



STATE OF OKLAHOMA
OFFICE OF PERSONNEL MANAGEMENT

"Serving Equal Opportunity Employers"

OPM 05-47

TO: All Appointing Authorities

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

A handwritten signature in cursive script, appearing to read "Oscar B. Jackson, Jr.", written in black ink.

DATE: October 25, 2005

RE: Emergency Amendments to the Merit Rules for Employment

Enclosed please find the text of emergency amendments to the Merit Rules for Employment. The amendments to all rules except **530:10-17-31** and **530:10-7-19** became effective October 6, 2005. Amendments to **530:10-17-31** and **530:10-7-19**, become effective November 1, 2005 and January 1, 2006, respectively. Due to budgetary constraints, the Office of Personnel Management has no current plans to produce a rulebook or supplement for distribution to all state employees. However, all currently effective Merit Rules adopted by the Administrator are available on the Office of Personnel Management's website at:

http://www.ok.gov/opm/HR_Rules_and_Statutes/index.html

The emergency amendments to the Merit Rules enclosed with this memorandum will be available at the above website address beginning November 1, 2005. Following is a summary of the current emergency amendments to the Merit Rules:

530:10-3-22: This rule was amended to allow coursework approved for training credit for civil rights officers to also be available as training credit for discrimination complaints investigators.

530:10-5-52: This amendment reflects a statutory change from the 2005 legislative session. It provides a review process prior to a demotion pursuant to a position audit or reclassification.

530:10-7-19: This rule was proposed to effectuate The Employees Benefits Council's "OK Health" wellness-mentoring program. This program will be available to all active state employees of participating agencies effective January 1, 2006. The wellness program is designed to lower health care utilization by mentoring employees to better

health. Reducing health care claim costs will help in lowering health care insurance premiums in the long term. EBC started the mentoring program as a pilot in June 2003 with the Department of Human Services. Employees completing one year in the pilot program have lowered health care claim costs by thirty percent.

530:10-7-24: This amendment provides clarification that a skill-based pay adjustment paid as a salary differential may not cause an employee's base pay to exceed the pay band maximum.

530:10-13-35: This amendment reflects a statutory change requiring reduction-in-force implementation plans be provided to the Director of State Finance and certain state employee association representing state employees.

530:10-15-11: The amendment to subsection (b)(5) reflects a statutory change allowing for accrual of annual leave above the maximum as long as the excess leave is used during the same calendar year or within twelve months of the date it accrues pursuant to the Appointing Authority's discretion.

The amendment to subsection(b)(8) is to clarify that **no employee** that resigns and accepts a subsequent position within the same agency without a break in service of more than thirty days is eligible for payment of accrued annual leave.

530:10-17-31: The amendments to this rule reflect various statutory as well as administrative changes. The rule is amended throughout to reflect a change from the term "service rating" to "performance evaluations".

Subsections(b)(1) – (b)(5) reflect statutory changes to the employee performance management system requirements, such as: inclusion of an agency number, date of review, and employee identification number; identification of accountabilities and behaviors; a mid-term interview; identification of performance strengths and areas for development; and, a final interview.

Subsection (c) has been amended to require that probationary employees be rated at least 30 days prior to the end of probation and employees be evaluated for a period of no more than twelve months. The amendments also provide that supervisors may perform as many evaluations as deemed necessary to manage performance.

Subsection (i) reflects a statutory change requiring the Administrator to conduct annual random audits of state agencies to determine compliance.

The text of the emergency rule amendments follows.

TITLE 530. OFFICE OF PERSONNEL MANAGEMENT
CHAPTER 10. MERIT SYSTEM OF PERSONNEL ADMINISTRATION RULES
SUBCHAPTER 3. AFFIRMATIVE ACTION AND EQUAL EMPLOYMENT
OPPORTUNITY

PART 2. DISCRIMINATION COMPLAINTS INVESTIGATIONS

530:10-3-22. Training requirements for discrimination complaints investigators

(a) Unless otherwise provided by state or federal law, all persons who are designated to investigate complaints of employment discrimination in executive branch agencies shall complete:

- (1) four days of initial discrimination complaints investigator training either conducted by the Office of Personnel Management or approved by the Administrator; and
- (2) a minimum of one investigation under the guidance of a senior EEO investigator, designated by the Administrator. The senior EEO investigator shall advise and support the investigator in developing competency in investigating complaints of discrimination; and
- (3) a minimum of six hours of classroom instruction or 0.6 Continuing Education Units (CEUs) in training related to the subjects listed in subsection (b) of this section or section (a)(1) of OAC 530:10-3-78 each calendar year and other annual training that may be announced by the Administrator. Persons who complete annual training shall submit proof of completion that is acceptable to the Administrator no later than December 31st of each year.

(b) Discrimination complaints investigator training shall provide participants with a current knowledge of:

- (1) Oklahoma and federal equal employment opportunity laws and rules;
- (2) theories of discrimination and burdens of proof;
- (3) planning and conducting complete and impartial investigations;
- (4) techniques for interviewing witnesses;
- (5) collecting relevant evidence;
- (6) documenting the record of investigation; and
- (7) preparing the written report of investigation.

(c) A person who has completed the initial training requirements established in (a)(1) of this Section and who is conducting an investigation under the guidance of a senior EEO investigator required in (a)(2) of this Section shall be considered as conditionally meeting the training requirements of the Administrator and shall be considered to be in compliance of this Part for that investigation.

(d) The Administrator will certify that a person has completed the training requirements for investigating complaints of discrimination after the Administrator:

- (1) determines the person has completed the initial training requirements established in (a)(1) of this Section, and
- (2) receives recommendation from the senior EEO investigator under whose guidance one or more investigations have been conducted as required in (a)(2) of this Section that the person seeking certification has demonstrated competency in conducting investigations; or the Administrator waives the recommendation requirement.

(e) The Administrator shall send notice of certification to the person certified and to the certified person's Appointing Authority if the person is a state employee.

(f) Discrimination complaints investigators who do not complete the annual training described in (a)(3), or who fail to report such training by January 15th of the following year, will be

placed on an "inactive" list and shall not conduct discrimination complaints investigations until the training requirement for the previous year has been met and reported.

SUBCHAPTER 5. POSITION ALLOCATION AND EMPLOYEE CLASSIFICATION SYSTEM

PART 5. AUDITS OF POSITIONS

530:10-5-52. Demotion resulting from position audit or reclassification

If an employee in the classified service is demoted as a result of a position audit or reclassification, the agency shall provide notice, to include all position description documentation, of such demotion to the Office of Personnel Management. The Office of Personnel Management shall review the findings of the agency prior to such demotion occurring, to ensure compliance with the law. The Office of Personnel Management shall complete the review and respond within ten (10) business days of receipt of notice. The provisions of this subsection shall not apply to demotions that are a result of a position audit or reclassification performed by the Office of Personnel Management. [74:842-6.5(B)]

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATES OF PAY

530:10-7-19. OK Health Incentive Pay

(a) Agencies may elect to participate in OK Health, the Employees Benefits Council's wellness mentoring program, a program designed to lower employee health care utilization by improving overall health. [74:1383]. Appointing Authorities may pay incentives to employees who participate in OK Health. The pay incentive shall consist of three separate lump sum payments payable to an employee upon completion of specified steps in the program and shall be available for only the first twelve months of an employee's participation in the program.

(b) A participating Appointing Authority may select one of the three following incentive packages:

(1) Bronze Plan: \$100.00 total financial incentive payable as follows:

- (A) \$25.00 for completing enrollment process;
- (B) \$25.00 for completion of twelve-week process; and,
- (C) \$50.00 for completion of year-end follow up evaluation.

(2) Silver Plan: \$300.00 total financial incentive payable as follows:

- (A) \$75.00 for completing enrollment process;
- (B) \$100.00 for completion of twelve-week process; and,
- (C) \$125.00 for completion of year-end follow up evaluation.

(3) Gold Plan: \$500.00 total financial incentive payable as follows:

- (A) \$100.00 for completing enrollment process;
- (B) \$175.00 for completion of twelve-week process; and,
- (C) \$225.00 for completion of year-end follow up evaluation.

(c) The Employees Benefits Council shall certify to the Appointing Authority employee completion of the enrollment process, the twelve-week process, or the year-end follow up evaluation on a form prescribed by the Council.

530:10-7-24. Skill-based pay adjustments

(a) An Appointing Authority may develop skill-based pay programs upon the approval of the Administrator. Such programs shall be related to the acquisition or possession of additional skills and abilities which can be applied to the work to be performed and which will increase the value of the employee to the agency. The skills or abilities must be verifiable through certification, licensure, diploma, or some other method and must be beyond the qualifications required to perform the primary or essential functions and responsibilities of the employee's position. Requests to establish skill-based pay programs shall include a complete description of the training or education required, how it will benefit the agency, the proposed salary adjustment, and any other information that will assist in evaluating the request.

(b) Skill-based pay adjustments may be provided as a differential over and above an employee's base pay or as lump-sum payment. Lump sum skill-based pay adjustments may be awarded upon initial certification and any subsequent recertification as may be required by the certifying organization and identified in the agency's skill-based pay plan. Lump sum payments shall be limited to **10%** of an employee's annual salary, and differentials shall be limited to **10%** of an employee's monthly salary for employees paid on a monthly basis, and **10%** of an employee's biweekly salary for employees paid on a biweekly basis. Employees whose base pay is at or exceeds the maximum of the pay band shall not be eligible for a differential, but may receive a lump-sum payment. At no time shall a differential pursuant to this section cause an employee's base pay to exceed the pay band maximum. Except as provided in Subsection (c), skill-based pay adjustments shall be paid only as long as the employee occupies a position to which the skill is applicable in accordance with the agency's salary administration plan. An employee may receive multiple skill-based pay differentials so long as the combined total of all skill-based pay differentials does not exceed **15%**.

(c) Skill-based pay differentials paid to an employee shall become permanent after **24** continuous months and shall be included as a part of the employee's base pay, except as provided in 530:10-7-10. [74:840-2.17]

SUBCHAPTER 13. REDUCTION-IN-FORCE

PART 3. REDUCTION-IN-FORCE PLAN REQUIREMENTS

530:10-13-35. Reduction-in-force implementation plan

As provided in Section 840-2.27C of Title 74 of the **Oklahoma Statutes** and OAC 530:10-13-3, Appointing Authorities of executive branch agencies shall post the reduction-in-force implementation plan in all offices of the agency within **5** business days after posting the reduction-in-force notice. A copy of the implementation plan shall be provided to the Office of Personnel Management, ~~and~~ the Oklahoma Merit Protection Commission, the Director of State Finance and any state employee association representing state employees at such time and as defined at OAC 530:15-1-2. no later than the time it is posted in the agency. The reduction-in-force implementation plan is not subject to the approval of the Administrator or the Commission. In addition to the information required by 530:10-13-3(b), the reduction-in-force implementation plan shall include:

- (1) a statement of the conditions necessitating the reduction-in-force;
- (2) the estimated time schedule for the reduction-in-force;
- (3) a description of the displacement process, and limits;

- (4) listings of affected positions and employees, to include the following information (or if such lists are not posted, the location of the office where they are available for review):
- (A) all occupied and vacant positions to be abolished, showing in each case: geographical and administrative location, job family, level, and pay band for the position; the name, job family, level, and pay band, of the incumbent; and, for permanent employees, retention points and other lateral or lower level job families in which the employee previously held permanent status, listed in the reverse order in which they were held;
 - (B) all positions and employees which are subject to displacement, showing the same information;
 - (C) other occupied and vacant positions and employees in affected job families, showing the same information. The agency may include all other positions in the agency in affected job families or may limit posting to ten percent of positions occupied by employees with the least number of retention points based on longevity dates in affected job families, and
 - (D) all retained funded vacant positions anywhere in the agency;
- (5) the schedule and procedure to be followed if an eligible employee chooses to accept a displacement offer for transfer or voluntary demotion in lieu of separation;
- (6) the agency policy on issues related to partial payment of moving expenses for transferred employees in accordance with Section 500.51 of Title 74 of the **Oklahoma Statutes**;
- (7) such other information as the Appointing Authority deems appropriate; and
- (8) the method established by the Appointing Authority to break ties in retention points.

SUBCHAPTER 15. TIME AND LEAVE

PART 3. ANNUAL AND SICK LEAVE POLICIES

530:10-15-11. Annual leave

(a) Annual leave is intended to be used for vacations, personal business, and other time off work not covered by other paid leave or holiday provisions. An employee may charge family and medical leave, taken in accordance with 530:10-15-45, against annual leave accumulations.

(b) Eligible employees shall accrue annual leave based upon hours worked (excluding overtime), paid leave, and holidays [74:840-2.20] in accordance with 530:10-15-10 and the provisions in this subsection, 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. Annual leave earned during one month shall not be available for use until the beginning of the next month.

- (1) Annual leave shall be applied for by the employee and shall be used only when approved by the Appointing Authority.
- (2) Part-time employees shall accrue annual leave in an amount proportionate to that which would be accrued under full-time employment [74:840-2.20].
- (3) Annual leave earned during a pay period shall be prorated based upon the number of hours (excluding overtime hours) an employee is on the payroll [74:840-2.20].
- (4) An Appointing Authority may require an employee to take annual leave whenever in the administrative judgment of the Appointing Authority such action would be in the best interests of the agency; except that the employee shall not be required to reduce accrued annual leave below 5 days. An Appointing Authority shall not apply this rule in lieu of

530:10-11-120. Leaves of absence for internal investigatory purposes shall be administered according to 530:10-11-120.

(5) Unused accrued annual leave shall be accumulated for no more than the maximum leave accumulation limits specified in 530:10-15-10, except as provided in this paragraph. ~~At the discretion of the Appointing Authority, employees~~ Employees may accumulate more than the maximum annual leave accumulation limits shown in the schedule, provided that such excess is used during the same calendar year in which it accrues or within twelve months of the date on which it accrues, at the discretion of the Appointing Authority. Employees shall not be paid for excess leave above the accumulation limit; such excess accumulations shall be used for leave purposes in the agency where it was accrued or, if an employee was transferred to an agency by statute or executive order, in the agency to which the employee was transferred regardless of where the leave was accrued, only while the employee is continuously employed.

(6) Annual leave shall not be taken in advance.

(7) An employee who transfers to another agency may have accrued annual leave transferred at the option of the Appointing Authority to which transferred, or such Appointing Authority may require that all or a portion of the annual leave be paid by the agency from which the employee is transferred before the transfer. The amount of annual leave paid by the agency from which the employee is transferred and the amount of annual leave transferred with the employee shall not exceed the accumulation limits established in Section 840-2.20 of Title 74 of the **Oklahoma Statutes**.

(8) Any employee who is separated from the state service shall be paid or shall have payment made to the employee's estate for any annual leave accumulated up to and including the accumulation limit except as otherwise provided in the Merit Rules. ~~Employees who resign from a classified position to accept an unclassified position within the same agency, and employees who resign an unclassified position to accept a classified position within the same agency, are ineligible for payment of accrued annual leave. At no time shall any employee resigning from one position to accept another position within the same agency be paid for accrued annual leave unless there has been a break in service of more than thirty days.~~

(9) Annual leave shall be charged against an employee's annual leave balance based on the amount of time an employee is absent from work during the employee's assigned work schedule. Holidays falling within a period of annual leave shall not be charged to annual leave.

(10) Any probationary or permanent employee who leaves the employ of an agency shall receive payment for the accrued number of hours of annual leave in accordance with the hourly rate. Payment may only be withheld pending settlement of a legal debt to the agency. If a person is reemployed by the State within a period of **30** calendar days from the date of separation, any portion of the accumulated annual leave which has not yet been paid may be reinstated.

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 that shall be used by all agencies for completing employee ~~service-rating~~ performance evaluations. 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(A)].*

(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. The evaluation shall contain the agency number, date of review, and employee identification number;*

(2) *The identification ~~of the strengths and deficiencies of~~ by the immediate supervisor of accountabilities and behaviors upon which the employee will be evaluated;*

(3) *~~Corrective actions, if necessary, to correct deficiencies~~ A mid-term interview with the immediate supervisor for the purpose of discussing the progress of the employee in meeting the accountabilities and behaviors upon which the employee will be evaluated;*

(4) *Identification of performance strengths and performance areas for development;*

(5) *~~A~~ A final interview with the employee by the immediate supervisor who shall provide the employee with a copy of the ~~service-ratings~~ performance evaluation; and*

(~~5~~) (6) *The opportunity for the employee to submit written comments regarding the ~~service rating~~ performance evaluation. [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~~ Each classified employee in probationary status shall be rated at least thirty days prior to the end of the probationary period. All unclassified and permanent classified employees not otherwise exempt from this requirement shall have an evaluation period of no more than twelve months. Supervisors may perform as many additional evaluations as they deem necessary in order to effectively manage the performance of a subordinate.*

(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~~ performance evaluations of current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases, and discharges. Reductions-in-force shall not be considered*

discharges [74:840-4.17].

(f) The agency shall retain a copy of the ~~service rating~~ performance evaluation for each employee of the agency. A copy of the ~~service rating~~ performance evaluation 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 March 31st, Appointing Authorities shall report their agency's compliance with the requirements of 74:840-4.17 to the Administrator. The 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.

(i) The Administrator of the Office of Personnel Management shall conduct an annual random audit of state agencies to determine whether they are in compliance with this section (840-4.17). Any agency deemed to be out of compliance shall submit a written plan to the administrator detailing the efforts the agency will make to come into compliance at the earliest possible date [74:840-4.17].