

## Chapter 240 — State Personnel Relations

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#### ADMINISTRATIVE PROVISIONS

**240.005 Short title of chapter.** This chapter shall be known as the State Personnel Relations Law. [Amended by 1979 c.468 §2]

**240.010 Purpose of chapter.** The general purpose of this chapter is to establish for the state a system of personnel

administration based on merit principles. [Amended by 1979 c.468 §3]

**240.011 Policy on public service contracts; review.** (1) The Legislative Assembly declares that the interests of the state are best served by a system that goes beyond consideration of mere short-term cost to encompass other benefits, such as efficiency, continuity of operations, public protection and avoidance of the spoils system. The state has a basic obligation to protect the public by attempting to assure the orderly and uninterrupted operations, services and functions of all public agencies.

(2) It is the policy of the state that contracts for public services entered into by any public agency be entered with full knowledge of costs and benefits to the public and that contracts be subject to ongoing review to insure accountability of the contractor for the quantity and quality of contracted services. [1989 c.862 §1(1),(2)]

**Note:** 240.011 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**240.012 Job sharing; policy statement.** The Legislative Assembly finds that job sharing is an efficient and effective technique which should be used to improve management of state agencies. It further finds that job sharing offers employment opportunities to those who otherwise may be unable to participate in state employment and contribute to state operations. [1977 c.462 §1]

**Note:** 240.012 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**240.013 Job-sharing positions; adjustment of benefits and detriments.** Insofar as reasonably possible, individuals who hold job-sharing positions shall be entitled to benefits and privileges and suffer detriments under this chapter in proportion to their seniority as adjusted in the proportion that their monthly time employed bears to the monthly time employed by individuals holding full-time positions. [1979 c.302 §7]

**240.015 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

(1) "Appointing authority" means an officer or agency having power to make appointments to positions in the state service.

(2) "Class" or "classification" means a group of positions in the state classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group.

(3) "Board" means the Employment Relations Board.

(4) "Division" means, except in the phrase "division of the service," the Personnel Division referred to in ORS 240.055.

(5) "Administrator" means the Administrator of the Personnel Division.

(6) "Division of the service" means a state department or any division or branch thereof, any agency of the state government, or any branch of the state service, all the positions in which are under the same appointing authority.

(7) "Job-sharing position" means a full-time position in the classified service that is classified as one that may be held by more than one individual on a shared time basis whereby the individuals holding the position work less than full time.

(8) "Regular employee" means an employee who has been appointed to a position in the classified service in accordance with this chapter after completing the trial service period.

(9) "State service" means all offices and positions in the employ of the state other than those of commissioned, warrant and enlisted personnel in the military and naval services thereof. However, as provided in ORS 396.330, the term includes members of the Oregon National Guard or Oregon State Defense Force who are not serving pursuant to provisions of Title 10 or 32 of the United States Code and who are employed as state employees in the Oregon Military Department. [Amended by 1959 c.690 §1; 1969 c.80 §30; 1975 c.147 §9; 1979 c.302 §4; 1979 c.468 §4a; 1995 c.114 §1]

**240.055 Personnel Division.** The Department of Civil Service that has heretofore functioned under ORS chapter 240 is hereby renamed the Personnel Division and transferred into the Oregon Department of Administrative Services. [Amended by 1969 c.80 §31]

**240.057 Administrator of Personnel Division; appointment.** The Personnel Division shall be under the supervision and control of an administrator who shall be appointed by and hold office at the pleasure of the Director of the Oregon Department of Administrative Services. [1979 c.468 §7]

**240.060 Employment Relations Board; qualification of members; outside activities.** (1) The Civil Service Commission that has functioned under this chapter shall be continued as a board of three members to be known as the Employment Relations Board. Each member of the board shall be a citizen of the state known to be in sympathy with the application of merit principles to public employment and shall be of recognized standing and known interest in public administration and in the development of efficient methods of selecting and administering personnel. In the selection of the members of the Employment Relations Board, the Governor shall give due consideration to the interests of labor, management and the public. Each member of the board shall be trained or experienced in labor-management relations and labor law or the administration of the collective bargaining process. No member of the board shall hold, or be a candidate for, any public office.

(2) Except as provided in subsection (3) of this section, a member of the board shall not hold any other office or position of profit, pursue any other business or vocation, or serve on or under any committee of any political party, but shall devote the member's entire time to the duties of the office of the member.

(3) A member of the board may:

(a) Serve as an arbitrator, fact finder or mediator for parties located outside of the State of Oregon;

(b) Teach academic or professional classes for entities that are not subject to the board's jurisdiction;

(c) Have a financial interest but an inactive role in a business unrelated to the duties of the board; and

(d) Publish, and receive compensation or royalties for, books or other publications that are unrelated to the member's duties, provided that activity does not interfere with the performance of the member's duties.

(4) A member of the board shall be on leave status or act outside of normal work hours when pursuing any activity described in subsection (3)(a) and (b) of this section. [Amended by 1969 c.80 §32; 1973 c.536 §26; 1975 c.147 §10; 1977 c.808 §1; 1999 c.248 §1]

**240.065 Appointment; terms; vacancies.** (1) The members of the Employment Relations Board shall be appointed by the Governor for a term of four years.

(2) Each member shall be appointed for a term ending four years from the date of the expiration of the term for which the predecessor of the member was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Appointments to the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. [Amended by 1969 c.80 §34; 1973 c.536 §27; 1973 c.792 §6a; 1977 c.808 §2; 1991 c.67 §59]

**240.070** [Repealed by 1967 c.73 §3 (240.071 enacted in lieu of 240.070)]

**240.071 Compensation and expenses of members.** A member shall be paid in accordance with the provisions of ORS 240.240. However, the Personnel Division shall adopt a salary plan that requires the chairperson of the Employment Relations Board to receive a higher salary than the other members. In addition, subject to any other applicable law regulating travel and other expenses of state officers, a member shall receive the actual and necessary travel and other expenses incurred in the performance of official duties. [1967 c.73 §4 (enacted in lieu of 240.070); 1969 c.80 §34a; 1969 c.314 §16; 1975 c.518 §1; 1977 c.808 §3]

**240.075 Removal of members.** A member of the Employment Relations Board shall be removable by the Governor only for cause, after being given a copy of charges against the member and an opportunity to be heard publicly on such charges before the Governor. A copy of the charges and a transcript of the record of the hearing shall be filed with the Secretary of State.

**240.080 Chairperson appointed by Governor; meetings; quorum; hearings.** The Governor shall appoint one of the members of the Employment Relations Board as chairperson, who shall serve for a term not to exceed four years. The chairperson shall be the chief administrative officer of the board. The board shall meet at such times and places as are specified by call of the chairperson or a majority of the board. All hearings shall be open to the public. A majority of the members of the board constitutes a quorum for the transaction of business. Any agent designated by the board to

make investigations and conduct hearings may administer oaths and affirmations, examine witnesses and receive evidence. [Amended by 1973 c.536 §29; 1977 c.808 §4]

**240.085** [Repealed by 1969 c.80 §35 (240.086 enacted in lieu of 240.085)]

**240.086 Duties of board; rules.** The duties of the Employment Relations Board shall be to:

(1) Review any personnel action affecting an employee, who is not in a certified or recognized appropriate collective bargaining unit, that is alleged to be arbitrary or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct.

(2) Review and enforce arbitration awards involving employees in certified or recognized appropriate collective bargaining units. The awards shall be enforced unless the party against whom the award is made files written exceptions thereto for any of the following causes:

(a) The award was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the arbitrator.

(c) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party were prejudiced.

(d) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(e) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

(f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not affecting the merits of the decision upon the matters submitted.

(g) The award is in violation of law.

(3) Adopt such rules or hold such hearings as it finds necessary to perform the duties, functions and powers imposed on or vested in it by law. [1969 c.80 §35a (enacted in lieu of 240.085); 1971 c.575 §5; 1975 c.605 §14; 1979 c.468 §5]

**240.088 Review of arbitration awards after written exceptions filed.** (1) If after a hearing on the exceptions filed as provided in ORS 240.086 (2), it appears to the Employment Relations Board that the award should be vacated or modified, the board may by order refer the award back to the arbitrator with proper instructions for correction or rehearing. Upon failure of the arbitrator to follow the instructions, the board shall have jurisdiction over the case and proceed to its final determination by order.

(2) Review of arbitration awards shall be limited exclusively to that provided under ORS 240.086 and this section, except for such judicial review as may be provided for under ORS 183.480. [1979 c.468 §6]

**240.090** [Repealed by 1969 c.80 §92]

**240.091** [Repealed by 1979 c.468 §1]

**240.093** [1971 c.576 §3; repealed by 1979 c.468 §1]

**240.095** [Amended by 1969 c.80 §37; 1969 c.489 §5; repealed by 1979 c.468 §1]

**240.097** [1969 c.489 §2; repealed by 1979 c.468 §1]

**240.099** [1969 c.658 §2; repealed by 1973 c.536 §39]

**240.100 Administer oaths; subpoena witnesses; compel production of papers.** Each member of the Employment Relations Board may administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter. [Amended by 1969 c.80 §38]

**240.105 Use of public facilities of state or municipalities.** All officers and employees of the state and of municipalities and political subdivisions of the state shall allow the Personnel Division or Employment Relations

Board the reasonable use of public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing or investigation authorized by this chapter or ORS 243.005 to 243.215, 243.305, 243.315 and 243.401 to 243.945. The division or board shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it. [Amended by 1969 c.80 §38a]

**240.110** [Amended by 1969 c.80 §39; repealed by 1973 c.794 §34]

**240.115 Action to secure compliance with chapter.** The Employment Relations Board may maintain such action or proceeding at law or in equity as it considers necessary or appropriate to secure compliance with this chapter and its rules and orders thereunder.

**240.120** [Amended by 1969 c.80 §39a; repealed by 1973 c.794 §34]

**240.123 Board personnel; executive secretary of board; general counsel.** (1) The Employment Relations Board shall employ such personnel as it considers necessary for efficient administration of its vested duties, and fix the compensation of its employees in accordance with the compensation plan for classified employees.

(2) The board shall designate one of its employees as its executive secretary and delegate to the executive secretary such administrative duties and responsibilities as it finds advisable. The executive secretary shall be in the classified service.

(3) The board shall designate a member of the Oregon State Bar as its general counsel to assist it in the performance of its functions and duties. Notwithstanding ORS chapter 180 and independently of the Attorney General, the general counsel may represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested. The general counsel shall not appear before the board in any capacity other than general counsel to the board. The board may also delegate to its general counsel such other administrative duties and responsibilities as it finds advisable. [1969 c.80 §35e; 1973 c.536 §30; 1977 c.808 §5; 1979 c.468 §8]

**240.125** [Amended by 1969 c.80 §40; repealed by 1979 c.468 §1]

**240.130** [Amended by 1969 c.80 §41; repealed by 1979 c.468 §1]

**240.135** [Amended by 1969 c.80 §42; repealed by 1979 c.468 §1]

**240.140** [Amended by 1969 c.80 §42a; repealed by 1979 c.468 §1]

**240.145 Duties of administrator; rules.** The Administrator of the Personnel Division, subject to the approval of the Director of the Oregon Department of Administrative Services, shall direct and supervise all the administrative and technical activities of the Personnel Division. In addition to the duties imposed upon the administrator elsewhere in this chapter, the administrator shall:

(1) Establish and maintain a roster of all employees in state service, in which there shall be set forth, as to each employee, the class title of the position held, the salary or pay; any change in class title, pay, status or merit rating; and any other data about the employee that the division deems necessary.

(2) Select for appointment, under this chapter, such employees of the division and such experts and special assistants as are necessary to carry out effectively the provisions of this chapter.

(3) Prepare such rules, policies and procedures, tests and eligible lists as are necessary to carry out the duties, functions and powers of the Personnel Division under this chapter.

(4) Devise plans for and cooperate with appointing authorities and other supervisory officers in the conduct of employee training programs, to the end that the quality of service rendered by state personnel may be continually improved.

(5) Investigate from time to time the operation and effect of this chapter and the rules thereunder, and report findings and recommendations to the director of the department.

(6) Make annual reports to the director of the department regarding the work of the division, and such special reports as the director considers desirable. [Amended by 1969 c.80 §43; 1971 c.695 §1; 1979 c.468 §9]

**240.150** [Amended by 1969 c.348 §1; repealed by 1979 c.468 §37]

**240.155** [Amended by 1969 c.80 §44; repealed by 1979 c.468 §1]

**240.160 Agency personnel officers.** A division of the service may designate a staff employee to serve as personnel officer for that division of the service. Such a personnel officer shall administer, within the division of the service, training and educational programs developed by the administrative head thereof in cooperation with appointing authorities and others and shall have such other functions of the Personnel Division as are authorized by the Administrator of the Personnel Division. [Amended by 1969 c.80 §45]

**240.165 Cost of operating Personnel Division divided among various agencies of state government.** (1) The administrative expenses and costs of operating the Personnel Division shall be paid by the various divisions of the service in the state government. To establish an equitable division of the costs, the amount to be paid by each division of the service shall be determined in such proportion as the service rendered to each division of the service bears to the total service rendered by the Personnel Division.

(2) The Personnel Division, at such times as its administrator deems proper, shall estimate in advance the expenses that will be incurred during a given period of not to exceed six months and, upon approval by the Director of the Oregon Department of Administrative Services, the division shall render to each division of the service affected thereby an invoice for its pro rata share of such expenses. Each division of the service shall pay such invoice as an administrative expense of that division of the service from funds or appropriations available to that division of the service in the same manner as other claims against the state are paid. If the estimated expenses in the case of any division of the service are more or less than the actual expenses, the difference shall be reflected in the next following estimate of expenses and invoice for that division of the service. [Amended by 1969 c.80 §46; 1969 c.489 §6]

**240.167 Cost of operating Employment Relations Board divided among various divisions of state government.** (1) The administrative expenses and costs of operation of the Employment Relations Board in behalf of the state service shall be paid by the various divisions of the service in the state government. The board shall determine the amount of the expenses and costs to be paid by each division of the service on the basis of the proportion that the number of employees of that division in the classified service bears to the total number of employees of all divisions of the service in the classified service, or on any other basis that the board determines to be equitable.

(2) The Employment Relations Board, at such times as its executive secretary considers proper, shall estimate in advance the expenses and costs that will be incurred during a period of not to exceed six months and shall render to each division of the service in the state government affected thereby an invoice for its pro rata share of such expenses and costs. Each division shall pay such invoice promptly as an administrative expense of that division from funds appropriated to or otherwise available for expenditure by that division, in the same manner as other claims against the state are paid. If the estimated expenses in the case of any division are more or less than the actual expenses, the difference shall be reflected in the next following estimate of expenses and invoice for that division of the service. [1969 c.658 §4; 1979 c.66 §1]

**240.170 Oregon Department of Administrative Services Operating Fund.** (1) All moneys received by the Personnel Division pursuant to the state personnel management program shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund and are appropriated continuously out of that fund for the payment of all expenses incurred by the division for administration of the state personnel management program.

(2) All moneys received by the Employment Relations Board pursuant to ORS 240.167 shall be deposited in the State Treasury to the credit of the Oregon Department of Administrative Services Operating Fund and are appropriated continuously out of the fund for the payment of all expenses incurred by the board. [Amended by 1957 c.437 §2; 1969 c.80 §47; 1969 c.489 §8; 1993 c.500 §8a]

**240.180** [1969 c.80 §36; 1971 c.734 §20; repealed by 1979 c.468 §1]

**240.185 Maximum number of state employees; applicability; exceptions.** (1) On and after January 1, 1984, the number of persons employed by the state shall not exceed 1.5 percent of the state's population of the prior year.

(2) The population figure shall be that required by ORS 190.510 to 190.610.

(3) This section applies to all full-time equivalent budgeted positions.

(4) This section does not apply to the Governor, the Secretary of State, the State Treasurer, the Supreme Court or the Legislative Assembly in the conduct of duties vested in any of them by the Oregon Constitution. However, this exception applies only to the office of the Governor and not to the executive branch of government.

(5) This section does not apply to personnel who administer unemployment insurance benefits programs of the Employment Department, to personnel who administer programs required to be implemented as a condition for the continued certification of the Employment Division Law by the United States Secretary of Labor or to personnel who administer programs implemented by the United States Department of Labor under federal law if the state is required to enter into contracts to provide such programs.

(6) This section does not apply to personnel whose positions are funded by the gifts, grants and contracts program in the Department of Higher Education.

(7) In order to assess the effect of subsection (1) of this section, the Oregon Department of Administrative Services by December 31 of each even-numbered year shall conduct a workload analysis of each state agency, regardless of whether the agency is exempt from the application of subsection (1) of this section. The workload analysis of each agency shall be submitted to the Legislative Assembly prior to its convening in regular session and shall accompany the agency's budget request before the Joint Ways and Means Committee. [1979 c.604 §1; 1983 c.340 §1; 1989 c.863 §1]

**Note:** 240.185 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## CATEGORIES OF SERVICE; CLASSIFICATION AND COMPENSATION PLANS

**240.190 Policy on comparability of value of work and compensation and classification.** (1) It is declared to be the public policy of the State of Oregon to attempt to achieve an equitable relationship between the comparability of the value of work, as defined in ORS 292.951, performed by persons in state service and the compensation and the classification structure within the state system. To further the effort to achieve and maintain equity for undervalued jobs and job classifications, the state shall employ a neutral and objective method of determining the comparability of the value of work. The first priority in attaining equitable relationships shall be achieving compensation equity for the most undervalued classes in the lowest salary ranges.

(2) State management, in each branch of government, shall, when establishing or modifying personnel plans and policies in compensation and classification matters, or in collective bargaining, arbitration and grievance procedures, hold equity in compensation and classification matters as an important consideration. Where applicable, an exclusive representative of a collective bargaining unit shall hold the same considerations to achieve consistency with the policies stated in this section and ORS 292.951 to 292.971.

(3) No employee shall have wages decreased in order to achieve the policy set forth in this section. [1983 c.814 §1; 1987 c.772 §2]

**Note:** 240.190 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**240.195 Categories of positions in state service.** Positions in the service of the state are divided into the following categories:

(1) The classified service as provided in ORS 240.210.

(2) The unclassified service as provided in ORS 240.205.

(3) The exempt service as defined in ORS 240.200.

(4) The management service as provided in ORS 240.212. [1955 c.738 §1; 1981 c.409 §1]

**240.200 Exempt service.** The exempt service shall comprise:

(1) Officers elected by popular vote and persons appointed to fill vacancies in elective offices.

(2) Members of boards and commissions who serve on a part-time basis and who, if compensated, receive compensation on a per diem basis.

(3) Judges, referees, receivers, jurors and notaries public.

(4) Officers and employees of the Legislative Assembly.

(5) Persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation or examination on behalf of the Legislative Assembly or a committee thereof, or by authority of the Governor.

(6) Any other position designated by law as exempt. [1955 c.738 §2; 1969 c.80 §48; 1969 c.199 §17; 1975 c.427 §1; 1983 c.763 §29]

**240.205 Unclassified service.** The unclassified service shall comprise:

(1) One executive officer and one secretary for each board or commission, the members of which are elected officers or are appointed by the Governor.

(2) The director of each department of state government, each full-time salaried head of a state agency required by law to be appointed by the Governor and each full-time salaried member of a board or commission required by law to be appointed by the Governor.

(3) The administrator of each division within a department of state government required by law to be appointed by the director of the department with the approval of the Governor.

(4) Principal assistants and deputies and one private secretary for each executive or administrative officer specified in ORS 240.200 (1) and in subsections (1) to (3) of this section. "Deputy" means the deputy or deputies to an executive or administrative officer listed in subsections (1) to (3) of this section who is authorized to exercise that officer's authority upon absence of the officer. "Principal assistant" means a manager of a major agency organizational component who reports directly to an executive or administrative officer listed in subsections (1) to (3) of this section or deputy and who is designated as such by that executive or administrative officer with the approval of the Director of the Oregon Department of Administrative Services.

(5) Employees in the Governor's office and the principal assistant and private secretary in the Secretary of State's division.

(6) The deans, professors, principals, instructors and teachers in facilities operated under ORS 346.010.

(7) Apprentice trainees only during the prescribed length of their course of training.

(8) Licensed physicians and dentists employed in their professional capacities and student nurses, interns, and patient or inmate help in state institutions.

(9) Lawyers employed in their professional capacities.

(10) All members of the Oregon State Police appointed under ORS 181.250 and 181.265.

(11) Deputy superintendents and associate superintendents in the Department of Education.

(12) Temporary seasonal farm laborers engaged in single phases of agricultural production or harvesting.

(13) Any individual employed and paid from federal funds received under the Emergency Job and Unemployment Assistance Act of 1974 (United States Public Law 93-567) or any other federal program intended primarily to alleviate unemployment. However, persons employed under this subsection shall be treated as classified employees for purposes of ORS 243.650 to 243.782.

(14) Managers, department heads, directors, producers and announcers of the state radio and television network.

(15) Employees, including managers, of the foreign trade offices of the Economic and Community Development Department located outside the country.

(16) Any other position designated by law as unclassified. [Amended by 1953 c.699 §3; 1955 c.738 §4; 1957 c.597 §1; 1959 c.230 §1; 1959 c.566 §4; 1961 c.645 §1; 1965 c.405 §2; 1969 c.80 §49; 1969 c.199 §18; 1969 c.564 §3; 1969 c.599 §§66a,66b; 1971 c.301 §19; 1971 c.467 §25c; 1975 c.3 §1; 1975 c.393 §1a; 1975 c.427 §2a; 1977 c.271 §1; 1979 c.747 §1; 1979 c.468 §11; 1981 c.518 §3; 1981 s.s. c.3 §40; 1983 c.763 §30; 1985 c.388 §1; 1985 c.565 §38; 1991 c.149 §3; 1991 c.887 §2; 1993 c.741 §19; 1995 c.612 §13; 2001 c.883 §42]

**240.207** [1969 c.564 §2; 1979 c.468 §29; repealed by 1995 c.612 §24]

**240.210 Classified service.** The classified service comprises all positions in the state service existing on June 16, 1945, or thereafter created and which are not listed in ORS 240.200, 240.205 or 240.212. [Amended by 1955 c.738 §7; 1981 c.409 §2]

**240.212 Management service.** The management service shall comprise all positions not in the unclassified or exempt service that have been determined to be confidential employees, supervisory employees or managerial employees, as defined in ORS 243.650. [1981 c.409 §6; 1995 c.286 §25]

**240.215 Classification plan; job share; career ladder; transfers.** (1) The Personnel Division of the Oregon Department of Administrative Services shall adopt a classification plan which shall group all positions in the classified service in classifications based on their duties, authority and responsibilities; and which shall set forth for each classification, a class title, a statement of the minimum qualifications, duties, authority and responsibilities thereof. Each classification of positions may be subdivided and classes may be grouped and ranked in an appropriate manner.

(2) The allocation of positions within the various operating agencies to the classifications in the classification plan shall be performed by the agency appointing authority with post-audit review by the division. Agencies shall allocate positions to the available class that most accurately describes the work based upon the assigned duties, authorities and responsibilities. If a position is found to be misallocated, the agency shall change the allocation of the position to the proper class for the work, whether or not the assigned duties have changed since the previous allocation decision.

(3) In adopting a classification system, the division shall consult with appointing authorities to determine the positions in a class of positions that can be classified as job-sharing positions.

(4) The division shall group jobs into broad, statewide classes, whenever possible, consistent with good management practices and ORS 240.190 and 243.650 to 243.782. In this process, the division shall work to reduce the total number of classes, in conjunction with developing career ladders and voluntary cross-agency transfers in concert with employees of the agency. It is intended that employees be provided the necessary training in those instances where additional skills are required. [Amended by 1969 c.80 §50; 1979 c.302 §5; 1979 c.468 §10a; 1993 c.724 §11; 1995 c.155 §1]

**240.217 Certain reclassifications prohibited.** Whenever class specifications for a class of positions in the classified service are changed to reflect revised or added responsibilities that require either the same level or a higher level of competence, such change will not result in a downward reclassification of the class. [1978 c.6 §2]

**Note:** 240.217 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**240.220** [Amended by 1969 c.80 §51; repealed by 1979 c.468 §1]

**240.225** [Repealed by 1979 c.468 §1]

**240.227 Salary for legislator appointed to exempt, unclassified or management service.** (1) Except as otherwise provided by section 30, Article IV of the Oregon Constitution, notwithstanding any statute or salary plan establishing the salary for a position in the exempt, unclassified or management service, a Senator or Representative who is appointed to a position in the exempt, unclassified or management service during the Senator's or Representative's term of office shall receive a salary established as follows:

(a) If the salary for the position to which the Senator or Representative is appointed has been increased during the Senator's or Representative's term of office, the Senator or Representative shall receive a salary equal to that established for the position immediately prior to the commencement of the Senator's or Representative's term of office until the term of office of the Senator or Representative expires.

(b) If the salary for the position to which the Senator or Representative is appointed decreased or remained unchanged during the Senator's or Representative's term of office, the Senator or Representative shall receive the salary established by the applicable statute or salary plan.

(2) As used in this section, "term of office" means the particular four-year or two-year period for which the Senator or Representative was elected pursuant to section 4, Article IV of the Oregon Constitution. In the event that the Senator or Representative was appointed to fill a vacancy in the Legislative Assembly, "term of office" means the remainder of the four-year or two-year period for which the Senator or Representative was appointed, beginning on the date of appointment. "Term of office" does not mean the Senator's or Representative's duration of service in the Legislative Assembly. [1987 c.879 §23]

**240.230** [Repealed by 1979 c.468 §1]

**240.233** [1955 c.738 §8; 1969 c.80 §52; 1975 c.139 §1; repealed by 1979 c.468 §1]

**240.235 Compensation plan for classified service.** (1) The Personnel Division shall establish and implement a

merit pay system which shall take into consideration individual performance and organizational accomplishment, prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, maintenance or other benefits received, obligations established by collective bargaining agreements, and the state's financial condition and policies. The merit pay system may provide for monetary awards to employees for past meritorious service and contribution to the mission and goals of the employing agency.

(2) Modifications of the merit pay system may be adopted by the division and shall be effective only when approved by the Director of the Oregon Department of Administrative Services.

(3) Except as provided in subsection (4) of this section, each employee in the classified service shall be paid a rate within the salary range set forth in the merit pay system for the class of positions in which employed.

(4) Following any modification of the classification plan affecting a position, the division may provide that the rate of compensation of the employee holding such position shall not be reduced by reason of any such modification. An employee holding such a position shall not be eligible for any salary increase during such period of time that the employee's salary is above the maximum of the salary range of the classification to which the employee's position is allocated. [Amended by 1961 c.451 §1; 1969 c.80 §53; 1975 c.305 §1; 1979 c.468 §12]

**240.240 Application of chapter to unclassified or management service.** (1) The unclassified service or, except as provided in ORS 240.250, the management service shall not be subject to this chapter, except that employees and officers in the unclassified or management service shall be subject to the laws, rules and policies pertaining to any type of leave with pay except as otherwise provided in subsections (4) and (5) of this section, and shall be subject to the laws, rules and policies pertaining to salary plans except as otherwise provided in subsections (3) and (5) of this section.

(2) With regard to any unclassified or management service position for which the salary is not fixed by law, and except as otherwise provided in subsections (3) and (5) of this section, the Personnel Division shall adopt a salary plan which is equitably applied to various categories in the unclassified or management service and is in reasonable conformity with the general salary structure of the state. The division shall maintain this unclassified and management salary plan in accordance with the procedures established for the classified salary plan as provided in ORS 240.235.

(3) The Secretary of State and the State Treasurer, for the purpose of maintaining a salary plan for unclassified and management service positions in their departments, may request the advice and assistance of the division.

(4) With regard to unclassified instructors and teachers under annual teaching contracts for an academic year in facilities operated under ORS 346.010, arrangements for leave with pay shall be established by the Department of Education.

(5) With regard to unclassified positions in the Economic and Community Development Department's foreign offices, the salary plan and arrangements for leave with pay shall be established by the Director of the Economic and Community Development Department. [1955 c.738 §5; 1969 c.80 §54; 1971 c.695 §2; 1975 c.427 §4; 1981 c.409 §3; 1985 c.121 §1; 1991 c.149 §4; 1995 c.612 §14]

**240.245 Application of chapter to exempt service.** The exempt service shall not be subject to the provisions of this chapter, except that, with regard to any position for which salaries are not fixed by law, the officer authorized by law to appoint or fill such position shall maintain a salary plan equitably applied to the exempt position and in reasonable conformity with the general salary structure of the state. [1955 c.738 §3; 1969 c.80 §55]

**240.250 Rules applicable to management service.** The Personnel Division shall adopt rules, policies and procedures necessary for the management service. The rules may cover any wages, hours, terms and conditions of employment addressed by this chapter, even if, absent the rule, those wages, hours, terms and conditions would not otherwise apply to the management service. The rules shall further merit principles in the examination, selection and promotion of individuals for the management service. [1981 c.409 §7; 1985 c.121 §2]

**240.305** [Amended by 1975 c.427 §5; repealed by 1979 c.468 §1]

## METHOD OF SELECTING EMPLOYEES FOR SERVICE IN CLASSIFIED POSITIONS

**240.306 Recruitment, selection and promotion of state employees; criteria; procedures; duties of department.** (1) Recruiting, selecting and promoting employees shall be on the basis of their relative ability, knowledge, experience and skills, determined by open competition and consideration of qualified applicants, without regard to an individual's

race, color, religion, sex, marital status, national origin, political affiliation, age, disability or other nonjob related factors, with proper regard for an individual's privacy. Nothing in this subsection shall be construed to enlarge or diminish the obligation of the state or the rights of employees concerning claims of employment discrimination as prescribed by applicable state and federal employment discrimination laws.

(2) The Oregon Department of Administrative Services shall establish procedures to provide for statewide open recruitment and selection for classifications which are common to state agencies. Such procedures shall include adequate public notice, affirmative action to seek out underutilized members of protected minorities, and job related testing. The department may delegate to individual operating agencies the responsibility for recruitment and selection of classifications where appropriate.

(3) Competition for appropriate positions may be limited to facilitate employment of those with a substantial disability or who are economically disadvantaged, or for purposes of implementing a specified affirmative action program.

(4) Appointments to positions in state service shall be made on the basis of qualifications and merit by selection from eligible lists established by the department or a delegated operating agency.

(5)(a) Noncompetitive selection and appointment procedures may be used for unskilled or semiskilled positions, or where job related ranking measures are not practical or appropriate.

(b) Noncompetitive selection and appointment or direct appointment also may be used by agency appointing authorities to fill positions that:

(A) Require special or unique skills such as expert professional level or executive positions; or

(B) Have critical timing requirements affecting recruitment.

(6) Minimum qualifications and performance requirements and duties of a classification may be appropriately modified to permit the appointment and promotion of trainees to positions normally filled at full proficiency level.

(7) The department or delegated agencies shall establish systems to provide opportunities for promotion through meritorious service, training, education and career development assignments. The department shall certify to the eligibility of persons selected for promotion or delegate that responsibility to operating agencies in appropriate situations. Provision shall be made to bring persons into state service through open competition at higher levels where such competition provides abilities not available among existing employees, enrich state service or contribute to improved employment opportunity for underrepresented groups. [1979 c.468 §20; 1985 c.635 §1; 1989 c.224 §28; 1997 c.51 §1]

**240.307 Procedure for enforcement of ORS 240.309.** (1) Any complaint alleging violation of ORS 240.309 shall be filed with the Employment Relations Board.

(2) Any employee may file a complaint with the board alleging violation of ORS 240.309.

(3) If the employee makes a prima facie case showing that the employer has violated ORS 240.309, then the burden of rebutting the prima facie case is on the employer.

(4)(a) Any employer found to be in violation of ORS 240.309 by the board may be required to pay any affected employee damages for any loss of wages, benefits and rights. The board may also require the agency to discontinue the improper practices.

(b) Any award granted to an affected employee by the board shall be in addition to any penalty imposed under ORS 240.990.

(5) Subject to the requirements of ORS 183.452, the state agency need not be represented by legal counsel in these proceedings before the Employment Relations Board. The board may adopt, by rule, special informal proceedings to review these matters and may, in its discretion, rely on any grievance procedure records developed by the state agency. If the board adopts a rule under this subsection, the employer shall not be required to comply with ORS 183.452 (2)(b) for hearings conducted under the board rule. Any court review of the board's decision under this section shall give special deference to the informality of the proceedings in reviewing the sufficiency of the record. [1990 c.3 §3; 1999 c.448 §7]

**240.309 Temporary appointments; limitations; duration; extension; periodic reports; post-audit review; investigation; exceptions.** (1) Temporary employment shall be used for the purpose of meeting emergency, nonrecurring or short-term workload needs of the state.

(2) A temporary employee may be given a nonstatus appointment without open competition and consideration only for the purposes enumerated in this section. Temporary appointments shall not be used to defeat the open competition and consideration system.

(3) A temporary employee may not be employed in a permanent, seasonal, intermittent or limited duration position except to replace an employee during an approved leave period.

(4) Employment of a temporary employee for the same workload need, other than for leave, may not exceed six calendar months. The decision to extend the period of employment may be delegated by the Personnel Division of the Oregon Department of Administrative Services to other state agencies. Approval to extend shall be allowed only upon an appointing authority's finding that the original emergency continues to exist and that there is no other reasonable means to meet the emergency. Agency actions under this subsection are subject to post-audit review by the Oregon Department of Administrative Services as provided in ORS 240.311.

(5) Employment of a temporary employee for different workload needs shall not exceed the equivalent of six calendar months in a 12-month period.

(6) A temporary employee shall not be denied permanent work because of the temporary status. Temporary service shall not be used as any portion of a required trial service period.

(7) The Personnel Division of the Oregon Department of Administrative Services shall report the use of temporary employees, by agency, once every six months, including the duration and reason for use or extensions, if any, of temporary appointments. The reports shall be made available upon request to interested parties, including employee organizations. If any interested party alleges misuse of temporary employees, the division shall investigate, report its findings and take appropriate action.

(8) The Department of Justice may use temporary status appointments for student law clerks for a period not to exceed 24 months.

(9) A state agency may use temporary status appointments for a period not to exceed 48 months for student interns who are enrolled in high school or who are under 19 years of age and are training to receive a General Educational Development (GED) certificate. Student interns are not eligible for benefits under ORS 243.105 to 243.285. [1985 c.635 §3; 1990 c.3 §1; 1993 c.98 §5; 1993 c.724 §12; 2001 c.312 §1]

**240.310** [Amended by 1969 c.80 §56; 1975 c.427 §6; repealed by 1979 c.468 §1]

**240.311 Delegation of authority and responsibility by division; post-audit review.** (1) Delegations of authority and responsibility to operating agencies shall be subject to appropriate post-audit review by the Personnel Division.

(2) Controversies between operating agencies and the division arising from post-audit reviews shall be resolved by the Director of the Oregon Department of Administrative Services. [1979 c.468 §22]

**240.315** [Amended by 1969 c.80 §57; 1975 c.427 §7; repealed by 1979 c.468 §1]

**240.316 Trial service; regular status; procedures for transfer, demotion and separation of employees.** (1)(a) Persons initially appointed to or promoted to a permanent or seasonal position in state service shall be subject to a trial service period.

(b) An appointing authority has the discretion to subject an employee to a trial service period when:

(A) A management service employee or a classified, unrepresented employee transfers to a different agency;

(B) A management service employee or a classified, unrepresented employee transfers back to the same agency after an absence of more than one year;

(C) A former management service employee or former classified, unrepresented employee is reemployed by the same agency after an absence of more than one year; or

(D) A former management service employee or former classified, unrepresented employee is reemployed by a different agency.

(c) Any employee who serves the trial service period designated by the Personnel Division or a delegated operating agency for a given classification or as described in paragraph (b) of this subsection shall be given regular employee status.

(2) Employees who have acquired regular status will not be subject to separation except for cause as defined by ORS 240.555 or lack of work, curtailment of funds, or reorganization requiring a reduction in force.

(3) Procedures shall be established by the division to provide for the layoff and opportunity for reemployment of employees separated for reasons other than cause, which shall take into account the needs of the service, qualifications, quality of performance, relative merit and length of service.

(4) Procedures shall also be established by the division for the transfer, discipline or demotion of employees for the good of the service or separation of employees whose conduct or performance continues to be improper or inadequate after reasonable attempts have been made to correct it, where appropriate. [1979 c.468 §23; 1981 c.155 §1; 1989 c.134

§1; 1989 c.890 §11]

**240.320** [Amended by 1969 c.80 §58; repealed by 1979 c.468 §1]

**240.321 Collective bargaining; effect of collective bargaining agreements on personnel rules; grievance procedures.** (1) All collective bargaining between the state and its agencies and any certified or recognized exclusive employee representative of classified employees shall be under the direction and supervision of the Director of the Oregon Department of Administrative Services.

(2) Notwithstanding any of the provisions of ORS 240.235, 240.306, 240.316, 240.430 and 240.551, employees of state agencies who are in certified or recognized appropriate bargaining units shall have all aspects of their wages, hours and other terms and conditions of employment determined by collective bargaining agreements between the state and its agencies and the exclusive employee representatives of such employees pursuant to the provisions of ORS 243.650 to 243.762, except with regard to the recruitment and selection of applicants for initial appointment to state service.

(3) The provisions of rules adopted by the Oregon Department of Administrative Services, the subjects of which are incorporated into collective bargaining agreements, shall not be applicable to employees within appropriate bargaining units covered by such agreements.

(4) The department shall ensure the speedy resolution of employee grievances by adopting a grievance procedure resulting in a final employer determination within 60 days of the filing of a written grievance, with appeal thereafter to the Employment Relations Board, the Civil Rights Division of the Bureau of Labor and Industries, or other appropriate review agency. Employees in collective bargaining units shall have their grievances resolved as provided for by the collective bargaining agreement. [1979 c.468 §24; 1997 c.23 §1]

**240.325** [Amended by 1969 c.80 §59; repealed by 1979 c.468 §1]

**240.330** [Amended by 1969 c.80 §60; repealed by 1979 c.468 §1]

**240.335** [Repealed by 1979 c.468 §1]

**240.340** [Amended by 1959 c.689 §5; 1959 c.694 §1; 1969 c.80 §61; 1973 c.189 §1; 1973 c.827 §23; 1975 c.427 §8; 1979 c.861 §7; repealed by 1979 c.468 §1]

**240.345** [Amended by 1969 c.80 §62; repealed by 1979 c.468 §1]

**240.350** [Amended by 1969 c.80 §63; repealed by 1979 c.468 §1]

**240.355** [Amended by 1969 c.80 §64; 1971 c.695 §3; 1975 c.325 §1; repealed by 1979 c.468 §1]

**240.360** [Amended by 1955 c.140 §1; 1969 c.80 §65; 1975 c.427 §9; repealed by 1979 c.468 §1]

**240.365** [Amended by 1969 c.80 §66; 1969 c.347 §1; 1975 c.427 §10; repealed by 1979 c.468 §37]

**240.370** [Amended by 1971 c.696 §1; repealed by 1979 c.468 §1]

**240.375** [Amended by 1959 c.375 §1; 1969 c.80 §67; repealed by 1979 c.468 §1]

**240.379** [1981 c.557 §2; 1987 c.743 §1; 1989 c.224 §29; repealed by 1997 c.221 §1]

**240.380** [Amended by 1971 c.695 §6; repealed by 1979 c.468 §1]

**240.384** [1981 c.557 §3; 1989 c.224 §30; repealed by 1997 c.221 §1]

**240.385** [Repealed by 1971 c.695 §10]

**240.387** [1971 c.697 §2; repealed by 1979 c.468 §1]

**240.390** [Repealed by 1979 c.468 §1]

**240.391 Definitions.** As used in this section, unless the context requires otherwise, “severely disabled person” means a disabled person, as defined in ORS 174.107:

(1) Who has a severe physical or mental impairment which seriously limits one or more functional capacities including but not limited to mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills, in terms of an employment outcome;

(2) Whose vocational rehabilitation can be expected to require multiple vocational rehabilitation services over an extended period of time; and

(3) Who has one or more physical or mental impairments resulting from amputation; arthritis; autism; blindness; burn injury; cancer; cerebral palsy; cystic fibrosis; deafness; heart disease; hemiplegia; hemophilia; respiratory or pulmonary dysfunction; mental retardation; mental illness; multiple sclerosis; muscular dystrophy; musculoskeletal disorders; neurological disorders, including stroke and epilepsy; paraplegia; quadriplegia and other spinal cord conditions; sickle cell anemia; specific learning disability; symptomatic HIV infection; traumatic brain injury; and end-stage renal disease; or another impairment or combination of impairments determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation. [1979 c.217 §2; 1987 c.743 §2; 1989 c.224 §31; 1991 c.402 §2; 1993 c.9 §1]

**240.392** [1979 c.217 §3; 1989 c.224 §32; repealed by 1997 c.221 §1]

**240.393** [1979 c.217 §4; 1981 c.557 §4; 1989 c.224 §33; repealed by 1997 c.221 §1]

**240.394** [1979 c.217 §5; 1983 c.740 §63; 1989 c.224 §34; repealed by 1997 c.221 §1]

**240.395 Suspension of merit system in emergencies; reinstatement.** (1) In the event of emergency or abnormal employment conditions due to disaster, national defense, war or conflict in which the Armed Forces of the United States are participating and because of which Oregon citizens are subject to induction into the Armed Forces, if a critical shortage of persons available and employable to fill positions and discharge duties in the classified service results, and the Personnel Division so finds and the Governor so certifies, the examination, certification and appointment procedures required by law shall be suspended for the duration of the emergency as to all or any classes of positions in which there is a shortage of employees.

(2) When the division determines that the emergency or abnormal condition no longer exists, and the Governor so certifies, the regular examination, certification and employment procedures shall be reestablished. Temporary appointments made with the approval of the division during the emergency period shall terminate 90 days after the date of establishment of eligible lists for positions to which temporary appointments have been made. [Amended by 1969 c.80 §68]

**240.400 Designation by appointing authority of staff employees to act as alternates.** An appointing authority may file in writing with the Personnel Division names of staff employees to act in the name of the appointing authority and to perform any act or duty of the appointing authority authorized under the provisions of this chapter. [1971 c.695 §5; 1979 c.468 §14]

**240.405** [Amended by 1961 c.647 §1; 1963 c.185 §1; 1969 c.80 §69; 1969 c.346 §1; repealed by 1979 c.468 §1]

## REMOVAL DURING TRIAL SERVICE; SEASONAL EMPLOYEES; MERIT RATINGS

**240.410 Removals during trial period.** At any time during the trial service period, the appointing authority may remove an employee if, in the opinion of the appointing authority, the trial service indicates that such employee is unable or unwilling to perform duties satisfactorily or that the habits and dependability of the employee do not merit continuance in the service. [Amended by 1979 c.468 §15]

**240.415** [Repealed by 1979 c.468 §1]

**240.420** [Repealed by 1961 c.646 §1]

**240.425 Regular seasonal employees.** Positions which occur, terminate and recur periodically and regularly regardless of the duration thereof shall be designated by rule, policy or procedure of the Personnel Division as seasonal positions. An employee who satisfactorily serves in a seasonal position the trial service period designated by the division or a delegated operating agency for the classification to which the seasonal position is allocated is entitled to permanent status as a regular seasonal employee. [Amended by 1969 c.80 §70; 1981 c.156 §1]

**240.430 Merit ratings.** In cooperation with appointing authorities, the Personnel Division shall establish a system of merit ratings to determine the quality of performance and relative merit of employees in the classified service. [Amended by 1969 c.80 §71; 1979 c.468 §16]

#### STATE MANAGEMENT CREDENTIALS PROGRAM

**240.435 State Management Credentials Program required; purpose.** The Oregon Department of Administrative Services shall establish a state management credentials program for state agency managers and employees on a career track to become agency managers. The state management credentials program shall include training opportunities for agency employees and training requirements for existing agency managers. The purpose of the state management credentials program is to insure that agency managers have the necessary training and skills to be effective leaders and team builders and to provide training in management skills as part of a professional development program for nonmanagement agency employees. To that end, the department shall:

- (1) Identify necessary job skills for state managers, including team-building skills;
- (2) Identify skills and training needs for state managers to meet workplace requirements in the future;
- (3) Identify incentives for employees to participate in the program; and
- (4) Identify continuing education resources in the public sector and through in-service training to implement the state management credentials program. [1993 c.724 §13a(1)]

**Note:** 240.435 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**240.505** [Repealed by 1979 c.468 §1]

**240.510** [Amended by 1963 c.199 §3; 1969 c.80 §72; repealed by 1979 c.468 §1]

**240.515** [Amended by 1953 c.353 §2; 1961 c.450 §1; 1969 c.80 §73; 1973 c.471 §1; repealed by 1979 c.468 §1]

**240.520** [Amended by 1969 c.80 §74; repealed by 1979 c.468 §1]

**240.525** [Repealed by 1979 c.468 §1]

**240.530** [Repealed by 1979 c.468 §1]

**240.535** [Amended by 1969 c.80 §75; repealed by 1979 c.468 §1]

**240.540** [Amended by 1969 c.80 §76; repealed by 1979 c.468 §1]

**240.545** [Repealed by 1979 c.468 §1]

#### WORKING HOURS, LEAVES, DISCIPLINE, REEMPLOYMENT

**240.546 Payments in lieu of sick leave with pay; rules; exclusions.** The Personnel Division may adopt rules, policies and procedures for state agencies to provide employees in the classified and unclassified service with payments on account of sickness in lieu of accrued and any future sick leave with pay. The Legislative Assembly, state

courts, Secretary of State, State Treasurer and Department of Education may similarly adopt rules, policies and procedures providing unclassified employees with such payments. Payments on account of sickness may be made directly or from an insured plan, but such payments shall not include medical treatment, hospitalization, dental or eye or other health care or duplicate any group insurance coverage otherwise provided in whole or in part by employer contributions. [1981 c.567 §9; 1995 c.612 §15]

**240.550** [Repealed by 1979 c.468 §1]

**240.551 Working hours, holidays, leaves of absence and vacations of employees in state classified service.** The Personnel Division shall establish the hours of work, holidays, leaves of absence with and without pay and vacations of employees in the state classified service. The division may delegate this responsibility to individual operating agencies where appropriate. [1979 c.468 §21]

**240.555 Suspension, reduction, demotion or dismissal.** The appointing authority in any division of the service may suspend, reduce, demote or dismiss an employee thereof for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service. [Amended by 1969 c.80 §77; 1975 c.427 §11; 1979 c.468 §17]

**240.560 Appeal procedure.** (1) A regular employee who is reduced, dismissed, suspended or demoted, shall have the right to appeal to the Employment Relations Board not later than 10 days after the effective date of such reduction, dismissal, suspension or demotion. Such appeal shall be in writing and shall be heard by the board within 30 days after its receipt. The board shall furnish the division of the service concerned with a copy of the appeal in advance of the hearing.

(2) The hearing shall be conducted as provided for a contested case in ORS 183.310 to 183.550.

(3) If the board finds that the action complained of was taken by the appointing authority for any political, religious or racial reasons, or because of sex, marital status or age, the employee shall be reinstated to the position and shall not suffer any loss in pay.

(4) In all other cases, if the board finds that the action was not taken in good faith for cause, it shall order the immediate reinstatement and the reemployment of the employee in the position without the loss of pay. The board in lieu of affirming the action, may modify it by directing a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in classification, grade or pay. The findings and order of the board shall be certified in writing to the appointing authority and shall be forthwith put into effect by the appointing authority. [Amended by 1957 c.205 §1; 1959 c.689 §6; 1969 c.80 §78; 1971 c.734 §35; 1975 c.427 §12; 1977 c.400 §1; 1977 c.770 §6; 1993 c.778 §24]

**240.563 Judicial review.** Judicial review of orders under ORS 240.560 shall be as provided in ORS 183.310 to 183.550. [1971 c.734 §31]

**240.565** [Amended by 1969 c.80 §79; repealed by 1979 c.468 §1]

**240.570 Classified employee filling position in unclassified, exempt or management service.** (1) Positions in the unclassified, management and exempt services may be filled by classified employees. After termination of unclassified or exempt service or removal from the management service, for reasons other than specified by ORS 240.555, an employee may be restored to a position held in the same agency and service prior to appointment to the unclassified, management or exempt services. To be restored, the employee must meet position qualifications and shall be subject to agency collective bargaining contracts when applicable.

(2) An appointing authority may assign, reassign and transfer management service employees for the good of the service and may remove such employees from the management service due to reorganization or lack of work.

(3) A management service employee is subject to a trial service period established pursuant to rules of the Personnel Division under ORS 240.250. Thereafter, management service employee may be disciplined by reprimand, salary reduction, suspension or demotion or removed from the management service if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily.

(4) Employees who are assigned, reassigned, transferred or removed, as provided in subsection (2) of this section, and employees who are disciplined or removed from the management service for the reasons specified in subsection

(3) of this section may appeal to the Employment Relations Board in the manner provided by ORS 240.560.

(5) Management service employees with immediate prior former regular status in the classified service may be dismissed from state service only for reasons specified by ORS 240.555 and pursuant to the appeal procedures provided by ORS 240.560. [1955 c.738 §6; 1979 c.468 §18; 1981 c.409 §4; 1985 c.121 §3; 1987 c.269 §1]

**240.572** [1977 c.271 §3; repealed by 1979 c.468 §1]

**240.575** [1971 c.542 §2; repealed by 1979 c.468 §1]

**240.580 Service credits for service in unclassified service.** An employee who is initially appointed to a position in the unclassified service as a member of the Oregon State Police under ORS 181.250 or 181.265, who separates voluntarily from that service and who, within two years after the separation, is appointed to a position in the classified service, whether within a bargaining unit covered by a collective bargaining agreement or not, and acquires regular employee status shall be entitled, for purposes of layoff and opportunity for reemployment after separation for reasons other than cause, to service credit for the service in the unclassified service preceding the service in the classified service. ORS 240.321 (3) does not apply to service credit granted under this section. [1983 c.746 §2]

**240.590 Reemployment of employee in exempt service.** An employee in the exempt service who has been employed full time for at least 12 months consecutively in such service may be noncompetitively reemployed in a position for which qualified within two years from the date of separation, if separated from state service in good standing. However, such reemployment shall occur only after current bargaining unit members have exhausted any rights under an applicable collective bargaining agreement. [1985 c.635 §5]

## MEDIATION FEE

**240.610 Mediation service fee; interest-based problem solving training fee; amount; payment; disposition of fees.** (1) Notwithstanding ORS 662.435, when the Employment Relations Board assigns a mediator under ORS 243.712 or 662.425 to resolve a labor dispute or labor controversy between a local public employer and the exclusive representative of the employees of that employer, the board may charge a fee for the mediation services provided by the board.

(2) Notwithstanding any other law, the fee charged by the board under this section shall not exceed \$1,000, and the local public employer and the exclusive representative shall each pay one-half of the amount of the fee to the board. Notwithstanding any other law, in addition to the initial fee charged for mediation services, the board may charge a second fee, in an amount not to exceed \$1,000, for mediation services performed subsequent to those services performed at one mediation session after a notice of intent to strike or notice of intent to implement the employer's last offer has been given.

(3) Notwithstanding any other law, in addition to fees for mediation services, the board may establish fees for training in interest-based problem solving. Such fees are not subject to the provisions of subsection (2) of this section.

(4) Fees received by the board under this section shall be deposited to the credit of the Oregon Department of Administrative Services Operating Fund established by ORS 240.170.

(5) As used in this section:

(a) "Exclusive representative" and "labor dispute" have the meanings given those terms in ORS 243.650.

(b) "Local public employer" means any political subdivision in this state, including a city, county, community college, school district, special district and a public and quasi-public corporation. [1993 c.711 §2; 1995 c.79 §84; 1995 c.448 §1]

**240.705** [Repealed by 1967 c.630 §5]

## PROHIBITED CONDUCT

**240.710 Certain acts unlawful.** (1) No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification, or appointment made under this chapter, or in any manner commit or attempt to commit any fraud preventing the impartial execution of this chapter and the rules.

(2) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other

valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(3) No employee of the Personnel Division, examiner or other person shall defeat, deceive or obstruct any person in the right of the person to examination, eligibility, certification or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service. [Amended by 1969 c.80 §80]

**240.740** [1983 c.808 §2; repealed by 1989 c.890 §12]

**240.750 When discipline action not to be retained in personnel file.** No copy of a personnel discipline action that has been communicated orally or in writing to the employee and subsequently reduced in severity or eliminated through collective bargaining, grievance or personnel process shall be placed or otherwise retained in the personnel file of the employee unless agreed to by the employer and the employee. [1985 c.813 §2]

**Note:** 240.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## MISCELLANEOUS

**240.850 Policy on work environments; duties of state agencies.** It is the policy of the State of Oregon to encourage cooperative, participatory work environments and team-based management practices in all state agencies. To that end, when feasible and appropriate, state agencies shall:

- (1) Delegate responsibility for decision-making and service delivery to the lowest possible level;
- (2) Involve all workers, especially frontline workers, in the development and design of processes and program improvements;
- (3) Simplify and eliminate internal administrative rules and policies that unduly impede the attainment of the agency's mission and delivery of services;
- (4) Eliminate layers of organizational hierarchies;
- (5) Envision state government as a high performance organization in which training and technology are viewed as an investment in the workforce; and
- (6) Promote continuous improvement of state services through the involvement of all workers in process design and performance-based outcome development. [1993 c.724 §13b]

**Note:** 240.850 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

**240.855 Telecommuting; state policy; agencies to adopt written policies; biennial report.** (1) As used in this section:

- (a) "State agency" means any state office, department, division, bureau, board and commission, whether in the executive, legislative or judicial branch.
  - (b) "Telecommute" means to work from the employee's home or from an office near the employee's home, rather than from the principal place of employment.
- (2) It is the policy of the State of Oregon to encourage state agencies to allow employees to telecommute when there are opportunities for improved employee performance, reduced commuting miles or agency savings.
  - (3) Each state agency shall adopt a written policy that:
    - (a) Defines specific criteria and procedures for telecommuting;
    - (b) Is applied consistently throughout the agency; and
    - (c) Requires the agency, in exercising its discretion, to consider an employee request to telecommute in relation to the agency's operating and customer needs.
  - (4) Each state agency that has an electronic bulletin board, home page or similar means of communication shall post the policy adopted under subsection (3) of this section on the bulletin board, home page or similar site.
  - (5) The Oregon Department of Administrative Services, in consultation with the Office of Energy, shall provide a biennial report to the Joint Committee on Technology, or a similar committee of the Legislative Assembly, containing at least the following:

- (a) The number of employees telecommuting;
- (b) The number of trips, miles and hours of travel time saved annually;
- (c) A summary of efforts made by the state agency to promote and encourage telecommuting;
- (d) An evaluation of the effectiveness of efforts to encourage employees to telecommute; and
- (e) Such other matters as may be requested by the committee. [Formerly 283.550]

**Note:** 240.855 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

## PENALTIES

**240.990 Penalties.** (1) Subject to ORS 153.022, any person who willfully violates any provision of this chapter or of the rules thereunder is guilty of a misdemeanor and is punishable, upon conviction, by a fine of not more than \$500 or by imprisonment in the county jail for a term not exceeding one year, or both.

(2) Any person who fails to appear in response to a subpoena or to answer any question or produce any books or papers pertinent to any investigation or hearing authorized by this chapter is guilty of a misdemeanor.

(3) A state officer or employee who fails to comply with any provision of this chapter or of any rule, regulation or order thereunder is subject to all penalties and remedies provided by law for failure of a public officer or employee to do an act required of a public officer or employee by law.

(4) Any person who is convicted of a misdemeanor under this chapter shall, for a period of five years, be ineligible for appointment to or employment in a position in the state service, and if the person is an officer or employee of the state, shall be deemed guilty of malfeasance in office and shall be subject to forfeit of the office or position.

[Amended by 1999 c.1051 §301]