



STATE OF OKLAHOMA
OFFICE OF PERSONNEL MANAGEMENT

"Serving Equal Opportunity Employers"

OPM 05-17

TO: All Appointing Authorities

DATE: March 3, 2005

FROM: Oscar B. Jackson, Jr., IPMA-CP, Administrator and
Cabinet Secretary of Human Resources and Administration

A handwritten signature in black ink, appearing to read "Oscar B. Jackson, Jr.", written over the printed name in the "FROM:" field.

RE: Emergency Amendments to the Merit Rules for Employment

Enclosed please find the text of emergency amendments to the Merit Rules for Employment. These amendments became effective January 24, 2005. Agency employees should be advised that all currently effective Merit Rules adopted by the Administrator are available on the Office of Personnel Management's website at:

http://www.opm.state.ok.us/html/hr_policy_rules_rule.htm

The emergency amendments to the Merit Rules enclosed with this memorandum will be available at the above website address beginning March 7, 2005.

Following is a summary of the emergency amendments to the Merit Rules that became effective January 24, 2005:

Subchapter 1—All amendments to subchapter 1 were to correct or add citations.

Subchapter 3— All amendments to subchapter 3 were to correct or add citations.

Subchapter 7—Amendment to Merit Rule **530:10-7-14** clarifies that an employee's salary may be set at a rate greater than 20% higher than his rate of pay before promotion or career progression as long as the resulting salary is within the approved hiring range. All other amendments to this subchapter were to correct or add citations.

Subchapter 9—Merit Rule **530:10-9-130** clarifies the definition of veteran for hiring purposes. Other amendments were to correct or add citations.

Subchapter 11—All amendments to subchapter 11 were to correct or add citations.

Subchapter 13—Amendments to Merit Rule **530:10-13-2** are to harmonize the definitions with those in the Oklahoma Personnel Act. Amendment to **530:10-13-32** was to conform the rule to statute as to order of removal during a reduction-in-force and preference for veterans. All other amendments to subchapter 13 were to correct or add citations.

Subchapter 15—Amendment to **530:10-15-45** is to implement statutory change allowing for FMLA leave to be paid with accrued compensatory time. Amendment to

*"We serve the people of Oklahoma by delivering reliable and innovative
human resource services to our partner agencies to achieve their missions."*

530:10-15-49 is to clarify that the section applies to all employees. All other amendments to subchapter 15 were to correct or add citations.

Subchapter 17—Amendments to **530:10-17-31** are to update the rule and clarify that agencies subject to rule are to report compliance by March 31 of each year. All other amendments to subchapter 17 were to correct or add citations.

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT

CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES

SUBCHAPTER 1. GENERAL PROVISIONS

PART 1. GENERAL PROVISIONS

530:10-1-2. Definitions [AMENDED EFF. 7/11/04]

In addition to terms defined in OAC 455:10-1-2, the following words and terms, when used in the Merit Rules, shall have the following meaning, unless the context clearly indicates otherwise.

"Absence without leave" and **"unauthorized absence"** means any absence of an employee from duty without specific approval.

"Absolute preference veteran" means a veteran eligible for placement at the top of registers for appointment to the classified service because of a service-connected disability of **30%** or more.

"Act" means the Oklahoma Personnel Act.

"Administrator" means the appointing authority of the Oklahoma Office of Personnel Management [74:840-1.3]. As the term is used in the Merit Rules, the term includes employees of the Office of Personnel Management to whom the Administrator has lawfully delegated authority to act

on his or her behalf. The term, as used in the Merit rules, may also include Appointing Authorities to whom the Administrator has delegated authority under a duly executed delegation agreement.

"Adverse impact" or **"disparate impact"** means a substantially different rate of selection in hiring, promotion, or other employment decision which works to the disadvantage of members of a race, sex, or ethnic group. A common yardstick for determining adverse impact is the **"4/5ths rule"** which indicates adverse impact if the selection rate for any protected group is less than 4/5ths (80%) of the selection rate of the group with the highest selection rate.

"Agency" means any office, department, board, commission or institution of the executive branch of state government [74:840-1.3].

"Allocation" or **"Position allocation"** means the process by which the Office of Personnel Management designates a position to an established job family. A position is allocated on the basis of duties, authority, responsibilities, classification guides, and other appropriate factors.

"Appointing authority" means the chief administrative officer of an agency [74:840-1.3]. As the term is used in the Merit Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

"Assignment" or **"Position assignment"** in the context of position allocation means the process by which an Appointing Authority designates a position to an established job family level.

"Balanced and representative work force" means a work force whose composition at all levels approximates the composition of the relevant civilian labor force in terms of race, sex, and ethnicity.

"Base pay", "base rate", or "base salary" means the hourly rate or salary established for a job performed. It does not include shift differentials, benefits, overtime, incentives, longevity, or any other pay elements.

"Break in service" means a period of time in excess of thirty (30) days during which an employee is not present at work and is not in paid leave status or on approved leave without pay.

"Career progression" means a type of intra-agency promotion in which an employee is advanced from one level of a job family to a higher non-supervisory level in the same job family.

"Certification", in the context of initial classified appointments, means the submission of available names of eligibles from the appropriate register to an Appointing Authority. Such a list is called a **"certificate"**. Individuals whose names appear on the certificate are said to be **"certified"**. In the context of all other types of appointments, certification means the determination by the Office, or by an Appointing Authority to whom the Administrator has delegated authority, that a candidate possesses permanent classified status or is eligible for reinstatement to permanent classified status, and meets requirements for appointment to a specified job in the classified service.

"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* [74:840-1.3].

"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 [74:840-1.3].

"Classified employee" means an employee in the classified service, or an employee currently on leave from the classified service in accordance with established Merit Rules governing leave.

"Classified service" means state employees and positions under the jurisdiction of the Oklahoma Merit System of Personnel Administration [74: 840-1.3].

"Commission" means the Oklahoma Merit Protection Commission [74:840-1.3].

"Compensation plan" means a schedule of salaries or hourly wages established for the jobs recognized in the agency classification plan so that all positions of a given job within an agency may be paid the same salary range established for the job.

"Consider" means a reasonable judgment based on job related criteria and on an individual's fitness for duties for initial or internal appointment.

"Demotion" means the reclassification of a classified employee to a different job with a lower pay band assignment or to a lower level within the same job family. Demotion may be voluntary or involuntary.

"Direct reclassification" means a change made in a classified employee's classification by an Appointing Authority as a result of the adoption of a new or revised job family descriptor.

"Discharge" is defined in 455:10-11-3.

"Displacement" or **"displace"** means the process of an employee accepting an offer of employment to an occupied or funded vacant position [74:840-2.27B].

"EEO Job Categories", as used in the context of affirmative action/equal employment opportunity, means the following occupational categories:

(A) **Officials and Administrators:** Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district, or area basis.

(B) **Professionals:** Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge.

(C) **Technicians:** Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training.

(D) **Protective Service Workers:** Occupations in which workers are entrusted with public safety, security and protection from destructive forces.

(E) **Paraprofessionals:** Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status.

(F) **Administrative Support (Including Clerical and Sales):** Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office.

(G) **Skilled Craft Workers:** Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs.

(H) **Service-Maintenance:** Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property.

"Eligible" means a person who has met all requirements for appointment to a given job.

"Employee" or **"state employee"** means an elected or appointed officer or employee of an agency unless otherwise indicated [74:840-1.3].

"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 [74:840-1.3].

"Executive Director" means the appointing authority of the Oklahoma Merit Protection Commission [74:840-1.3].

"FEPA" means the Oklahoma Fair Employment Practices Act, Section 840-4.12 of the Oklahoma Personnel Act.

"FLSA" means the federal Fair Labor Standards Act.

"FLSA exempt" means employees performing work which is considered to be exempt from the overtime payment provisions of the FLSA.

"FLSA non-exempt" means employees performing work which is considered to be under the overtime payment provisions of the FLSA.

"Hiring range" means a range within a pay band within which an Appointing Authority may establish the initial rate of pay for a given job.

"Hiring rate" means the initial rate of pay for a given job within the pay band assigned to the job family level.

"Hiring rule" refers to the names of the top **10** available eligibles certified to an Appointing Authority by the Administrator.

"Initial appointment" or **"original appointment"** means the act of an Appointing Authority hiring a person, usually from a certificate, for a probationary period. Contrast the meaning of these terms with "internal action" and "internal appointment" which are also defined in this Section.

"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 [74:840-1.3].

"Internal action" or **"Internal appointment"** means the reclassification of a current employee or the reinstatement, recall or reemployment from a Priority Reemployment Consideration Roster of a former employee.

"Intra-agency transfer" means moving an employee from one position to another position with the same agency either with or without reclassification [74:840-1.3].

"Job" means a position or job family level in a job family [74:840-1.3].

"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 [74:840-1.3].

"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 [74:840-1.3].

"Job family level" or "level" means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience [74:840-1.3].

"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 [74:840-1.3].

"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 [74:840-1.3].

"Leave of absence without pay" means leave or time off from duty granted by the Appointing Authority, for which period the employee receives no pay.

"Manifest imbalance" means representation of females, Blacks, Hispanics, Asian/Pacific Islanders and American Indians/Alaskan natives in specific job groups or EEO job categories within the agency's work force that is substantially below its representation in the appropriate civilian labor force.

"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 [74:840-1.3]. Merit Rules adopted by the Administrator are in OAC 530:10, and Merit Rules adopted by the Commission are in OAC 455:10.

"Merit System" means the Oklahoma Merit System of Personnel Administration [74:840-1.3].

"Minimum qualifications" means the requirements of education, training, experience and other basic qualifications for a job.

"Minority" means a person who appears to belong, identify with, or is regarded in the community as belonging to one of the following racial or ethnic groups:

(A) **"Black"**, meaning all persons having origins in any of the Black racial groups of Africa;

(B) **"Hispanic"**, meaning all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race;

(C) **"Asian or Pacific Islander"**, meaning all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(D) **"American Indian or Alaskan Native"**, meaning all persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition. For affirmative action purposes, persons who are reported as American Indian shall verify 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 tribal affiliation [74:840-2.1].

"New position" means a position not previously existing.

"Noncompetitive appointment" means the appointment of a person to a noncompetitive job level within a job family [74:840-1.3].

"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 [74:840-1.3].

"Office" means the Office of Personnel Management [74:840-1.3].

"Oklahoma Personnel Act" means Sections 840-1.1 et seq. of Title 74 of the Oklahoma Statutes, creating the Merit System of Personnel Administration and any amendments or supplements.

"Part-time employee" means an employee who works less than full time.

"Pay band" means the pay range assigned to a job family level.

"Payline" means the relationship between the rate of pay of a particular job family level and the assigned job evaluation points for the same job family level.

"Permanent employee" means a classified employee who has acquired permanent status in the classified service according to the Act and the Merit Rules.

"Position" means a group of specific duties, tasks and responsibilities assigned by the Appointing Authority to be performed by one person; a position may be part time or full time, temporary or permanent, occupied or vacant.

"Priority reemployment consideration" means the requirement that Appointing Authorities consider eligible former state employees who were separated as a result of a reduction-in-force whose names appear on Priority Reemployment Consideration Rosters before any vacant position is filled by any eligible initially appointed from an employment register.

"Probationary employee" means a classified employee who has not acquired permanent status in the classified service in accordance with the Act and the Merit Rules.

"Probationary period" means a working test period during which a classified employee is required to demonstrate fitness for the job to which appointed by the satisfactory performance of the duties and responsibilities of the job.

"Promotion" means the reclassification of a classified employee to a different job with a higher pay band assignment or to a higher level within the same job family.

"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 [74:840-1.3].

"Reallocation" or **"Position reallocation"** means the process of reassigning an established position, occupied or vacant, from one job family to another.

"Recall right" means the entitlement of an eligible person to be offered reappointment to the job family level from which removed by a reduction-in-force before any other person may be appointed, except by recall.

"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 [74:840-1.3].

"Register" means a list of eligibles for original probationary appointment to a job.

"Register life" means the length of time during which a person's name may be continuously or intermittently on a register as a result of an entrance examination.

"Regular and consistent" means, in connection with an employee's work assignments, the employee's usual and normal work assignments, excluding incidental, casual, occasional tasks, and activities the employee assumes without direction to do so. Temporary work assignments of less than **60** days in any **12** month period are not considered regular and consistent.

"Regular unclassified service employee" means an unclassified service employee who is not on a temporary or other time-limited appointment [74:840-1.3].

"Reinstatement" means the reappointment of a former permanent classified employee as provided in the Merit Rules or the replacing of an eligible's name on a register.

"Resignation" means an employee's voluntary termination of his or her employment with the state. In the case of a classified employee, it includes the forfeiture of status in the classified service.

"Salary administration plan" means the plan adopted by an Appointing Authority and submitted to the Administrator for approval which establishes hiring ranges for positions. Components of a salary administration plan may include but are not limited to conditions for hiring above the midpoint of a pay range, skill-based pay programs, and other pay movement mechanisms authorized by Section 840-2.17 of the Oklahoma Personnel Act.

"Senior EEO Investigator" means a person who has been designated by the Administrator to provide advice and support to persons completing the training requirements for discrimination complaints investigators as described in 530:10-3-22.

"Successor job family level" means a job family level that takes the place of another job family level.

"Supervisor" means a classified or unclassified employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education 74:840-3.1] who has been assigned authority and responsibility for evaluating the performance of [other state employees] [~~74:840-3.1~~][74:840-1.3].

"Trial period" means a working test period after promotion, voluntary demotion, or intra-agency lateral transfer during which a classified employee is required to demonstrate satisfactory performance in the job to which promoted, voluntarily demoted, or transferred before acquiring permanent status in the job.

"Unclassified service" or **"exempt service"** means employees and positions excluded from coverage of the Oklahoma Merit System of Personnel Administration [74:840-1.3]. Such employees and positions are subject to various provisions of the Oklahoma Personnel Act and the Merit Rules.

"Veteran" means a person who has been honorably discharged from the Armed Forces of the United States and who has been a resident of Oklahoma for at least 1 year before the date of examination [74:840-1.3].

PART 3. DELEGATION OF HUMAN RESOURCE FUNCTIONS

530:10-1-43. Written memorandum of agreement of delegated authority

(a) Before the Administrator approves the application for delegation authority, a memorandum of agreement shall be prepared by the Administrator in cooperation with the Appointing Authority. This delegation agreement shall include or incorporate by reference the following documents and information:

- (1) A description of the delegation authority;
- (2) An outline of the terms and conditions of the agreement, including an effective date for the agreement;
- (3) A description of audit activities, reports to the Administrator, and a description of records to be maintained by the Appointing Authority.
- (4) The application for delegation authorization, as amended before execution of the delegation agreement.
- (5) The list of delegation audit activities provided by the Administrator to the Appointing Authority.
- (6) The delegation standards, procedures, records, and reports required by the Administrator.
- (7) The timing of and methodology for conducting scheduled audits.
- (8) A statement describing the degree to which the personnel professional designated as the professional administrator of the delegated functions will act in the Appointing Authority's stead in regards to the delegated authority during the life of the agreement. The Appointing Authority shall not delegate ultimate responsibility for the agency's exercise of the delegated authority, or authority to sign or terminate the delegation agreement.

(b) The delegation agreement shall be dated and signed by the Appointing Authority of the requesting agency and then by the Administrator. The Administrator's signature on the agreement shall constitute approval of the application for delegation authority. Approval of this application for delegation authority shall constitute authority for the Appointing Authority or designee to implement the approved delegation of personnel authority. ~~[74:840-1.15(5)]~~[74:840-3.1] The Administrator shall send the Appointing Authority and the agency administrator of the delegated functions a copy of the agreement within five calendar days after signing the agreement.

SUBCHAPTER 3. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT OPPORTUNITY

PART 5. NONCOMPLIANCE, INVESTIGATIONS, HEARINGS, AND REMEDIES

530:10-3-54. Failure to make significant progress; pattern of noncompliance

(a) If, after notice and a hearing pursuant to Article II of the Administrative Procedures Act [~~74:308a et seq.~~] [75:308a et seq.], the Administrator finds that an agency has failed to make significant progress toward affirmative action goals or has a pattern of noncompliance with affirmative action goals, the Administrator may:

(1) Require the *noncomplying appointing authority to participate in programs for special recruiting efforts* [74:840-2.1(G)(1)(a)];

(2) Develop *training programs to enhance promotability of minorities within agencies and supervisory training in equal employment opportunity employment, affirmative action, managing workplace diversity* [74:840-2.1(G)(1)(b)];

(3) Require *mandatory review and approval of all hiring decisions by an appointing authority by the Administrator if the Administrator can document a pattern of noncompliance 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* [74:840-2.1(G)(1)(c)].

(b) If the Administrator determines that none of the remedies in subsection (a) of this Section are appropriate, the Administrator may remove personnel function(s) relating to recruitment, hiring, or promotion from the appointing authority and place that function with the Administrator of the Office of Personnel Management. Removal of personnel functions under this subsection shall require:

(1) A determination by the Administrator that a pattern of noncompliance with affirmative action goals exists at an agency;

(2) A determination by the Administrator that the Office of Personnel Management has sufficient resources;

(3) Documentation by the Administrator of a pattern of noncompliance with the affirmative action plan;

(4) A vote by two-thirds of the Affirmative Action Council recommending that the Administrator remove personnel functions.

(c) Removal of personnel functions under subsection (b) shall terminate one calendar year from the removal of the function unless the Administrator is able to demonstrate that the restoration of personnel functions to the appointing authority will result in further noncompliance with the affirmative action plan. A vote of two-thirds of the Affirmative Action Council shall be necessary to continue the removal of personnel functions for each additional year.

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATES OF PAY

530:10-7-1. Purpose and general provisions

(a) The purpose of the rules in this Part is to *establish pay regulations, regulations for performance pay increases, rates for pay differentials, on-call pay, and other types of pay incentives and salary adjustments* [74:840-1.6A].

(b) Pay raises are prohibited unless specifically authorized by legislation or the Merit Rules. A cost-of-living raise or any other type of raise that would be given to state

employees on an across-the-board basis is prohibited unless specifically authorized by the Legislature. [74:840-2.17]

(c) The rules in this subchapter provide for market adjustments, increases upon lateral transfer, skill-based adjustments, equity-based adjustments, career progression increases, salary adjustments upon completion of the initial probationary period or trial period, and performance-based adjustments. Appointing Authorities may use these pay mechanisms only if funds are available in the agency's budget for the current and subsequent fiscal year without the need for additional funding to increase the personal services budget of the agency. Upon certification from the Director of State Finance that an Appointing Authority has exceeded the agency's budget for the current or subsequent fiscal year due to the use of the pay movement mechanisms listed in this subsection, the Administrator may withdraw authorization for the agency to use the following pay movement mechanisms during the next appropriations cycle: market adjustments, increases upon lateral transfer, equity-based adjustments, performance-based adjustments, and career progression increases. [74:840-2.17]

(d) The rules in this subchapter do not apply to employees and positions in the unclassified service unless stated otherwise.

530:10-7-6. Sign-on pay incentive

(a) Appointing Authorities may implement a pay incentive for the following individuals who are appointed to positions in job families for which there are critical recruitment and retention problems as identified by the Appointing Authority [74:840-1.6A(11)]:

- (1) individuals not currently employed in state government;
- (2) Carl Albert Executive Fellows and other professional trainees and students employed pursuant to paragraphs 10 and 11(a) and (b) of Section 840-5.5(A) of Title 74 of the Oklahoma Statutes; and
- (1) individuals employed pursuant to the Cooperative Engineering Trainee Program.

(b) Appointing Authorities who choose to implement the pay incentive shall file a plan with the Administrator of the Office of Personnel Management and the Director of the Office of State Finance which contains information related to the implementation of the pay incentive within the agency. The plan shall provide documentation of the critical recruitment and retention problems and shall include a project description, specific prerequisites that each employee shall meet in order to receive the pay incentive, and information concerning the funding of the incentive from the agency's existing budget. The plan shall be signed by the Appointing Authority, and this signature requirement may not be delegated. No payment shall be made under this Section until the plan has been reviewed and accepted by the Administrator.

(c) The pay incentive shall not exceed \$5,000.00 and is payable to eligible individuals as a lump sum payment or in two equal payments during the first six months of state employment. Former state employees may be eligible for the pay incentive following a break-in-service of at least 180 days.

(d) To receive the pay incentive, an eligible individual shall be required to sign an agreement form acknowledging that the individual is obligated to repay the entire incentive, including tax withholdings on the incentive, if the individual leaves state employment or accepts employment with another state agency within 1 year after he or she receives the pay incentive. Appointing Authorities may use the agreement form

developed by the Administrator or any other agreement form which is consistent with the provisions of this Section.

(e) An individual may receive only one sign-on pay incentive during his or her state employment.

530:10-7-7. Pay differential

(a) The Administrator may authorize a pay differential [74:840-1.6A(11)] for a position within a job family because of special duty requirements related to the position. This may include shift pay, on-call pay, skill-based pay adjustments, and other types of differentials based on special work requirements, as approved by the Administrator. These payments shall be over and above the employee's base pay and shall be paid only as long as the employee occupies the particular position under the circumstances which have necessitated the differential. The request for the differential shall be submitted in writing by the requesting agency and shall adequately identify the need.

(b) An Appointing Authority shall determine whether pay differentials will be paid while employees are in paid leave status or provided only for hours actually worked. Appointing Authorities shall apply such practices uniformly. Pay differentials shall not be provided for hours that an employee is not in pay status.

530:10-7-11. Continuous Service Incentive Plan

(a) Appointing Authorities may implement a pay incentive plan [74:840-1.6A(11)] intended to promote continuous service within the first two years of state employment. The plan shall be limited to job families for which there are critical recruitment and retention problems as identified by the Appointing Authority.

(b) The pay incentive shall consist of scheduled periodic payments over the employee's first two years of continuous service in the targeted job families, not to exceed a total of \$2,500 in any 12-month period. Payments may not be made prospectively or prorated. No payment shall be made under the plan until the employee has completed at least six months of continuous service in the targeted job family.

(c) At the discretion of the Appointing Authority, the following persons filling positions in the targeted job families may be included in the plan:

- (1) Persons not currently employed in state government;
- (2) Current state employees during their first two years of continuous state employment in the targeted job family; and
- (3) Former state employees following a break in service of at least 30 days.

(d) Appointing Authorities who choose to implement the pay incentive shall submit a written plan to the Administrator of the Office of Personnel Management and the Director of the Office of State Finance prior to implementation. The plan shall identify the job families to which the pay incentive will be applicable and shall document the critical recruitment and retention problems and the agency's rationale for the plan. The plan may provide for different pay incentives for different job families at the discretion of the Appointing Authority. The plan shall also identify the criteria for eligibility and shall include information concerning the funding of the pay incentive from the agency's existing budget. The plan shall be signed by the Appointing Authority, and this signature requirement may not be delegated. No payment shall be made under this Section until the plan has been reviewed and accepted by the Administrator.

530:10-7-14. Rate of pay upon reclassification, promotion, career progression, demotion, and transfer

(a) **Rate of pay when incumbent is reclassified directly.** When an employee is reclassified directly under 530:10-5-90, the rate of pay shall be fixed in accordance with 530:10-7-13.

(b) **Rate of pay upon promotion or career progression.**

(1) An Appointing Authority shall adopt objective written criteria for the amount of salary advancements on promotion or career progression. These criteria shall be a part of the agency salary administration plan established under 530:10-7-1.1 and shall be consistent with state and federal statutes prohibiting discrimination.

(2) The Appointing Authority shall set an employee's salary on promotion or career progression at no less than 5% and no more than 20% of the employee's salary before promotion or career progression, except as follows:

(A) If the increase would make the employee's salary after promotion or career progression greater than the maximum rate of pay for the new pay band, the employee's salary shall be set at the maximum rate of pay for the new pay band.

(B) If the increase is insufficient to raise the employee's salary to the minimum of the new pay band, the employee's salary shall be raised to the minimum of the new pay band.

(C) The Appointing Authority may set the employee's salary on promotion or career progression at any more than 20% of the employee's salary before promotion or career progression as long as the rate is within the hiring range established for the position in an approved salary administration plan.

(D) The Appointing Authority shall not lower the salary of an employee on promotion or career progression. If the employee's salary before promotion or career progression exceeds the maximum of the new pay band, the employee's salary shall remain the same.

(c) **Rate of pay when demoted.** The rate of pay of an employee who is demoted shall be set by the Appointing Authority at any rate of pay within the pay band for the job to which demoted, which does not exceed that employee's last rate of pay. An Appointing Authority may delay setting the rate of pay upon demotion for up to 1 year when the demotion is due to an agency reorganization. For the purposes of this subsection, "agency reorganization" means the reclassification of employees in lieu of reduction-in-force.

(d) **Rate of pay upon intra-agency lateral transfer.** An Appointing Authority may provide up to a 5% increase in salary, not to exceed the maximum rate of pay for the pay band, for an employee upon intra-agency lateral transfer to a position in the same job family and level or another job family and level with the same pay band assignment, based on the needs of the agency. [74:840-2.17]

530:10-7-17. Rate of pay upon detail to special duty

The pay of an employee who is detailed to special duty in accordance with ~~530:10-5-110~~ 530-10-11-110 shall not be reduced, but must be increased to at least the minimum rate but not more than the maximum rate the employee could receive upon promotion to that job family and level, provided:

(1) any such temporary increase shall not affect eligibility for increase in the regular job family and level which the Appointing Authority could grant if the employee had not been detailed.

(2) at the conclusion of the detail, pay shall revert to the authorized rate of pay in the employee's regular job family and level.

SUBCHAPTER 9. RECRUITMENT AND SELECTION

PART 9. CLASSIFIED APPOINTMENTS

530:10-9-99. Fair employment practices appointments

(a) This Section establishes procedures for the application of the optional hiring procedure authorized by the Fair Employment Practices Act (FEPA), Section 840-4.12 ~~(H)~~(H) of the Oklahoma Personnel Act, *to employ females, blacks, Hispanics, Asian/Pacific Islanders and American Indians/Alaskan natives* ~~[74:840—4.12(I)(2)]~~ [74:840-4.12(H)(2)].

(b) An Appointing Authority intending to use the optional FEPA hiring procedure shall indicate that intention on a request for certification along with the targeted group, i.e., gender or race/ethnic category. An FEPA certification shall include a regular certificate with the availability of eligibles and ranking of names determined in accordance with the regular methods described in 530:10-9-71, **Certification methods**. An FEPA certification shall also include a separate list of the names of the top **10** available members of the targeted group. The Administrator may also include additional names as alternates. The names on this separate list shall be a subset of the regular certificate, and the names on it shall be ranked in the same order as on the regular certificate. If an Appointing Authority has targeted more than one group, a separate list shall be included for each group.

(c) If the Appointing Authority makes one or more appointments using an FEPA certification, each appointment shall be in accordance with either 530:10-9-92 or the optional FEPA hiring procedure authorized by Section 840-4.12 ~~(H)~~(H) of the Oklahoma Personnel Act.

PART 13. VETERANS PREFERENCE

530:10-9-130. Veterans preference on lists of eligibles

In establishing employment lists of eligible persons for competitive and noncompetitive appointment, certain preferences shall be allowed for veterans honorably discharged from the Armed Forces of the United States [74:840-4.14(A)].

(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:*

(A) *veteran* [74:840-4.14(A)(1)]; or

(B) *unremarried surviving spouse of a veteran* [74:840-4.14(A)(1)]; or

(C) *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 the date of application* [74:840-4.14(A)(2)].

(2) *Ten points shall be added to the final grade of any ~~war~~ veteran ~~as defined in Section 67.13a of Title 72 of the Oklahoma Statutes~~ 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 [74:840-4.14(A)(3)].

(3) In addition to the **10** points preference provided in (2) of this subsection, such eligible ~~war~~ veterans who are in receipt of benefits payable at the rate of **30%** or more because of the service-connected disability, shall be considered Absolute Preference Veterans. Their names shall be placed at the top of the register, ranked in order of their examination scores. Absolute Preference Veterans shall not be denied employment and passed over for others without showing cause. [74:840-4.14(A)(3)]

SUBCHAPTER 11. EMPLOYEE ACTIONS

PART 1. GENERAL PROVISIONS

530:10-11-1. Purpose

The purposes of the rules in this Subchapter are to establish policies and procedures for *probationary periods of employment* ~~[74:840-2.12(8)]~~[74:840-4.13(D)], transfers, promotions, demotions, and separations, while protecting *employees from arbitrary dismissal or unfair treatment* ~~[74:840-2.12(3)]~~[74:840-1.6(A)(3)].

PART 3. PROBATIONARY EMPLOYEES

530:10-11-31. Permanent status

Permanent status in the classified service shall not be granted until the probationary period has been successfully completed. Such status shall begin at the end of the final working day of the probationary period ~~[74:840-4.13(C)]~~[74:840-4.13(D)] except as otherwise provided in the following Sections: 530:10-11-30; 530:10-11-34; 530:10-11-36; and 530:10-11-32.

530:10-11-32. Termination during probationary period

The probationary appointment of any person may be terminated at any time during the probationary period without the right of appeal ~~[74:840-4.13(C)]~~[74:840-4.13(D)].

530:10-11-39. Transfer of probationary employees

A probationary employee shall not be transferred to a position in another job family level or agency except as provided in Section 840-2.21 of Title 74 of the Oklahoma Statutes, 530:10-15-49, or 530:10-11-74. No probationary employee appointed from a local certificate, issued in accordance with 530:10-9-71(b), shall be transferred from that locality until the probationary period has been completed.

SUBCHAPTER 13. REDUCTION-IN-FORCE

PART 1. GENERAL PROVISIONS FOR REDUCTION-IN-FORCE

530:10-13-1. Purpose

The purpose of the rules in this Subchapter is to implement the provisions of Sections 840-2.27A through ~~840-2.27C~~ 840-2.27(I) of the Oklahoma Personnel Act which pertain

to reductions-in-force. The rules in this Subchapter establish general provisions for reductions-in-force and policies and procedures for recall and priority consideration for reemployment. The rules in this Subchapter governing reductions-in-force apply to classified employees within the executive branch only. This Subchapter is not a comprehensive listing of state and federal statutory provisions related to reductions-in-force and regulations promulgated thereunder, and is not intended to conflict with either state or federal law and regulations.

530:10-13-2. Definitions

In addition to terms defined in 530:10-1-2 and 455:10-1-2, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Affected job family levels" means those containing affected positions.

"Affected employees" means classified employees in affected positions.

"Affected positions" means positions being abolished or positions which are subject to displacement action.

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

"Displacement or displace" means the process of an employee accepting an offer of employment to an occupied or funded vacant position.

"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.

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

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

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

"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. [74:840-2.27B]

"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.

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

"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.

"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.

530:10-13-3. Notice of reduction-in-force and time requirements

(a) **Cabinet Secretary approval.** Prior to the posting of any reduction-in-force notice, the notice shall be approved by the cabinet secretary for the agency conducting the reduction-in-force. [74:840-2.27C] If there is no incumbent cabinet secretary for the agency, the approval requirement shall not apply.

(b) **Notice.** At least **60** days before the scheduled beginning of reduction-in-force separations or as otherwise provided by law, the Appointing Authority shall post a notice in each office affected by the proposed reduction-in-force that a reduction-in-force will be conducted in accordance with the Oklahoma Personnel Act and Merit Rules. Such notice shall be posted for **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. [74:840-2.27C(A)]

(c) **Implementation plan** The reduction-in-force implementation plan and subsequent personnel transactions directly related to the reduction-in-force 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 shall be posted in each office affected by the plan within **5** business days after posting of the reduction-in-force notice. At the discretion of the Appointing Authority, the reduction-in-force implementation plan may be posted concurrently with the reduction-in-force notice. The reduction-in-force implementation plan shall:

- (1) Specify the position or positions to be abolished within specified units, divisions, facilities, agency-wide or any parts thereof, as determined by the Appointing Authority;
- (2) Provide for retention of affected employees based on type of appointment;
- (3) Require separation of probationary classified affected employees in affected job family levels, except those affected employees in probationary status after reinstatement from permanent classified status without a break in service, prior to the separation of any permanent classified affected employee in an affected job family level;
- (4) Provide for the retention of permanent classified affected employees in affected job family levels and those affected employees in probationary status after reinstatement, based on years of service;
- (5) Provide for exercise of displacement opportunities by permanent classified affected employees and those affected employees in probationary status after reinstatement if any displacement opportunities exist; and
- (6) Provide for outplacement assistance and employment counseling from the Oklahoma Employment Security Commission and any other outplacement assistance and employment counseling that may be available. [74:840-2.27C(B)]

(d) **Review of fiscal components** The Director of the Office of State Finance shall, within 5 business days of receipt, review the fiscal components of the reduction-in-force implementation plan and reject any plan that does not meet the requirements of Section ~~840-2.27C(C)~~ 840-2.27C(D) of Title 74 of the Oklahoma Statutes.

PART 3. REDUCTION-IN-FORCE PLAN REQUIREMENTS

530:10-13-32. Order of employee removal

(a) Agency-wide, or within displacement limits, if established, retention of affected employees shall be based on job family level and type of appointment [74:840-2.27C]. Subject to eligible classified employees accepting displacement offers, unclassified employees in a job family level on limited term appointments shall be separated first, followed by employees on project indefinite appointments, followed by employees on probationary appointments with the agency, prior to the separation or voluntary demotion of any permanent classified employee from the same job family level [74:840-2.27C].

(b) Retention of permanent classified employees in affected job family levels and within displacement limits, if any are established, shall be based on years of service [74:840-2.27C].

(c) The Appointing Authority shall calculate retention points for all eligible classified employees, including those on an approved leave of absence. Eligible classified employees with more retention points shall be ranked higher; with the order of removal from a job family level in inverse order of that ranking. If tie scores occur, the ranking of employees who have the same total retention points shall be determined first by giving a veteran's preference over affected nonveterans who have equal retention points to the affected veteran and then by giving preference for retention according to years of service in the agency. If a tie continues to exist, retention status shall be determined by a method established by the Appointing Authority and described in the reduction-in-force implementation plan.

(d) For purposes of a reduction-in-force, any permanent classified employee on a detail to special duty shall be ranked on the basis of base job family level, not on the basis of the job to which detailed.

SUBCHAPTER 15. TIME AND LEAVE

PART 1. GENERAL PROVISIONS

530:10-15-1. Purpose

The purpose of the rules in this Subchapter is to establish leave regulations [~~74:840-2.12(11)~~] [74:840-1.6a(11); 74:840-2.20] for classified and unclassified employees of the State of Oklahoma who are subject to leave rules. *[O]ffices and positions of the State Senate and House of Representatives shall not be subject to . . . [the Merit Rules governing] involuntary leave without pay or furlough . . . 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* [74:840-5.1]

PART 3. ANNUAL AND SICK LEAVE POLICIES

530:10-15-10. GENERAL ANNUAL AND SICK LEAVE POLICIES

(a) Permanent and probationary classified employees and regular unclassified employees are eligible for annual leave and sick leave with full pay according to law and the rules in this Chapter. *Temporary employees and other limited term employees are ineligible to accrue, use or be paid for sick leave and annual leave* ~~[74:840-2.20(4)]~~ [74:840-2.20(A)(3)].

(b) The tables in Appendix B of this Chapter list leave accrual rates and accumulation limits. OAC 530:10-15-11 and 530:10-15-12 also govern annual and sick leave.

(c) Annual and sick leave accrual rates and accumulation limits are based on *cumulative periods of employment calculated in the manner that cumulative service is determined for longevity purposes* [74:840-2.20(A)(1)]. For purposes of this Subchapter and the longevity pay program, cumulative service shall be calculated as prescribed in this subsection.

(1) State employment with any classified or unclassified agency in any branch of state government including service under the administrative authority of the Regents for Higher Education and the Department of Vocational and Technical Education shall be qualifying for purposes of calculating cumulative service. Cumulative service includes periods of part-time qualifying employment in excess of **2/5** time that were continuous for at least **5** months and any period of full-time employment described in (A) through (G) of this paragraph:

- (A) Employment as a permanent classified employee;
- (B) Employment as a probationary classified employee;
- (C) Employment as a regular unclassified employee;
- (D) Temporary or other time-limited unclassified employment;
- (E) Paid leave;
- (F) Leave without pay of **30** continuous calendar days or less; and
- (G) Leave without pay in excess of **30** calendar days taken under Section 840-2.21 of Title 74 of the **Oklahoma Statutes**. Any other leave without pay in excess of **30** calendar days shall not be counted as cumulative service.

(2) Periods of service that are described in (1) of this subsection, shall be combined for purposes of determining cumulative service and the total shall be expressed in whole years. Partial years, less than **12** months, are dropped.

(d) Annual leave and sick leave shall accrue only when an employee is actually working, on authorized leave with pay, or during the time the employee is using paid leave to supplement workers compensation benefits under Section 2e of Title 85. Leave shall not accrue after the last day the employee works.

(e) An employee using paid leave to supplement workers compensation benefits under Section 2e of Title 85 of the **Oklahoma Statutes** shall be in leave without pay status.

(f) An Appointing Authority may terminate an employee who is absent from work after the employee has exhausted all of his or her sick and annual leave accumulations unless the absence is covered by 530:10-15-45 or 530:10-15-49. Termination of a permanent classified employee under this subsection is subject to the pretermination hearing requirements of Section 840-6.4 of Title 74 of the **Oklahoma Statutes**. This subsection does not prevent an Appointing Authority from granting leave without pay according to 530:10-15-47.

530:10-15-12. Sick leave

Eligible employees shall accrue sick leave based upon hours worked (excluding overtime), paid leave, and holidays ~~[74:840-2.20(1)]~~[74:840-2.20(A)(1)] according to 530:10-15-10 and this Section, not to exceed the total possible work hours for the month. The hourly rate is equal to the annual accrual divided by the number of work hours in the current year. Sick leave earned during one month shall not be available for use until the beginning of the next month.

(1) Sick leave means a period when the employee cannot work because of sickness, injury, pregnancy, or medical, surgical, dental or optical examination, or treatment, or where the employee's presence at work would jeopardize the health of the employee or others. An employee may charge family and medical leave, taken in accordance with 530:10-15-45, against sick leave accumulations.

(2) An employee shall not use sick leave for annual leave.

(3) An employee shall not use sick leave before it is accrued.

(4) Immediately on return to work, an employee who has been absent on sick leave shall give the Appointing Authority a signed statement that the absence was due to reasons listed in (1) of this Section. If an absence exceeds **3** working days, the employee shall give the Appointing Authority a physician's statement unless the Appointing Authority waives it. For shorter absences, the Appointing Authority may require the employee to supply proof the absence was consistent with (1) of this Section. Sick leave shall not be granted until approved by the Appointing Authority. An Appointing Authority shall approve sick leave unless there are facts to show that an employee abused sick leave privileges or the employee failed to supply requested evidence of illness.

(5) Sick leave shall be charged against an employee's sick leave balance based on the amount of time an employee is absent from work during the employee's assigned work schedule. Holidays, or the scheduled days off for holidays, occurring within a period of sick leave shall not be charged to sick leave.

(6) Sick leave earned during a pay period shall be prorated according to the number of hours (excluding overtime) an employee is on the payroll ~~[74:840-2.20(1)]~~[74:840-2.20(A)(1)].

(7) Part-time employees shall accrue sick leave in an amount proportionate to that which would have accrued under full-time employment ~~[74:840-2.20(1)]~~[74:840-2.20(A)(1)].

(8) When an employee transfers from one agency to another, the Appointing Authority of the receiving agency shall give the employee credit for all unused sick leave accumulations.

(9) Employees shall not be compensated for accumulated sick leave when they separate from state service.

(10) If an absence because of illness or injury extends beyond the sick leave an employee has accumulated, the Appointing Authority may charge additional absence to the employee's annual leave accumulations.

(11) Unless it is against the law, an Appointing Authority shall approve sick leave when an employee is absent due to illness or injury and receiving Oklahoma State Workers Compensation benefits.

(12) If an employee leaves the state service on or after October 1, 1992, and is reemployed within a period of **2** years from the date of separation, the Appointing Authority may reinstate all or a part of the unused sick leave accumulated during the previous period of continuous employment with the state ~~[74:840-2.20(6)]~~[74:840-2.20(A)(7)].

(13) There is no limit on sick leave accumulations.

PART 5. MISCELLANEOUS TYPES OF LEAVE

530:10-15-45. Family and medical leave

(a) The federal Family and Medical Leave Act of 1993 entitles eligible employees to family and medical leave. This section is not a comprehensive listing of the provisions of the federal Family and Medical Leave Act of 1993 (29 U.S.C, 2601 et seq.) and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations. To be eligible, an employee shall have been employed by the state at least **12** months and have worked at least **1,250** hours during the preceding **12**-month period.

(b) An eligible employee is entitled to family and medical leave for up to a total of **12** weeks during any **12**-month period, for the following reasons:

- (1) the birth of the employee's son or daughter, and to care for the newborn child;
- (2) the placement with the employee of a son or daughter for adoption or foster care;
- (3) to care for the employee's spouse, son, daughter, or parent with a serious health condition. As used in this subsection, "son" or "daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing *in loco parentis*, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability; and
- (4) a serious health condition that makes the employee unable to perform the functions of the employee's job.

(c) An Appointing Authority may require that an employee's request for family and medical leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member.

(d) The entitlement to family and medical leave resulting from (b)(1) and (b)(2) of this Section expires at the end of the **12**-month period beginning on the date of the birth or placement.

(e) When family and medical leave is taken to care for a sick family member as defined in (b)(3) of this Section or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when it is medically necessary. An Appointing Authority may adopt a policy allowing family and medical leave to be taken intermittently to care for a newborn child or newly placed adopted or foster child.

(f) Whenever it is possible, an employee shall schedule family and medical leave to accommodate the operations of the employee's agency. An employee shall give the Appointing Authority notice and a leave request at least **30** days before leave is to begin if the need for family and medical leave is expected. When the need for family and

medical leave is unexpected, an employee shall give the Appointing Authority notice and a leave request as soon as possible. The notice and request shall:

- (1) be in writing;
- (2) refer to this Section;
- (3) describe the reason for the family and medical leave;
- (4) specify the type of leave the employee is requesting to account for the time off; and
- (5) include any information or documentation required for the type of leave requested.

(g) The Appointing Authority has the responsibility to review requests for sick leave and leave without pay for designation as family and medical leave. The Appointing Authority has the right to designate leave taken for an FMLA-qualifying event as FMLA leave, regardless of whether the employee has requested FMLA leave. The Appointing Authority's designation decision shall be based only on information provided by the employee or the employee's spokesperson. In accordance with the federal Family and Medical Leave Act, the Appointing Authority shall not designate leave as family and medical leave retroactively, unless the Appointing Authority does not have sufficient information concerning the employee's reason for taking the leave until after the leave period has begun.

(h) Family and medical leave is not a separate type of leave, and it is not accrued or accumulated. An Appointing Authority shall give employees the following options to account for time lost because of leave under the federal Family and Medical Leave Act of 1993.

- (1) Charge to accumulated annual leave [74:840-2.22];
- (2) Charge to accumulated sick leave [74:840-2.22];
- (3) Charge to leave donated by other state employees under Section 840-2.23 of Title 74 of the **Oklahoma Statutes**, which is also known as "shared leave"; ~~and~~
- (4) Charge to accumulated compensatory time. If FMLA qualifying leave is paid with an employee's accrued compensatory time, the time shall not be charged against the employee's 12-week FMLA entitlement [29 CFR 825.207(i)]; and
- (5) Record as leave without pay in accordance with 530:10-15-47.

(i) The agency shall continue paying the employee's insurance coverage while the employee is on family and medical leave.

(j) Upon return from family and medical leave, an employee shall have the right to be restored to the same or equivalent position and benefits, except for extension of his or her anniversary date for longevity pay, leave accrual, and calculation of retention points, he or she would have had if the employee had been continuously employed in pay status during the leave period.

(k) An employee shall not be required to take more leave than necessary to resolve the circumstance that precipitated the need for leave.

530:10-15-49. Leave and first preference due to work related illness or injury

(a) **Purpose.** The purpose of this Section is to interpret Section 840-2.21 of Title 74 of the **Oklahoma Statutes** (Section 840-2.21). Section 840-2.21 establishes the rights and benefits of state employees who are absent from work because of an illness or injury arising out of and sustained in the course of employment with the State. These employees

have a right to return to work if certain conditions are met. **In applying Section 840-2.21 and this Section, employing agencies shall return an employee to work as soon as possible, either to the original position or to an alternate position if an employee, with reasonable accommodation, is unable to return to the original position.**

(b) **Employee eligibility.** ~~This Section applies to all eligible probationary and permanent classified and regular unclassified employees. It does not apply to unclassified employees on temporary and other limited term appointments.~~ An employee shall file a claim for workers compensation benefits to be eligible [74:840-2.21].

(c) **Termination of rights.** All rights and benefits under Section 840-2.21 and this Section shall end **1** year after the start of leave without pay under this Section and shall end immediately if the claim for workers compensation is denied or ~~annulled~~ otherwise concluded within the **1** year period [74:840-2.21].

(d) **Employing agency practice, policy, and procedure.** An agency's policy, procedure and practice affecting employees who file claims for workers compensation benefits shall agree with Section 840-2.21.

(e) **Required notice to employees.** Appointing Authorities shall give employees who report a job related illness or injury copies of this Section, Section 840-2.21, and the agency's policies and procedures for complying with this Section and the law. The procedures shall include instructions about requesting leave without pay under Section 840-2.21.

(f) **Placement of employee on leave without pay.** Appointing Authorities shall refer to this Section when they place an employee on leave without pay under Section 840-2.21. The Appointing Authority shall not require employees to exhaust paid sick and annual leave accumulations before placing them on leave without pay [74:840-2.21]. The Appointing Authority shall continue paying the employee's basic plan insurance coverage and dependent insurance benefit allowance while the employee is on leave without pay, and the leave shall not be a break in service [74:840-2.21].

(g) **Medical reports.** At least every **3** months, an employee on leave without pay under this Section shall give the Appointing Authority a medical statement as to his or her ability to perform the essential duties of the original position [74:840-2.21]. The medical statement shall be made by a physician as defined in Section 14 of Title 85 of the **Oklahoma Statutes.**

(h) **Inability to perform essential duties of original position.** If an employee on leave without pay under this Section cannot perform the essential duties of the original position, the employing agency shall give the employee first preference for other classified and unclassified positions according to Section 840-2.21.

(1) Appointing Authorities shall establish a procedure for giving employees on leave without pay under this Section first preference to fill classified and unclassified positions that do not represent a promotion to the employee, if the employee is medically able to do the essential duties and has the minimum qualifications for positions the Appointing Authority seeks to fill.

(2) The Appointing Authority's procedure shall include either notifying an employee of all vacant classified and unclassified positions the Appointing Authority seeks to fill or allowing the Appointing Authority and the employee to agree on notice for specific positions or jobs. The procedure may require employees to submit medical reports stating their ability to perform the essential duties of specific positions or

groups of positions. The Appointing Authority shall give a copy of the procedure to each employee on leave without pay under this Section.

(3) Appointing Authorities do not have to notify employees on leave without pay under this Section when the Appointing Authority fills a vacant position temporarily (by temporary unclassified appointment or detail to special duty).

(4) Before an Appointing Authority may give a classified or unclassified employee first preference for a classified position, the employee shall be certified by the Office of Personnel Management as meeting the minimum qualifications. Neither classified nor unclassified employees shall be required to compete through the open competitive process for a classified position. The Appointing Authority shall submit the necessary paperwork to the Office of Personnel Management for review.

(5) Before an Appointing Authority assigns an employee to an alternate position (a position that is not the original position), the Appointing Authority shall give the employee written notice of the requirement to return to the original position under (i) of this Section. While in an alternate position, an employee shall submit medical reports at least every 3 months and whenever the medical condition changes enough to affect his or her ability to return to the original position.

(i) **Return to original position.** An employee on leave without pay or working in an alternate position shall have the right to return to his or her original position according to this Section and Section 840-2.21. When a medical report indicates the employee is able to perform the essential duties of the original position, with or without reasonable accommodation, the Appointing Authority shall return the employee to the original position. The employee and the Appointing Authority may agree in writing to waive the requirement to return the employee to the original position from an alternate position.

(j) **Failure to return to work.**

(1) The Appointing Authority may discipline a permanent classified employee or a probationary classified employee or an unclassified employee if:

(A) a medical report states the employee is able to do the essential duties of the original position or an alternate position (for which the employee is qualified); and

(B) the employee does not return to work within 7 days after the Appointing Authority mails a notice to the employee's last known address or delivers a notice to the employee.

(2) If an employee does not return to the original position or an alternate position within 1 year after the start of leave without pay, the Appointing Authority may terminate the employee under Section 840-2.21. An Appointing Authority that uses Section 840-2.21 as authority to terminate an employee shall give the employee a copy of (k) of this Section. Termination of a permanent classified employee under this Section is subject to the pretermination hearing requirements of Section 840-6.4 of Title 74 of the **Oklahoma Statutes**.

(k) **Reinstatement upon separation.** A classified employee shall be eligible for reinstatement to either classified or unclassified employment with any state agency for 12 months after the date of separation under (j)(2) of this Section. An unclassified employee shall be eligible for reinstatement to unclassified employment with any state agency for 12 months after the date of separation under (j)(2) of this Section. This does not reduce

eligibility under other general reinstatement or reemployment laws or rules, such as 530:10-9-102. [74:840-2.21]

SUBCHAPTER 17. EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM AND CAREER ENHANCEMENT PROGRAMS

PART 3. PERFORMANCE EVALUATION SYSTEM

530:10-17-31. Employee performance management system

(a) *The Office of Personnel Management shall make available one standard performance management system ~~to~~ that shall be used by all agencies for completing employee service ratings. Agencies shall implement this new system on or before January 1, 2000. Until January 1, 2000, agencies may continue to use employee service rating systems which were approved or provided by the Administrator prior to November 1, 1999. The purpose of this employee performance management system is to evaluate the performance of each 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 and those employees employed by the institutions under the administrative authority of The Oklahoma State System of Higher Education [74:840-4.17].*

(b) *The employee performance management system shall provide for the following:*

- (1) *An objective evaluation of the employee, by the immediate supervisor, of the performance of the employee within the assigned duties of the job;*
- (2) *The identification of the strengths and deficiencies of the employee;*
- (3) *Corrective actions, if necessary, to correct deficiencies;*
- (4) *An interview with the employee by the immediate supervisor who shall provide the employee with a copy of the service ratings; and*
- (5) *The opportunity for the employee to submit written comments regarding the service rating [74:840-4.17].*

(c) *Each employee shall be rated at least thirty (30) days prior to the end of the probationary period. Thereafter, each employee shall be rated no less than once each year [74:840-4.17].*

(d) *The immediate supervisor shall hold a meeting in person with the employee at least three times during a 12-month evaluation period.*

(1) *One meeting shall take place at the beginning of the evaluation period in order to communicate the accountabilities and behaviors upon which the employee will be evaluated. A copy shall be provided to the employee.*

(2) *One meeting shall take place during the rating period for the purpose of discussing the progress of the employee in meeting the accountabilities upon which the employee will be evaluated.*

(3) *One meeting shall take place at the end of the review period to provide the final evaluation. A copy of the evaluation shall be provided to the employee, and the employee shall have the opportunity to provide written comments.*

(e) *The agency shall use the available service ratings 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 [74:840-4.17].

(f) *The agency shall retain a copy of the service rating for each employee of the agency. A copy of the service rating shall be-retained in the employee's personnel file [74:840-4.17].*

(g) The basic document to be used in conducting performance evaluations is the Performance Management Process form (OPM-111), a form prescribed by the Administrator. The form contains spaces for the supervisor to describe a list of accountabilities on which the employee will be evaluated. The form also lists behaviors on which state employees will be evaluated. The form provides spaces for the supervisor to enter an overall accountability rating, an overall performance rating, and a summary/development plan. The form requires signature by the employee, the supervisor, and the reviewer.

(h) On or before each ~~January 1st~~ March 31st, Appointing Authorities shall ~~confirm~~ report their agency's compliance with the requirements of 74:840-4.17 to the Administrator. The confirmation report shall be conveyed on a form prescribed by the Administrator and shall include information from the most recent annual review period used by that agency.

PART 7. CARL ALBERT PUBLIC INTERNSHIP PROGRAM

530:10-17-74. Undergraduate internship program

(a) **Eligibility.** The undergraduate internship program consists of temporary positions for students enrolled in institutions of higher education and working toward an undergraduate degree [~~74:840-3.4(1)~~][74:840-3.4(A)(1)]. To be considered for eligibility determination, applicants shall have completed at least **24** semester hours of coursework with at least a **2.5** cumulative grade point average on a **4.0** scale. Applicants shall follow the procedures in 530:10-17-77 for eligibility determination.

(b) **Conditions of employment.** Participants in the Undergraduate Internship Program who receive internship appointments shall:

- (1) be employed in accordance with paragraph 8 of Section 840-5.5 of Title 74 of the Oklahoma Statutes, for not more than 2 semesters or 999 hours,
- (2) continue making progress toward an undergraduate degree,
- (3) maintain the grade point average set out in (a) of this Section, and
- (4) complete the training requirements described in (d)(3) of this Section.

(c) **Benefits.** Undergraduate interns shall not be eligible for paid leave, or health and retirement benefits.

(d) **Responsibilities of appointing authorities.**

(1) The Appointing Authority or designee shall ensure that the intern provides written verification to the Office of Personnel Management that the intern is:

- (A) continuing to make progress toward an undergraduate degree during each semester employed, and
- (B) maintaining the grade point average set out in (a) of this Section.

(2) If this information is not transmitted to the Office of Personnel Management within **30** days after the end of the previous semester, the Administrator shall notify

the Office of State Finance and the Appointing Authority of the termination of the internship agreement in accordance with Section 530:10-17-82(a).

(3) Each Appointing Authority shall provide a minimum of 4 clock hours of job-related training for undergraduate interns during the internship, in addition to the training coordinated by the Administrator, and shall provide verification to the Office of Personnel Management of the completion of the training requirements.

530:10-17-75. Executive Fellows program

(a) **Eligibility.** An Executive Fellows Program consists of six-month to two-year placements in professional or managerial level positions for students ~~[74:840-3.4(2)]~~[74:840-3.4(A)(2)]. No person is eligible to participate in the Executive Fellows program for more than **2** years. To be considered for eligibility determination, applicants shall have completed a baccalaureate degree and at least **6** semester hours of graduate level coursework with at least a **3.0** grade point average on a **4.0** scale ~~[74:840-3.4(1)]~~[74:840-3.4(A)(1)] or a **7.0** on a **12.0** scale in all graduate level coursework. Applicants shall follow the procedures in 530:10-17-77 for eligibility determination.

(b) The Administrator may waive the completion of **6** semester hours of graduate level coursework required by subsection (a) of this section for **1** semester, if:

(1) An individual currently employed by a state agency as a Carl Albert Public Internship Program undergraduate intern provides written verification to the Office of Personnel Management that he or she has:

(A) completed an undergraduate degree, and

(B) is enrolled in **6** semester hours of approved graduate level work; and

(2) The Appointing Authority or designee of the agency where the undergraduate intern is currently employed certifies in writing on a form provided by the Office of Personnel Management that the agency intends to employ the undergraduate intern as a Carl Albert Public Internship Program Executive Fellow immediately upon the undergraduate intern's completion of an undergraduate degree.

(c) The appointment of an Executive Fellow in accordance with subsection (b) is not effective until the Administrator approves:

(1) the waiver of the **6** semester hours of graduate level coursework; and

(2) an Executive Fellow agreement form prepared by the Appointing Authority in accordance with 530:10-17-77(f).

(d) At the end of the semester for which the waiver of the **6** semester hours of graduate level coursework was approved by the Administrator pursuant to subsection (b), the individual employed as a Carl Albert Public Internship Program Executive Fellow shall meet the eligibility requirements in subsection (a) of this section or be removed from the Carl Albert Public Internship Program. ~~[74:840-3.5]~~

(e) **Conditions of employment.** Participants in the Executive Fellows Program who receive internship appointments shall:

(1) be appointed in accordance with paragraph 10 of Section 840-5.5 of Title 74 of the **Oklahoma Statutes** ~~[74:840-3.5(4)]~~,

(2) be granted leave benefits commensurate with regular state employees ~~[74:840-3.5(4)]~~,

- (3) be enrolled in the state health insurance and retirement benefits programs, if expected to work one thousand (1,000) or more hours per year,
 - (4) continue to make scholastic progress toward their graduate degrees during each fall and spring semester until completion of all graduate degree requirements,
 - (5) maintain the grade point average set out in (a) of this Section, and
 - (6) complete the training requirements described in (c)(3) of this Section.
- (f) Responsibilities of appointing authorities.
- (1) The Appointing Authority or designee shall ensure that the intern provides written verification to the Office of Personnel Management that the intern is:
 - (A) continuing to make scholastic progress toward a graduate degree, until completion of all graduate degree requirements, and
 - (B) maintaining the grade point average set out in (a) of this Section.
 - (2) If this information is not transmitted to the Office of Personnel Management within **30** days after the end of the previous semester, the Administrator shall notify the Office of State Finance and the Appointing Authority of the termination of the internship agreement in accordance with Section 530:10-17-82(a).
 - (3) Each Appointing Authority shall provide a minimum of **8** clock hours of job related training for Executive Fellows during each **6**-month period, in addition to the training coordinated by the Administrator, and shall provide verification to the Office of Personnel Management of the completion of the training requirements.
 - (4) Each Appointing Authority *shall rate the performance of participants in the Executive Fellows Program in accordance with Section 840-4.17 of Title 74 of the Oklahoma Statutes.* [74:840-3.4]

530:10-17-77. Application form and procedure

(a) **Application form and applicant survey form.**

- (1) The Carl Albert Public Internship Program application is available from the Office of Personnel Management. The application form provides information about the application process and eligibility requirements. It solicits information about applicants and their qualifications for participation in the program.
- (2) Applicants may apply at any time.
- (3) An applicant may complete a voluntary survey form which solicits information related to demographics, including race or ethnic group, and disabilities. The information shall be used for statistical purposes only.

(b) **Communication with the Office of Personnel Management.** Interested persons may direct communications to the attention of the Carl Albert Public Internship Program in accordance with 530:1-1-12.

(c) **Application procedure.** Applicants for the internship program shall provide the following information to the Office of Personnel Management for review and determination of eligibility:

- (1) A completed and signed application form;
- (2) Transcript(s) of coursework from accredited higher education institutions;
- (3) A letter of nomination from a faculty member of the higher education institution where they are enrolled;
- (4) A letter of recommendation from the current Appointing Authority, if the applicant is a state employee ~~[74:840-3.4(4)]~~[74:840-3.4(C)];
- (5) A resume;

- (6) Three letters of recommendation from persons other than relatives or the nominating faculty member;
- (7) Verification of current enrollment.
- (d) **Notification.** The Administrator shall notify applicants if the documents they submit are sufficient for eligibility. A notice of eligibility does not mean the applicant will be employed as an intern.
- (e) **Length of eligibility.** Applicant information on file at the Office of Personnel Management shall remain active if eligible applicants submit verification of current enrollment and an updated transcript each semester. If applicants fail to provide updated information within 90 days after the end of the previous semester, they will no longer be eligible for employment as an intern and their names will be removed from the list of eligible applicants made available to state agencies.
- (f) **Appointment.**
- (1) The Administrator shall provide a list of all eligible applicants for the Carl Albert Public Internship Program to state agencies periodically and at an agency's request. An agency may request an eligible applicant list and copies of individual eligible intern files at any time.
 - (2) An agency may appoint any eligible applicant after the Administrator has approved a completed Carl Albert Public Internship Agreement Form described in (3) of this subsection. A new form shall be completed if there are any substantive changes to the original agreement.
 - (3) The Administrator shall provide the internship agreement form to state agencies. The form solicits information about the employing agency, the Executive Fellow or Undergraduate Intern, and the internship faculty member. The form provides information regarding employment, benefits, training, work schedules, duties, compensation, and projected length of internship. Before an eligible applicant enters on duty, the agreement form shall be completed and signed by:
 - (A) The eligible applicant;
 - (B) The Appointing Authority or designee of the employing agency, who shall certify that the internship appointment does not contravene any provision of the Oklahoma Personnel Act or the Merit Rules;
 - (C) The college or university faculty member who shall monitor the internship; and
 - (D) A representative of the Administrator.
 - (4) All intern appointments are made at the discretion of the Appointing Authority. Executive Fellows will count against an agency's full-time-equivalent employee limit if an agency retains them after the internship time period is completed.
 - (5) The signature of the faculty member shall not be required when a Carl Albert Executive Fellow who has already completed his or her degree requirements is completing a new agreement form.
- (g) **State employees.** State employees may apply to participate in the Carl Albert Public Internship Program. Permanent classified and regular unclassified employees who receive internship appointments may request leave without pay from their permanent or regular employment in accordance with 530:10-15-47, **Leave of absence without pay.** Probationary employees and regular unclassified employees with less than **12** months continuous service shall resign before entry-on-duty as an intern.

530:10-17-80. General conditions of employment

(a) No expectation of continued employment.

(1) Persons participating in the Carl Albert Public Internship Program shall be employed in the unclassified service of the state in accordance with Section 840-5.5 of Title 74 of the **Oklahoma Statutes** and Sections 530:10-17-74 and 530:10-17-75.

(2) An intern has no right or expectation of continued employment in any classified or unclassified position with the state because of participation in the Carl Albert Public Internship Program.

(b) Compensation plan for interns.

(1) The employing agency shall establish compensation plans that include rates of pay for Carl Albert Public Internship Program positions which are consistent with positions having like duties and responsibilities within the agency.

(2) The Administrator may establish job descriptions for interns in accordance with Section 530:10-5-8.

(3) Carl Albert interns who are not exempt from the provisions of the Fair Labor Standards Act (29 U.S.C. 201 et seq.) are subject to its overtime provisions and 530:10-7-12.

(4) Salary adjustments may be made in accordance with Section 840-2.17 of Title 74 of the **Oklahoma Statutes**.

(c) Report of work performance to educational institution. The Appointing Authority or designee of the employing agency shall provide the internship faculty member with information necessary to evaluate the intern's work experience for academic purposes at the faculty member's request.

(d) Intercession by the Office of Personnel Management. The Office of Personnel Management may intercede in an internship if 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 ~~[74:840-3.5(7)]~~[74:042-3.5(8)] in accordance with the rules in this Part, and the individual internship agreement. The intercession process may include, but is not limited to the following actions: modification of certain agreement terms, reassignment, and separation or early release from the internship.

(e) State employees; continuation of benefits. State employees leaving classified or exempt positions in state government in order to take an internship shall continue to receive all fringe benefits they would have received in their previous classified or exempt positions [74:840-3.5(2)].

(f) Training requirements. Each intern shall complete the training requirements prescribed by the employing agency and the Administrator.

PART 11. CERTIFIED PUBLIC MANAGER PROGRAM

530:10-17-110. Purpose

(a) The rules in this Part establish policies and procedures to implement the Certified Public Manager Program in accordance with Section ~~840-2.12(10)~~840-1.6A(10) of Title 74 of the **Oklahoma Statutes**. The Program is administered by the Administrator of the Office of Personnel Management.

(b) It is the purpose of the Certified Public Manager Program to develop the management skills of public sector employees and to assist state agencies and other public sector organizations in the identification and development of future leaders.

530:10-17-111. Definitions

In addition to words and terms defined in OAC 455:10-1-2 or 530:10-1-2, the following words and terms, when used in this Part, shall have the following meaning, unless the context clearly indicates otherwise.

“Organizations” means municipalities, counties, Indian Nations, and the federal government.

“Program” means the Certified Public Manager Program authorized by Section ~~840-2.12(10)~~840-1.6A(10) of Title 74 of the **Oklahoma Statutes**.