma Department of Career and Technology Education of any employee who is now employed in a job classification which is eligible for longevity pay shall be included in years of service for purposes of determining longevity pay.

G. Years of service shall be certified through the current employing agency by the appointing authority on a form approved by the Office of Personnel Management. Said form shall be completed and posted as directed by the Administrator of the Office of Personnel Management by the current employing agency when the employee initially enters on duty with the agency and thereafter whenever the employee's anniversary date is changed.

H. Eligible employees, in full-time status or in part-time status working more than one hundred fifty (150) hours per month, shall receive one (1) lump-sum annual payment, in the amount provided on the preceding schedule, during the month following the anniversary date of the employee's most recent enter-on-duty day

with the state. Upon implementation of the statewide information systems project, the lump-sum annual payment may be paid concurrent with the final payroll of the month of the employee's anniversary date. Eligible part-time employees who work one hundred fifty (150) hours per month or less shall receive one (1) lump-sum annual payment, based on the formula in subsection L of this section, during the month following the anniversary date of the employee's most recent enter-on-duty day with the state. To receive longevity pay an employee must be in pay status on or after his or her anniversary date.

Eligible employees who would not otherwise receive annual longevity payments because their employment includes regular periods of leave without pay in excess of thirty (30) calendar days shall receive one (1) lump-sum annual payment, based on the formula in subsection L of this section, during:

1. The month of August if the employee is in pay status on July 1; or
2. During the month following the employee's first return to duty that fiscal year if the employee is not in pay status on July 1.

Except as otherwise provided by Sections 840-2.27D and 840-2.28 of this title, employees terminated as a result of a reduction-in-force or retiring from state employment shall receive upon said termination or retirement the proportionate share of any longevity payment which may have accrued as of the date of termination or retirement. Provided further that, the proportionate share of any longevity payment which may have accrued as of the date of death of an employee shall be made to the surviving spouse of the employee or if there is no surviving spouse to the estate of the employee.

I. Periods of leave without pay taken in accordance with Section 840-2.21 of this title shall be counted as service. Other periods of nonpaid leave status in excess of thirty (30) calendar days shall not mark a break in service; however, they shall:

1. Not be used in calculating total months of service for longevity pay purposes; and
2. Extend the anniversary date for longevity pay by the total period of time on nonpaid leave status except as provided in subsection H of this section for employees whose conditions of employment include regular periods of leave without pay.

J. Employees currently receiving longevity pay who work for the judicial branch of state

government or who work for the Oklahoma Department of Career and Technology Education shall not be eligible for the longevity pay plan provided for in this section.

K. A break in service with the state in excess of thirty (30) days but which does not exceed two (2) years which was caused by a reduction-in-force shall be treated as if it were a period of nonpaid leave status as provided for in subsection I of this section for the purpose of calculating total months of service for longevity pay. This subsection shall only apply to state employees laid off after June 30, 1982.

L. Eligible part-time employees working less than one hundred fifty (150) hours per month and other eligible employees with regular annual periods of leave without pay of more than thirty (30) calendar days will receive a prorated share of the "Annual Longevity Payment" authorized in subsection D of this section. The prorated amount of payment will be based on actual hours worked in the immediately preceding twelve (12) months.

M. An employee shall not be entitled to retroactive longevity payments as a result of amendments to this section unless specifically authorized by law.

N. The Administrator of the Office of Personnel Management is authorized to promulgate such Longevity Pay Plan Rules as he or she finds necessary to carry out the provisions of this section.

O. As of July 1, 1998, years of service with a city-county health department for employees who left a city-county health department for employment with the Department of Environmental Quality or the State Department of Agriculture, between July 1, 1993 and July 1, 1998, and who are now employed in a job classification that is eligible for longevity pay pursuant to this section, shall be included in years of service for purposes of determining longevity pay subsequent to July 1, 1998.

P. As of July 1, 2003, years of service with a local conservation district shall be included in years of service for purposes of determining longevity pay for local conservation district employees transferred to the Oklahoma Conservation Commission pursuant to the provisions of Enrolled Senate Bill No. 149 of the 1st Session of the 49th Legislature.

§74-840-2.19. Payroll claims.

A. The Director of State Finance shall not approve any payroll claim for payment for any

agency unless said claim contains or is accompanied by the certification by the administrative head of said agency or an authorized employee of said agency that the persons named in said claim have been appointed and employed in accordance with the provisions of the Oklahoma Personnel Act and the rules and orders promulgated pursuant to the provisions of the Oklahoma Personnel Act. For purposes of this section, "payroll claim" shall also include longevity payments made pursuant to Section 840-2.18 of this title.

B. If, as a result of a payroll audit, the Office of Personnel Management finds that an agency has made payments of salaries or wages contrary to the provisions of the Oklahoma Personnel Act and the rules promulgated pursuant to the provisions of the Oklahoma Personnel Act:

1. Audit findings shall be promptly transmitted to the appointing authority of the agency certifying the payroll claim or claims involved; and

2. An audit conference with said agency shall be scheduled within fifteen (15) days, at which time the audit exceptions will be resolved or become a determination of error unless the parties to the conference agree to a further review; and

3. If underpayments or overpayments made by said agency are deemed to be the result of administrative error, the agency which certified the payroll claim or claims in error shall refund to the employee the balance of the actual amounts due and owing to the payee or shall seek repayment from the payee of any amount paid in excess of the actual amount due and owing the payee; and

4. If an agency neglects or refuses to seek repayment after a determination that an error in payroll amount or amounts has been made, or to properly adjust a then current salary or wage, the Office of Personnel Management shall notify the Director of State Finance of an unresolved audit exception stating the agency involved and the person to whom said exception refers; and

5. Upon receipt of notification that a procedure to initiate repayment has been instituted by the certifying agency or that a protest has been filed with the Oklahoma Merit Protection Commission, said notice shall be withdrawn or waived by the Office of Personnel Management, in writing, to the Director of State Finance. Implementation of procedures provided in this section shall not operate to deny or delay payment of proper salaries or wages to any employee of this state; and

6. The provisions of this section regarding collections of any overpayment of salaries or wages by any agency to any state employee or officer shall not include any such overpayment made prior to July 1, 1983;

7. Recovery of overpayments from an employee shall include all overpayments occurring within one (1) year prior to the determination of error. Disbursement of underpayments to an employee shall include all underpayments made within a period of two (2) years prior to the termination of error; and

8. If an agency discovers overpayment or underpayment errors through an internal audit, the agency shall recover overpayments from the employee or disburse underpayment amounts in accordance with this section. Prior to initiation of recovery of overpayments from an employee, the agency shall provide the employee with adequate notice and an opportunity to respond.

C. The Director of State Finance shall not approve any payroll claim for payment for any agency for which the Office of Personnel Management has filed with the Director of State Finance a notification of unresolved audit exception pursuant to this section, unless the person named in the audit exception has been removed from the payroll by the certifying agency, the overpayment has been converted by the agency, or the exception has been withdrawn or waived in writing by the Office of Personnel Management.

D. Any sum on a payroll claim found to have been paid in excess of the actual amount due and owing may be recovered from the payee through the following procedures:

1. Upon the determination that an error in payroll amount has been made, the agency which certified the claim or claims shall notify the payee in writing within ten (10) days from said determination. The notice to the payee shall contain:

- a. the amounts paid in error; and
- b. the dates of said payments; and
- c. the options available for repayment; and
- d. the right of the payee to protest the findings.

Said notice shall also provide space for the payee to indicate an election of a repayment option or to protest the findings. Said election shall be required within thirty (30) days after the notification.

2. If the payee is, at the time of said notification, an officer or employee of the agency seek-

ing repayment, options available for repayment shall be by:

- a. lump-sum cash repayment; or
- b. reduction of the corrected current salary or miscellaneous payroll deduction in a lump sum or in installments over a term not to exceed the term in which the erroneous payments were made; or
- c. reduction in accrued annual leave by an amount of time at the then current correct salary level equal in value to the total of the amount or amounts to be repaid; or
- d. any combination thereof.

3. If the payee is, at the time of said notification, an officer or employee of an agency of the state other than the agency seeking repayment, the options provided by paragraph 2 of this subsection may be exercised by the payee with the approval of the then current employing agency. Payment of amounts deducted or charged against annual leave shall be paid to the agency seeking repayment by an appropriate miscellaneous claim for interagency payment. If a payroll deduction is elected pursuant to the provisions of this paragraph and employment is subsequently terminated, any balance remaining shall be deducted from any final payment otherwise due to the employee.

4. If a payee who is, at the time of said notification, a permanent classified officer or employee of any agency of this state protests the determination of the error or the amount of said determination, the agency seeking repayment shall present, within five (5) days of the return of said protest, the facts in writing, the notice, and the protest of the payee, to the Oklahoma Merit Protection Commission. The Oklahoma Merit Protection Commission shall treat any such protest as a complaint pursuant to Section 840-1.9 of this title. The Commission and Executive Director, after investigation and hearing, shall make a determination which shall be binding on the agency. The salary or wages of any payee exercising the right to the protest shall not be suspended or reduced until a determination has been issued by the Oklahoma Merit Protection Commission and Executive Director.

5. If the payee is no longer an employee of the state but agrees to repay the amount or amounts paid in error, repayment may be accepted:

- a. by lump-sum cash repayment; or
- b. in installments over a period not to exceed twelve (12) months.

6. If the payee is no longer an employee of the state, and does not respond or cannot be located within ten (10) days after mailing of the determination of error, or refuses repayment, the agency seeking repayment shall present the facts in writing to the Attorney General and shall send a copy to the Office of Personnel Management. The Attorney General shall determine what action may be taken to recover said amount.

7. Repayments other than by reduction in present salary or reduction in accrued annual leave for a payee currently employed by the agency seeking repayment shall be deposited in the General Revenue Fund unless the fund to which the amount in error was originally charged can be identified and was other than a General Revenue Fund appropriation. Said deposits shall be treated as nonrevenue receipts.

§74-840-2.20. Leave benefits — Emergency and permanent rules.

A. The Administrator of the Office of Personnel Management shall promulgate such emergency and permanent rules regarding leave and holiday leave as are necessary to assist the state and its agencies.

The Administrator of the Office of Personnel Management, in adopting new rules, amending rules and repealing rules, shall ensure that the following provisions are incorporated:

1. Eligible employees who enter on duty or who are reinstated after a break in service shall receive leave benefits in accordance with the schedule outlined below. Leave shall be accrued based upon hours worked, paid leave, and holidays, but excluding overtime, not to exceed the total possible work hours for the month. Years of service shall be based on cumulative periods of employment calculated in the manner that cumulative service is determined for longevity purposes pursuant to Section 840-2.18 of this title. Employees may accumulate more than the maximum annual leave accumulation limits shown in the schedule below, provided that such excess is used during the same calendar year in which it accrues or within twelve (12) months of the date on which it accrues, at the discretion of the appointing authority.

2. From November 1, 2001, the following accrual rates and accumulation limits apply to eligible employees as follows:

ACCRUAL RATES		ACCUMULATION LIMITS	
Cumulative Years of Service	Annual Leave	Sick Leave	Annual Leave
Persons employed			
0-5 yrs	=15 day/yr	15 days/yr	30 days
5-10 yrs	=18 day/yr	15 days/yr	60 days
10-20 yrs	=20 day/yr	15 days/yr	60 days
over 20 yrs	=25 day/yr	15days/yr	60 days

3. Temporary employees and other limited term employees are ineligible to accrue, use, or be paid for sick leave and annual leave. Such employees shall be eligible for paid holiday leave at the discretion of the appointing authority.

4. Leave earned during a month shall not be available for use until the beginning of the following month.

5. Employees shall not be entitled to retroactive accumulation of leave as a result of amendments to this section.

6. The Administrator of the Office of Personnel Management and the Executive Director of the Oklahoma Merit Protection Commission shall cooperate to assist agencies in developing policies to prevent violence in state government workplaces without abridging the rights of state employees. Such policy shall include a paid administrative leave provision as a cooling-off period which the Administrator of the Office of Personnel Management is authorized to provide pursuant to the Administrative Procedures Act. Such leave shall not be charged to annual or sick leave accumulations.

7. State employees who terminated their employment in the state service on or after October 1, 1992, may be eligible to have sick leave accrued at the time of termination of employment restored if they return to state employment, provided that the state employees' enter-on-duty dates for reemployment occur on or before two (2) years after their termination of employment and they are eligible to accrue sick leave before the two (2) years expire.

8. Employees who are volunteer firefighters pursuant to the Oklahoma Volunteer Firefighters Act and who are called to fight a fire shall not have to use any accrued leave or need to make up any time due to the performance of their vol-

unteer firefighter duties.

B. Nothing in the Oklahoma Personnel Act is intended to prevent or discourage an appointing authority from disciplining or terminating an employee due to abuse of leave benefits or absenteeism. Appointing authorities are encouraged to consider attendance of employees in making decisions regarding promotions, pay increases, and discipline.

C. Upon the transfer of a function in state government to an entity outside state government, employees may, with the agreement of the outside entity, waive any payment for leave accumulations to which the employee is entitled and authorize the transfer of the leave accumulations or a portion thereof to the outside entity.

§74-840-2.20A. Agency closings and reductions in services — Employee leave or relocation.

A. When an agency of the State of Oklahoma or part of such an agency is closed because of an imminent peril threatening the public health, safety, or welfare of state employees or the public, the appointing authority shall place employees who are scheduled to work in the closed area on paid administrative leave or shall assign them to work in another location. Employees who are on paid administrative leave shall be in standby or on-call status during their normal scheduled duty hours. The appointing authority may call such employees to return to their normal duties and work location or respond to the demands of the situation as necessary.

B. When the Governor or a designee of the Governor authorizes agencies or parts of agencies to maintain basic minimum services because hazardous weather conditions impede or delay the movement of employees to and from work, employees responsible for providing such basic minimum services shall report to work. Appointing authorities of agencies shall be responsible for determining essential agency functions and ensuring that employees who staff such functions are so informed. Leave alternatives for those employees not responsible for basic minimum services shall be established by the Administrator of the Office of Personnel Management.

C. Appointing authorities of affected agencies shall notify the Office of Personnel Management of agency closings and reductions in services pursuant to this section.

D. The provisions of this section are applicable to agencies and employees in the executive

department of state government, including those on temporary and other limited term appointments. The provisions of this section shall not be applicable to employees of institutions within The Oklahoma State System of Higher Education.

E. The Administrator of the Office of Personnel Management shall adopt rules necessary to implement the provisions of this section.

§74-840-2.20B. Leaves of absence for state employees serving as donors.

A. Any employee of this state, its departments or agencies shall be granted a leave of absence, subject to approval of the scheduling of such leave by the employee's Appointing Authority, with medical necessity being the primary determinant for such approval, for the time specified for the following purposes:

1. Five (5) workdays to serve as a bone marrow donor if the employee provides the employer written verification that the employee is to serve as a bone marrow donor; and

2. Thirty (30) workdays to serve as a human organ donor if the employee provides the employer written verification that the employee is to serve as a human organ donor.

B. An employee who is granted a leave of absence pursuant to the provisions of this section shall receive the base state pay without interruption during the leave of absence. For purposes of determining seniority, pay or pay advancement, and performance awards, and for the receipt of any benefit that may be affected by a leave of absence, the service of the employee shall be considered uninterrupted by the leave of absence.

C. A state agency shall not penalize an employee for requesting or obtaining a leave of absence pursuant to the provisions of this section.

D. The leave authorized by this section may be requested by the employee only if the employee is the person who is serving as the donor.

§74-840-2.21. Leave without pay.

A. If a state employee, whether in the classified or unclassified service, is absent because of an illness or injury arising out of and sustained in the course of his or her employment with the state, and for which workers' compensation benefits have been filed, the employing agency shall place the employee on leave without pay if the employee so requests; provided, leave without pay pursuant to this section shall not for any purpose be considered a break in service.

B. An employee who sustains an illness or injury arising out of and sustained in the course of employment with the State of Oklahoma shall not be required to use either accumulated sick or annual leave during such period prior to being placed on leave without pay pursuant to this section.

C. An employee placed on leave without pay pursuant to the provisions of this section shall continue receiving basic plan insurance coverage as defined in Section 1363 of this title and dependent insurance benefit allowance pursuant to paragraph 2 of subsection C of Section 1370 of this title paid by the agency during the leave without pay.

D. An employee on leave without pay pursuant to the provisions of this section shall have the right to be returned to his or her original position in accordance with rules promulgated by the Office of Personnel Management. If it is found necessary for the good of the state to fill the position during the period the employee is on leave without pay the employee filling the position shall vacate the position upon the return of the employee on leave without pay, subject to layoff, transfer or demotion rights earned under the Oklahoma Personnel Act and rules of the Office of Personnel Management. The right to return to the original position shall expire one (1) year from the date of the start of leave without pay. Notwithstanding the provisions of Section 1 et seq. of Title 85 of the Oklahoma Statutes, the employee may be separated in accordance with the Oklahoma Personnel Act and Merit Rules if the employee has not returned to the original position of the employee or some other position within the agency within one (1) year from the date of the start of leave without pay.

E. An employee on leave without pay pursuant to the provisions of this section shall provide a medical statement as to his or her ability to perform the duties of the position to the appointing authority at least every three (3) months.

F. If the employee becomes medically able with reasonable accommodation to perform the duties of his or her original position, the employee shall be returned to such position. If the employee is unable to perform the duties of the original position with reasonable accommodation, but is medically able with reasonable accommodation to perform the duties of any other position within the agency for which the employee is qualified, and appointment to such

other position does not constitute a promotion, the employee shall have first preference for any such position which becomes vacant within the agency, notwithstanding any other preference provisions of the Oklahoma Personnel Act or of other laws of the State of Oklahoma. An employee accepting another position pursuant to this subsection shall not forfeit his or her right to be returned to the original position within twelve (12) months after the start of leave without pay pursuant to the provisions of subsection D of this section.

G. An ill or injured employee shall be eligible to participate in the Disability Insurance Program established pursuant to the provisions of Section 1331 et seq. of this title in accordance with rules promulgated by the State and Education Employees Group Insurance Board.

H. All benefits, rights, and obligations contained in this section shall continue during the time the employee remains on leave without pay status, for a continuous period not to exceed twelve (12) months. However, if a workers' compensation claim based on such illness or injury is denied during the twelve-month period, all benefits, rights and obligations conferred upon an employee pursuant to this section shall cease and be discontinued immediately.

I. A classified employee who is separated pursuant to subsection D of this section shall be eligible for reinstatement to employment with any state agency for twelve (12) months after the date of separation whether in the classified or unclassified service in accordance with rules adopted by the Administrator of the Office of Personnel Management provided the employee is qualified for the position to which reinstated. An unclassified employee who is separated pursuant to subsection D of this section shall be eligible for reinstatement to unclassified employment with any state agency for twelve (12) months after the date of separation in accordance with rules promulgated by the Administrator of the Office of Personnel Management provided the employee is qualified for the position to which reinstated. Nothing in this subsection shall be construed to compel or require any agency of the state to reinstate a former employee who is separated pursuant to subsection D of this section. Further, nothing in this subsection shall be construed as limiting or reducing a former employee's eligibility for reinstatement pursuant to other general reinstatement or reem-

ployment provisions in rules promulgated by the Administrator.

§74-840-2.22. Family and medical leave.

The Administrator of the Office of Personnel Management shall promulgate emergency and permanent leave rules as necessary to implement the federal Family and Medical Leave Act of 1993 and rules thereto. Such leave rules shall permit an employee to select any one or a combination of the following types of leave to account for authorized absences covered by the Family and Medical Leave Act of 1993: leave without pay; annual and sick leave accumulated by the employee; and annual and sick leave donated by other state employees; and compensatory time.

§74-840-2.23. State leave sharing program.

A. There is hereby created the state leave sharing program. The purpose of the state leave sharing program is to permit state employees to donate annual or sick leave to a fellow state employee who has exhausted, or will exhaust, all types of paid leave and:

1. Who is eligible for and requires family leave or who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is likely to cause the employee to take leave without pay or terminate employment, if:

- a. the receiving employee has exhausted, or will exhaust, all types of paid leave due to an extraordinary or severe illness, injury, impairment, or physical or mental condition, which involves the employee, a relative of the employee or household member, and
- b. the condition has caused, or is likely to cause, the employee to go on leave without pay or terminate employment; or

2. Immediately after the death of a relative or household member, provided that the total leave received for this purpose shall not exceed five (5) days in any calendar year; or

3. Who is affected by a presidentially declared national disaster in Oklahoma after May 1, 1999, for a period of eighteen (18) months after the date of the presidentially declared national disaster if:

- a. the employee suffered a physical injury as a result of the disaster,
- b. the spouse, relative, or household member of the employee suffered a physical injury or died as a result of the disaster, or

c. the domicile of the employee or the home of a relative of the employee was damaged or destroyed as a result of the disaster.

B. As used in this section:

1. "Relative of the employee" shall be limited to the spouse, child, stepchild, grandchild, grandparent, stepparent, or parent of the employee;

2. "Household members" means those persons who reside in the same home, who have reciprocal duties to and do provide financial support for one another. This term shall include foster children and legal wards even if they do not live in the household. The term does not include persons sharing the same general house, when the living style is primarily that of a dormitory or commune;

3. "Severe" or "extraordinary" means extreme or life threatening;

4. "State employee" means a permanent classified employee or a regular unclassified employee with one (1) year or more continuous service with the state. The term "state employee" does not include classified employees in probationary status or unclassified employees on temporary or other limited term appointments, except that those employees are eligible to receive shared leave as provided in subsection A of this section and the leave with pay authorized by Section 840-2.23A of this title related to a presidentially declared national disaster; and

5. "Terminal" means likely to result in death within two (2) calendar years.

C. An employee may be eligible to receive shared leave pursuant to the following conditions:

1. The chief administrative officer of the employee determines that the employee meets the criteria described in this section; and

2. The employee has abided by state policies regarding the use of leave.

D. An employee may not donate annual or sick leave to an eligible employee without the permission of the chief administrative officer of the donating employee's agency.

E. An employee may donate annual or sick leave to another employee provided the donation does not cause the annual leave balance of the employee to fall below eighty (80) hours and provided the donation does not cause the sick leave balance of the employee to fall below eighty (80) hours.

F. Except as otherwise provided for in this subsection, the chief administrative officer of the

employee shall determine the amount of donated leave an employee may receive and may authorize an employee to use up to a maximum of two hundred sixty-one (261) days of donated leave during total state employment. An employee may receive and use up to a maximum of three hundred sixty-five (365) days of donated leave during total state employment, if the employee is suffering from an illness which has been certified in writing by a licensed physician or health care practitioner as being terminal. However, upon written request by the employee who either has reached or shall reach in the near future a maximum amount as set out in this subsection, the chief administrative officer of the employee may approve additional donated leave as requested by the employee.

G. The chief administrative officer of the employee shall require the employee to submit, prior to approval or disapproval of shared leave pursuant to paragraph 1 of subsection A of this section, a medical certificate from a licensed physician or health care practitioner verifying the need for the leave and expected duration of the illness, injury, impairment, or physical or mental condition for which the leave is donated.

H. Donated annual or sick leave is transferable between employees in different state entities with the agreement of both chief administrative officers of the entities.

I. The receiving employee shall be paid his or her regular rate of pay; therefore, one hour of donated leave may cover more or less than one hour of the salary of the recipient. The calculation of the leave value of the recipient shall be in accordance with Office of Personnel Management policies, regulations, and procedures. The dollar value of the leave is converted from the donor to the recipient. The leave received will be designated as donated leave and be maintained separately from all other leave balances.

J. Any donated leave may only be used by the recipient for the purposes specified in this section.

K. All forms of paid leave available for use by the recipient must be used prior to using donated leave.

L. Any donated leave not used by the recipient during each occurrence as determined by the chief administrative officer of the employee shall be returned to the donor. The donated leave remaining will be divided among the donors on a prorated basis based on the original donated value and returned at its original donor value

and reinstated to the original leave balance of each donor.

M. All donated leave must be given voluntarily. No employee shall be coerced, threatened, intimidated, or financially induced into donating annual or sick leave for purposes of the leave sharing program.

N. Employees may not donate excess annual or sick leave that the donor would not be able to otherwise take.

§74-840-2.23A. National disaster leave.

A. An appointing authority may grant leave with pay not to exceed fifteen (15) working days to a state employee who is affected by a presidentially declared national disaster in Oklahoma after May 1, 1999, if:

1. The employee suffered a physical injury as a result of the disaster;

2. A relative or household member of the employee, as defined by subsection B of Section 840-2.23 of Title 74 of the Oklahoma Statutes, suffered a physical injury or died as a result of the disaster; or

3. The domicile of the employee or the domicile of a relative of the employee, as defined by subsection B of Section 840-2.23 of Title 74 of the Oklahoma Statutes, was damaged or destroyed as a result of the disaster.

B. The authority to grant leave with pay pursuant to subsection A of this section shall extend for a period of not more than eighteen (18) months after the date of a presidentially declared national disaster.

C. Annual leave, sick leave, or compensatory time which was charged to a state employee as a result of the presidentially declared national disaster resulting from the May 3, 1999, tornadoes that would have otherwise been eligible for the leave provision in subsection A of this section, may be reinstated by the appointing authority. A state employee entitled to leave with pay pursuant to this section who was charged leave without pay shall be compensated at the base rate of pay of the employee.

§74-840-2.24. Participation in specialized disaster relief services—Leave with pay.

A. 1. As used in this subsection, "disaster" means disasters designated at level III and above in the American Red Cross Regulations and Procedures.

2. Any state employee in the executive branch of state government who is a certified disaster service volunteer of the American Red

Cross, with the authorization of the chief executive officer of his state agency, may be granted a leave with pay not to exceed fifteen (15) working days in any twelve-month period to participate in specialized disaster relief services within the State of Oklahoma for the American Red Cross, upon the request of the American Red Cross and with the approval of the office of the Governor of this state, without the loss of pay, annual leave, sick leave, accrued overtime wages or compensatory time. The agency shall compensate an employee granted leave time under this section at his regular rate of pay for those regular work hours during which the employee is absent from work.

3. Notwithstanding the provision of paragraph 2 of this subsection, state employees certified as disaster volunteers shall not exceed five hundred (500) participants at any one time. A list of such employees will be coordinated with the Department of Civil Emergency Management and the office of the Governor of this state. Within sixty (60) days of any request made by the American Red Cross, a report shall be prepared by the American Red Cross and submitted to the Governor's office stating the reasons and needs for any request made.

B. Any state officer or employee in the executive branch of state government authorized by the employing agency of the officer or employee to volunteer in a disaster relief activity during a presidentially declared national disaster in Oklahoma after May 1, 1999, for a period of not more than six (6) months after the date of the presidentially declared national disaster, shall not have to use accrued leave or need to make up any time due to the performance of their volunteer activities.

§74-840-2.25. Meetings of job-related professional organizations — Leave to attend — Activities excluded.

A. A permanent classified employee or a regular unclassified employee shall be entitled to take leave with pay for not to exceed three (3) days a year to attend meetings of job-related professional organizations of which the employee is a member upon receiving permission from the appointing authority. The denial by an appointing authority or organizational leave shall be in writing and state the reasons for denying said leave.

B. The leave authorized by this section shall not be used for lobbying activities which include the lobbying of legislative or executive branch

elected officials within state-owned or leased buildings.

§74-840-2.26. Flextime attendance policies and alternative work schedules.

A. In order to provide increased services to the public, to assist state employees in meeting the needs of their families, improve employee morale and productivity, appointing authorities are encouraged to consider the adoption of flex-time attendance policies and alternative work schedules.

B. For purposes of this section, “flextime” means a regular, eight-hour-day work schedule that permits the use of alternative starting and ending times within limits set by the appointing authority and that includes a common work period during which all employees are expected to be present.

C. The Administrator of the Office of Personnel Management shall provide technical assistance to agencies in developing flextime policies and alternative work schedules and shall promulgate rules pursuant to the Administrative Procedures Act as necessary for such policies.

§74-840-2.27. Renumbered as § 840-2.27C of this title by Laws 1997, c. 287, § 20, eff. July 1, 1997.

§74-840-2.27A. Short title.

Sections 4 through 11 of this act shall be known and may be cited as the “State Government Reduction-in-Force and Severance Benefits Act”.

§74-840-2.27B. Definitions.

As used in Sections 840-2.27B through 840-2.27G of this title:

1. “Affected job family levels” means those containing affected positions;

2. “Affected employees” means classified employees in affected positions;

3. “Affected positions” means positions being abolished or positions which are subject to displacement action;

4. “Agency” means any office, department, board, commission, or institution of all branches of state government, except for institutions within The Oklahoma State System of Higher Education;

5. “Displacement” or “displace” means the process of an employee accepting an offer of employment to an occupied or funded vacant position;

6. “Displacement limit” means any area

within an agency in which displacement may not occur. These areas may include, but are not limited to, job families, units, and geographic areas within an agency;

7. "Displacement opportunity" means the circumstances under which an occupied or funded vacant position is subject to displacement by an affected employee;

8. "Displacement privilege" means the privilege an affected employee has to utilize a displacement opportunity;

9. "Educational institution" means an institution within The Oklahoma State System of Higher Education, a facility under the management or control of the Oklahoma Department of Career and Technology Education, or a licensed private educational institution in the State of Oklahoma;

10. "Personnel transaction" means the record of the separation as a result of a reduction-in-force of a classified affected employee from an agency, or the record of the transfer or demotion of a classified affected employee;

11. "Reduction-in-force" means abolition of positions in an agency or part of an agency and the corresponding nondisciplinary removal of affected employees from such positions through separation from employment or through displacement to other positions. Reduction-in-force may also include reorganizations;

12. "Reorganization" means the planned elimination, addition or redistribution of functions or duties either wholly within an agency, any of its subdivisions, or between agencies;

13. "Severance benefits" means employee benefits provided by the State Government Reduction-in-Force and Severance Benefits Act to affected employees separated through a reduction-in-force; and

14. "Years of service" means current and prior service which is creditable for the Longevity Pay Plan. An affected employee shall not be required to have been continuously employed for two (2) years to be given credit for either current or prior service pursuant to the State Government Reduction-in-Force and Severance Benefits Act.

§74-840-2.27C. Reduction-in-force plan.

A. At least sixty (60) days before the scheduled beginning of reduction-in-force separations or as otherwise provided by law, the appointing authority shall post in each office of executive branch agencies affected by the proposed reduction-in-force notice that a reduction-in-force will

be conducted in accordance with the Oklahoma Personnel Act and Merit rules. The reduction-in-force implementation plan shall be provided to the Director of State Finance and any state employee association representing state employees at such time. The notice shall not be posted unless approved by the cabinet secretary for the agency conducting the reduction-in-force. If there is no incumbent cabinet secretary for the agency, the cabinet-secretary-notice-approval requirement shall not be applicable. The approved notice shall be posted in each office affected by the proposed plan for five (5) days. The appointing authority shall provide a copy of the notice to the Administrator. A reduction-in-force shall not be used as a disciplinary action.

B. The reduction-in-force implementation plan and subsequent personnel transactions directly related to the reduction-in-force in executive branch agencies shall be in compliance with rules adopted by the Administrator. The reduction-in-force implementation plan, including the description of and reasons for displacement limits and protections from displacement actions, and severance benefits that will be offered pursuant to Section 840-2.27D of this title shall be posted in each office affected by the plan within five (5) business days after posting of the reduction-in-force notice. The reduction-in-force implementation plan shall:

1. Provide for the appointing authority to determine the specific position or positions to be abolished within specified units, divisions, facilities, agency-wide or any parts thereof;

2. Provide for retention of affected employees based on type of appointment;

3. Require the separation of probationary classified affected employees in affected job family levels, except those affected employees on probationary status after reinstatement from permanent classified status without a break in service, prior to the separation or displacement of any permanent classified affected employee in an affected job family level;

4. Provide for retention of permanent classified affected employees in affected job family levels and those affected employees on probationary status after reinstatement from permanent classified status without a break in service based upon consideration of years of service;

5. Provide for exercise of displacement opportunities by permanent classified affected employees and those affected employees on probationary status after reinstatement from perma-

ment classified status without a break in service if any displacement opportunities exist; and

6. Provide outplacement assistance and employment counseling from the Oklahoma Employment Security Commission and any other outplacement assistance and employment counseling made available by the agency to affected employees regarding the options available pursuant to the State Government Reduction-in-Force and Severance Benefits Act prior to the date that a reduction-in-force is implemented.

C. If an agency implements a reduction-in-force then it shall give a veteran's preference over affected nonveterans who have equal retention points to the affected veteran.

D. The Director of the Office of State Finance shall review the fiscal components of the reduction-in-force implementation plan and within five (5) business days of receipt reject any plan that does not:

1. Demonstrate that funds are available to cover projected costs,
2. Contain an estimate of the number of affected employees likely to participate in the education voucher program established in Section 840-2.27D of this title, and
3. Contain an estimate of the cost savings or reduced expenditures likely to be achieved by the agency.

If the reduction-in-force is conducted pursuant to a reorganization, the fiscal components of the reduction-in-force implementation plan shall contain reasons for the reorganization, which may include, but not be limited to, increased efficiency, improved service delivery, or enhanced quality of service.

E. The appointing authority may limit displacement of affected employees at the time of a reduction-in-force. Displacement limits shall not be subject to the approval of the Administrator. Any limitation shall be based upon reasonable, written, articulated criteria as certified by the appointing authority. If displacement is limited, the appointing authority shall take action to avoid or minimize any adverse impact on minorities or women.

1. The appointing authority may protect from displacement action up to twenty percent (20%) of projected post-reduction-in-force employees in affected positions within displacement limits; provided, that any fractional number resulting from the final mathematical calculation of the number of those positions shall be rounded to the next higher whole number. The appointing

authority must explain why affected employees are being protected.

2. If the affected employee has not held within the last five (5) years a position in the job family level or predecessor class in which the affected employee is otherwise eligible for a displacement opportunity, the appointing authority may determine that the affected employee does not possess the recent relevant experience for the position and deny in writing the displacement opportunity.

3. An affected permanent classified employee may exercise a displacement privilege, if one exists, if the affected employee has received an overall rating of at least "satisfactory", or its equivalent, on the most recent annual service rating. If an affected employee has not been rated in accordance with the time limits established in Section 840-4.17 of this title, the employee shall be deemed to have received an overall rating of at least "satisfactory" or its equivalent on the most recent service rating.

4. An affected employee who exercises a displacement privilege pursuant to this section shall:

- a. be required, as a condition of continued employment by the agency, to sign an agreement, in a form to be prescribed by the Administrator of the Office of Personnel Management, acknowledging that the employee had an opportunity to receive severance benefits and affirmatively elected to exercise a displacement privilege and to forego such benefits. An affected employee who signs the agreement required by this subparagraph waives any privilege which might otherwise have been available to the affected employee pursuant to the agreement for the provision of severance benefits, and
- b. not have the right to exercise any subsequent right to receive severance benefits from the agency for which the affected employee performs services on the date that the employee exercises a displacement privilege. The provisions of this section shall not prohibit any person from exercising a displacement privilege in, or accepting severance benefits from, more than one agency during employment with the State of Oklahoma or from the agency which the affected employee exercised a displacement privilege in any future reduction-in-force.

F. An affected employee who does not agree pursuant to Section 840-2.27E of this title to

accept severance benefits and who does not have a displacement opportunity or does not accept a displacement opportunity shall be separated by the reduction-in-force and shall not receive any severance benefits that would have otherwise been provided pursuant to Section 840-2.27D of this title.

G. Permanent classified affected employees and those affected employees on probationary status after reinstatement from permanent classified status without a break in service who were removed from a job family level by taking a position in another job family level through displacement or separated after foregoing severance benefits shall be recalled by the agency to the job family level from which they were removed in inverse order of removal before the agency may appoint other persons to the job family level, from the employment register, by internal action or from Priority Reemployment Consideration Rosters as provided by this section. Upon declination of an offer of reappointment to the job family level from which the employee was removed or eighteen (18) months after the date of removal from the job family level, whichever is first, this right to be recalled shall expire.

H. The names of permanent classified affected employees and those affected employees on probationary status after reinstatement from permanent classified status without a break in service who have been separated pursuant to the State Government Reduction-in-Force and Severance Benefits Act, who apply and meet all requirements for state jobs in the classified service shall be placed on Priority Reemployment Consideration Rosters in accordance with their individual final earned ratings for a maximum of eighteen (18) months after the date of separation. Before any vacant position is filled by any individual eligible for initial appointment from the employment register, individuals on the Priority Reemployment Consideration Rosters shall be given priority consideration for reemployment by any state agency within eighteen (18) months after the date of the reduction-in-force. Upon declination of an offer of reemployment to a job family level having the same or higher pay band than the job family level from which the employee was removed, or eighteen (18) months after the date of separation, whichever is first, this priority consideration for reemployment shall expire. If an agency has posted a reduction-in-force plan and implementation schedule, all

affected employees in positions covered by the plan and any within the displacement limits established by the appointing authority of the agency who have been separated shall be eligible for priority reemployment consideration.

I. If an agency or any part thereof is scheduled to be closed or abolished as a result of legislation or a court order, the affected employees, who would be eligible for Priority Reemployment Consideration after their separation in accordance with subsection H of this section, may apply and, if qualified and eligible, shall be accorded Priority Reemployment Consideration not to exceed twelve (12) months before the scheduled date of separation. If an agency has posted a reduction-in-force plan and implementation schedule, all affected employees in positions covered by the plan and any within the displacement limits established by the appointing authority of the agency shall be eligible for Priority Reemployment Consideration beginning with the date the schedule is posted, not to exceed twelve (12) months before the scheduled date of separation.

J. When the Legislature is not in session, the Contingency Review Board may, upon the request of the Governor, direct agencies, boards and commissions to reduce the number of employees working for the agency, board or commission whenever it is deemed necessary and proper. Such reduction shall be made pursuant to reduction-in-force plans as provided in this section.

K. 1. When the Legislature is not in session, the Contingency Review Board may, upon the request of the Governor, direct and require mandatory furloughs for all state employees whenever it is deemed necessary and proper. The Contingency Review Board shall specify the effective dates for furloughs and shall note any exceptions to state employees affected by same. All classified, unclassified, exempt or nonmerit employees, including those employees of agencies or offices established by statute or the Constitution, shall be affected by such actions.

2. Mandatory furlough means the involuntary temporary reduction of work hours or the placement of an employee on involuntary leave without pay. Rules governing leave, longevity pay and participation in the State Employees Group Health, Dental, Disability, and Life Insurance program shall not be affected by mandatory furloughs. Furlough, as provided for in this section or by rules adopted by the Administrator

of the Office of Personnel Management, shall not be appealable under the provisions of the Oklahoma Personnel Act.

3. Notwithstanding existing laws or provisions to the contrary, members of state boards and commissions shall not receive per diem expenses during periods of mandatory furlough. The Contingency Review Board shall additionally call upon elected officials, members of the judiciary, and other public officers whose salary or emoluments cannot be altered during current terms of office, to voluntarily donate to the General Revenue Fund any portion of their salary which would otherwise have been affected by a mandatory furlough.

L. All agencies directed by the Contingency Review Board to terminate or furlough employees, shall report the cumulative cost savings achieved by the reductions-in-force or furloughs to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives on a quarterly basis for one (1) year following the effective date of the action.

M. The appointing authority of an agency which has an approved reduction-in-force plan pursuant to the State Government Reduction-in-Force and Severance Benefits Act may request the Administrator of the Office of Personnel Management to appoint an interagency advisory task force for the purpose of assisting the agency and its employees with the implementation of the reduction-in-force. The appointing authority of state agencies requested by the Administrator to participate on a task force shall assign appropriate administrative personnel necessary to facilitate the necessary assistance required for the efficient implementation of the approved reduction-in-force.

§74-840-2.27D. Severance benefits.

A. Agencies shall provide severance benefits to affected employees who are separated from the state service as a result of a reduction-in-force due to a reorganization or any other action by an agency which results in affected positions being abolished and affected employees being severed from the state service. Severance benefits shall be given to the following categories of affected employees: permanent classified affected employees and affected employees on probationary status after reinstatement from permanent classified status without a break in service; provided, however, affected employees of the University Hospitals Authority must have been continuously employed in the state service

since on or before January 1, 1995, to receive severance benefits. Pursuant to this section and Section 840-5.1A of this title, state agencies may provide severance benefits provided by this subsection to regular unclassified employees with one (1) year or more continuous state service who are separated from the state service for budgetary reasons; however, state agencies shall offer regular unclassified state employees with one (1) year or more continuous state service who are separated from the state service the same severance benefit as the affected employees in a reduction-in-force if the unclassified employees' separation is as a result of the conditions causing the agency to implement a reduction-in-force. Affected employees who qualify for severance benefits pursuant to this section, in addition to the payment of any compensable accrued leave or other benefits an affected employee is eligible to receive upon separation from the state service, shall receive severance benefits consisting of the following elements:

1. All agency severance benefits shall provide the following:

a. payment equal to the affected employee's current health insurance premium for the affected employee only for eighteen (18) months based on the cost of the premium at the time of the reduction-in-force. The appointing authority of the agency can ask the Director of the Office of State Finance to waive the severance benefit provision in this subparagraph or to reduce the length of coverage or subsequent severance benefit payment upon demonstration of the agency's inability to fund the full benefit,

b. a longevity payment, as prescribed by Section 840-2.18 of this title, in the amount which would otherwise be paid to the affected employee on the affected employee's next anniversary date. For the purposes of this subparagraph, the University Hospitals Authority shall calculate longevity for affected employees who were members of the University Hospitals Authority Model Personnel System pursuant to Section 3211 of Title 63 of the Oklahoma Statutes for all state service as would otherwise be determined by Section 840-2.18 of this title, and

c. outplacement assistance and employment counseling prior to and after the reduction-in-force from the Oklahoma Employment Security Commission and other state or private entities that the entity may contract with to

assist individuals who may be impacted by a reduction-in-force;

2. In addition to the severance benefits provided by paragraph 1 of this subsection, agencies may give affected employees, except as otherwise provided by paragraph 3 of this subsection, severance benefit packages based on any combination of the following options, provided that all affected employees who receive severance benefits in the reduction-in-force shall be accorded uniform treatment pursuant to the State Government Reduction-in-Force and Severance Benefits Act:

a. up to one (1) week of pay, calculated by dividing the affected employee's current annual salary by the whole number fifty-two (52), for each year of service,

b. a maximum lump-sum payment of Five Thousand Dollars (\$5,000.00), and

c. payment for accumulated sick leave or extended illness benefits at up to one-half (1/2) of the affected employee's hourly rate not otherwise used pursuant to law for conversion to credited retirement credit; and

3. An affected employee may direct payment of all or a portion of the affected employee's severance benefits to the options authorized by this paragraph by exercising an option to receive education vouchers for use in connection with the Reduction-in-Force Education Voucher Action Fund subject to the following requirements and rules of the Administrator of the Office of Personnel Management, provided that the agency offers to match employee severance funds pursuant to this paragraph. In such case:

a. the affected employee may purchase One Dollar (\$1.00) in voucher credit for each One Dollar (\$1.00) contributed by the affected employee to the fund subject to a maximum affected employee contribution of Three Thousand Dollars (\$3,000.00) which may be matched by a maximum agency contribution of Three Thousand Dollars (\$3,000.00); provided, that the agency contribution shall not exceed the contribution of the affected employee,

b. the affected employee may pay the cost for the voucher program directly, subject to the requirements of subparagraph a of this paragraph, or the employing agency of the affected employee may pay the cost of the voucher from funds which would otherwise have been used to make payments to the displaced affected employee pursuant to an elec-

tion by the affected employee to receive severance benefits,

c. no voucher issued pursuant to the provisions of this paragraph shall:

(1) be redeemed by the affected employee for cash or anything of value other than the cost of tuition and fees at a public or private educational institution within the State of Oklahoma, or

(2) be valid longer than a period of four (4) years from the date upon which the voucher is issued to the affected employee,

d. the Administrator of the Office of Personnel Management shall pay tuition and fees directly to the educational institution and shall receive any refunds for payment of tuition and fees from the educational institution which shall be credited to the affected employee's account, and

e. the Administrator of the Office of Personnel Management shall distribute to the affected employee and the agency any monies remaining in the affected employee's account after the voucher credit has expired. The distribution shall be based on the proportional share of contributions made by the affected employee and the agency.

B. Each affected employee who is separated from state service as a result of a reduction-in-force after July 1, 1998, besides being eligible for the eighteen (18) months of continuation coverages provided by the Public Health Service Act, 42 U.S.C., Section 30066-1 et seq., i.e., health, dental, vision and healthcare reimbursement account options, under this severance benefit, shall also be eligible to elect additional continuation coverage for any life insurance, in twenty-thousand-dollar units, on self or five-thousand-dollar units, on dependents, and to continue participation in the dependent care reimbursement account provided that these additional coverages were in effect immediately prior to the effective date of the reduction-in-force, the date of which shall serve as the qualifying event date. Provided, that no coverage elected for continuation through the Public Health Service Act for the full eighteen-month period is allowed to lapse, then that affected employee may elect to continue those same coverages for an additional eighteen (18) months at whatever rate is then in effect. This additional eighteen-month continuation period of coverage shall be administered by the Oklahoma State

Employees Benefits Council following the initial eighteen-month period of continuation which shall be administered by the COBRA office at the State and Education Employees Group Insurance Board.

C. Part-time affected employees shall receive benefits pursuant to this section on a prorated basis. Part-time employees shall have been compensated for at least one thousand (1,000) hours during the twelve (12) months immediately preceding the effective date of the reduction-in-force to be eligible for severance benefits pursuant to the State Government Reduction-in-Force and Severance Benefits Act.

D. No appointing authority shall grant affected employees in a reduction-in-force severance benefits except as provided in this section.

§74-840-2.27E. Separation agreement.

Any affected employee who receives severance benefits pursuant to the State Government Reduction-in-Force and Severance Benefits Act shall execute a separation agreement with the employing agency, on forms to be prescribed by the Administrator of the Office of Personnel Management. The forms shall comply with applicable federal laws and may include but not be limited to the following elements:

1. Agreement by the affected employee that the receipt of the benefits is in lieu of continued employment with the agency or other severance benefits related to the current reduction-in-force;

2. Agreement by the affected employee that, to the extent allowed by federal or state law, respectively, the affected employee releases the State of Oklahoma and the agency from all claims, liabilities, demands and causes of action known or unknown, fixed or contingent, equitable, legal or administrative, except unemployment insurance;

3. Agreement by the affected employee that, to the extent allowed by federal or state law, respectively, the affected employee releases the State of Oklahoma and the agency from any claim or cause of action which might arise under federal or state laws governing the employment relationship; and

4. Agreement by the affected employee that the affected employee knows and understands that the receipt of severance benefits is in exchange, to the extent allowed by federal or state law, for any rights the affected employee may have had to:

- a. continued employment with any agency, and

b. future employment with the agency from which separated for a period of one (1) year from the date of the agreement, provided that nothing in this subparagraph shall prohibit an appointing authority of any agency from employing an affected employee who has received a severance benefit. If an affected employee is reemployed by the agency from which separated as a result of a reduction-in-force within one (1) year of separation, the affected employee shall repay all severance benefits received pursuant to the State Government Reduction-in-Force and Severance Benefits Act on a proportional basis. The repayment amount of the severance benefits received by or paid on behalf of the affected employee shall be reduced one-three-hundred-sixty-fifths (1/365) for each day after the separation of the affected employee, provided that any education voucher credit benefits shall not include agency contributions.

The provisions of this section shall not prohibit any affected employee from accepting severance benefits from more than one agency during employment with the State of Oklahoma.

§74-840-2.27F. Reduction-in-Force Education Voucher Action Fund.

A. There is hereby created in the State Treasury a revolving fund for the Office of Personnel Management to be designated the "Reduction-in-Force Education Voucher Action Fund". The fund shall be a continuing fund, not subject to fiscal year limitations. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Administrator of the Office of Personnel Management for the purposes authorized by subsection B of this section. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of State Finance for approval and payment.

B. The fund shall be used for the purpose of providing education vouchers to affected employees exercising rights to severance benefits pursuant to Sections 7 and 12 of this act in order to make payment to eligible educational institutions.

C. The Office of Personnel Management shall establish accounts within the fund for each affected employee who elects to participate in the education voucher opportunity pursuant to Sections 7 and 12 of this act, in which shall be

placed the affected employee and agency contributions.

§74-840-2.27G. Reduction-in-Force Emergency Cost Fund.

A. There is hereby created in the State Treasury a fund for the Office of State Finance to be designated as the "Reduction-in-Force Emergency Cost Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of appropriations made by the Legislature. All monies accruing to the fund are hereby appropriated and may be budgeted and expended by the Director of the Office of State Finance for the purpose of aiding state agencies to pay severance benefits pursuant to the State Government Reduction-in-Force Severance Benefits Act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of State Finance for approval and payment.

B. Monies appropriated to the fund may be transferred to an agency upon application to the Director of the Office of State Finance by the appointing authority proposing to conduct a reduction-in-force and who, because of insufficient resources, is unable to provide severance benefits pursuant to the State Government Reduction-in-Force Severance Benefits Act to eligible affected employees. The appointing authority shall have met the reduction-in-force plan submission and approval requirements of Section 6 of this act. The Director may either:

1. Approve the request; or

2. Deny or reduce the request of an appointing authority if the Director determines that the agency has funds available to pay the severance benefits or if anticipated requests from agencies for funding in a fiscal year will exceed the monies in the fund.

C. The Director shall notify the Contingency Review Board regarding any decision to authorize disbursements from the fund. Any member of the Board may call a meeting to consider the Director's decision within five (5) business days of the notification to the Contingency Review Board. If the Contingency Review Board does not disapprove or otherwise amend the Director's decision within ten (10) business days of notification to the Contingency Review Board, the Director's decision shall be final. If the Director or the Contingency Review Board has authorized the use of the fund, the Director shall transfer the funds to the agency.

D. Agencies must use any monies transferred from the fund solely for the purposes of the State Government Reduction-in-Force and Severance Benefits Act. Any monies not used as a result of the reduction-in-force for which the money was transferred shall be returned to the fund by state agencies, except as provided by Section 11 of this act.

E. Any monies transferred to agencies from the fund shall not be subject to any budgetary limits of an agency.

§74-840-2.27H. Repealed by Laws 1998, c. 256, § 11, eff. July 1, 1998.

§74-840-2.27I. Election to reinstate health insurance coverage.

A. An affected former state employee who:

1. Had a vested or retirement benefit pursuant to the provisions of any of the state public retirement systems;

2. Was separated from state service as a result of a reduction-in-force since July 1, 1997; and

3. Was offered severance benefits pursuant to the State Government Reduction-in-Force and Severance Benefits Act, may reinstate health insurance coverage any time within two (2) years following the date of the reduction-in-force from the state, and be eligible for the purchase of all other benefits available to former employees with a vested benefit of the state public retirement system of which the employee is a member.

B. Former employees who elect to reinstate health insurance coverage pursuant to this section shall provide satisfactory evidence of insurability after a break in coverage of one hundred eighty (180) days or more.

C. The provisions of subsection A of this section shall apply to an affected former state employee who may have elected non-state-sponsored health insurance coverage or who initially may have elected one of the available state-sponsored health insurance plans but later cancels either of those elected coverages.

D. A former employee who reinstates health insurance coverage pursuant to this section shall pay the full cost of the insurance premium at the then available rate and pursuant to the rules and enrollment procedures established by the State and Education Employees Group Insurance Board. The former employee will be subject to the same rate changes as those made available to all other state vested or retired employees. The

former employee may elect coverage for the employee's current dependents if the election is made within thirty (30) days of reinstatement of health insurance.

§74-840-2.28. Authorization — Benefit package options — Plan for reduction-in-force — Part-time employees — Ineligibility for future benefits.

A. Agencies shall be authorized to provide voluntary out benefits to permanent classified employees and regular unclassified employees with one (1) year or more of continuous state service who are voluntarily separated from the state service in order to reduce or eliminate the adverse impact of an imminent reduction-in-force. For purposes of this section, "agency" or "agencies" shall include agencies, boards, commissions, or departments of all three branches of state government. Voluntary out benefit payments made pursuant to this section, in addition to the payment of any compensable accrued leave and other benefits an employee who voluntarily separates is eligible to receive upon separation from the state service, shall consist of the following elements:

1. All agency voluntary out benefits shall provide the following:

a. payment equal to the employee's current health insurance premium for the employee only for eighteen (18) months based on the cost of the premium at the time of the voluntary separation, and

b. a longevity payment, as prescribed by Section 840-2.18 of this title in the amount which would otherwise be paid to the employee on the employee's next anniversary date. For the purposes of this subparagraph, the University Hospitals Authority shall calculate longevity for employees who were members of the University Hospitals Authority Model Personnel System pursuant to Section 3211 of Title 63 of the Oklahoma Statutes for all state service as would otherwise be determined by Section 840-2.18 of this title;

2. In addition to the voluntary out benefits provided by paragraph 1 of this subsection, agencies may give employees, except as otherwise provided by paragraph 3 of this subsection, voluntary out benefit packages based on any combination of the following options, provided that all employees who are separated as a result of the agency offer of a voluntary out benefit pursuant to this section in anticipation of the

imminent reduction-in-force are accorded uniform treatment pursuant to this section:

a. up to one (1) week of pay, calculated by dividing the employee's current annual salary by the whole number fifty-two (52), for each year of service,

b. a maximum lump-sum payment of Five Thousand Dollars (\$5,000.00),

c. payment for accumulated sick leave or extended illness benefits at up to one-half of the employee's hourly rate not otherwise used pursuant to law for conversion to credited retirement credit, and

d. payment of health benefit premiums as provided by the Public Health Service Act, 42 U.S.C., Section 300bb-1 et seq., for a period not to exceed eighteen (18) months. The agency shall not be authorized to make a cash payment to the employee in lieu of the payment by the agency of the cost of continued health care coverage for the employee; and

3. An employee may direct payment of all or a portion of the employee's voluntary out benefits to the options authorized by this paragraph by exercising an option to receive education vouchers for use in connection with the Reduction-in-Force Education Voucher Action Fund subject to the following requirements and rules of the Administrator of the Office of Personnel Management, provided that the agency offers to match employee voluntary out funds pursuant to this paragraph. In such case:

a. the employee may purchase One Dollar (\$1.00) in voucher credit for each One Dollar (\$1.00) contributed by the employee to the fund subject to a maximum employee contribution of Three Thousand Dollars (\$3,000.00) which may be matched by a maximum agency contribution of Three Thousand Dollars (\$3,000.00); provided, that the agency contribution shall not exceed the contribution of the employee,

b. the employee may pay the cost for the voucher program directly, subject to the requirements of subparagraph a of this paragraph, or the employing agency of the employee may pay the cost of the voucher from funds which would otherwise have been used to make payments to the displaced employee pursuant to an election by the employee to receive voluntary out benefits,

c. no voucher issued pursuant to the provisions of this paragraph shall:

(1) be redeemed by the employee for cash

or anything of value other than the cost of tuition and fees at a public or private educational institution within the State of Oklahoma, or

(2) be valid longer than a period of four (4) years from the date upon which the voucher is issued to the employee,

d. the Administrator of the Office of Personnel Management shall pay tuition and fees directly to the educational institution and shall receive any refunds for payment of tuition and fees from the educational institution which shall be credited to the employee's account, and

e. the Administrator of the Office of Personnel Management shall distribute to the affected employee and the agency any monies remaining in the employee's account after the voucher credit has expired. The distribution shall be based on the proportional share of contributions made by the employee and the agency.

B. Appointing authorities in agencies of the executive branch shall submit to the Director of the Office of State Finance, prior to offering voluntary out benefits pursuant to this section, a plan with details on why the agency has determined a reduction-in-force is imminent, the anticipated impact of the imminent reduction-in-force on the agency or part of the agency, the voluntary out benefits the agency intends to offer pursuant to this section and their cost, and how the agency intends to execute the offer of the voluntary out benefits. The Director shall review the fiscal components of the plan and have ten (10) business days to disapprove it.

C. Part-time employees who are eligible to receive voluntary out benefits shall receive benefits pursuant to this section on a prorated basis. Part-time employees shall have been compensated for at least one thousand (1,000) hours during the twelve (12) months immediately preceding the separation of the employee due to the employee's acceptance of a voluntary out benefit.

D. An employee who accepts voluntary out benefits pursuant to this section shall not be eligible to accept any future voluntary out benefits pursuant to this section.

§74-840-2.29. On-call classified employees — Minimum compensation for hours worked.

A classified employee who is on-call shall be compensated for a minimum of two (2) hours of work if the employee reports to a work location

while in an on-call status. This provision shall apply anytime the employee reports and works less than two (2) hours.

§74-840-2.30. Public accountability pay system.

It is the policy of the State of Oklahoma to be accountable to state taxpayers for the expenditure of public funds. To this end, all state employees shall be paid according to a pay system established pursuant to the principles of public accountability that prohibits payment to any state employee for time not worked unless the time not worked is covered by available paid leave. Violation of this provision may result in disciplinary action and criminal prosecution under Oklahoma law.

§74-840.3. Renumbered as § 840-1.3 of this title by Laws 1994, c. 242, § 54.

§74-840-3.1. Training programs for supervisory personnel.

A. Each supervisor employed as of January 1, 1993, by a state agency, board or commission in the executive branch of state government, excluding those within The Oklahoma State System of Higher Education, shall attend, prior to December 31, 1993, a training program for supervisory personnel. The training program shall be established pursuant to subsection C of this section.

B. Employees appointed to supervisory positions after January 1, 1993, shall complete twenty-four (24) hours of training pursuant to subsection C of this section within twelve (12) months of assuming such supervisory position. Thereafter, supervisors are required to complete twelve (12) hours of training pursuant to subsection C of this section each year. The appointing authority of each agency shall ensure each supervisory employee is notified and scheduled to attend such required training and shall make time available for each such employee to complete the training.

C. 1. The Administrator of the Office of Personnel Management shall promulgate any rules necessary to develop and implement training programs for supervisory personnel which shall include courses related to the effective performance of an agency manager or supervisor. Rules authorized by this subsection shall require supervisors to attend such training within a reasonable period of time determined by the Administrator.

2. Training programs for supervisors under this section may be approved by the Office of Personnel Management; provided, however, such programs shall be subject to standards developed by the Office of Personnel Management. All state agencies, boards and commissions may participate in any such government employee training program established by an institution that is a member of The Oklahoma State System of Higher Education and approved by the Office of Personnel Management as provided for in this paragraph.

§74-840-3.2. Creation — Purpose — Administration.

There is hereby established within the Office of Personnel Management, the Carl Albert Public Internship Program. The purposes of the program shall be to assist students at institutions of higher education in gaining experience and knowledge in state government and to encourage recruitment of such students to pursue careers in state government service. In administering the program, the Administrator of the Office of Personnel Management shall:

1. Consult with the chief administrative officers of the legislative, executive, and judicial branches of government in encouraging the establishment and development of intern positions within their agencies;

2. Coordinate with the State Regents for Higher Education and the appropriate public and private institutions of higher education in Oklahoma in the development of a statewide internship program, soliciting qualified applicants, and selecting participants;

3. Develop and coordinate a selection process for placing individuals in intern positions. This selection process shall provide for equal employment opportunities in accordance with state and federal law;

4. Develop and coordinate a training plan for the internship program which balances the need for training and exposure to new ideas with the intern's and agency's need for on-the-job work experience;

5. Develop guidelines for a compensation plan for interns participating in this program; and

6. Provide for recruitment in the regular state service of persons who have successfully completed the Executive Fellows Program provided for in Section 3 of this act.

§74-840-3.3. Repealed by Laws 1998, c. 235, § 10, eff. July 1, 1998.

§74-840-3.4. Undergraduate Public Internship Program - Executive Fellows Program.

A. The Carl Albert Public Internship Program shall consist of two individual internship programs:

1. An Undergraduate Internship Program consisting of a temporary position for students enrolled in an institution of higher education and working toward an undergraduate degree; and

2. An Executive Fellows Program consisting of six-month to two-year placements in professional or managerial level positions for students who have:

a. successfully completed a baccalaureate degree and at least six (6) semester hours of approved graduate level work with at least a three point zero (3.0) grade point average calculated on a four point zero (4.0) scale in all graduate coursework,

b. demonstrated a substantial interest in public sector management,

c. been recommended by the institution of higher education at which they are enrolled, and

d. such additional requirements as determined by the Office of Personnel Management.

B. Employing agencies shall rate the performance of participants in the Executive Fellows Program in accordance with Section 840-4.17 of this title.

C. State employees, who otherwise meet the qualifications of the program, shall be eligible to participate in the Carl Albert Public Internship Program upon the written recommendation of the chief administrative officer of the applicant's agency.

§74-840-3.5. Rules and regulations.

The Office of Personnel Management shall promulgate rules to provide that:

1. Upon successful completion of a two-year internship in the Executive Fellows Program, a participant who has met all requirements of education and experience shall be eligible for appointment to a position in the classified or unclassified service of the state and shall be deemed as meeting all other statutory requirements;

2. Persons leaving classified or unclassified positions in state government in order to take an internship shall:

- a. have the right to return to the previous position at any time during the internship or upon completion of the internship, and
- b. continue to receive all fringe benefits they would have received in their previous classified or unclassified positions;

3. Participants in the Undergraduate Internship Program who were not public employees prior to accepting a position in the program shall be employed in accordance with paragraph 8 of subsection A of Section 840-5.5 of this title;

4. Participants in the Executive Fellows Program who were not public employees prior to accepting a position in the program shall be appointed in accordance with paragraph 10 of subsection A of Section 840-5.5 of this title, except that they shall be granted leave benefits commensurate with regular state employees;

5. Selection of interns shall be coordinated by the Office of Personnel Management, but shall permit appropriate involvement by institutions of higher education and state agencies in order to ensure the integrity of the program, permit the appropriate match between interns and agency assignments, and to benefit the employing agency;

6. The Administrator of the Office of Personnel Management may waive the completion of six (6) semester hours of approved graduate level work required by Section 840-3.4 of this title for participation in the Executive Fellows Program for an undergraduate intern enrolled in six (6) semester hours of approved graduate level work and currently employed by a state agency;

7. Establish compensation plans for interns; and

8. Empower the Office of Personnel Management to intercede in an internship when the Office determines, at the request of the intern, the agency, or the institution of higher education at which the intern is enrolled, that an internship is not functioning in accordance with guidelines established for the program and that are necessary for the efficiency and integrity of the program.

§74-840-3.6. Exception to employment limitations.

Intern positions established pursuant to the provisions of this act shall not be included within any limitation on full-time-equivalent employee positions for any agency.

§74-840-3.7. Certain construction of act prohibited.

Provided that nothing in this act creating the Carl Albert Public Internship Program shall be construed to limit the authority of state agencies and institutions of higher education to continue or establish other internship programs or positions.

§74-840-3.8. Mentor program — Mentor Selection Advisory Committee.

A. Effective July 1, 1995, the Administrator of the Office of Personnel Management shall design a mentor program for state employees with executive potential in all branches of state government. The mentor program shall be open to all state employees but shall place a special emphasis on development of women, racial minorities and persons with disabilities as executives. As used in this section, "agency" means any office, department, board, commission, or institution in all branches of state government.

B. Effective July 1, 1995, there is hereby created a seven-member Mentor Selection Advisory Committee which shall be composed of the following permanent members: The Administrator or designee, the Director of the Office of State Finance or designee, a designee of the Governor, a designee of the President Pro Tempore of the Senate and a designee of the Speaker of the House of Representatives. Two other agency appointing authorities shall be selected every two (2) years by the Advisory Committee's permanent members. Agency appointing authority members may be represented at committee meetings by a designee. Appointed members not serving a specific term will serve at the pleasure of their appointing authority. Members shall be reimbursed for necessary travel expenses incurred in the performance of their duties by the Office of Personnel Management.

Any state employee may nominate another state employee for the mentor program. The Mentor Selection Advisory Committee shall select candidates for the mentor program and recommend those candidates to the Administrator for approval. The Advisory Committee shall select candidates from those employees nominated for participation in the program. The Mentor Selection Advisory Committee may recommend to the Administrator up to five candidates during a two-year period for participation in the mentor program. Selection criteria shall include,

but not be limited to:

1. Demonstrated leadership qualities;
2. Outstanding achievement record;
3. Outstanding recommendations by supervisors or peers;
4. Special knowledge of state systems; and
5. Completion of the Certified Public Manager Program or similar achievement.

Individuals recommended by the Advisory Committee and approved by the Administrator shall be referred to as mentor executives. Each mentor executive shall be assigned to a management rotation in any state agency accepting the mentor executive and the mentor executive's sending agency, provided that each agency rotation shall not exceed six (6) months. Each sending agency appointing authority shall participate in the design and implementation of the management rotations for the mentor executive selected from that agency. The mentor executive shall be assigned to at least one policy level manager during the period of time the mentor executive is serving in a management rotation.

Rotation assignments in agencies other than the mentor executive's sending agency shall be accomplished through the State Personnel Interchange Program, Section 840-3.9 et seq. of this title, and shall not exceed a total of twenty-four (24) months for all rotations combined. Each mentor executive shall be considered an employee of the sending agency for all purposes other than supervision. The Administrator shall establish minimum compensation for mentor executives and shall adopt rules as the Administrator finds necessary for the administration of the State Mentor Program. Such rules shall provide for the sending agency and the agency in which the mentor executive is completing his or her management rotation to share the compensation of the mentor executive or for either agency to pay the total amount. A state employee's salary may be increased during the period of his or her participation in the State Mentor Program, but shall not be reduced during such period. Each agency participating in the mentor program shall assign an executive-level manager to serve as the mentor for the period the mentor executive is completing the mentor executive's management rotation in that agency.

The mentor's duties are to instill in the mentor executive knowledge of the agency's purpose and functions, and a sense of professionalism

and public service. Mentors will further serve as a source of career guidance and reference after the management rotation is finished. The employees participating in the mentor program shall be exempt from any full-time-equivalent limitations established by law.

The Administrator of the Office of Personnel Management may intercede in mentor executive rotational assignments if the Administrator determines that the assignments are not functioning in accordance with guidelines established for the state mentor program. The result of the intercession may include, but is not limited to, reassignment or removal from the program.

§74-840-3.9. Short title.

Sections 840-3.9 through 840-3.14 of this title shall be known and may be cited as the "State Personnel Interchange Program".

§74-840-3.10. Public policy.

A. It is the policy of this state that:

1. State agencies in all branches of state government shall provide, whenever possible, such services as shall be required by other entities of state government; and

2. All entities of state government shall provide required services without charge or, when it is not possible to provide such services without charge, on a contractual basis.

B. "Agency" or "agencies" shall include agencies, boards or commissions in all branches of state government and "employee" or "employees" shall include persons employed in all branches of state government when used in Sections 840-3.10 through 840-3.14 of this title.

§74-840-3.11. Establishment of interchange programs - Rules and regulations.

The Administrator of the Office of Personnel Management is hereby directed to establish programs to facilitate the interchange of employees among state governmental entities, to evaluate the efficient utilization and deployment of state personnel, and to adopt rules necessary to carry out the provisions of the State Personnel Interchange Program. The State Personnel Interchange Program and rules promulgated hereunder shall apply to both unclassified and classified employee services.

§74-840-3.12. Eligible employees.

All employees in the classified and unclassified service are eligible for interchange.

§74-840-3.13. Procedures, requirements and restrictions for personnel interchange assignments.

A. All personnel interchange assignments are intended to be temporary in nature. An individual's period of assignment to any receiving agency shall not exceed twelve (12) months in any thirty-six-month period; except that the period of assignment for mentor executives participating in the mentor program established by Section 840-3.8 of this title shall not exceed twenty-four (24) months in any thirty-six-month period.

B. An individual shall be assigned as a participating employee only upon the individual's freely given written consent, without any form of coercion or duress. Personnel interchanges shall be executed by mutual consent agreement by the appointing authority of the sending agency, the appointing authority of the receiving agency, and the participating individual.

C. A participating employee shall be considered an employee of the sending agency for all purposes other than supervision. The receiving agency shall be responsible for all costs and liabilities arising from the performance of work assigned to the participating employee by the receiving agency which is found to be contrary to law and public policy by a court of competent jurisdiction.

D. A participating classified or unclassified employee may be assigned to a classified or unclassified position for the duration of the assignment without regard to the status of the employee in the sending agency.

E. Work assigned to a participating employee by a receiving agency shall be exempt from the classification and compensation provisions of the Oklahoma Personnel Act. Further, although all agencies are encouraged to resolve employee complaints at the lowest possible level, nothing in this section shall be construed to require a receiving agency to establish or adopt a grievance procedure pursuant to Section 840-6.2 of this title, to hear formal grievances, or to designate a grievance manager. Whenever an interchange agreement is terminated in accordance with the Oklahoma Personnel Act and rules promulgated by the Administrator of the Office of Personnel Management, the participating employee shall be entitled to return to the previous class or job family level of the employee or its successor class or job family level, if one exists in the sending agency. Otherwise, the reduction-

in-force provision of Section 840-2.27 of this title shall apply.

F. Except as provided in subsection E of this section, a participating employee who is assigned to a receiving agency shall neither lose, or suffer diminution of, any right, power, privilege, or benefit to which the employee would otherwise be entitled, including but not limited to salary, seniority, promotion, reinstatement, insurance, retirement, classified or unclassified status, progressive discipline, and use of grievance and appeals procedures. An employee's class or job family level shall not be adversely affected by another employee's participation in an interchange.

G. Any participating employee who suffers injury, occupational disease, or death, arising out of and in the course of an assignment to a receiving agency or sustained in the discharge of duties in connection with said assignment shall be considered an employee of the sending agency, and shall not be deprived by virtue of participating in said program of any right or expectancy that would otherwise accrue pursuant to the laws of this state governing labor and workers' compensation.

H. Except as provided in this section, a participating employee shall neither receive nor accept any compensation from the receiving agency to which the employee is assigned. Any receiving agency shall, in accordance with any applicable laws and policies, reimburse the per diem and travel expenses of any participating employee assigned thereto.

I. Nothing in the State Personnel Interchange Program is intended to preclude the adoption of rules governing the interchange of employees of state governmental entities via other interchange provisions, such as leaves of absence without pay and career executive appointments.

§74-840-3.14. Conflict of interest.

Nothing in the State Personnel Interchange Program is intended to authorize any participating agency or employee to engage in any activity which is a conflict of interest or which would be in conflict with any provision of law, except as specifically provided herein.

§74-840-3.15. Certified Public Manager Program.

A. There is hereby created the Certified Public Manager Program within the Office of Personnel Management. The Program shall be administered by the Administrator of the Office of

Personnel Management. The purpose of the Program shall be to develop the management skills of those employees and persons who enter into the Program and to assist state agencies and other employers in the identification and development of future managers and leaders. The Program, when space is available, may be available to political subdivisions and not-for-profit employers.

B. The Administrator of the Office of Personnel Management shall adopt rules necessary to implement the Certified Public Manager Program. These shall include:

1. Admission and curriculum requirements for the Program; and

2. Fees sufficient for the operation of the Program. Fees charged to state agencies for their employees who participate in the Program may be less than fees charged to other employers for persons employed by them. The Administrator shall also require a nominal fee to be charged individuals who participate in the Program.

§74-840.4. Renumbered as § 840-1.4 of this title by Laws 1994, c. 242, § 54.

§74-840-4.1. Placement of agency under Merit System of Personnel Administration.

A. The Governor of the State of Oklahoma is hereby empowered and authorized by an Executive Order to place any agency, and the employees thereof, except positions exempted from the classified service as stipulated by said Order, under the Merit System of Personnel Administration prescribed by the Oklahoma Personnel Act and the rules promulgated thereunder. Further, the Governor may issue an Executive Order to place any position exempted from the Merit System by Executive Order and its incumbent under the Merit System. This section shall not authorize the removal of any agency, position, or employee placed under the Merit System of Personnel Administration.

B. The provisions of the Merit System of Personnel Administration shall not be extended to any agency except by Executive Order as provided in this section or by legislation.

C. The placement of an agency under the Merit System of Personnel Administration covers functions, positions, and employees in an agency on the effective date of the legislation or the Executive Order and functions, positions, and employees subsequently added to the agency, unless otherwise provided by law.

D. Upon placement of an agency under the Merit System of Personnel Administration by Executive Order or legislation, subsequent changes in the name of the agency, its organization or structure, or repeal of statutory language placing the agency under the Merit System shall not alone be construed to remove the agency from the Merit System. An agency shall be removed from the Merit System by enacting legislation which affirmatively declares the agency is removed from the Merit System of Personnel Administration.

E. Upon placement of an agency under the Merit System of Personnel Administration by Executive Order or legislation, the agency shall abide by the provisions of the Merit System of Personnel Administration Rules and the Oklahoma Personnel Act. Statutory provisions not included in the Oklahoma Personnel Act that authorize agencies to effect personnel transactions, including but not limited to preparing personnel schedules, employing and appointing personnel, defining their duties and fixing their salaries or compensation shall be interpreted as authorizing agencies to effect personnel transactions within the provisions of the Oklahoma Personnel Act and the rules promulgated thereunder unless the Legislature expresses a contrary intent.

§74-840-4.2. Status of employees.

A. Except as otherwise provided by law, effective on the date an unclassified employee is made subject to the Merit System of Personnel Administration by virtue of an Executive Order issued pursuant to Section 840-4.1 of this title or legislation, the employee shall be given status in the job family level to which the position occupied by the employee is initially allocated by the Office of Personnel Management. The employee shall not be required to take any examination or qualify for the job family level, and the salary of the employee shall not be reduced as a result of such initial allocation. The status of the employee shall be determined as follows:

1. An employee who has been continuously employed by the agency for a minimum of twelve (12) months immediately preceding the date on which the employee is made subject to the provisions of the Merit System shall be given permanent status in the classified service.

2. An employee who has been continuously employed by the agency for less than twelve (12) months on the date the employee is made subject to the provisions of the Merit System

shall be given probationary status in the classified service. Such employee may obtain permanent status in the classified service twelve (12) months after the employee's entry-on-duty date with the agency pursuant to the provisions of the Merit System.

B. Persons appointed to the classified service of any agency under the Merit System shall achieve classified status only in accordance with the Oklahoma Merit System of Personnel Administration Rules promulgated pursuant to the Oklahoma Personnel Act.

C. Any classified employee who is serving in a position on the effective date of the removal of the position from the classified service and placement into the unclassified service shall have the option of retaining the employee's classified status. Any such employee who elects to change from classified to unclassified status shall so indicate in writing. If the employee chooses to remain in the classified service, the position occupied by the employee shall remain in the classified service until the employee either vacates the position or elects unclassified status. All future appointees to such positions shall be in the unclassified service.

§74-840-4.3. Audit of classified service positions.

A. The Office of Personnel Management shall conduct audits of positions in the classified service to determine the proper job family to which a position is allocated, and may delegate the auditing function to an agency pursuant to subsection E of Section 840-1.15 of this title. Appointing authorities have control of positions within their agency and have the authority to organize their agencies, to create positions, to abolish positions and to prescribe or change the duties and responsibilities assigned to any position or employee at any time and shall determine the level within a job family at which duties and responsibilities are assigned. The Administrator of the Office of Personnel Management shall adopt rules establishing policies and procedures for appointing authorities to follow when determining the job family level at which duties and responsibilities are assigned within their agencies. Such rules shall include a process for review by the Office of Personnel Management of internal classification grievances of job family level assignments which cannot be resolved at the agency level. Individual audits of positions shall be conducted at the request of the appointing authority based on information provided by

the agency. An incumbent employee will be given an opportunity to respond; however, the Office of Personnel Management will rely on the appointing authority for an official listing of the duties and responsibilities of the position.

B. The appointing authority has the responsibility to ensure that employees are properly classified and that the work performed conforms to the appropriate job family descriptor describing the position. Employees shall be classified in accordance with the work they are assigned on a regular and consistent basis as an integral part of their normal work assignment and job family descriptor. An employee has the right and responsibility to file a classification grievance, as provided by law and rule, when duties performed on a regular and consistent basis do not conform to the job family descriptor. An employee is entitled to the compensation assigned to the job family level for which duties were performed on a regular and consistent basis. This provision does not entitle the employee to a higher job family level. Agency classification and reclassification decisions shall not be subject to appeal to the Oklahoma Merit Protection Commission. However, the involuntary removal of a permanent employee in permanent status in a job family level to a lower level in the same job family or to another job family level assigned a lower pay band shall be considered a demotion. Such action may be appealed by the employee to the Oklahoma Merit Protection Commission. The Administrator of the Office of Personnel Management shall adopt rules pursuant to subsection A of this section which shall include a process for review by the Office of Personnel Management of internal classification grievances of job family level assignments which cannot be resolved at the agency level.

C. Job family descriptors shall be used for the purpose of distinguishing one job family from another as clearly and definitively as possible in order that positions may be properly allocated and employees may be properly classified in accordance with this section. Job family descriptors shall be applied in accordance with the following:

1. The position description questionnaire and job family descriptors shall be interpreted and applied as a composite picture of the job requirements. An employee is not required to perform all of the work operations described in a job family descriptor in order to be eligible for classification thereunder. An employee is not

eligible or entitled to classification by reason of performing isolated or singular duties incidental to the job but which are described in another job family descriptor. Employees are entitled to the job family level they are currently assigned.

2. An employee normally performs some of the work of higher-rated jobs and some of the work of lower-rated jobs when required. The normal duties of an employee may include assistance to others.

3. An employee is required to perform the work operations and duties described or appraised as being covered by a job family descriptor pursuant to that degree or amount of guidance or instruction which is considered regular and consistent in order to qualify for the classification.

§74-840-4.4. Job specifications — Incorporation of requirements related to the deaf and hard-of-hearing.

When the appointing authority determines that certain knowledge and sign language skills are required in any position in order to effectively work with deaf or hard-of-hearing persons, such requirements shall be incorporated into the specifications of the appropriate job family descriptors. Such requirements shall not be construed as placing additional requirements on persons who are incumbents in such positions at the time such a determination is made.

§74-840-4.5. Repealed by Laws 1999, c. 410, § 22, emerg. eff. June 10, 1999.

§74-840-4.6. Pay structure.

A. The State of Oklahoma, to recruit, retain and motivate a quality workforce for the purpose of providing quality services to the citizens of Oklahoma, shall provide a pay structure based on internal equity and external competitiveness balanced by the state's fiscal conditions. The state's goal shall be to provide a flexible and adaptable state employee pay system based on the market data found in relevant public and private sector markets.

B. The Administrator of the Office of Personnel Management shall develop a salary schedule for the classified service and pay lines as appropriate to meet the needs of agencies.

C. The Administrator shall design a compensation system for all classified state employees. The compensation system, except for performance based adjustments, developed pursuant to this subsection shall be consistent with but not limited to the recommendations contained in the

Classification and Compensation Reform Report from the Administrator, dated December 1998 and submitted to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives.

D. All executive branch state agencies who employ personnel in the unclassified service of the state, whose salaries are not prescribed by law, shall establish salary schedules for such employees.

§74-840-4.7. Adoption of pay grades and pay grade adjustments — Reports — Exemption from Administrative Procedures Act.

A. Proposed initial assignment of pay bands and pay band adjustments may be adopted by the Administrator of the Office of Personnel Management after a public hearing. Such action shall become effective the following July 1 unless the Administrator finds it essential for the provision or continuation of government services to adopt an earlier effective date. All such actions shall be reported to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives. The report shall include the justification and financial impact of the action.

B. The provisions of this section shall not be subject to the provisions of Article I of the Administrative Procedures Act.

§74-840-4.8. Chaplains — Percentage of salary designated as housing allowance for federal tax purposes.

A. In order to allow state-employed chaplains to take advantage of federal tax provisions, the chief administrative officer of any state entity that employs chaplains may designate not to exceed forty percent (40%) of the salary of the chaplain as a housing allowance.

B. The Administrator of the Office of Personnel Management shall promulgate rules for the implementation of this section.

§74-840-4.9. Teachers' rights, privileges and benefits.

Certified teachers employed to serve as administrators, counselors, librarians or to teach by the state, under the Merit System of Personnel Administration, shall be entitled to all benefits granted other state employees of the agency, board, commission, department or institution by which they are employed. Such teachers shall also be entitled to all benefits and privileges of their profession, including the right to participate in the Public Employees' Retirement System, or

the Oklahoma Teachers' Retirement System at the option of the teacher and the right of membership and participation in the Oklahoma Education Association and all other professional associations and organizations of their choice.

§74-840-4.10. Enforcement of teachers' rights, privileges and benefits.

A. The Superintendent of Public Instruction and the Administrator of the Office of Personnel Management shall enforce and carry out the provisions of Section 17 of this act.

B. The Administrator of the Office of Personnel Management shall act upon recommendation made by the Superintendent or his designee.

§74-840-4.11. Noncompetitive appointments.

The Administrator may promulgate rules to provide for the establishment of noncompetitive appointments including, but not limited to, the positions of unskilled labor, attendants, aides, food service helpers, or custodial or similar types of employment when the character of the work makes it impracticable to supply the needs of the service effectively by competitive examination. All such persons appointed shall serve a probationary period in accordance with the rules adopted by the Office of Personnel Management and the provisions of the laws of the State of Oklahoma and shall acquire permanent status and be subject to the same rules as other classified employees.

§74-840-4.12. Promotional and entrance examinations - Persons with severe disabilities - Special disabled veterans — Optional hiring procedure for affirmative action goals.

A. The Administrator of the Office of Personnel Management shall be responsible for conducting promotional examinations and entrance examinations as required under the Oklahoma Personnel Act. Such examinations shall be of such character as to determine the qualifications, fitness and ability of the persons tested to perform the duties of the job family or job family level for which such tests or examinations are given. Provided, however, tests and examinations of persons with severe disabilities who have satisfactorily completed vocational and technical education courses in vocational training units or divisions approved by the State Department of Rehabilitation Services shall be limited in scope so as to relate to the skill and physical capability required for a particular position. Adequate public notice shall be given of all

examinations except for promotion within a department or agency. Notwithstanding any other provision of law, the Administrator may keep confidential all promotional examinations, entrance examinations, and any other testing materials, but the Administrator shall be required to disclose them pursuant to a valid order from a court of competent jurisdiction and establishment of a protective order prohibiting public disclosure of the examinations and materials.

B. No person shall be required to take an entrance examination for an appointment to a job family level requiring licensing by a state agency if that person has been previously tested and is currently licensed by the State of Oklahoma.

C. Promotional examinations for promotion within an agency, unless requested by the agency, shall not be required; provided that the promotion is in accordance with a plan adopted by the Administrator and is in accordance with a plan adopted by the promoting agency. Every employee promoted within an agency or following an intra-agency lateral transfer shall serve a six-month trial period in the job level to which the employee is promoted or transferred, unless the trial period is waived, in writing, by the appointing authority. At any time during a trial period, the appointing authority may return the employee to the level from which the employee was promoted upon written notification by the appointing authority to the employee as to such action and the reason therefor, and the employee shall not have the right to appeal.

D. The Administrator shall accept Certificates of Proficiency issued by accredited private or public schools, colleges or the Oklahoma Employment Security Commission in lieu of typing and shorthand tests.

E. The Office of Personnel Management shall certify that a candidate meets the necessary job qualifications for a job family level in the classified service for the purpose of allowing that candidate to be appointed to a job. The Administrator of the Office of Personnel Management may delegate the certification function provided by this section to an agency pursuant to subsection E of Section 840-1.15 of this title. Any statute which creates any position or qualifications for any position in the classified service shall not be construed to limit the power of the Administrator to interpret or add to those qualifications in a reasonable manner consistent with the intent of the Legislature and the duties of

that position. Any statute which empowers any agency head or other employer to hire or nominate persons for employment within the classified service shall not be construed to empower that agency head or other employer to waive or modify any qualification or rule for employment established by the Administrator. The Administrator shall not be construed to have the authority to limit or reduce any qualification established by statute for any position. The constructions established herein shall apply to any statutes or positions heretofore or hereafter created unless that statute clearly and specifically states that such constructions do not apply.

F. Subsections A through E of this section shall not apply to special disabled veterans who are considered for employment under the provisions of Sections 401 through 404 of Title 72 of the Oklahoma Statutes. Provided, said veterans may elect instead to be considered for employment according to the procedures set out in subsections A through E of this section.

G. Subsections A through E of this section shall not apply to persons with severe disabilities who are considered for employment under the provisions of this subsection. Provided, said persons may elect instead to be considered for employment according to the procedures set out in subsections A through E of this section.

1. As used in this subsection "persons with severe disabilities" means persons certified as having disabilities according to standards and procedures established by the Administrator. Said standards and procedures shall be developed by the Administrator of the Office of Personnel Management with the assistance of the Office of Handicapped Concerns, and the State Department of Rehabilitation Services.

2. Agencies of this state may employ persons with severe disabilities who are legal residents of the state in competitive and noncompetitive jobs. Except for the requirement of minimum qualifications specified in applicable job specifications, such persons with disabilities shall be exempt from entrance examinations and hiring procedures administered by the Office of Personnel Management pursuant to this section and Section 840-4.13 of this title.

3. Persons with severe disabilities hired pursuant to this subsection shall be appointed for a probationary period pursuant to Section 840-4.13 of this title.

4. Persons with severe disabilities hired pursuant to this subsection shall be subject to the

rules of the Administrator of the Office of Personnel Management.

5. The Office of Personnel Management shall maintain records regarding the employment of persons with severe disabilities by state agencies and shall report the number of persons so employed in its annual report for the Office of Personnel Management required by Section 840-1.6A of this title.

H. 1. This subsection shall be known and may be cited as the "Fair Employment Practices Act".

2. Agencies of this state may use the optional hiring procedure provided in this subsection to employ females, blacks, Hispanics, Asian/Pacific Islanders and American Indians/Alaskan natives, as defined by the Equal Employment Opportunity Commission, who are legal residents of the state in competitive and noncompetitive jobs. Individuals must meet the minimum qualifications and pass any required examinations established by the Office of Personnel Management or by statute. Except for any required examinations and minimum qualifications specified in applicable job specifications, such persons shall be exempt from the hiring procedures administered by the Office of Personnel Management. Persons may only be employed under this subsection in a job family level, group or category which has been identified as underutilized and in which an appropriate hiring goal has been set in the state agency's affirmative action plan approved by the Office of Personnel Management pursuant to the provisions of Section 840-2.1 of this title. In addition, the appointing authority of the employing agency must determine that a manifest imbalance exists which justifies remedial action pursuant to this subsection in order to reach the affirmative action hiring goal. Provided further, that eligible war veterans, as defined by Section 67.13a of Title 72 of the Oklahoma Statutes, who are members of the group for which a hiring goal has been set shall be considered by the employing agency before a nonveteran is appointed pursuant to this subsection.

3. To be eligible for appointment, the persons who are members of the group for which a hiring goal has been set must score within the top ten scores of other available members of said group based on any examination or rating of education and experience.

4. Persons hired pursuant to this subsection shall be appointed for a probationary period pur-

suant to Section 840-4.13 of this title.

5. Upon acquiring permanent status, the employee shall be subject to the rules and regulations of the Office of Personnel Management and to full rights and entitlements of state employees in the classified service.

6. The authority for an agency to make appointments pursuant to this subsection shall be temporary and shall cease when the appointing authority of an agency can no longer justify remedial action pursuant to this subsection.

7. The Office of Personnel Management shall maintain records regarding the employment of persons by state agencies pursuant to this subsection and shall report the number of persons so employed in its annual report for the Office of Personnel Management required by Section 840-1.6A of this title.

§74-840-4.13. Certification to appointing authority — Broad band certification — Statewide and local registers — Professional practice licensure and hard-to-fill positions - Probationary period.

A. Based upon the results of competitive entrance examinations and registers, as provided by the Oklahoma Personnel Act, the Administrator of the Office of Personnel Management shall certify to the appointing authority the names of the ten persons receiving the highest grade or score in said examinations plus all eligible applicants whose grade or score is tied with the lowest ranking of those so eligible.

B. In addition to establishing statewide registers pursuant to subsection A of this section, the Administrator is hereby authorized to promulgate rules creating a local register to fill a vacancy in a local office of an agency by providing a certificate of available names of eligible persons who are residents of the county where the local office is located or said county and adjacent counties or a group of contiguous counties comprising a service area of an agency. Available eligible residents shall be certified ahead of other available eligible persons who reside outside the area of the local register. In filling vacant positions, the appointing authority shall select any one of the persons whose names have been so certified and may give preference in all cases to persons who have resided in this state for at least one (1) year prior to the date of the examination. Provided, however, that any appointing authority authorized to employ persons who are not citizens of the United States, pursu-

ant to Section 255 of this title, may request the Office to certify only the names of persons who are citizens of the United States in carrying out the provisions of this section; and such appointing authority may select any person so certified to the Administrator to fill such vacant positions even though a noncitizen may have received a higher grade on the examination. Provided, further, that any appointing authority may select special disabled veterans considered for employment pursuant to Sections 401 through 404 of Title 72 of the Oklahoma Statutes. The Department of Public Safety, in filling vacancies for Highway Patrol Cadets, may disqualify any eligible whose name has been certified for Highway Patrol Cadet pursuant to subsection A of this section, if the Department of Public Safety considers the eligible in connection with the hiring of three other eligibles pursuant to subsection A of this section from that certificate. The name of such disqualified eligible shall be omitted from further certification to, and consideration by, the Department of Public Safety for appointment as a Highway Patrol Cadet to the next immediate Highway Patrol Academy for which vacancies are being filled. Such disqualification shall neither deprive any person of any preference pursuant to paragraph 3 of subsection A of Section 840-4.14 of this title nor deprive any person from certification to, and consideration by, the Department of Public Safety for appointment as a Highway Patrol Cadet to a Highway Patrol Academy to be held after the next immediate Highway Patrol Academy. The Department of Public Safety shall provide written notice of the disqualification to the Office of Personnel Management. The Department of Corrections, in filling vacancies for Correctional Officer Cadets and Probation and Parole Officers, may disqualify any eligible whose name has been certified for Correctional Officer Cadet or Probation and Parole Officer, pursuant to subsection A of this section, if the Department of Corrections considers the eligible in connection with the hiring of three other eligibles pursuant to subsection A of this section from that or any other certificate. The name of such disqualified eligible shall be omitted from future certification to, and consideration by, the Department of Corrections for appointment as a Correctional Officer Cadet or Probation and Parole Officer for a period of six (6) months, at which time the eligible may request restoration to the register by the Office of Personnel Management. Such disqual-

ification shall not deprive any person of any preference pursuant to paragraph 3 of subsection A of Section 840-4.14 of this title. The Department of Corrections shall provide written notice of the disqualification to the Office of Personnel Management.

C. Agencies may fill positions requiring professional practice licensure and hard-to-fill positions pursuant to authorization by the Administrator without regard to subsections A and B of this section. The Administrator shall promulgate rules to authorize agencies to fill positions directly, pursuant to this subsection. Such rules shall include criteria for identifying professional practice licensure positions and hard-to-fill positions which shall not require establishment of an employment list of eligible persons or the application of veterans preference. The Administrator shall monitor appointments made by agencies pursuant to this subsection and shall establish recordkeeping and reporting procedures and the conditions under which the Administrator may withdraw authorization for agencies to directly hire persons into hard-to-fill positions. Nothing in this subsection shall be construed to waive any requirement for any job or position established by statute or the Administrator.

D. Every person, except as provided in subsection E of this section, upon initial appointment under the classified service, shall be appointed for a probationary period of one (1) year, except that the appointing authority may waive in writing the remainder of the probationary period at any time after a probationary employee has served six (6) months; provided, however, that the employee and the Administrator of the Office of Personnel Management shall be notified in writing as to such action and the reason therefor. The probationary appointment of any person may be terminated at any time during the probationary period without the right of appeal. At the close of the probationary period, as herein provided, said person shall acquire a permanent status under the conditions prescribed in the Oklahoma Personnel Act.

E. Every person initially appointed under the classified service as an agent of the Alcoholic Beverage Laws Enforcement Commission shall be appointed for a probationary period of one (1) year.

F. In working with appointing authorities in determining minimum qualifications for a position, the Administrator of the Office of Personnel Management shall require an appointing au-

thority to justify in writing any reasons for excluding from consideration relevant public or private sector experience applicable to the position.

§74-840-4.14. Preferences.

A. In establishing employment lists of eligible persons for competitive and noncompetitive appointment, certain preferences shall be allowed for honorably discharged veterans as defined by Section 67.13a and Section 67.13b of Title 72 of the Oklahoma Statutes. In determination of the register rank:

1. Five points shall be added to the final grade of any person who has passed the examination and has submitted proof of having status as a veteran or unremarried surviving spouse of a veteran;

2. Five points shall be added to the final grade of any person who has passed the examination and has submitted proof of having status as a spouse of a veteran who is unemployable due to a service-connected disability as certified by the Veterans Administration or agency of the Defense Department within six (6) months of date of application; and

3. Ten points shall be added to the final grade of any veteran who has passed the examination and has submitted proof of having a service-connected disability as certified by the Veterans Administration or agency of the Defense Department within six (6) months of date of application. Such veterans' names shall be placed at the top of the register in accordance with their numerical rating if in receipt of benefits payable at the rate of thirty percent (30%) or more and such veterans shall not be denied employment and passed over for other veterans or nonveterans, without showing cause. Acceptable cause shall include a reasonable expectation of the inability of the preferred applicant to satisfactorily perform at the required level of the position and shall be reviewed in each instance by the Administrator of the Office of Personnel Management. If the Administrator finds that acceptable cause for the denial of employment to the preferred applicant does not exist, the appointing authority shall be required to hire the preferred applicant. The position shall not be permanently filled until the Administrator has issued his findings.

B. War veterans, as defined by Section 67.13a of Title 72 of the Oklahoma Statutes, who have been awarded the Purple Heart or have a service-incurred disability rated by the

Veterans Administration or a branch of the Armed Forces of the United States and who have been a resident of Oklahoma for at least one (1) year prior to the date of the examination, shall be authorized to open any closed register established by the Merit System of Personnel Administration.

C. Subsection A of this section shall not apply to special disabled veterans who are considered for employment under the provisions of Sections 401 through 404 of Title 72 of the Oklahoma Statutes. Provided, said veterans may elect instead to be considered for employment according to the procedures set out in this section.

§74-840-4.15. Posting vacancies and promotional opportunities.

A. The appointing authority shall post announcements of a vacancy or vacancies in accordance with a promotional plan filed by the agency with the Office of Personnel Management. Promotional posting shall be required for initial entry into a job family at any level. Promotional posting shall also be required for entry into any supervisory position or level. Each agency's promotional posting plan shall describe the method by which all agency employees will be notified of vacancy announcements. The posting shall include:

1. Identification of the job family level of the vacancy or vacancies;
2. A listing of job title, major work duties and minimum qualifications;
3. The pay band and range;
4. The anticipated number of vacancies;
5. The specific location of work;
6. The time limits and procedure for filing an application with the appointing authority; and
7. Any additional factors which the appointing authority will consider in filling the vacancy.

B. The appointing authority may elect to post general promotional opportunities in accordance with the provisions of this section in cases where there are usually continuous multiple vacant positions within a given job family; provided the appointing authority maintains a promotional applicant list for each job family which is posted on the basis of general promotional opportunities. In such cases, the posting must include the length of time and conditions under which the promotional application of the candidate will remain available for active consideration by the appointing authority.

C. If an employee still feels that the employee has not been treated fairly with regard to a promotional action pursuant to this section after such complaint has been reviewed in a formal grievance procedure conducted in accordance with the provisions of Section 840-6.2 of this title, the employee may seek a remedy through the procedures established in the Oklahoma Personnel Act. If a violation of Section 840-2.9 of this title has been committed, the Oklahoma Merit Protection Commission may declare a position open.

D. Prior to re-posting a notice of vacancy for a position that was not filled after the first notice was posted, the appointing authority must receive approval from the Administrator of the Office of Personnel Management prior to making any qualification changes to the position to be filled.

§74-840-4.16. Promotional preferences — Intent of Legislature.

It is the intent of the Legislature that any guidelines pertaining to promotion adopted by the Administrator give preference to:

1. a promote-from-within policy when the merit, ability and capacity of incumbent employee applicants is relatively equal to that of outside applicants; and
2. seniority as a factor in promotional plans when merit, ability and capacity are relatively equal among applicants.

§74-840-4.17. Employee service rating system. [Effective 11/1/05]

A. The Office of Personnel Management shall make available one standard performance management system that shall be used by all agencies for completing employee performance evaluations. The purpose of this employee performance management system is to evaluate the performance of each regular classified, unclassified and exempt employee in the executive branch of state government except those in the exempt unclassified service as specified in paragraphs 1 and 2 of subsection A of Section 840-5.5 of this title and those employees employed by the institutions under the administrative authority of The Oklahoma State System of Higher Education.

B. The employee performance management system shall provide for the following:

1. An objective evaluation by the immediate supervisor of the performance of the employee

within the assigned duties of the job. The evaluation shall contain the agency number, date of review, and employee identification number;

2. The identification by the immediate supervisor of accountabilities and behaviors upon which the employee will be evaluated;

3. A mid-term interview with the immediate supervisor for the purpose of discussing the progress of the employee in meeting the accountabilities and behaviors upon which the employee will be evaluated;

4. Identification of performance strengths and performance areas for development;

5. A final interview with the employee by the immediate supervisor who shall provide the employee with a copy of the performance evaluation; and

6. The opportunity for the employee to submit written comments regarding the performance evaluation.

C. Each employee shall be rated at least thirty (30) days prior to the end of the probationary period. Except as may otherwise be provided by rules promulgated by the Administrator of the Office of Personnel Management, after the end of the probation period, each employee shall be evaluated at least annually on a twelve-month period.

D. Any permanent classified employee who disagrees with the employee's performance evaluation may file a grievance pursuant to Section 840-6.2 of this title.

E. Any employee, regardless of status, who is required to be evaluated pursuant to this section and who believes that the employing agency has not complied with the requirements of subsection B of this section may file a complaint through any dispute resolution process made available through the employing agency or, if there is no internal agency dispute resolution process, through the Oklahoma Merit Protection Commission. The Oklahoma Merit Protection Commission shall have jurisdiction to investigate or hear appeals of the failure of an agency to comply with the provisions of subsection B of this section.

F. The agency shall use employee evaluations of current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases and discharges. Reductions-in-force shall not be considered discharges.

G. The agency shall retain a copy of the performance evaluation for each employee of the

agency. A copy of the performance evaluation shall be retained in the employee's personnel file.

H. Each appointing authority shall annually report its compliance with the provisions of this section in writing to the Administrator of the Office of Personnel Management. The Administrator shall prescribe a form for such reporting.

I. The Administrator of the Office of Personnel Management shall conduct an annual random audit of state agencies to determine whether they are in compliance with this section. Any agency deemed to be out of compliance shall submit a written plan to the Administrator detailing the efforts the agency will make to come into compliance at the earliest possible date.

§74-840-4.18. Renumbered as § 840-2.27 of this title by Laws 1995, c. 263, § 10.

§74-840-4.19. Authority to designate place of employment - Appeals to Merit Board Protection Commission.

A state agency shall have sole and final authority to designate the place or places where its employees shall perform their duties. The Oklahoma Merit Protection Commission shall not have jurisdiction to accept an appeal of an employee resulting from the employing agency transfer of an employee from one county or locality to another, changing the assigned duties of an employee, or relieving the employee from performance of duty at a particular place and reassigning to an employee duties to be performed at another place, unless an employee asserts that:

1. The action resulted in a change in job classification or reduction of the base salary of the employee;

2. A violation of the provisions of Section 840-2.5 or 840-2.9 of this title may have occurred; or

3. The action was taken clearly for disciplinary reasons and to deny the employee the right of appeal.

§74-840.5. Renumbered as § 840-2.12 of this title by Laws 1994, c. 242, § 54.

§74-840-5.1. Unclassified service exempt from act except leave regulations.

Unless otherwise provided, offices and positions in the unclassified service are in no way subject to any of the provisions of this act or of the rules and regulations promulgated hereunder except leave regulations. Provided, offices and

positions of the State Senate and House of Representatives shall not be subject to regulations of the Office of Personnel Management on involuntary leave without pay or furlough but shall be subject to any involuntary leave without pay or furlough plan adopted by the President Pro Tempore of the Senate or the Speaker of the House of Representatives. No person chosen by election or appointment to fill an elective office shall be subject to any leave plan or regulation or shall such person be eligible for accrual of any leave benefits.

§74-840-5.1A. Unclassified service — Service at pleasure of appointing authority — Severance benefits.

A. Within state government, persons appointed to a position in the unclassified service after June 30, 1996, shall serve at the pleasure of the appointing authority. Appointing authorities shall not convey any right or expectation of continued employment to such unclassified employees. The appointing authority may separate such unclassified employees at any time with or without cause. No provision of the Oklahoma Personnel Act shall be construed as granting any property interest in employment to any unclassified service employee.

B. Nothing in this section is intended to change the status of any unclassified employee appointed to a position on or before June 30, 1996.

C. This section shall not apply to persons in positions in institutions under the jurisdiction of the Oklahoma State Regents for Higher Education or subject to the University Hospitals Authority Model Personnel System created pursuant to Section 3211 of Title 63 of the Oklahoma Statutes.

D. Agencies may provide severance benefits pursuant to Section 840-2.27D of this title to regular unclassified employees with one (1) year or more continuous state service who are separated from the state service for budgetary reasons. A plan providing for such benefits shall be submitted to the Director of the Office of State Finance who shall reject any plan that does not:

1. Demonstrate that funds are available to cover projected costs;

2. Contain an estimate of the number of affected employees likely to participate in the education voucher program established in Section 840-2.27D of this title; and

3. Contain an estimate of the cost savings or reduced expenditures likely to be achieved by the agency.

§74-840-5.1B. [Repealed by Laws 2005, HB 1500, c. 453, §5, emerg, eff. July 1, 2005]

§74-840-5.2. Option to retain classified status.

Any classified employee who is serving in an agency head position which is subject to the Merit System of Personnel Administration on the effective date of this act shall have the option of retaining such classified status. An incumbent who chooses to remain in the classified service shall be subject to all provisions and conditions of the Merit System of Personnel Administration. An incumbent who chooses to change status from classified to unclassified shall so indicate in writing. All future appointees to such positions shall be in the unclassified service.

§74-840-5.2A. Ethics Commission — Status of employees to be as shown on employment records.

All persons employed by the Ethics Commission prior to March 18, 1998, shall be in and shall have been in such status in the classified or unclassified service as shown on their individual records on file in the Office of Personnel Management. The employment records of such persons on file in the Office of Personnel Management shall be controlling as to the status of such persons and the positions they occupy or occupied.

§74-840-5.2B. State and Education Employees Group Insurance Board — Status of employees to be as shown on employment records.

All persons employed by the State and Education Employees Group Insurance Board prior to March 27, 1998, shall be in and shall have been in such status in the classified or unclassified service as shown on their individual records on file in the Office of Personnel Management. The employment records of such persons on file in the Office of Personnel Management shall be controlling as to the status of such persons and the positions they occupy or occupied.

§74-840-5.3. Certain persons not considered state employees.

A. The following offices, positions and personnel shall not be considered state employees except as otherwise provided by law:

1. Patient and inmate help in the state charitable, mental and correctional institutions;

2. Persons engaged in public work for the state, but employed by contractors when the performance of such contract is authorized by the Legislature or other competent authority;

3. All employees of all public school districts; and

4. Officers and members of the Oklahoma National Guard, as such.

B. 1. Instructional and administrative personnel, except for superintendents, of the State Department of Rehabilitation Services at the Oklahoma School for the Blind and the Oklahoma School for the Deaf pursuant to Section 1419 of Title 10 of the Oklahoma Statutes shall be considered state employees, except they shall not be considered state employees for the purposes of the Oklahoma Personnel Act, unless otherwise provided by law. However, the Office of Personnel Management may categorize such employees as unclassified solely for the purpose of entering and maintaining employment data in the state Personnel Management Information System established pursuant to Section 840-2.13 of this title.

2. The superintendents at the Oklahoma School for the Blind and the Oklahoma School for the Deaf shall be state employees in the unclassified service, subject to the Oklahoma Personnel Act.

§74-840-5.4. Placement of agencies under Merit System of Personnel Administration.

Nothing in this act is intended to automatically place any agency under the provisions of the Merit System of Personnel Administration; however, any agency may be placed under the provisions of the Merit System in accordance with Section 840.3 of Title 74 of the Oklahoma Statutes unless otherwise prohibited by law.

§74-840-5.5. Unclassified service — Service at pleasure of appointing authority. [Shaded text effective 9/1/05.]

A. The following offices, positions, and personnel shall be in the unclassified service and shall not be placed under the classified service:

1. Persons chosen by popular vote or appointment to fill an elective office, and their employees, except the employees of the Corporation Commission, the State Department of Education and the Department of Labor;

2. Members of boards and commissions, and heads of agencies; also one principal assistant or deputy and one executive secretary for each state agency;

3. All judges, elected or appointed, and their employees;

4. Persons employed with one-time, limited duration, federal or other grant funding that is not continuing or indefinitely renewable. The length of the unclassified employment shall not exceed the period of time for which that specific federal funding is provided;

5. All officers and employees of The Oklahoma State System of Higher Education, State Board of Education and Oklahoma Department of Career and Technology Education;

6. Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a committee thereof or by authority of the Governor. These appointments and authorizations shall terminate on the first day of the regular legislative session immediately following the appointment, if not terminated earlier. However, nothing in this paragraph shall prevent the reauthorization and reappointment of any such person. Any such appointment shall be funded from the budget of the appointing authority;

7. Election officials and employees;

8. Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period and seasonal employees employed pursuant to Section 1806.1 of this title who work less than one thousand two hundred (1,200) hours in any twelve-month period. This category of employees may include persons employed on an intermittent, provisional, seasonal, temporary or emergency basis;

9. Department of Public Safety employees occupying the following offices or positions:

a. administrative aides to the Commissioner,
b. executive secretaries to the Commissioner,
c. the Governor's representative of the Oklahoma Highway Safety Office who shall be appointed by the Governor,

d. Highway Patrol Colonel,

e. Highway Patrol Lieutenant Colonel,

f. Highway Patrol Major,

g. Director of Finance,

h. noncommissioned pilots,

i. Information Systems Administrator,

j. Law Enforcement Telecommunications System Specialist,

k. Director of Driver License Administration,

l. Director of Transportation Division,

m. Director of the Alcohol and Drug Countermeasures Unit,

n. Director of the Oklahoma Highway Safety Office,

o. Civil Rights Administrator,

p. Budget Analyst,

q. Comptroller,

r. Chaplain,

s. Helicopter Mechanic,

t. Director of Safety Compliance,

u. Human Resources Director,

v. Administrator of Department Services, and

w. a maximum of seven (7) positions for the purpose of administering programs in the Oklahoma Highway Safety Office, within full-time employee limitations of the Department, employed with federal funding that is continuing or indefinitely renewable. The authorization for such positions shall be terminated if the federal funding for positions is discontinued;

provided, any person appointed to a position prescribed in subparagraphs d, e, f or o of this paragraph shall have a right of return to the classified commissioned position without any loss of rights, privileges or benefits immediately upon completion of the duties in the unclassified commissioned position, and any person appointed to a position prescribed in subparagraph i, j, k, l, m or n of this paragraph shall have a right of return to the previously held vacant classified position within the Department of Public Safety without any loss of rights, privileges or benefits immediately upon completion of the duties in the unclassified commissioned position;

10. Professional trainees only during the prescribed length of their course of training or extension study;

11. Students who are employed on a part-time basis, which shall be seventy-five percent (75%) of a normal forty-hour work week or thirty (30) hours per week, or less, or on a full-time basis if the employment is pursuant to a cooperative education program such as that provided for under Title I IV-D of the Higher Education Act of 1965 (20 U.S.C. 1087a-1087c), as amended, and who are regularly enrolled in:

a. an institution of higher learning within The Oklahoma State System of Higher Education,

b. an institution of higher learning qualified to become coordinated with The Oklahoma State System of Higher Education. For purposes of this section, a student shall be considered a regularly enrolled student if the student is enrolled in a minimum of five (5) hours of accredited graduate courses or a minimum of ten (10) hours

of accredited undergraduate courses, provided, however, the student shall only be required to be enrolled in a minimum of six (6) hours of accredited undergraduate courses during the summer, or

c. high school students regularly enrolled in a high school in Oklahoma and regularly attending classes during such time of enrollment;

12. The spouses of personnel who are employed on a part-time basis to assist or work as a relief for their spouses in the Oklahoma Tourism and Recreation Department;

13. Service substitute attendants who are needed to replace museum and site attendants who are unavoidably absent. Service substitutes may work as part-time or full-time relief for absentees for a period of not more than four (4) weeks per year in the Oklahoma Historical Society sites and museums; such substitutes will not count towards the agency's full-time-equivalent (FTE) employee limit;

14. Employees of the Oklahoma House of Representatives, the State Senate, or the Legislative Service Bureau;

15. Corporation Commission personnel occupying the following offices and positions:

a. Administrative aides, and executive secretaries to the Commissioners,

b. Directors of all the divisions, personnel managers and comptrollers,

c. General Counsel,

d. Public Utility Division Chief Engineer,

e. Public Utility Division Chief Accountant,

f. Public Utility Division Chief Economist,

g. Public Utility Division Deputy Director,

h. Secretary of the Commission,

i. Deputy Conservation Director,

j. Manager of Pollution Abatement,

k. Manager of Field Operations,

l. Manager of Technical Services,

m. Public Utility Division Chief of Telecommunications,

n. Director of Information Services, and

o. All Data Processing employees hired on or after September 1, 2005;

16. At the option of the employing agency, the Supervisor, Director, or Educational Coordinator in any other state agency having a primary responsibility to coordinate educational programs operated for children in state institutions;

17. Department of Mental Health and Substance Abuse Services personnel occupying the following offices and positions at each facility:

a. Director of Facility,

- b. Deputy Director for Administration,
- c. Clinical Services Director,
- d. Executive Secretary to Director, and
- e. Directors or Heads of Departments or Services;

18. Office of State Finance personnel occupying the following offices and positions:

- a. State Comptroller,
- b. Administrative Officers,
- c. Alternator Claims Auditor,
- d. Employees hired to fulfill state compliance agency requirements under Model Tribal Gaming Compacts,
- e. Employees of the Budget Division,
- f. Employees of the Fiscal and Research Division,

g. Employees hired to work on the CORE Systems Project, and

h. The following employees of the Information Services Division:

- (1) Information Services Division Manager,
- (2) Network Manager,
- (3) Network Technician,
- (4) Security Manager,
- (5) Contracts/Purchasing Manager,
- (6) Operating and Applications Manager,
- (7) Project Manager,
- (8) Help Desk Manager,
- (9) Help Desk Technician,
- (10) Quality Assurance Manager,
- (11) ISD Analysts,
- (12) CORE Manager,
- (13) Enterprise System/Database Software Manager,
- (14) Data Center Operations and Production Manager,
- (15) Voice Communications Manager,
- (16) Applications Development Manager,
- (17) Projects Manager,
- (18) PC's Manager,
- (19) Servers Manager,
- (20) Portal Manager, and
- (21) Procurement Specialist;

19. Employees of the Oklahoma Industrial Finance Authority;

20. Those positions so specified in the annual business plan of the Oklahoma Department of Commerce;

21. Those positions so specified in the annual business plan of the Oklahoma Center for the Advancement of Science and Technology;

22. The following positions and employees of the Oklahoma School of Science and Mathematics:

a. positions for which the annual salary is Twenty-four Thousand One Hundred Ninety-three Dollars (\$24,193.00) or more, as determined by the Office of Personnel Management, provided no position shall become unclassified because of any change in salary or grade while it is occupied by a classified employee,

b. positions requiring certification by the State Department of Education, and

c. positions and employees authorized to be in the unclassified service of the state elsewhere in this section or in subsection B of this section;

23. Office of Personnel Management employees occupying the following positions:

a. the Carl Albert Internship Program Coordinator,

b. one Administrative Assistant, and

c. one Workforce Planning Manager;

24. Department of Labor personnel occupying the following offices and positions:

a. two Deputy Commissioners,

b. two Executive Secretaries to the Commissioner,

c. Chief of Staff,

d. two Administrative Assistants,

e. Information Systems Administrator,

f. three Safety and Health Directors,

g. Research Director,

h. Employment Standards Director,

i. Asbestos Director, and

j. General Counsel;

25. The State Bond Advisor and his or her employees;

26. The Oklahoma Employment Security Commission employees occupying the following positions:

a. Associate Director,

b. Secretary to the Associate Director, and

c. Assistant to the Executive Director;

27. Oklahoma Human Rights Commission personnel occupying the position of Administrative Assistant;

28. Officers and employees of the State Banking Department;

29. Officers and employees of the University Hospitals Authority except personnel in the state classified service pursuant to Section 3211 of Title 63 of the Oklahoma Statutes and members of the University Hospitals Authority Model Personnel System created pursuant to subsection E of Section 3211 of Title 63 of the Oklahoma Statutes or as otherwise provided for in Section 3213.2 of Title 63 of the Oklahoma Statutes;

30. Alcoholic Beverage Laws Enforcement Commission employees occupying the following positions:

a. three Administrative Service Assistant positions, however, employees in such positions who are in the unclassified service on June 4, 2003, may make an election to be in the classified service without a loss in salary by September 1, 2003, and

b. the Deputy Director position in addition to the one authorized by paragraph 2 of this subsection;

31. The Oklahoma State Bureau of Investigation employees occupying the following positions:

a. five assistant directors,

b. six special investigators,

c. one information representative,

d. one federally funded physical evidence technician,

e. four federally funded laboratory analysts,

f. a maximum of fourteen positions employed for the purpose of managing the automated information systems of the agency, and

g. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

32. The Department of Transportation, the following positions:

a. Director of the Oklahoma Aeronautics Commission,

b. five Department of Transportation Assistant Director positions,

c. eight field division engineer positions, and

d. one pilot position;

33. Commissioners of the Land Office employees occupying the following positions:

a. Director of the Investments Division,

b. Assistant Director of the Investments Division,

c. one Administrative Assistant,

d. one Audit Tech position,

e. one Auditor I position,

f. two Accounting Tech I positions,

g. two Administrative Assistant I positions,

h. two Imaging Specialist positions, and

i. one Information Systems Specialist position;

34. Within the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control Commission, the following positions:

a. six Narcotics Agent positions and three Typist Clerk/Spanish transcriptionists, including a Typist Clerk Supervisor/Spanish transcription-

ist, provided, authorization for such positions shall be terminated if the federal funding for the positions is discontinued,

b. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection,

c. one fiscal officer,

d. one full-time Programmer, and

e. one full-time Network Engineer;

35. The Military Department of the State of Oklahoma is authorized such unclassified employees within full-time employee limitations to work in any of the Department of Defense directed youth programs, the State of Oklahoma Juvenile Justice youth programs, those persons reimbursed from Armory Board or Billeting Fund accounts, and skilled trade positions;

36. Within the Oklahoma Commission on Children and Youth the following unclassified positions:

a. one Oversight Specialist and one Community Development Planner,

b. one State Plan Grant Coordinator, provided authorization for the position shall be terminated when federal support for the position by the United States Department of Education Early Intervention Program is discontinued, and

c. one executive secretary in addition to the one authorized pursuant to paragraph 2 of this subsection;

37. The following positions and employees of the Department of Central Services:

a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection,

b. the Director of Central Purchasing,

c. one Alternate Fuels Administrator,

d. one Director of Special Projects,

e. three postauditors,

f. four high-technology contracting officers,

g. one Executive Assistant to the Purchasing Director,

h. four Contracts Managers,

i. one Associate Director,

j. one specialized HiTech/Food Contracting Officer,

k. one State Use Contracting Officer,

l. one Property Distribution Administrator;

m. three licensed architects assigned to the Facilities and Properties Division,

n. three licensed engineers assigned to the Facilities and Properties Division,

o. four construction consultants assigned to the Facilities and Properties Division,

p. one attorney assigned to the Facilities and Properties Division,

q. three positions assigned to the Information Services Division, which shall include one Information Technology Manager, one Applications Specialist and one Data Planning Specialist, and

r. four positions assigned to Fleet Management, which shall include one Deputy Fleet Manager and three Management Analysts;

38. Four Water Quality Specialists, and four Water Resources Division Chiefs within the Oklahoma Water Resources Board;

39. J.D. McCarty Center for Children with Developmental Disabilities personnel occupying the following offices and positions:

a. Physical Therapists,

b. Physical Therapist Assistants,

c. Occupational Therapists,

d. Certified Occupational Therapist Aides, and

e. Speech Pathologists;

40. The Development Officer and the Director of the State Museum of History within the Oklahoma Historical Society;

41. Oklahoma Department of Agriculture, Food, and Forestry personnel occupying the following positions:

a. one Executive Secretary in addition to the Executive Secretary authorized by paragraph 2 of this subsection and one Executive Assistant,

b. nineteen Agricultural Marketing Coordinator III positions,

c. temporary fire suppression personnel, regardless of the number of hours worked, who are employed by the Oklahoma Department of Agriculture, Food, and Forestry during the period of October 1 through May 31 in any fiscal year; provided, however, notwithstanding the provisions of any other section of law, the hours worked by such employees shall not entitle such employees to any benefits received by full-time employees,

d. one Administrator for Human Resources,

e. one Director of Administrative Services,

f. one Water Quality Consumer Complaint Coordinator,

g. one hydrologist position,

h. Public Information Office Director,

i. Market Development Services Director,

j. Legal Services Director,

k. Animal Industry Services Director,

l. Agricultural Environmental Management Services Director,

m. Forestry Services Director,

n. Plant Industry and Consumer Services Director,

o. one Grants Administrator position,

p. Director of Laboratory Services,

q. Chief of Communications,

r. Public Information Manager,

s. Inventory/Supply Officer,

t. five Agriculture Field Inspector positions assigned the responsibility for conducting inspections and audits of agricultural grain storage warehouses. All other Agriculture Field Inspector positions and employees of the Oklahoma Department of Agriculture, Food, and Forestry shall be classified and subject to the provisions of the Merit System of Personnel Administration. On November 1, 2002, all other unclassified Agriculture Field Inspectors shall be given status in the classified service as provided in Section 840-4.2 of this title,

u. Rural Fire Coordinator,

v. one Agricultural Marketing Coordinator III,

w. Food Safety Division Director,

x. two Environmental Program Specialists,

y. two Scale Technicians, and

z. two Plant Protection Specialists;

42. The Contracts Administrator within the Oklahoma State Employees Benefits Council;

43. The Development Officer within the Oklahoma Department of Libraries;

44. Oklahoma Real Estate Commission personnel occupying the following offices and positions:

a. Educational Program Director, and

b. Data Processing Manager;

45. A Chief Consumer Credit Examiner for the Department of Consumer Credit;

46. All officers and employees of the Oklahoma Capitol Complex and Centennial Commemoration Commission;

47. All officers and employees of the Oklahoma Motor Vehicle Commission;

48. One Museum Archivist of The Will Rogers Memorial Commission;

49. One Fire Protection Engineer of the Office of the State Fire Marshal;

50. Acting incumbents employed pursuant to Section 209 of Title 44 or Section 48 of Title 72 of the Oklahoma Statutes who shall not be included in any limitation on full-time equivalency imposed by law on an agency. Permanent classified employees may request a leave of absence from classified status and accept an unclassified

appointment and compensation as an acting incumbent with the same agency; provided, the leave shall expire no later than two (2) years from the date of the acting incumbent appointment. An appointing authority may establish unclassified positions and appoint unclassified employees to perform the duties of a permanent classified employee who is on leave of absence from a classified position to serve as an acting incumbent. All unclassified appointments created pursuant to this paragraph shall expire no later than two (2) years from the date of appointment. Classified employees accepting unclassified appointments and compensation pursuant to this paragraph shall be entitled to participate without interruption in any benefit programs available to classified employees, including retirement and insurance programs. Immediately upon termination of an unclassified appointment pursuant to this paragraph, an employee on assignment from the classified service shall have a right to be restored to the classified service and reinstated to the former job family level and compensation plus any adjustments and increases in salary or benefits which the employee would have received but for the leave of absence;

51. The Oklahoma Homeland Security Director and all other positions assigned the responsibilities of working in the Oklahoma Office of Homeland Security; and

52. The following eighteen (18) positions in the State Department of Health:

- a. one surveillance supervisor,
- b. one surveillance project monitor,
- c. two bilingual interviewers,
- d. eight senior interviewers, and
- e. six interviewers.

B. If an agency has the authority to employ personnel in the following offices and positions, the appointing authority shall have the discretion to appoint personnel to the unclassified service:

1. Licensed medical doctors, osteopathic physicians, dentists, psychologists, and nurses;
2. Certified public accountants;
3. Licensed attorneys;
4. Licensed veterinarians; and
5. Licensed pharmacists.

C. Effective July 1, 1996, authorization for unclassified offices, positions, or personnel contained in a bill or joint resolution shall terminate June 30 of the ensuing fiscal year after the authorization unless the authorization is codified in the Oklahoma Statutes or the termination is otherwise provided in the legislation.

D. The appointing authority of agencies participating in the statewide information systems project may establish unclassified positions and appoint unclassified employees to the project as needed. Additional unclassified positions may be established, if required, to appoint an unclassified employee to perform the duties of a permanent classified employee who is temporarily absent from a classified position as a result of assignment to this project. All unclassified appointments under this authority shall expire no later than December 31, 2007, and all unclassified positions established to support the project shall be abolished. Both the positions and appointments resulting from this authority shall be exempt from any agency FTE limitations and any limits imposed on the number of unclassified positions authorized. Permanent classified employees may request a leave of absence from classified status and accept an unclassified appointment and compensation with the same agency under the provisions of this subsection; provided, the leave shall expire no later than December 31, 2007. Employees accepting the appointment and compensation shall be entitled to participate without interruption in any benefit programs available to classified employees, including retirement and insurance programs. Immediately upon termination of an unclassified appointment pursuant to this subsection, an employee on assignment from the classified service shall have a right to be restored to the classified service and reinstated to the former job family level and compensation plus any adjustments and increases in salary or benefits which the employee would have received but for the leave of absence.

§74-840-5.6. Corporation Commission employees — Inclusion in unclassified service.

The unclassified service of the state shall include personnel employed by the Corporation Commission in positions which do not require registration with the Board of Professional Engineers and Land Surveyors but which have been employed in accordance with subparagraph 8 of paragraph 22 of Section 840.8 of Title 74 of the Oklahoma Statutes, which provides for engineer positions and employees of the Corporation Commission to be unclassified. From and after the effective date of this act, the titles of such positions and employees shall be changed to reflect the specialized nature of the positions and

the intent of the Legislature that such positions be part of the unclassified service.

This provision is not intended to change the current status, whether classified or unclassified, of any employee or position of the Corporation Commission. Furthermore, it is not intended to authorize any increase in classified or unclassified full-time-equivalent employee positions or funding limitations.

§74-840-5.7. Grand River Dam Authority.

A. The Grand River Dam Authority shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 8 of this act, the following offices, positions and personnel shall be in the unclassified service:

1. The general manager, assistant general managers, secretaries to the general manager, and assistant general managers;
2. The chief engineer and the engineers, superintendents, and assistant superintendents;
3. The general counsel and the attorneys on the general counsel's staff;
4. The secretary;
5. The treasurer;
6. Rate analysts; and
7. Unclassified employees hired prior to May 1, 1989, who hold engineering job titles but who are not registered engineers, provided said persons are reassigned nonengineering job titles. At such time as the positions occupied by said unclassified employees are vacated, the positions shall revert to the classified service.

§74-840-5.8. Oklahoma Tax Commission.

A. The Oklahoma Tax Commission shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to the Oklahoma Personnel Act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the following offices, positions and personnel shall be in the unclassified service:

1. One private secretary for each Tax Commissioner; all revenue administrators, the budget officer and the comptroller of the Tax Commission;
2. All revenue unit managers;
3. All Computer Programming Systems Specialist positions;
4. All Data Processing Programmer Analyst Supervisor and Data Processing Programmer Analyst III positions;
5. All Public Affairs Officer and Assistant Public Affairs Officer positions;
6. The Public Information Officer; and
7. All Tax Economist and Tax Policy Analyst positions.

§74-840-5.9. State Department of Education.

A. The State Department of Education shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 8 of this act, the following offices, positions and personnel shall be in the unclassified service:

1. Administrative Assistants;
2. Informational Representatives III;
3. Driver Educational Electronics Technician;
4. Media Technical Assistants;
5. Executive Secretaries;
6. Accounting Supervisor;
7. Supervisor of Records;
8. Supervisor of Printing Services;
9. Migrant Records Transfer System Representative;
10. Financial Managers; and
11. In addition to the State Department of Education offices and positions listed in this paragraph, any and all offices and positions within the State Department of Education for which the annual salary is Twenty-one Thousand Nine Hundred Forty-three Dollars

(\$21,943.00) or more shall also be in the unclassified service of this state.

Nothing in this paragraph is intended to change the status, whether classified or unclassified service, of any person employed by the Department of Education prior to May 1, 1989. No position shall be made part of the selective service while it is occupied by an unclassified service employee because of any change in salary or grade. Hereafter, any position paid an annual salary of Twenty-one Thousand Nine Hundred Forty-three Dollars (\$21,943.00) or more shall be made part of the unclassified service upon being vacated.

§74-840-5.10. CompSource Oklahoma.

A. CompSource Oklahoma shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the following offices, positions and personnel shall be in the unclassified service:

1. President and Chief Executive Officer;
2. Executive Vice President;
3. Vice Presidents;
4. Executive Secretaries to the President, Executive Vice President and Vice Presidents;
5. Law Clerks and Legal Assistants;
6. Special Counsel;
7. General Counsel;
8. Medical Analysts Supervisor;
9. Medical Analysts;
10. Field Adjusters;
11. Investment Officer;
12. Workers' Compensation Insurance Consultants;
13. Workers' Compensation Insurance Technicians;
14. Workers' Compensation Insurance Adjusters;
15. Workers' Compensation Insurance Underwriters;
16. Fraud Investigation Specialists; and
17. Collections Attorneys.

C. CompSource Oklahoma may develop a plan for a pilot program for incentive-based

compensation for its employees beginning July 1, 2003, and ending no later than June 30, 2006. The plan shall be subject to the review and approval of the Administrator of the Office of Personnel Management. On or before January 1, 2006, the Administrator of the Office of Personnel Management shall submit a report on the pilot program to the Governor, Speaker of the House of Representatives and President Pro Tempore of the Senate.

§74-840-5.11. Department of Corrections — Merit system — Service status.

A. The Department of Corrections shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the Director of the Department of Corrections may establish positions in the unclassified service and place employees in those positions provided the total number of unclassified positions does not exceed six percent (6%) of the total full-time-equivalent employee limit established for the Department of Corrections. Any unclassified positions established for the Oklahoma State Industries shall be funded from the Department of Corrections Industries' Revolving Fund only. In addition to the regular salary, any unclassified employee of the Oklahoma State Industries of the Department of Corrections who is responsible for obtaining a contract for products manufactured or services provided by prison industries may, at the discretion of the Director of the Department of Corrections, be awarded additional compensation of not more than five percent (5%) of the total amount of said contracts but not more than Ten Thousand Dollars (\$10,000.00) per year. This compensation may be in addition to the salary of the employee and may be paid in one lump sum from any funds available to the Department of Corrections. No such compensation shall be made unless funds are available. Funds for payment of any compensation awards shall be encumbered to the extent of the awards.

Incumbents who were classified under the Merit System of Personnel Administration on

the effective date the position they occupy became part of the unclassified service shall have the option of remaining in their classified service status. Incumbents who choose to accept unclassified service appointments shall so signify in writing. All future appointees to these positions shall be in the unclassified service. Incumbents who choose to remain in the classified service shall be subject to all rules and procedures of the Merit System.

§74-840-5.12. State Department of Rehabilitation Services — Merit system — Unclassified positions.

A. The State Department of Rehabilitation Services shall be under the Merit System. Except as otherwise provided in this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to Section 840-1.1 et seq. of this title to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the Director of the State Department of Rehabilitation Services may establish positions in the unclassified service and place employees in the positions provided the total number of unclassified positions does not exceed fifty-two (52). This limit does not include State Department of Rehabilitation Services employees subject to Section 840-5.3 of this title.

C. The limit on unclassified positions provided for in subsection B of this section shall not apply to the instructional and administrative personnel at the Oklahoma School for the Blind and the Oklahoma School for the Deaf as listed in Section 1419 of Title 10 of the Oklahoma Statutes.

D. The limit on unclassified positions provided for in subsection B of this section shall not apply to the employees of the Disability Determination Division of the State Department of Rehabilitation Services. The Director of the State Department of Rehabilitation Services may establish positions in the unclassified service in the Disability Determination Division and may place employees in those positions provided the total number of those unclassified positions does not exceed ten.

E. Instructional and administrative personnel of the State Department of Rehabilitation Services at the Oklahoma School for the Blind and the Oklahoma School for the Deaf pursuant to Section 1419 of Title 10 of the Oklahoma Statutes shall be considered unclassified state employees solely for the purpose of entering and maintaining employment data in the state Personnel Management Information System established pursuant to Section 840-2.13 of this title, unless otherwise provided by law.

§74-840-5.13. Department of Environmental Quality.

A. The Department of Environmental Quality shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the following offices, positions and personnel shall be in the unclassified service:

1. Division Directors;
2. General Counsel;
3. Attorneys;
4. Director of Public Information and Education;
5. Customer Service Specialists;
6. Senior Coordinator of Rural Solid Waste Systems Development;
7. Director of Support Services; and
8. Director of the Office of Waste Planning and Systems Development.

§74-840-5.14. Repealed by Laws 1996, c. 327, § 5, eff. Nov. 1, 1996.

§74-840-5.15. Office of Juvenile Affairs. [Shaded text effective 9/1/05.]

A. The Office of Juvenile Affairs shall be under the Merit System. Except as otherwise provided in subsection B of this section, all offices, positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated pursuant thereto. This section shall supersede and repeal any and all executive orders issued pursuant to the Oklahoma Personnel

Act to place the agency or its predecessors under the Merit System.

B. In addition to offices, positions and personnel that are unclassified pursuant to Section 840-5.5 of this title, the Office of Juvenile Affairs may place a maximum of thirty-eight (38) employees in the unclassified service.

§74-840-5.16. State Work Incentive Program.

A. There is hereby created the State Work Incentive Program aimed at employing participants in the Temporary Assistance for Needy Families Program in Oklahoma and vocational rehabilitation clients of the Department of Rehabilitation Services in the state service. The program shall focus on placement of persons in entry-level positions. The Department of Human Services and the Department of Rehabilitation Services shall notify agencies in all branches of state government of this program and shall certify to appointing authorities and the Administrator of the Office of Personnel Management that a person is a participant in the Temporary Assistance for Needy Families Program or is a vocational rehabilitation client of the Department of Rehabilitation Services before the person is eligible to be employed under the State Work Incentive Program by a state agency. Agencies shall cooperate with the Department of Human Services and the Department of Rehabilitation Services in seeking to provide employment opportunities to persons who are participants in the Temporary Assistance for Needy Families Program or who are vocational rehabilitation clients of the Department of Rehabilitation Services. The Department of Human Services, the Department of Rehabilitation Services and the Office of Personnel Management shall coordinate with agencies to facilitate the transition of participants in the Temporary Assistance for Needy Families Program and vocational rehabilitation clients of the Department of Rehabilitation Services into the State Work Incentive Program.

B. Agencies employing eligible persons in the State Work Incentive Program shall employ them in unclassified status for up to two (2) years in full-time or part-time capacity. State Work Incentive Program positions shall not be included within any limitation on full-time-equivalent employee positions for any agency. The service of participants shall be rated pursuant to Section 840-4.17 of this title.

C. Employees hired under the State Work Incentive Program are eligible for leave benefits

and other benefits available to state employees, subject to other eligibility requirements, and may be reassigned or promoted while they are participating in the program.

D. Employees hired under the State Work Incentive Program shall be eligible for conversion to permanent classified status after two (2) years of continuous participation in the program. Such employee shall be exempt from probationary hiring procedures including, but not limited to, placement on hiring lists and certification from registers, provided the employee:

1. Has had satisfactory performance as evidenced by service ratings conducted pursuant to Section 840-4.17 of this title;

2. Possesses the minimum requirements specified for an applicable job; and

3. Passes any entrance examination required for the applicable job by the Office of Personnel Management, or a person with severe disabilities and is eligible to be hired pursuant to Section 840-4.12 of this title.

The Administrator of the Office of Personnel Management shall promulgate such rules as are necessary for the implementation of the State Work Incentive Program.

§74-840-5.18. Oklahoma Public Employees Retirement System.

A. All offices, positions and personnel of the Oklahoma Public Employees Retirement System shall be classified and subject to the provisions of the Merit System of Personnel Administration as provided in the Oklahoma Personnel Act, Section 840.1 et seq. of this title. This section shall supersede and repeal any and all executive orders issued pursuant to the Oklahoma Personnel Act to place the agency under the Merit System.

B. In addition to offices, positions, and personnel that are unclassified pursuant to Section 840-5.5 of this title, the following positions and personnel shall be in the unclassified service:

1. The Chief Investment Officer;

2. One Administrative Assistant;

3. Two positions associated with the Severance Program;

4. One additional position; and

5. Four professional-level data processing positions.

§74-840-5.19. Ethics Commission.

A. The Ethics Commission shall be under the Merit System. Except as provided in subsection B of this section, all positions and personnel

shall be classified and subject to the provisions of the Merit System of Personnel Administration as provided in the Oklahoma Personnel Act. This section shall supersede and repeal any and all executive orders issued pursuant to the Oklahoma Personnel Act to place the agency under the Merit System.

B. In addition to positions and personnel that are unclassified pursuant to Section 840-5.5 of Title 74 of the Oklahoma Statutes, the following offices, positions, and personnel of the Ethics Commission shall be in the unclassified service: One investigator.

§74-840-5.20. State and Education Employees Group Insurance Board.

A. The State and Education Employees Group Insurance Board shall be under the Merit System. Except as provided in subsection B of this section, all positions and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration as provided in the Oklahoma Personnel Act. This section shall supersede and repeal any and all executive orders issued pursuant to the Oklahoma Personnel Act to place the agency under the Merit System.

B. In addition to positions and personnel that are unclassified pursuant to Section 840-5.5 of Title 74 of the Oklahoma Statutes, the following offices, positions, and personnel of the State and Education Employees Group Insurance Board shall be in the unclassified service:

1. A director of internal audit;
2. Two deputy administrators;
3. Seven assistant administrators;
4. One executive secretarial position to the Board;
5. An administrative support officer; and
6. Three professional-level data processing positions.

§74-840-5.21. Oklahoma Transportation Authority.

A. All offices, positions, and personnel of the Oklahoma Transportation Authority shall be classified and subject to the provisions of the Merit System of Personnel Administration as provided in the Oklahoma Personnel Act. This section shall supersede and repeal any and all Executive Orders issued pursuant to the Oklahoma Personnel Act to place the Authority under the Merit System.

B. In addition to offices, positions, and personnel that are unclassified pursuant to Section

840-5.5 of this title, the following positions and personnel shall be in the unclassified service:

1. Information Technology Analysts;
2. Process Integration Specialists;
3. Project Managers;
4. System Integration Specialists; and
5. One Administrative Assistant.

§74-840-5.22. Certain employees to become classified and subject to Merit System — Examination.

All offices, positions, and personnel of the Oklahoma Indian Affairs Commission shall be in the unclassified service. All future appointees to positions in the Oklahoma Indian Affairs Commission shall be in the unclassified service.

§74-840-5.23. Oklahoma Motor Vehicle Commission - Unclassified service.

All offices, positions, and personnel of the Oklahoma Motor Vehicle Commission shall be in the unclassified service. All future appointees to positions in the Oklahoma Motor Vehicle Commission shall be in the unclassified service.

§74-840-5.24. State Election Board — Merit system.

Notwithstanding any provision of law to the contrary, the State Election Board shall be under the Merit System of Personnel Administration. Except for the Secretary of the State Election Board, all offices, positions, and personnel shall be classified and subject to the provisions of the Merit System of Personnel Administration and rules promulgated hereunder. Salaries and job family allocations shall be determined in accordance with Section 840-4.2 of Title 74 of the Oklahoma Statutes. This section shall supersede and repeal any and all executive orders issued pursuant to this act to place the agency or its predecessors under the Merit System.

§74-840-6.1. Alternative Dispute Resolution Program.

A. The Oklahoma Merit Protection Commission shall establish and maintain a mandatory Alternative Dispute Resolution Program and shall adopt and promulgate such rules as may be necessary for the implementation and management of the program.

B. A purpose of the Alternative Dispute Resolution Program is to provide an economical means and access to effective alternative dispute resolution services to all state agencies and employees.

C. The Oklahoma Merit Protection Commission may require employees and agencies to utilize the Alternative Dispute Resolution Program to resolve disputes brought before the Commission pursuant to Sections 841.13 and 841.15 of Title 74 of the Oklahoma Statutes.

D. Alternative dispute resolution programs established and utilized by the Commission are not subject to Article II of the Administrative Procedures Act. The decision in such cases may be appealed by any party to the Oklahoma Merit Protection Commission and thereafter to district court.

§74-840-6.2. Grievance procedure.

A. The Oklahoma Merit Protection Commission shall establish standard internal agency grievance resolution procedures for classified state employees. The procedures shall encourage prompt and equitable resolution of grievances at the lowest possible level within the employing agency. Each appointing authority shall either use the procedures established by the Commission or adopt other procedures which address the specific needs of their agencies. All procedures shall contain the minimum requirements established pursuant to this section.

B. The appointing authority of each agency shall furnish to each classified employee a copy of the internal agency grievance resolution procedure utilized by the agency.

C. No employee shall be disciplined or otherwise prejudiced in his or her employment for exercising his or her rights under the internal agency grievance resolution procedure.

D. Internal agency grievances may include, but are not limited to, any direct or indirect form of discipline, reduction-in-force, work assignments, withholding of work, classification, reclassification, promotion, leave, performance appraisal, length of service, overtime, compensatory time, transfers, or any alleged violation of the Oklahoma Personnel Act or merit rules.

E. The internal agency grievance resolution procedures established by the Oklahoma Merit Protection Commission shall contain the following minimum requirements:

1. Procedures encouraging resolution of disputes within the agency quickly, informally and at the lowest possible level;

2. Procedures requiring prompt resolution of the internal agency grievance within established time periods; and

3. Procedures guaranteeing the employee the right to be represented by a person of his own

choosing at each step of the procedure, except the initial informal discussion with his immediate supervisor.

F. The Oklahoma Merit Protection Commission shall promulgate rules as necessary to implement the provisions of subsections A through I of this section to establish internal agency grievance resolution procedures, provided that such rules previously promulgated by the Administrator of the Office of Personnel Management shall be transferred to the Oklahoma Merit Protection Commission and shall remain in effect until duly modified by the Commission.

G. The appointing authority of each classified agency shall designate employees of the agency to receive and process internal agency grievances. Within six (6) months after designation to serve in this capacity, these employees shall complete the training programs established by the Commission. Upon successful completion, such employees shall be certified to perform the duties associated with receiving and processing internal agency grievances.

H. The appointing authority of each classified agency shall ensure that employees designated to receive and process internal agency grievances are scheduled to attend and notified of the required training and shall make time available for employees to complete the training.

I. Each agency shall maintain records of each grievance filed as well as summary information about the number, nature and outcome of all grievances filed. Agencies shall keep records of grievances separate and apart from other individual employee personnel files. Agencies shall annually report grievance information and related statistical data to the Oklahoma Merit Protection Commission pursuant to rules adopted by the Commission. An employee or former employee shall have a right of access to the grievance record of grievances he or she filed after the grievance procedure has been completed.

J. Employees may only appeal a reduction-in-force action to the Oklahoma Merit Protection Commission on the basis of procedural errors in the application of the reduction-in-force plan of the employing agency, board, or commission.

§74-840-6.3. Progressive discipline.

A. Each appointing authority shall establish written policies and procedures for progressive discipline of employees according to the rules established by the Oklahoma Merit Protection Commission.

B. Progressive discipline is a system designed to ensure not only the consistency, impartiality and predictability of discipline, but also the flexibility to vary penalties if justified by aggravating or mitigating conditions. Typically, penalties range from verbal warning to discharge, with intermediate levels of a written warning, suspension or demotion. Absent mitigating circumstances, repetition of an offense is accompanied by a generally automatic progression to the next higher level of discipline.

C. Each supervisor shall be responsible for applying discipline when necessary that is progressive in nature, appropriate for the offense, and equitable. Each supervisor shall consider aggravating or mitigating circumstances when determining the proper disciplinary action. Each supervisor shall use prompt, positive action to avoid more serious disciplinary actions. The Oklahoma Merit Protection Commission shall promulgate rules to establish the requirements and guidelines for discipline.

D. The rules shall prohibit supervisors from considering incidents that occurred longer than four (4) years prior to an offense in order to move to a higher level of discipline. The prohibition shall not apply to incidents involving the following types of conduct:

1. Criminal activity;
2. Sexual misconduct and/or harassment;
3. Racially discriminatory behavior and/or harassment;
4. Threats or acts of violence against employees in the workplace; and
5. Drug and/or alcohol use or abuse on the job.

§74-840-6.4. Pretermination hearing — Violation of procedures — Penalties.

A. A pretermination hearing shall be held before the appointing authority or its designee for any permanent classified state employee, as defined in Section 840.3 of this title, before such employee shall be terminated from state service unless the termination is part of a reduction-in-force as provided in Section 841.14 of this title.

B. The procedures for a pretermination hearing shall be:

1. Notice of a pretermination hearing shall be served by actual delivery or by certified or registered mail service at least seven (7) calendar days prior to the scheduled pretermination hearing;
2. Said notice of the pretermination hearing shall state all grounds for termination and shall

include a general summary of evidence or physical evidence to support each of the stated grounds for termination;

3. The appointing authority shall file in the employee's official personnel file at least seventy-two (72) hours before each pretermination hearing, a certificate to be included in the record stating what disciplinary actions have been taken to comply with progressive disciplines prior to the pretermination hearing and proposed termination and further certifying that all mandatory progressive discipline actions as required by statute or rule have been taken before pretermination hearing; provided, said certificate shall not be required where grounds for proposed termination are for commission of a criminal offense and/or acts involving moral turpitude;

4. The employee shall be advised of his or her rights of representation by legal counsel or a representative of choice;

5. Any pretermination hearing shall be recorded in its entirety by an audible electronic tape recording, and a copy of the tape shall be provided to the employee at no cost if the employee appeals to the Oklahoma Merit Protection Commission;

6. The pretermination hearing need not be a full evidentiary hearing. Formal rules of evidence shall not apply. The hearing shall be conducted so as to provide the appointing authority with information from which it may determine whether reasonable grounds exist to believe that the charges against the employee are true, and whether the grounds support the proposed action.

7. Following the pretermination hearing, if recommendation for termination is made, recordings of the pretermination hearing and all evidence in support thereof, shall be reviewed for legal sufficiency by the appointing agency director or his or her designee before termination is final;

8. Following review by said director the appointing authority shall notify the terminated employee of the final decision in the manner aforesaid within ten (10) working days after the pretermination hearing;

9. Such notice shall state all grounds for termination;

10. In any subsequent proceedings before the Oklahoma Merit Protection Commission or district court, no grounds for termination other than those stated in the aforementioned notices shall be considered.

C. Any individual who willfully and knowingly violates these provisions shall be guilty of a misdemeanor and will be subject to appropriate disciplinary action which may include termination from state service.

§74-840-6.5. Discharge, suspension or demotion of employee — Notice — Appeal — Hearing — Findings.

A. It is the purpose of this section to provide a system for the prompt, fair, and equitable disposition of appeals by permanent classified employees who have been demoted, suspended, or discharged. Further, it is the intent of this section that all decisions rendered as a result of this procedure shall be confined to the issues submitted for decision and consistent with the applicable laws and rules.

B. If an employee in the classified service is demoted as a result of a position audit or reclassification, the agency shall provide notice of such demotion to the Office of Personnel Management, which shall review the findings of the agency prior to such demotion occurring, to ensure compliance with the law. The Office of Personnel Management shall complete the review and respond within ten (10) business days of receipt of notice. The provisions of this subsection shall not apply to demotions that are a result of a position audit or reclassification performed by the Office of Personnel Management.

C. Any employee in the classified service may be discharged, suspended without pay for not to exceed sixty (60) calendar days, or demoted by the agency, department, institution, or officer by whom employed for misconduct, insubordination, inefficiency, habitual drunkenness, inability to perform the duties of the position in which employed, willful violation of the Oklahoma Personnel Act or of the rules prescribed by the Office of Personnel Management or by the Oklahoma Merit Protection Commission, conduct unbecoming a public employee, conviction of a crime involving moral turpitude, or any other just cause. Employees in the classified service, upon final conviction of, or pleading guilty or nolo contendere to, a felony shall be discharged if the felony is job-related pursuant to Section 24.1 of Title 51 of the Oklahoma Statutes. Before any such action is taken against a permanent classified employee, the employing agency, department, institution or officer shall provide the employee with a written statement of the specific acts or omissions that are causes or reasons for the proposed action, an explanation

of the agency's evidence, and an opportunity to present reasons why the proposed action is improper.

Within ten (10) business days after such discharge, suspension, or demotion, the appointing authority shall notify the employee by certified mail or personal service of the action taken and the specific cause for which said appointing authority has so acted. Within twenty (20) calendar days after receiving the written notification provided for in this section, the employee may file a written request for appeal with the Oklahoma Merit Protection Commission. The Executive Director shall determine if the jurisdictional requirements provided for in this section have been met. If the jurisdictional requirements are not met, the Executive Director shall notify both the employee and the agency within five (5) calendar days after the receipt of a written appeal request. Such notice shall specifically describe the requirements that were not met. If said requirements have been met, the Executive Director shall refer the appeal request to an administrative hearing officer for a hearing on said discharge, suspension, or demotion, or refer the appeal request to the Alternative Dispute Resolution Program.

If the case is not referred to the Alternative Dispute Resolution Program, then within five (5) calendar days after receipt of said properly executed appeal request, the Executive Director shall provide said employee and the appointing authority with a written notice of (1) a prehearing conference to be held at least five (5) working days, but not more than ten (10) working days, before the date of the hearing; and (2) the appeal hearing date which shall be no later than thirty-five (35) calendar days after the receipt of the appeal request, unless continued for good cause. Any continuances shall not exceed a combined total of sixty (60) calendar days except for good cause shown. Both the prehearing conference and the hearing shall be conducted in accordance with the provisions of Section 74-840-6.7 of this title. The notice shall be in the following form:

Notice of Hearing

Oklahoma Merit Protection Commission to _____. You are hereby notified that pursuant to your request an appeal hearing on your (discharge), (suspension), (demotion), from the position of _____ has been set for the _____ day of _____ at _____ M. at _____ in _____, a copy of said cause

for your (discharge), (suspension), (demotion), being hereto attached.

Dated this _____ day of _____ City of _____ By _____ Special Counsel of the Oklahoma Merit Protection Commission.

In appeals from demotion, suspension, or discharge, the burden of proof shall rest with the appointing authority, and decisions shall be made based on the rule of preponderance of evidence. The employee shall be sustained or not sustained. If the employee is not sustained in the appeal, the employee shall be discharged, or suspended without pay for not to exceed sixty (60) calendar days, or demoted. If sustained in the appeal, in whole or in part, the presiding official may either adjudge a forfeiture of pay not in excess of sixty (60) calendar days without loss of other rights and benefits or order reinstatement of appellant to the class previously held with full rights and without loss of pay or other benefits; provided that the decision will not result in an employee working out of proper classification as determined by the Office of Personnel Management.

The findings of the presiding officials shall be final and conclusive upon all questions within their jurisdiction between the parties except as provided for in Sections 317 and 318 of Title 75 of the Oklahoma Statutes. Upon the timely filing of a petition to rehear, reopen, or reconsider, the Oklahoma Merit Protection Commission shall schedule the matter for consideration by the Commissioners on the earliest possible date. The Commission shall rule on petitions by a majority vote of a quorum of the Commissioners. Based on the Commission review of the petition, the Commission shall issue a Final Petition Decision within thirty (30) days after the petition is heard. The Final Petition Decision shall address the issues which are within the jurisdiction of the Commission raised in the petition, and the Decision shall be written in clear and concise language. Final Petition Decisions are subject to judicial review if appealed to the district court within thirty (30) calendar days. The State of Oklahoma or any agency of the state shall not be allowed to appeal to the district court unless the employee is continued on full pay in the same status of employment existing prior to suspension or discharge.

§74-840-6.6. Violation of employee rights — Appeals — Investigations — Reports — Hearings — Alternative Dispute Resolution — Closing of record.

A. Any person who believes that his or her rights under the Oklahoma Personnel Act, Section 840-1.1 et seq. of this title, have been violated may appeal to the Oklahoma Merit Protection Commission for corrective action.

B. Excluding the procedures set forth in Section 840-6.5 of this title, the Executive Director shall conduct preliminary investigations of possible violations of the Oklahoma Personnel Act. The Executive Director shall prepare a report of each such investigation stating the issues and findings of fact. If it is the determination of the Executive Director that a violation of the Oklahoma Personnel Act or the Merit System of Personnel Administration Rules may have occurred, the Executive Director shall, within ten (10) calendar days after the date of the report, appoint an administrative hearing officer to hear the case or refer the case to the Alternative Dispute Resolution Program, as appropriate and provided for by law. If the appeal is to be heard by an administrative hearing officer, the Executive Director shall notify the appellant and the appointing authority of the date, time, and place of the hearing in accordance with the provisions of Section 840-6.7 of this title. Such hearing shall be conducted within thirty-five (35) calendar days of the date of the investigative report unless continued for good cause. Any continuances shall not exceed a combined total of sixty (60) calendar days except for good cause shown.

The prehearing conference and hearing shall be conducted in accordance with the provisions of Section 840-6.7 of this title. If it is determined a violation has occurred, the Commission or presiding official shall:

1. Direct the appointing authority to take the necessary corrective action; or
2. Report the finding to the appropriate authorities for further action.

Corrective action shall be confined to issues submitted for decision and shall be consistent with applicable laws and rules and limited to actions specifically granted to the Oklahoma Merit Protection Commission and presiding official in the Oklahoma Personnel Act and shall

not alter, reduce, or modify any existing right or authority as provided by statute or rule.

C. The following procedures shall pertain to the closing of a hearing or Alternative Dispute Resolution Program proceeding record:

1. When a hearing or Alternative Dispute Resolution Program proceeding is convened, the record will close at the conclusion of the hearing or Alternative Dispute Resolution Program proceeding unless otherwise specified by the presiding official;

2. When a hearing or Alternative Dispute Resolution Program proceeding is not convened, the record will close on the date set by the presiding official as the final date for the receipt of submissions of the parties; and

3. Once the record is closed, no additional evidence or argument shall be considered except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record.

§74-840-6.7. Hearing procedure.

All hearings held pursuant to the Oklahoma Personnel Act shall be conducted in accordance with the following provisions:

A. Prehearing Conferences

1. A prehearing conference may be held on all appeals set for hearing.

2. The prehearing conference may be conducted by the assigned administrative hearing officer, who may take an active part in the conference. The conference shall be informal, and shall not be open to the public. Each party may be represented by a designated individual who has knowledge of the case.

3. All discovery shall be completed at the prehearing conference. Thereafter, discovery may be conducted only where authorized by the administrative hearing officer where good cause is shown.

4. Copies of all documents or exhibits submitted to the administrative hearing officer must be submitted to the adverse party.

5. At the prehearing conference, the parties shall be required to:

- a. identify which allegations are admitted and which are denied; and
- b. submit a joint statement of the facts which are agreed and the issues to be decided; and
- c. submit a list of their witnesses, exhibits, and documents to be offered into evidence; and
- d. confer in regard to settlement; and

e. perform any other acts which will facilitate the prehearing conference or the hearing.

6. The administrative hearing officer shall:

a. determine the facts to which the parties agree and the issues to be decided; and

b. hear all pending motions; and

c. consider any other matters which will aid in the fair and prompt disposition of the appeal, including the possibility of settlement; and

d. prepare a prehearing conference order which shall record the actions taken, the agreements reached, and the issues to be decided. The order shall control the subsequent course of the hearing.

B. Hearings

All hearings shall be open to the public, and shall only be conducted by an administrative hearing officer appointed by the Executive Director. The hearing shall be conducted in accordance with the Administrative Procedures Act of the Oklahoma Statutes, except that if any party chooses to designate a representative, the representative shall not be required to be an attorney. All administrative hearing officers shall serve at the pleasure of the Executive Director for such compensation as may be provided.

Each party shall have the right to present witnesses in his behalf and evidence to support his position.

The appointing authority concerned, or a designee, shall appear in person and shall present the position of the agency in the personnel action. The administrative hearing officers shall rule upon the questions of admissibility of evidence, competency of witnesses, and any other question of law upon which they have jurisdiction as provided in the Oklahoma Personnel Act and the rules promulgated thereunder.

Within ten (10) calendar days after said hearing, the administrative hearing officer shall prepare findings of fact and conclusions of law. The Executive Director shall notify the appellant and the appointing authority of the decision of the administrative hearing officer by certified mail within five (5) calendar days of the receipt of the decision of the administrative hearing officer.

The findings of the administrative hearing officer shall be final regarding all questions of law within their jurisdiction except as provided in the Administrative Procedures Act. After exhausting all remedies under the Administrative Procedures Act, either party to an appeal of de-

motion, suspension, or discharge may appeal to district court within thirty (30) calendar days.

§74-840-6.8. Attorney fees and costs — Motion — Supporting evidence - Review.

A. The presiding officer of any hearing or Alternative Dispute Resolution Program proceeding before the Oklahoma Merit Protection Commission may require payment of reasonable attorney fees and costs to the prevailing party if the position of the nonprevailing party was without reasonable basis or was frivolous.

B. Requests by prevailing parties for payment of attorney fees and costs shall be filed by motion with a copy served on other parties within ten (10) days of the date that the decision is issued. A responsive pleading may be filed within ten (10) days of the date the motion is filed with the Oklahoma Merit Protection Commission. The motion shall be filed at the office of the Oklahoma Merit Protection Commission to the attention of the presiding officer and the ruling on the motion shall be made in an addendum decision.

C. The motion for fees and costs shall state why the prevailing party believes he or she is entitled to an award under this statute and shall be supported by evidence substantiating the amount of the request. Such evidence shall include the following:

1. Accurate and current time records;
2. A copy of the terms of any fee agreement between the party and the attorney;
3. The attorney's customary billing rate for similar work, provided the attorney has a billing practice to report; and
4. Evidence of the prevailing community rate sufficient to establish a market value for the services rendered.

D. If the Oklahoma Merit Protection Com-

mission determines that the appeal is frivolous, any party may be assessed attorney fees and costs of the action.

E. A petition for judicial review by the Oklahoma Merit Protection Commission of the addendum decision shall be filed in accordance with Article II of the Administrative Procedures Act, within ten (10) days of the issue date of said decision.

§74-840-6.9. Administrative fines — Forfeiture of position.

A. The Oklahoma Merit Protection Commission or the Administrator of the Office of Personnel Management may levy an administrative fine not to exceed Five Thousand Dollars (\$5,000.00) against any person, whether subject to the provisions of the merit system or in unclassified service, who after proper notice fails or refuses, within a reasonable period of time, to implement a written order of the Oklahoma Merit Protection Commission or the Administrator of the Office of Personnel Management.

Such fine shall be assessed against the person who violates the order and shall not be paid by any monies of the employing entity in which the person is employed or serves.

B. Any person against whom an administrative fine is levied who continues the violation for an unreasonable period of time, as determined by the Oklahoma Merit Protection Commission or Administrator of the Office of Personnel Management, shall forfeit his or her position and shall be ineligible for appointment to or employment in state government for a period of five (5) years.

C. Any fines collected pursuant to this section shall be deposited to the revolving fund of the respective entity which levies the fine.