

SJ Quinney College of Law, University of Utah

Utah Law Digital Commons

Utah Code Annotated 1943-1995

1-1-1993

Title 67: State Officers Chapter 19 Personnel Management - 1993 Replacement Volume

Utah Code Annotated

Follow this and additional works at: <https://dc.law.utah.edu/uca>

The Utah Code Annotated digital collection, hosted by Digital Commons, is brought to you for free and open access by the James E. Faust Law Library at the S.J. Quinney College of Law. Funds for this project have been provided by the Institute of Museum and Library Services through the Library Services and Technology Act and are administered by the Utah State Library Division. For more information, please contact valeri.craigle@law.utah.edu. Reprinted with permission. Copyright 2020 LexisNexis. All rights reserved.

Recommended Citation

Utah Code Annotated Title 67-19 (Michie, 1993)

This Book is brought to you for free and open access by Utah Law Digital Commons. It has been accepted for inclusion in Utah Code Annotated 1943-1995 by an authorized administrator of Utah Law Digital Commons. For more information, please contact valeri.craigle@law.utah.edu.

CHAPTER 19

PERSONNEL MANAGEMENT

Section	Short title.	Section	
67-19-1.	Policy of state.	67-19-15.7.	Promotion — Reclassification — Voluntary acceptance of lower positions.
67-19-2.	Definitions.		
67-19-3.	Discriminatory or unfair employment practices.	67-19-16.	Appointments to Schedule B positions — Examinations — Certification on appropriate registers — Probationary service — Dismissal.
67-19-4.	Department of Human Resource Management created — Director — Compensation — Staff.	67-19-17.	Reappointment of employees not retained in exempt position.
67-19-5.	Responsibilities of director.		
67-19-6.	Affirmative action plan.	67-19-18.	Dismissals and demotions — Grounds — Disciplinary action — Procedure — Reductions in force.
67-19-6.3.	Human Resources Advisory Committee created — Responsibilities.	67-19-19.	Political activity of employees — Rules and regulations — Highway patrol — Hatch Act.
67-19-6.5.	Overtime policies for state employees.	67-19-20 to 67-19-25.	Repealed.
67-19-6.7.	State agencies contracting to perform personnel functions on own behalf.	67-19-26.	Severability of provisions — Compliance with requirements for federally aided programs.
67-19-7.	Functions of department not to be delegated.	67-19-27.	Leave of absence with pay for disabled employees covered under other civil service systems.
67-19-8.	Functions for which state agencies responsible.	67-19-28.	Repealed.
67-19-9.	Functions which director may delegate to state agencies — Agreements to delegate — Contents — Execution — Termination.	67-19-29.	Violation a misdemeanor.
67-19-10.	Facilities and funding for department.	67-19-30.	Grievance resolution — Jurisdiction.
67-19-11.	State pay plans — Duties of director — Applicability of section — Exemptions from section.	67-19-31.	Classification or position schedule assignment grievances — Procedure.
67-19-12.	Creation of Flexible Benefit Program — Rulemaking power granted to establish program.	67-19-32.	Discriminatory/prohibited employment practices grievances — Procedures.
67-19-12.5.	Examination of payrolls and certification of employee eligibility by director.	67-19-33.	Controlled substances and alcohol use prohibited.
67-19-13.	Sick leave — Unused sick days — Early retirement program — Line of duty death benefit [Effective until July 1, 1994].	67-19-34.	Rulemaking power to executive director.
67-19-14.	Sick leave — Unused sick days — Early retirement program [Effective July 1, 1994].	67-19-35.	Reporting of convictions under federal and state drug laws.
67-19-15.	Career service — Exempt positions — Schedules for civil service positions — Coverage of career service provisions.	67-19-36.	Drug testing of state employees.
67-19-15.6.	Longevity salary increases.	67-19-37.	Discipline of employees.
		67-19-38.	Violations and penalties.
		67-19-39.	Exemptions.
		67-19-40.	State benefits for servicemembers activated due to Operation Desert Shield and Operation Desert Storm.

67-19-1. Short title.

This chapter shall be known and may be cited as the "Utah State Personnel Management Act."

History: C. 1953, 67-19-1, enacted by L. 1979, ch. 139, § 7.

County personnel management, Title 17, Chapter 33.

Cross-References. — Career service system for attorneys, §§ 67-5-6 to 67-5-13.

COLLATERAL REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d Civil Service §§ 1 to 90.

Key Numbers. — Labor Relations ⇄ 342, 368 to 391, 451, 455.

C.J.S. — 51A C.J.S. Labor Relations §§ 349 to 378.

67-19-2. Policy of state.

(1) It is the policy of this state that the governor be responsible for the administration of the personnel system and that the governor direct the system in a manner that will provide for the effective implementation of the policies and programs under the governor's direction.

(2) It is the policy of this state that the Utah state personnel system be administered on behalf of the governor by a strong central personnel agency. Any delegation of personnel functions should be according to standards and guidelines determined by the central personnel agency and should be carefully monitored by it.

(3) It is the policy of this state that comparative merit or achievement govern the selection and advancement of employees in Utah state government and that employees be rewarded for performance in a manner that will encourage excellence and strengthen the system.

(4) It is the policy of this state to provide for equal employment opportunity by ensuring that all personnel actions including hire, tenure or term, and condition or privilege of employment be based on the ability to perform the duties and responsibilities assigned to a particular position without regard to age, race, creed or religion, color, handicap, sex, national origin, ancestry or political affiliation.

(5) It is the policy of this state, if there are substantial disparities between the proportions of members of racial, ethnic, gender or handicap groups in state employment and the proportions of such groups in the labor force in this state, to take affirmative action to ensure that members of the groups have the opportunity to apply and be considered for available positions in state government.

(6) It is the policy of this state to ensure its employees opportunities for satisfying careers and fair treatment based on the value of each employee's services.

(7) It is the policy of this state to provide a formal procedure for processing the appeals and grievances of state employees without discrimination, coercion, restraint or reprisal.

History: C. 1953, 67-19-2, enacted by L. 1979, ch. 139, § 8. General powers and duties of governor, § 67-1-1.

Cross-References. — Discriminatory employment practices, Title 34, Chapter 35.

67-19-3. Definitions.

As used in this chapter:

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

(2) "Career service" means positions under schedule B as defined in Section 67-19-15.

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

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

(5) "Classified service" means those positions subject to the classification and compensation provisions of Section 67-19-12.

(6) "Committee" means the Human Resources Advisory Committee created by this chapter.

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

(8) "Department" means the Department of Human Resource Management.

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

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

(11) "Executive director," except where otherwise specified, means the executive director of the department.

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

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

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

History: C. 1953, 67-19-3, enacted by L. 1979, ch. 139, § 9; 1983, ch. 332, § 1; 1986, ch. 113, § 1; 1988, ch. 122, § 15; 1990, ch. 280, § 1; 1991, ch. 204, § 1.

Amendment Notes. — The 1990 amendment, effective April 23, 1990, added Subsections (5) and (7), redesignating the following subsections accordingly, and substituted "executive director" for "director" twice in Subsection (8).

The 1991 amendment, effective April 29, 1991, added present Subsections (3), (4), (10), and (12) through (14); redesignated former Subsections (3) through (8) as present Subsections (5) through (9) and (11); and, in Subsection (9), inserted "individual in a paid status covered by the" and substituted "provisions of this chapter" for "position."

COLLATERAL REFERENCES

A.L.R. — Validity, under Federal Constitution, of regulations, rules, or statutes requiring random or mass drug testing of public em-

ployees or persons whose employment is regulated by state, local, or federal government, 86 A.L.R. Fed. 420.

67-19-4. Discriminatory or unfair employment practices.

The state of Utah, its officers and employees shall be governed by the provisions of Section 34-35-6 of the Utah Antidiscrimination Act concerning discriminatory or unfair employment practices.

History: C. 1953, 67-19-4, enacted by L. 1979, ch. 139, § 10.

COLLATERAL REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d Public Officers and Employees §§ 44 to 63.

C.J.S. — 51A C.J.S. Labor Relations §§ 349 to 378, 402 to 500.

A.L.R. — Actionability under state statutes of discrimination because of complaining party's association with persons of different race, color, or the like, 35 A.L.R.3d 859.

Recovery of damages for emotional distress resulting from racial, ethnic, or religious abuse or discrimination, 40 A.L.R.3d 1290.

Recovery of damages for emotional distress resulting from discrimination because of sex or marital status, 61 A.L.R.3d 944.

Mandatory retirement of public officer or employee based on age, 81 A.L.R.3d 811.

Recovery of damages as remedy for wrongful discrimination under state or local civil rights provisions, 85 A.L.R.3d 351.

Validity of age requirement for state public office, 90 A.L.R.3d 900.

Application of state law to age discrimination in employment, 96 A.L.R.3d 195.

What constitutes unfair labor practice under state public employee relations acts, 9 A.L.R.4th 20.

Key Numbers. — Labor Relations ⇌ 368 to 391.

67-19-5. Department of Human Resource Management created — Director — Compensation — Staff.

- (1) There is created the Department of Human Resource Management.
- (2) (a) The department shall be administered by a director appointed by the governor with the advice and consent of the Senate.
 - (b) The director shall be a person with experience in personnel management and shall be accountable to the governor for his performance in office.
 - (c) The governor shall establish the director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
- (3) (a) Except as provided in this subsection, department employees below the level of the director shall be career service employees.
 - (b) The director may appoint a personal secretary and, with the approval of the governor, a deputy director, both of whom shall be exempt from career service.

History: C. 1953, 67-19-5, enacted by L. 1979, ch. 139, § 11; 1981, ch. 257, § 12; 1986, ch. 113, § 2; 1988, ch. 122, § 16; 1991, ch. 114, § 23.

Amendment Notes. — The 1991 amend-

ment, effective July 1, 1991, added Subsection (2)(c).

Cross-References. — Department of Administrative Services, generally, § 63A-1-104 et seq.

67-19-6. Responsibilities of director.**(1) The director shall:**

(a) develop, implement, and administer a statewide program of personnel management for state employees that will:

- (i) aid in the efficient execution of public policy;
- (ii) foster careers in public service for qualified employees; and
- (iii) render assistance to state agencies in performing their missions;

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

(c) perform duties assigned by the governor or statute;

(d) adopt rules for personnel management according to the procedures of Title 63, Chapter 46a, the Administrative Rulemaking Act;

(e) establish and maintain a management information system that will furnish the governor, the Legislature, and agencies with current information on authorized positions, payroll, and related matters concerning state personnel;

(f) in cooperation with other agencies, conduct research and planning activities to:

- (i) determine and prepare for future state personnel needs;
 - (ii) develop methods for improving public personnel management;
- and

(iii) propose needed policy changes to the governor;

(g) study the character, causes, and extent of discrimination in state employment and develop plans for its elimination through programs consistent with federal and state laws governing equal employment opportunity and affirmative action in employment;

(h) when requested by counties, municipalities, and other political subdivisions of the state, provide technical service and advice on personnel management at a charge determined by the director;

(i) establish compensation policies and procedures for early voluntary retirement;

(j) confer with the heads of other agencies about human resource policies and procedures; and

(k) submit an annual report to the governor and the Legislature.

(2) (a) After consultation with the governor and the heads of other agencies, the director shall establish and coordinate statewide training programs.

(b) The programs developed under this subsection shall have application to more than one agency.

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

History: C. 1953, 67-19-6, enacted by L. 1979, ch. 139, § 12; 1983, ch. 332, § 2; 1988, ch. 122, § 17.

Cross-References. — Discriminatory employment practices, Title 34, Chapter 35.
Government records, Title 63, Chapter 2.

67-19-6.3. Affirmative action plan.

(1) In conjunction with the director's duties under Section 67-19-6, and notwithstanding the general prohibition in Subsection 34-35-6(2)(c), the director shall prepare an affirmative action plan for state employment consistent with the guidelines provided in Title VII of the Civil Rights Act, 42 U.S.C. 2000e et seq., as amended, and in related federal regulations.

(2) The affirmative action plan required by this section applies only to state career service employees described in Section 67-19-15.

(3) The affirmative action plan required by this section shall be reviewed by the Legislature before implementation.

(4) Nothing contained in this section shall require the establishment of hiring quotas or preferential treatment of any identifiable group.

History: C. 1953, 67-19-6.3, enacted by L. 1991, ch. 256, § 1. came effective on April 29, 1991, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1991, ch. 256 be-

67-19-6.5. Human Resources Advisory Committee created — Responsibilities.

- (1) There is created a Human Resources Advisory Committee composed of:
- (a) five nonpartisan members appointed by the governor with the advice and consent of the Senate;
 - (b) one member from the House appointed by the speaker of the House;
 - (c) one member of the Senate appointed by the president of the Senate;
- and
- (d) the director, who shall serve as an ex officio member of the committee.

(2) The members appointed by the governor shall be Utah citizens who are responsible for human resource functions in organizations other than the state.

(3) The director and the legislative members shall serve as nonvoting members of the committee.

(4) The department shall provide staff and support services to the committee.

- (5) (a) The voting members of the committee shall be appointed for terms of four years and shall serve until their successors are appointed and qualified.

(b) The governor shall appoint the first committee to terms beginning July 1, 1988.

(c) The governor shall appoint some voting members of the first committee to serve terms of less than four years as follows:

- (i) two members shall be appointed to two-year terms; and
- (ii) three members shall be appointed to four-year terms.

(6) The legislative members of the committee shall serve terms of two years as follows:

- (a) the senator's term shall begin on July 1 of each even-number year;
- (b) the representative's term shall begin on July 1 of each odd-numbered year; and

(c) the term of the first representative to serve on the committee shall be for one year beginning July 1, 1992.

- (7) The committee shall choose a chairperson and a vice-chairperson from among the voting members.
- (8) Three voting members of the committee are a quorum to transact business.
- (9) (a) Legislative members of the committee shall receive compensation and expenses as provided by Section 36-2-2 and by the Joint Rules of Legislature.
 (b) Voting members shall serve without compensation.
- (10) The committee shall:
 (a) meet at the call of the director or of the chairperson;
 (b) keep minutes of its meetings;
 (c) comply with the procedures and requirements of Title 52, Chapter 4, the Open and Public Meetings Act;
 (d) advise the director on human resource policies for state employees;
 (e) advise the governor and the Appropriations Interim Committee of the Legislature on human resource policies for state employees if requested to do so by them or by the director; and
 (f) study the following through the taking of testimony and by other lawful means:
 (i) basic pay policy;
 (ii) pay plan design;
 (iii) the concept of pay for performance;
 (iv) total quality management; and
 (v) the funding, administration, implications, principles, techniques, and implementation of the subjects specified in Subsections (i) through (iv).
- (11) When a vacancy occurs in the position of director, the governor may request recommendations from the committee for persons to fill the position.
- (12) Decisions and recommendations of the committee are advisory only.

History: C. 1953, 67-19-6.5, enacted by L. 1988, ch. 122, § 18; 1992, ch. 264, § 1.

Amendment Notes. — The 1992 amendment, effective July 4, 1992, rewrote the provisions of former Subsection (1) and redesignated them as present Subsections (1) through (4), redesignated former Subsection (2) as present Subsection (5), substituted "voting members" for "members" in Subsections (5)(a) and (5)(c),

added present Subsection (6), redesignated former Subsections (3)(a) and (3)(b) as Subsections (7) and (8) and inserted "voting" in both subsections, rewrote former Subsections (4) and (5) and redesignated them as present Subsections (9) and (10), redesignated former Subsection (6) as present Subsection (11), added Subsection (12), and made stylistic changes.

67-19-6.7. Overtime policies for state employees.

- (1) As used in this section:
- (a) "Accrued overtime hours" means:
 (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end of the fiscal year, have not been paid and have not been taken as time off by the nonexempt state employee who accrued them; and
 (ii) for exempt employees, overtime hours earned during an overtime year.
- (b) "Agreement" means the agreement authorized by the FLSA by which a nonexempt employee elects the form of compensation he will receive for overtime.

(c) "Appointed official" means:

- (i) each department executive director and deputy director, each division director, and each member of a board or commission; and
- (ii) any other person employed by a department who is appointed by, or whose appointment is required by law to be approved by, the governor and who:

- (A) is paid a salary by the state of Utah; and

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

(d) "Department" means the Department of Administrative Services, the Department of Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage Control, the Insurance Department, the Public Service Commission, the Department of Agriculture, the Department of Human Services, the State Board of Education, the Department of Natural Resources, the Department of Transportation, the Department of Commerce, the Department of Employment Security, the Industrial Commission, the State Tax Commission, the Department of Community and Economic Development, the Department of Health, the National Guard, the Department of Environmental Quality, the Department of Public Safety, the Department of Human Resource Management, the Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office of the Attorney General, merit employees in the Office of the State Treasurer, and merit employees in the Office of the State Auditor.

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

(f) "Exempt employee" means a state employee who is exempt as defined by the FLSA.

(g) "FLSA" means the Fair Labor Standards Act, 29 U.S.C. Section 201 et seq. (1978).

(h) "Human Resource Management" means the Department of Human Resource Management.

(i) "Nonexempt employee" means a state employee who is nonexempt as defined by Human Resource Management applying FLSA requirements.

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

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

(l) (i) "State employee" means every person employed by a department who is not an appointed official or an elected official.

(ii) "State employee" does not mean:

- (A) certificated employees of the State Board of Education; and

- (B) employees of the Department of Community and Economic Development whose positions are designated as schedule AM exempt employees under Section 67-19-15.

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

(n) "Work period" means:

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

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

(iii) for nonexempt law enforcement and hospital employees, the period established by each department by rule for those employees according to the requirements of the FLSA.

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

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

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

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

(ii) being paid for the overtime worked at the rate of one and one half times the rate per hour that the state employee receives for nonovertime work.

(c) Any nonexempt employee who elects to take time off under this subsection shall be paid for any overtime worked in excess of the cap established by Human Resource Management.

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

(e) Each department shall:

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

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

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

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

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

(ii) The director of Human Resource Management may grant limited exceptions to this requirement, where work circumstances dictate, by authorizing a department to pay employees for overtime worked at the rate per hour that the employee receives for nonovertime work, if the department has funds available.

(b) (i) Each department shall:

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

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

- (ii) If any department fails to establish a uniform annual date as required by this subsection, the director of Human Resource Management, in conjunction with the director of the Division of Finance, shall establish the date for that department.
- (c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a benefit, and is not a vested right.
 - (ii) A court may not construe the overtime for exempt employees authorized by this Subsection (4) as an entitlement, a benefit, or as a vested right.
- (d) At the end of the overtime year, upon transfer to another department at any time, and upon termination, retirement, or other situations where the employee will not return to work before the end of the overtime year:
 - (i) any of an exempt employee's overtime that is more than the maximum established by Human Resource Management rule lapses; and
 - (ii) unless authorized by the director of Human Resource Management under Subsection (4)(a)(ii), a department may not compensate the exempt employee for that lapsed overtime by paying the employee for the overtime or by granting the employee time off for the lapsed overtime.
- (e) Before working any overtime, each exempt employee shall obtain authorization to work overtime from their immediate supervisor.
- (f) If the department pays an exempt employee for overtime under authorization from the director of the Department of Human Resource Management, the department shall charge that payment to the department's budget in the pay period earned.
- (5) Human Resource Management shall:
 - (a) ensure that the provisions of the FLSA and this section are implemented throughout state government;
 - (b) determine, for each state employee, whether that employee is exempt, nonexempt, law enforcement, or has some other status under the FLSA;
 - (c) in coordination with modifications to the systems operated by the Division of Finance, make rules:
 - (i) establishing procedures for recording overtime worked that comply with FLSA requirements;
 - (ii) establishing requirements governing overtime worked while traveling and procedures for recording that overtime that comply with FLSA requirements;
 - (iii) establishing requirements governing overtime worked if the employee is "on call" and procedures for recording that overtime that comply with FLSA requirements;
 - (iv) establishing requirements governing overtime worked while an employee is being trained and procedures for recording that overtime that comply with FLSA requirements;
 - (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt employee may accrue before a department is required to pay the employee for the overtime worked;
 - (vi) subject to the FLSA, establishing the maximum number of overtime hours for an exempt employee that do not lapse; and

(vii) establishing procedures for adjudicating appeals of any FLSA determinations made by Human Resource Management as required by this section;

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

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

(6) In coordination with the procedures for recording overtime worked established in rule by Human Resource Management, the Division of Finance shall modify its payroll and personnel systems to accommodate those procedures.

(a) Notwithstanding the procedures and requirements of Title 63, Chapter 46b, Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301, any employee who is aggrieved by the FLSA designation made by Human Resource Management as required by this section may appeal that determination to the executive director of Human Resource Management by following the procedures and requirements established in Human Resource Management rule.

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

(c) If the employee is aggrieved by the decision of the executive director of Human Resource Management, he shall appeal that determination to the Department of Labor, Wage and Hour Division, according to the procedures and requirements of federal law.

History: C. 1953, 67-19-6.7, enacted by L. 1992, ch. 186, § 1.

Effective Dates. — Laws 1992, ch. 186 became effective on April 27, 1992, pursuant to Utah Const., Art. VI, Sec. 25.

Appropriations. — Laws 1992, ch. 186, § 2(1) appropriates \$ 2,000,000 to the Division of Finance for "the payment of any liability determined by the U.S. Department of Labor

according to FLSA regulations for back pay due to employees who are paid by the Division of Finance through the state payroll system." Subsection (4) requires the division to obtain liability releases from employees before making payments.

Cross-References. — Division of Finance, § 63A-3-101 et seq.

67-19-7. State agencies contracting to perform personnel functions on own behalf.

(1) The director may contract with any agency to allow the agency to perform specified personnel functions on its own behalf.

(2) In evaluating whether or not to allow any agency to perform its own personnel functions, the director shall consider:

(a) the size of the agency;

(b) the nature of the work performed by the agency; and

(c) the type of recruitment necessary to attract applicants for available positions in the agency.

(3) If the director contracts with an agency to allow the agency to perform its own personnel functions, the director shall ensure that the contract requires:

(a) the director to submit the names of at least three candidates qualified to fill the position of personnel manager for the agency's personnel division or section to the agency's director;

(b) the director to write a performance appraisal for the person hired to manage the agency personnel division or section and submit it to the agency's director to be included in the performance evaluation of that individual;

(c) the director to review any recommendations for merit pay increases for the person hired to manage the agency personnel division or section with the agency's director;

(d) that any person hired to manage the agency's personnel division or section shall perform the duties required of that person by the agency head and by the contract; and

(e) that, if there is any conflict between the personnel policies required by the agency head and the personnel policies required by the state policies, those required by state policies take precedence.

History: C. 1953, 67-19-7, enacted by L. 1979, ch. 139, § 13; 1988, ch. 122, § 19; 1989, ch. 139, § 1.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, rewrote Subsection (3)(a), which read "the agency head to consult with the director regarding applicants' qualifications before hiring any person to manage the agency's personnel division or section"; rewrote Subsection (3)(b), which read "the

agency head to consult with the director regarding evaluation and recommendation of merit pay increases for the person hired to manage the agency's personnel division or section"; and redesignated former Subsections (3)(c) and (d) as Subsections (3)(d) and (e).

Cross-References. — Personnel functions of county agencies, § 17-33-7.

67-19-8. Functions of department not to be delegated.

The following functions shall be performed by the department and may not be contracted or otherwise delegated to another state agency:

- (1) the design and administration of the state pay plan;
- (2) the design and administration of the state classification system and procedures for determining schedule assignments;
- (3) position classification studies, including periodic desk audits, except that an agency may conduct classification studies and desk audits as necessary under Subsection 67-19-9(2) consistent with a delegation agreement approved by the department;
- (4) maintenance of registers and certification of eligible applicants;
- (5) the monitoring of state agency personnel practices to determine compliance with state personnel guidelines, including equal opportunity and affirmative action; and
- (6) the maintenance of central personnel records.

History: C. 1953, 67-19-8, enacted by L. 1979, ch. 139, § 14; 1983, ch. 301, § 1; 1983, ch. 332, § 3; 1988, ch. 122, § 20; 1989, ch. 139, § 2.

Amendment Notes. — The 1989 amendment, effective April 24, 1989, in Subsection (5), inserted "state personnel guidelines, in-

cluding" and deleted "guidelines" following "affirmative action."

Cross-References. — Discriminatory employment practices, Title 34, Chapter 35.

Employees' personnel files, Title 67, Chapter 18.

NOTES TO DECISIONS

Certification of eligible applicants.

According to the plain language of this section, certification of an employee's eligibility for reappointment is within the sole province of the Department of Human Resources Manage-

ment, although the certification determination is governed by the appropriate administrative rules and is not subject to the agency's unfettered discretion. *Holland v. Career Serv. Review Bd.*, 856 P.2d 678 (Utah Ct. App. 1993).

67-19-9. Functions for which state agencies responsible.

State agencies shall be responsible for the following personnel functions:

- (1) initial job descriptions;
- (2) recommending position classifications and grade allocations;
- (3) selecting qualified applicants for appointment and promotion to vacant positions;
- (4) conducting performance evaluations;
- (5) disciplining employees; and
- (6) maintaining individual personnel records.

History: C. 1953, 67-19-9, enacted by L. 1979, ch. 139, § 15.

Cross-References. — Employees' personnel files, Title 67, Chapter 18.

67-19-10. Functions which director may delegate to state agencies — Agreements to delegate — Contents — Execution — Termination.

All other personnel functions are the responsibility of the director of personnel management but may be delegated to state agencies as provided herein. An agreement to delegate functions to a state agency shall be in writing and shall contain the following:

- (1) a precise definition of each function to be delegated;
- (2) clear descriptions of standards to be met in performance of each function;
- (3) provision for periodic administrative audits by the office; and
- (4) a date on which the agreement shall terminate if not previously terminated or renewed.

The agreement shall be signed by the director and the head of the agency with whom the agreement is entered into and approved by the governor. Any agreement by the director to delegate functions to a state agency shall be subject to termination by the director based upon the results of administrative audits conducted by the office to review compliance with the terms of the agreement.

History: C. 1953, 67-19-10, enacted by L. 1979, ch 139, § 16.

Cross-References. — General powers and duties of governor, § 67-1-1.

67-19-11. Facilities and funding for department.

- (1) (a) All officers and employees of the state and its political subdivisions shall allow the department to use public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing, or investigation authorized by this chapter.
- (b) The department shall pay a political subdivision the reasonable cost of any facilities furnished by it.
- (2) The director shall submit an annual budget request for the department to the governor and the Legislature.

History: C. 1953, 67-19-11, enacted by L. 1979, ch. 139, § 17; 1983, ch. 332, § 4; 1988, ch. 122, § 21.

Cross-References. — Budgetary procedures, Title 63, Chapter 38.

Maintenance of public facilities by State Building Board, § 63-9a-18.

67-19-12. State pay plans — Duties of director — Applicability of section — Exemptions from section.

- (1) (a) This section, and the rules adopted by the department to implement this section, apply to each career and noncareer state employee not specifically exempted under Subsection (2).
- (b) If not exempted under Subsection (2), a state employee is considered to be in classified service.
- (2) The following state employees are exempt from this section:
- (a) members of the Legislature and legislative employees;
 - (b) members of the judiciary and judicial employees;
 - (c) elected members of the executive branch and their direct staff who are merit-exempt employees;
 - (d) certificated employees of the State Board of Education;
 - (e) officers, faculty, and other employees of state institutions of higher education;
 - (f) employees in any position for which the salary is set by statute;
 - (g) attorneys in the Office of the Attorney General;
 - (h) department heads and other persons appointed by the governor pursuant to statute; and
 - (i) employees of the Department of Community and Economic Development whose positions are designated as executive/professional positions by the executive director of the Department of Community and Economic Development with the concurrence of the director.
- (3) (a) The director shall prepare, maintain, and revise a position classification plan for each employee position not exempted under Subsection (2).
- (b) Classification of positions shall be based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same salary range may be applied equitably to, each position in the same class.
- (c) The director shall allocate or reallocate the position of each employee in classified service to one of the classes in the classification plan.
- (d) The department shall conduct periodic studies and desk audits at least once every three years to provide that the classification plan remains reasonably current and reflects the duties and responsibilities assigned to and performed by employees.

(4) (a) With the approval of the governor, the director shall develop and adopt pay plans for each position in classified service.

(b) The director shall design each pay plan to achieve, to the degree that funds permit:

(i) equal pay for equal work; and

(ii) comparability of state salary ranges to salary ranges used by private enterprise and other public employment for similar work.

(c) The director shall adhere to the following in developing each pay plan:

(i) Each pay plan shall consist of sufficient salary ranges to permit adequate salary differential among the various classes of positions in the classification plan.

(ii) The director shall assign each class of positions in the classification plan to a salary range and shall set the width of the salary range to reflect the normal growth and productivity potential of employees in that class. The width of the ranges need not be uniform for all classes of positions in the plan, but each range shall contain merit steps in increments of 2.75% salary increases.

(iii) The director shall issue rules for the administration of pay plans. The rules may provide for exceptional performance increases and for a program of incentive awards for cost saving suggestions and other commendable acts of employees. The director shall issue rules providing for salary adjustments.

(iv) Merit step increases shall be granted, if funds are available, to employees who receive a rating of "successful" or higher in an annual evaluation of their productivity and performance.

(v) By October 31 of each year, the director shall recommend to the governor salary adjustments, including selective salary range adjustments, merit increases, or cost-of-living adjustments. At least every three years, recommended adjustments shall incorporate the results of a salary survey of a reasonable cross section of comparable benchmark positions in private and public employment in the state. The survey may also study comparable unusual positions requiring recruitment outside Utah in the surrounding western states. The director may cooperate with other public and private employers in conducting the survey.

(vi) The director may periodically conduct a market survey for individual classes or definable groups. The director shall establish criteria to assure the adequacy and accuracy of the survey and shall use methods and techniques similar to and consistent with those used in private sector surveys. The director may cooperate with or participate in any survey conducted by other public and private employers.

(vii) The establishing of a salary range is a nondelegable activity subject to Subsection 67-19-8(1) and is not appealable under the grievance procedures of Sections 67-19-30 through 67-19-32, Title 67, Chapter 19a, Grievance and Appeal Procedures, or otherwise.

(viii) The governor shall consider salary adjustments recommended under Subsection (4)(c)(v) in preparing the executive budget and shall recommend the method of distributing the adjustments. These adjustments may include selective salary range adjustments, merit increases, or cost-of-living adjustments. The governor shall

submit to the Legislature any recommendation for funding the adjustments and shall support the recommendation with schedules indicating the cost to individual departments and recommending the source of funds. Any funding recommendation for these adjustments shall first provide for selective salary range adjustments to meet market comparability.

(ix) If funding is approved by the Legislature in a general appropriations act, the adjustments take effect on the July 1 following the enactment.

(5) (a) The director shall regularly evaluate the total compensation program of state employees in the classified service.

(b) Total compensation shall include salaries and wages, bonuses, paid leave, group insurance plans, retirement, and all other benefits offered to state employees as inducements to work for the state.

(c) The department shall conduct a survey of benefits in conjunction with the salary survey under Subsection (4)(c)(v). The director shall establish criteria to assure the adequacy and accuracy of the survey. The survey shall include large, medium, and small employers. The director shall use survey methods and techniques that emphasize the private sector and are similar to and consistent with those used in private sector surveys. The director may cooperate with other public and private employers in conducting the survey.

(6) (a) The director shall submit proposals for a total compensation plan to the governor by October 31 of each year, setting forth findings and recommendations affecting state employee compensation.

(b) The governor shall consider the director's proposals in preparing budget recommendations for the Legislature.

(c) The governor's budget proposals to the Legislature shall include a specific recommendation on state employee compensation.

History: C. 1953, 67-19-12, enacted by L. 1979, ch. 139, § 18; 1981, ch. 268, § 1; 1983, ch. 332, § 5; 1984, ch. 70, § 1; 1985, ch. 122, § 1; 1985, ch. 203, § 10; 1986, ch. 113, § 3; 1987, ch. 102, § 1; 1988, ch. 122, § 22; 1992, ch. 264, § 2.

Amendment Notes. — The 1992 amendment, effective July 4, 1992, rewrote the section to such an extent that a detailed analysis is impracticable.

Cross-References. — Career service system in attorney general's office, §§ 67-5-6 to 67-5-13.

Executive director of Department of Community and Economic Development, § 9-1-204.

State Board of Education, Title 53A, Chapter 1.

67-19-12.5. Creation of Flexible Benefit Program — Rule-making power granted to establish program.

(1) The department shall establish for calendar year 1990 and thereafter a Flexible Benefit Program under Section 125 of the Internal Revenue Code of 1986.

(2) The department shall establish accounts for all employees eligible for benefits which meet the nondiscrimination requirements of the Internal Revenue Code of 1986.

(3) (a) Each account established under this section shall include employee paid premiums for health and dental services.

(b) The account may also include, at the option of the employee, out-of-pocket employee medical and dependent care expenses.

(c) Accounts may also include other expenses allowed under the Internal Revenue Code of 1986.

(4) In accordance with Title 63, Chapter 46a, the Utah Administrative Rulemaking Act, the department may make rules to implement the program established under this section.

History: C. 1953, 67-19-12.5, enacted by L. 1989, ch. 200, § 1.

Effective Dates. — Laws 1989, ch. 200, § 2 makes the act effective on March 14, 1989.

Federal Law. — The Internal Revenue Code of 1986, cited in Subsections (1) to (3), is Title 26 of the U.S. Code.

67-19-13. Examination of payrolls and certification of employee eligibility by director.

(1) The director of personnel management may examine payrolls at any time to determine conformity with this chapter and the regulations.

(2) No new employee shall be hired in a position covered by this chapter, and no employee shall be changed in pay, title or status, nor shall any employee be paid unless certified by the director as eligible under the provisions of or regulations promulgated pursuant to this chapter.

History: C. 1953, 67-19-13, enacted by L. 1979, ch. 139, § 19.

Cross-References. — Administrative rule-making, Title 63, Chapter 46a.

67-19-14. Sick leave — Unused sick days — Early retirement program — Line of duty death benefit [Effective until July 1, 1994].

(1) The director shall, as an incentive to reduce sick leave abuse, promulgate rules governing procedures whereby, after an employee has accumulated 18 unused sick leave days, any sick days accumulated during any calendar year in excess of eight, at the option of that employee, may be carried as "converted sick leave" which the employee may use at a later date as annual leave, regular sick leave, or as paid-up health and medical insurance at the time of retirement on the basis of the payment by the employing department of one month's premium for each day of accumulated sick leave.

(2) (a) The director shall promulgate rules and regulations for the governance of an early retirement program. Employing departments may offer *an early retirement option to an employee. Employee participation in the early retirement program shall be entirely voluntary. An employee must be eligible for retirement benefits to qualify for the program.*

(b) The program shall provide for an employee to be paid for 25% of *unused accumulated sick leave at the employee's preretirement rate of pay. The employing department shall also provide health and life insurance benefits until the employee reaches age 65, but not to exceed five years' coverage from the date of retirement. An employee's health and life insurance benefits under the program terminate at death.*

(c) An employee under the age of 60, whose unused sick leave, after the 25% cashout has been paid, exceeds the 60 days maximum for five-year coverage under Subsection (b), may continue health and life insurance at the rate of one month's coverage for each day of unused sick leave above the 60 days, but not to exceed coverage beyond age 65.

- (d) Any costs or savings for this act shall be borne by the agency and shall not be appropriated by the Legislature.
- (3) (a) The director shall promulgate rules to provide a continuation of health and dental insurance to the surviving spouse and family of any state employee whose death occurs in the line of duty. The insurance coverage shall continue for a period of five years or until the surviving spouse realizes age 65, whichever comes first.
- (b) The rules shall also provide for a cashout of 25% of accumulated sick-leave in the same manner as provided under Subsection (2)(b).
- (c) The costs of paying for the benefits under Subsections (3)(a) and (b) shall be included in the agency's budget request each year following the date of death of the employee.

Sick leave — Unused sick days — Early retirement program [Effective July 1, 1994].

- (1) The director shall, as an incentive to reduce sick leave abuse, make rules governing procedures whereby, after an employee has accumulated 18 unused sick leave days, any sick days accumulated during any calendar year in excess of eight, at the option of that employee, may be carried as "converted sick leave" which the employee may use at a later date as annual leave, regular sick leave, or as paid-up health and medical insurance at the time of retirement on the basis of the payment by the employing department of one month's premium for each day of accumulated sick leave.
- (2) (a) (i) The director shall make rules for the governance of an early retirement program.
- (ii) Employing departments may offer an early retirement option to an employee.
- (iii) Employee participation in the early retirement program shall be entirely voluntary.
- (iv) An employee must be eligible for retirement benefits to qualify for the program.
- (b) (i) The program shall provide for an employee to be paid for 25% of unused accumulated sick leave at the employee's preretirement rate of pay.
- (ii) The employing department shall also provide health and life insurance benefits until the employee becomes eligible for Medicare, but not to exceed five years' coverage from the date of retirement.
- (c) An employee under the age of 60, whose unused sick leave, after the 25% cashout has been paid, exceeds the 60 days maximum for five-year coverage under Subsection (b), may continue health and life insurance at the rate of one month's coverage for each day of unused sick leave above the 60 days, but not to exceed coverage beyond the age eligible for Medicare.
- (d) Any costs or savings for this act shall be borne by the agency and shall not be appropriated by the Legislature.
- (3) (a) The director shall make rules to provide a continuation of health and dental insurance to the surviving spouse and family of any state employee whose death occurs in the line of duty. The insurance coverage shall continue for a period of five years or until the surviving spouse becomes eligible for Medicare, whichever comes first.

(b) The rules shall also provide for a cashout of 25% of accumulated sick leave in the same manner as provided under Subsection (2)(b).

(c) The costs of paying for the benefits under Subsections (3)(a) and (b) shall be included in the agency's budget request each year following the date of death of the employee.

History: C. 1953, 67-19-14, enacted by L. 1983 (1st S.S.), ch. 19, § 1; 1988, ch. 46, § 1; 1993, ch. 164, § 1.

Amended effective July 1, 1994. — Laws 1993, ch. 164, § 1 amends this section effective July 1, 1994. See amendment note below.

Repeals and Reenactments. — Laws 1983 (1st S.S.), ch. 19, § 1, repealed former § 67-19-14 (L. 1979, ch. 139, § 20; 1983, ch. 232, § 6; 1983, ch. 334, § 1; 1983 (1st S.S.), ch. 18, § 1), relating to sick leave rules and regulations, and enacted the above section.

Amendment Notes. — The 1993 amendment, effective July 1, 1994, subdivided Subsections (2)(a) and (2)(b); substituted eligibility

for Medicare for "age 65" as the milestone in Subsections (2)(b)(ii), (2)(c), and (3)(a); deleted the former second sentence of Subsection (2)(b)(ii), which read: "An employee's health and life insurance benefits under the program terminate at death"; and made stylistic changes.

Meaning of "this act." — The term "this act," in Subsection (2)(d), means Laws 1983 (1st S.S.), ch. 19, § 1, which enacted this section.

Cross-References. — Administrative rule-making, Title 63, Chapter 46a.
Pensions, Title 49.

67-19-15. Career service — Exempt positions — Schedules for civil service positions — Coverage of career service provisions.

(1) Except as otherwise provided by law or by rules and regulations established for federally aided programs, the following positions are exempt from the career service provisions of this chapter:

(a) the governor, members of the Legislature, and all other elected state officers, designated as Schedule AA;

(b) heads of departments appointed by the governor, designated as Schedule AB;

(c) all employees and officers in the office and at the residence of the governor, designated as Schedule AC;

(d) division directors, heads of institutions, and heads of major offices who are appointed by the department head or commissioner, and those other appointees who are in a personal and confidential relationship to that department head or commissioner, designated as Schedule AD;

(e) unskilled employees in positions requiring little or no specialized skill or training, designated as Schedule AE;

(f) part-time professional noncareer persons who are paid for any form of medical and other professional service and who are not engaged in the performance of administrative duties, designated as Schedule AF;

(g) attorneys in the attorney general's office who are under their own career service pay plan, designated as Schedule AG;

(h) teaching staff of all state institutions and patients and inmates employed in state institutions, designated as Schedule AH;

(i) persons employed in a professional or scientific capacity to make or conduct a temporary and special inquiry, investigation, or examination on behalf of the Legislature or a legislative committee or by authority of the governor, designated as Schedule AI;

(j) noncareer employees compensated for their services on a seasonal or contractual basis who are hired for limited periods of less than nine con-

secutive months or who are employed on less than one-half time basis, designated as Schedule AJ;

(k) those employees in a personal and confidential relationship to elected officials, designated as Schedule AK;

(l) employees appointed to perform work on projects of a limited duration not exceeding two years, designated as Schedule AL;

(m) employees of the Department of Community and Economic Development whose positions are designated as executive/professional positions by the executive director of the Department of Community and Economic Development with the concurrence of the director, designated as Schedule AM;

(n) employees of the Legislature, designated as Schedule AN;

(o) employees of the judiciary, designated as Schedule AO;

(p) all judges in the judiciary, designated as Schedule AP; and

(q) members of state and local boards and councils appointed by the governor and governing bodies of departments, other local officials serving in an ex officio capacity, officers, faculty, and other employees of state universities and other state institutions of higher education, designated as Schedule AQ.

(2) The civil service shall consist of two schedules as follows:

(a) (i) Schedule A is the schedule consisting of positions exempted by Subsection (1).

(ii) Removal from any appointive position under Schedule A, unless otherwise regulated by statute, is at the pleasure of the appointing officers without regard to tenure.

(b) Schedule B is the competitive career service schedule, consisting of all positions filled through competitive selection procedures as defined by the director.

(3) (a) The director, after consultation with the heads of concerned executive branch departments and agencies and with the approval of the governor, shall allocate positions to the appropriate schedules under this section.

(b) Agency heads shall make requests and obtain approval from the director before changing the schedule assignment and tenure rights of any position.

(c) Unless the director's decision is reversed by the governor, when the director denies an agency's request, the director's decision is final.

(4) (a) Compensation for employees of the Legislature shall be established by the directors of the legislative offices in accordance with Section 36-12-7.

(b) Compensation for employees of the judiciary shall be established by the state court administrator in accordance with Section 78-3-24.

(c) Compensation for officers, faculty, and other employees of state universities and institutions of higher education shall be established as provided in Title 53B, Chapters 1 and 2.

(d) Unless otherwise provided by law, compensation for all other Schedule A employees shall be established by their appointing authorities after consultation with the director of the Department of Human Resources.

(5) All employees of the Office of State Auditor, the Office of State Treasurer, the Office of the Attorney General, excluding attorneys who are under

their own career service system, and employees who are not exempt under this section are covered by the career service provisions of this chapter.

History: C. 1953, 67-19-15, enacted by L. 1979, ch. 139, § 21; 1983, ch. 332, § 7; 1985, ch. 203, § 11; 1985 (1st S.S.), ch. 4, § 18; 1987, ch. 102, § 2; 1988, ch. 122, § 23; 1991, ch. 114, § 24; 1991, ch. 204, § 2.

Amendment Notes. — The 1991 amendment by ch. 204, effective April 29, 1991, added Subsections (1)(n) through (1)(q); added subsection designations (2)(a)(i) and (2)(a)(ii); rewrote Subsection (1)(b), which read "persons appointed to fill vacancies in elective positions, employees of the Legislature, employees of the state judiciary, members of boards and commissions, and heads of departments appointed by the governor, state and local officials serving ex officio, and members of state and local boards and councils appointed by the governing bodies of the departments"; rewrote Subsection (1)(d) to such an extent that a detailed comparison is not practicable; rewrote Subsection (1)(g), which read "officers, faculty, and other employees of state universities and other state institutions of higher education"; rewrote

Subsection (1)(k), which read "all employees of the Utah Housing Finance Agency"; substituted "and obtained approval from the director before changing" for "to the director to change" in present Subsection (3)(b); and made minor stylistic changes throughout the section.

The 1991 amendment by ch. 114, effective July 1, 1991, redesignated former Subsection (3) as present Subsection (3)(a) while inserting therein "executive branch," redesignated former Subsections (4)(a) and (4)(b) as present Subsections (3)(b) and (3)(c), added present Subsections (4)(a) through (4)(d), and made minor changes in punctuation and style throughout the section.

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Cross-References. — Career service system for attorneys in attorney general's office, §§ 67-5-6 to 67-5-13.

Utah Housing Finance Agency, Title 9, Chapter 4, Part 9.

COLLATERAL REFERENCES

Utah Law Review. — Eligibility of Public Officers and Employees to Serve in the State Legislature: An Essay on Separation of

Powers, Politics, and Constitutional Policy, 1988 Utah L. Rev. 295 (1988).

67-19-15.6. Longevity salary increases.

(1) Except for those employees subject to the Executive and Judicial Compensation Commission or Citizen's Salary Commission, any employee shall receive an increase in salary of 3½% if that employee:

(a) holds a position under Schedule A or B as defined in Section 67-19-15;

(b) has reached the final step in salary range in the position classification;

(c) has been employed with the state for eight years; and

(d) is rated eligible in job performance under guidelines established by the director.

(2) Any employee who meets the criteria defined in Subsection (1) is entitled to the same increase in salary for each additional five years of employment so long as the employee maintains the eligibility standards established by the department.

History: C. 1953, 67-19-15.6, enacted by L. 1984, ch. 71, § 1; 1987, ch. 92, § 149; 1987, ch. 102, § 3; 1988, ch. 122, § 24; 1991, ch. 204, § 3.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, added the Subsection (1)(a) through (1)(d) designations, re-

wrote the introductory language of Subsection (1), which read "Any employee who," deleted "is entitled to an increase in salary of 3½%" following "director" in Subsection (1)(d), and made minor stylistic changes throughout the section.

67-19-15.7. Promotion — Reclassification — Voluntary acceptance of lower positions.

(1) Each employee who is promoted or whose position is reclassified to the next higher salary range shall be placed at the merit step within the new range corresponding to a salary increase of between 2.75% and 11%. The employee may not be placed higher than the highest merit step in the new salary range.

(2) Each employee who is promoted or whose position is reclassified to a salary range higher than the next higher range shall be placed at the merit step within the new range corresponding to a salary increase of between 5.5% and 11%. The employee may not be placed lower than the lowest merit step in the new salary range.

(3) Each employee who voluntarily accepts a position in the next lower salary range shall be placed at the merit step within the new range corresponding to a salary decrease of 2.75% or as close to 2.75% as possible. The employee may not be placed lower than the lowest merit step in the new salary range.

(4) Each employee who voluntarily accepts a position in a salary range lower than the next lower range shall be placed at the merit step within the new range corresponding to a salary decrease of 5.5% or as close to 5.5% as possible. The employee may not be placed higher than the highest merit step in the new salary range.

History: C. 1953, 67-19-15.7, enacted by L. 1992, ch. 264, § 3.

Effective Dates. — Laws 1992, ch. 264, § 4 makes the act effective on July 4, 1992.

67-19-16. Appointments to Schedule B positions — Examinations — Certification on appropriate registers — Probationary service — Dismissal.

(1) (a) Except as provided in Subsection (b), appointments to positions under Schedule B shall be made from registers of applicants who have been selected by competitive procedures as defined by the director.

(b) Applicants with severe disabilities are not required to undergo the competitive procedures required by this subsection.

(c) The director shall make rules defining severe disabilities for purposes of this subsection.

(2) (a) Vacancy notices for career service positions shall be publicly announced:

(i) for periods of time to be determined by the director; and

(ii) in a manner designed to attract an optimum number of qualified applicants.

(b) The director shall ensure that vacancy notices for career service positions are publicly announced for at least five days.

(3) After consulting with agency officials and outside experts, the director shall approve the examining instruments.

(4) When a department requests certification of applicants who have passed the tests, the director shall certify applicants on appropriate registers defined by rules established by the director.

(5) The agency head shall make appointments to fill vacancies from appropriate registers for probationary periods to be defined by rules established by the director.

(6) A person serving a probationary period may not use the grievance procedures provided in this chapter and in Title 67, Chapter 19a, Grievance and Appeal Procedures, and may be dismissed at any time by the appointing officer without hearing or appeal.

(7) Career service status shall be granted upon the successful completion of the probationary period.

History: C. 1953, 67-19-16, enacted by L. 1979, ch. 139, § 22; 1983, ch. 332, § 8; 1991, ch. 204, § 4.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, added the Subsection (1)(a) and (2)(a) designations and the subsection designations therein; designated the former second and third sentences of Subsection (5) as Subsections (6) and (7); added Subsections (1)(b), (1)(c), and Subsection (2)(b); substituted, in Subsection (1)(a), "Except as provided in Subsection (b), appointments" for "Appointments" deleted "but in every case a minimum of 5 days" following "director" in

Subsection (2)(a)(i); rewrote Subsection (3), which read "The director shall validate the examining instruments, consulting with agency officials and outside experts toward this end"; inserted "may not use the grievance procedures provided in this chapter and in Chapter 19a, Title 67, Grievance and Appeal Procedures, and" and deleted "unless discrimination is alleged. Tenure" following "appeal" in Subsection (6); and made minor stylistic changes throughout the section.

Cross-References. — Administrative rule-making, Title 63, Chapter 46a.

67-19-17. Reappointment of employees not retained in exempt position.

Any career service employee accepting an appointment to an exempt position who is not retained by the appointing officer, unless discharged for cause as provided by this act or by regulation, shall:

(1) be appointed to any career service position for which the employee qualifies in a pay grade comparable to the employee's last position in the career service provided an opening exists; or

(2) be appointed to any lesser career service position for which the employee qualifies pending the opening of a position described in Subsection (1) of this section. The director shall maintain a reappointment register for this purpose and it shall have precedence over other registers.

History: C. 1953, 67-19-17, enacted by L. 1979, ch. 139, § 23.

Meaning of "this act." — The term "this act," in the preliminary language, means Laws 1979, ch. 139, §§ 1 to 35, which appear as

§§ 34-35-5, 67-19-1 to 67-19-13, 67-19-15, and 67-19-16 to 67-19-29.

Cross-References. — Grievance and appeals procedure, § 67-19a-301 et seq.

NOTES TO DECISIONS

Cited in *Holland v. Career Serv. Review Bd.*, 856 P.2d 678 (Utah Ct. App. 1993).

67-19-18. Dismissals and demotions — Grounds — Disciplinary action — Procedure — Reductions in force.

(1) Career service employees may be dismissed or demoted only to advance the good of the public interest, and for just causes such as inefficiency, incompetency, failure to maintain skills or adequate performance levels, insubordination, disloyalty to the orders of a superior, misfeasance, malfeasance, or nonfeasance in office.

(2) Employees may not be dismissed because of race, sex, age, physical handicap, national origin, religion, political affiliation, or other nonmerit factor including the exercise of rights under this chapter.

(3) The director shall establish rules governing the procedural and documentary requirements of disciplinary dismissals and demotions.

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

(5) (a) No career service employee may be demoted or dismissed unless the department head or designated representative has complied with this subsection.

(b) The department head or designated representative notifies the employee in writing of the reasons for the dismissal or demotion.

(c) The employee has no less than five working days to reply and have the reply considered by the department head.

(d) The employee has an opportunity to be heard by the department head or designated representative.

(e) Following the hearing, the employee may be dismissed or demoted if the department head finds adequate cause or reason.

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

(b) Under those circumstances:

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

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

(iii) (A) Career service employees shall be separated in the order of their retention points, the employee with the lowest points to be discharged first.

(B) Retention points for each career service employee shall be computed according to rules established by the director allowing appropriate consideration for proficiency and for seniority in state government, including any active duty military service fulfilled subsequent to original state appointment.

(iv) A career service employee who is separated in a reduction in force shall be:

(A) placed on the reappointment roster provided for in Subsection 67-19-17(2); and

(B) reappointed without examination to any vacancy for which the employee is qualified which occurs within one year of the date of the separation.

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

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

(iii) The employee may appeal the decision of the department head according to the grievance and appeals procedure of this act.

History: C. 1953, 67-19-18, enacted by L. 1979, ch. 139, § 24; 1983, ch. 332, § 9; 1991, ch. 204, § 5.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, divided former Subsection (1) into present Subsections (1) through (3); redesignated former Subsections (2) through (4) as present Subsections (4) through (6); in Subsection (5), added the Subsection (a) designation and redesignated former Subsections (a) through (d) as present Subsections (b) through (e); in Subsection (6), added the (a), (b), (b)(iv)(A) and (B), and (c)(ii) and (iii) designations, added Subsection (b)(iii)(A), and redesignated former Subsections (a) through (e) as Subsections (b)(i),

(b)(ii), (b)(iii)(B), (b)(iv) and (c)(i), respectively; and made minor stylistic and punctuation changes throughout the section.

Meaning of "this act." — The term "this act," at the end of Subsection (6), literally means Laws 1983, ch. 332, §§ 1 to 9, which appear as various sections throughout this chapter (see Table of Session Laws in Tables volume). However, given the context in which it is used, it seems that the term is meant to refer to Laws 1979, ch. 139, §§ 1 to 35. See note under same catchline following § 67-19-17.

Cross-References. — Grievance and appeal procedure, § 67-19a-301 et seq.

COLLATERAL REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d Civil Service §§ 52 to 90.

A.L.R. — Determination as to good faith in

abolition of public office or employment subject to civil service or merit system, 87 A.L.R.3d 1165.

67-19-19. Political activity of employees — Rules and regulations — Highway patrol — Hatch Act.

Except as otherwise provided by law or by rules promulgated under this section for federally aided programs, the following provisions apply with regard to political activity of career service employees in all grades and positions.

(1) State career service employees may voluntarily participate in political activity subject to the following provisions:

(a) if any state career service employee is elected to any partisan or full-time nonpartisan political office, that employee shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office;

(b) no officer or employee in career service may engage in any political activity during the hours of employment, nor may any person solicit political contributions from employees of the executive branch during hours of employment for political purposes; and

(c) partisan political activity may not be a basis for employment, promotion, demotion, or dismissal, except that the director shall adopt rules providing for the discipline or punishment of a state officer or employee who violates any provision of this section.

(2) (a) Notwithstanding any other provision of this section, no member of the Utah Highway Patrol may use his official authority or influence for the purpose of interfering with an election or affecting the results of an election.

(b) No person may induce or attempt to induce any member of the Utah Highway Patrol to participate in any activity prohibited by this subsection.

(3) Nothing contained in this section may be construed to:

(a) preclude voluntary contributions by a state employee to the party or candidate of the officer's or employee's choice; or

(b) permit partisan political activity by any state employee who is prevented or restricted from engaging in the political activity by the provisions of the federal Hatch Act.

History: C. 1953, 67-19-19, enacted by L. 1979, ch. 139, § 25; 1982, ch. 75, § 1; 1984 (2nd S.S.), ch. 17, 1; 1988, ch. 122, § 25.

Federal Law. — For federal Hatch Act, cited in Subsection (3), see 5 U.S.C. § 1501 et seq.

Cross-References. — Administrative rule-making, Title 63, Chapter 46a.

Utah Highway Patrol, Title 53, Chapter 8.

NOTES TO DECISIONS

Constitutionality.

Former section was not unconstitutionally vague, nor did exclusion of employees of the state's attorney general and educational employees from the coverage of the section consti-

tute an arbitrary classification denying merit employees equal protection of the law. *Elder v. Rampton*, 360 F. Supp. 559 (D. Utah 1972), aff'd, 413 U.S. 902, 93 S. Ct. 3062, 37 L. Ed. 2d 1020 (1973).

COLLATERAL REFERENCES

Utah Law Review. — Eligibility of Public Officers and Employees to Serve in the State Legislature: An Essay on Separation of Powers, Politics, and Constitutional Policy, 1988 Utah L. Rev. 295 (1988).

Am. Jur. 2d. — 63A Am. Jur. 2d Public Officers and Employees §§ 53, 54.

A.L.R. — Election campaign activities as

ground for disciplining attorney, 26 A.L.R.4th 170.

Discharge from employment on ground of political views or conduct as affecting right to unemployment compensation, 29 A.L.R.4th 287.

Validity, construction, and effect of state statutes restricting political activities of public officers or employees, 51 A.L.R.4th 702.

67-19-20 to 67-19-25. Repealed.

Repeals. — Laws 1989, ch. 191, § 22 repeals former § 67-19-20, as last amended by Laws 1983, ch. 301, § 2 and Laws 1983, ch. 320, § 81; and § 67-19-21, as last amended by Laws 1988, ch. 122, § 26, creating the Personnel Review Board and providing for the submission of charges under grievance and appeals procedure, effective April 24, 1989. Laws 1990, ch. 93, § 41 repeals § 67-19-21.1, as enacted by Laws 1987, ch. 161, § 284, relating to proce-

dures for adjudicative proceedings, effective April 23, 1990. Laws 1989, ch. 191, § 22 repeals §§ 67-19-22 to 67-19-24, as enacted by Laws 1979, ch. 139, §§ 28 to 30 and § 67-19-25, as last amended by Laws 1988, ch. 101, § 4 and Laws 1988, ch. 122, § 27, concerning grievance and appeals procedure, effective April 24, 1989. For present provisions, see Chapter 19a of this title.

67-19-26. Severability of provisions — Compliance with requirements for federally aided programs.

(1) If any provision of this chapter or of any regulation or order issued thereunder or the application of any provision of this chapter to any person or circumstance is held invalid, the remainder of this chapter and the application of provision of this chapter or regulation or orders issued under it to persons or circumstances other than those to which it is held invalid shall still be regarded as having the force and effect of law.

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

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

History: C. 1953, 67-19-26, enacted by L. 1979, ch. 139, § 32.

Federal assistance management program, Title 63, Chapter 40.

Cross-References. — Administrative rule-making, Title 63, Chapter 46a.

67-19-27. Leave of absence with pay for disabled employees covered under other civil service systems.

(1) (a) An employee in a position covered by the Highway Patrol or operator and chauffeur license examiners civil service systems, who is injured in the course of employment shall be given a leave of absence with full pay during the period of temporary disability.

(b) This compensation is in lieu of all other compensation provided by law except hospital and medical services which are provided by law.

(2) An employee in a position covered by the Highway Patrol civil service system, who is 100% disabled through a criminal act upon his person by the use of a deadly weapon while in the lawful discharge of his duties, shall be given a leave of absence with full compensation until he reaches the retirement age of 62 years.

History: C. 1953, 67-19-27, enacted by L. 1979, ch. 139, § 33; 1993, ch. 234, § 375.

Amendment Notes. — The 1993 amendment, effective July 1, 1993, added the subsection designations; in Subsection (1)(a), substituted "An" for "Any current or future" at the

beginning of the subsection and deleted "at the time of the effective date of this act" after "systems"; in Subsection (2), substituted "An" for "Any current or future" at the beginning of the subsection and deleted "at the time of the effective date of this act" after "civil service system"; and made stylistic changes.

time of the effective date of this act" after "civil service system"; and made stylistic changes.

Cross-References. — Utah Public Employees' Disability Act, § 49-9-101 et seq.

67-19-28. Repealed.

Repeals. — Laws 1989, ch. 191, § 22 repeals § 67-19-28, as enacted by Laws 1979, ch. 139,

§ 34, providing for the merger of civil service systems prior to January 1, 1980.

67-19-29. Violation a misdemeanor.

Any person who knowingly violates a provision of this chapter is guilty of a class A misdemeanor.

History: C. 1953, 67-19-29, enacted by L. 1979, ch. 139, § 35.

Cross-References. — Sentencing for misdemeanors, §§ 76-3-201, 76-3-204, 76-3-301.

67-19-30. Grievance resolution — Jurisdiction.

(1) Employees shall comply with the procedural and jurisdictional requirements of this section, Title 63, Chapter 46b, Administrative Procedures Act, and Title 67, Chapter 19a, Grievance and Appeal Procedures, in seeking resolution of grievances.

(2) All grievances based upon a claim or charge of injustice or oppression, including dismissal from employment, resulting from an act, occurrence, commission, or condition shall be governed by Title 67, Chapter 19a, Grievance and Appeal Procedures, and Title 63, Chapter 46b, Administrative Procedures Act.

(3) All grievances involving classification or schedule assignment shall be governed by Section 67-19-31 and are designated as informal adjudicative proceedings as defined by Title 63, Chapter 46b, Administrative Procedures Act.

(4) All grievances by applicants for positions in state government involving an alleged discriminatory or prohibited employment practice shall be governed by Section 67-19-32 and Title 63, Chapter 46b, Administrative Procedures Act.

(5) A "grievance" under this chapter is a request for agency action for purposes of Title 63, Chapter 46b, Administrative Procedures Act.

History: C. 1953, 67-19-30, enacted by L. 1989, ch. 191, § 3; 1991, ch. 204, § 6; 1992, ch. 193, § 1.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, inserted "Grievance and Appeal Procedures" following "Title 67" in Subsections (1) and (2), "are exempt from the procedures of" in Subsection (3), and made minor stylistic changes throughout the section.

The 1992 amendment, effective April 27, 1992, in Subsection (3), substituted "designated as informal adjudicative proceedings as defined by" for "exempt from the procedures of."

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19-31. Classification or position schedule assignment grievances — Procedure.

(1) Upon receipt of a classification or position schedule assignment grievance, the administrator of the Career Service Review Board shall refer the grievance to the director.

(2) (a) The director shall assign the grievance to a classification panel of three or more impartial persons trained in state classification procedures.

(b) The classification panel shall determine whether or not the classification assignment was appropriate by applying the statutes, rules, and procedures adopted by the department that were in effect at the time of the classification or schedule change.

(c) The classification panel may:

(i) obtain access to previous audits, classification decisions, and reports;

(ii) request new or additional audits by department or agency personnel analysts; and

(iii) consider new or additional information.

(d) The classification panel may sustain or modify the original decision or make a new decision.

(e) The classification panel shall report its decision and findings to the director, who shall notify the grievant.

(3) (a) Either party may appeal the panel's decision to an impartial hearing officer trained in state classification procedures selected through a public bid process by a panel consisting of the following members:

(i) the executive director of the Department of Human Resource Management;

(ii) two department executive directors;

(iii) the chairman of the Human Resources Advisory Committee; and

(iv) a representative of the Utah Public Employees Association.

(b) The successful bid shall serve under contract for no more than three years. At the end of that time the Department of Human Resource Management shall reissue the bid.

(c) The hearing officer shall review the classification and make the final decision. The final decision is subject to judicial review pursuant to the provisions of Section 63-46b-15.

History: C. 1953, 67-19-31, enacted by L. 1989, ch. 191, § 4; 1992, ch. 193, § 2; 1993, ch. 63, § 1.

Amendment Notes. — The 1992 amendment, effective April 27, 1992, in Subsection (3)(c), inserted "agency" in the first sentence and added the second sentence.

The 1993 amendment, effective May 3, 1993, substituted the language beginning "an impartial" at the end of the introductory language in Subsection (3)(a) for "a classification commit-

tee appointed by the director" and added Subsections (3)(a)(i) to (iv), substituted Subsection (3)(b) for former language prescribing the membership of the classification committee, and substituted "hearing officer" for "classification committee" and deleted "agency" before "decision" in Subsection (3)(c).

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19-32. Discriminatory/prohibited employment practices grievances — Procedures.

(1) An applicant for a position in state government, a probationary employee, career service employee, or an exempt employee who alleges a discriminatory or prohibited employment practice as defined in Section 34-35-6 may submit a written grievance to the department head where the alleged unlawful act occurred.

(2) Within ten working days after a written grievance is submitted under Subsection (1), the department head shall issue a written response to the grievance stating his decision and the reasons for the decision.

(3) If the department head does not issue a decision within ten days, or if the grievant is dissatisfied with the decision, the grievant may submit a complaint to the Utah Antidiscrimination Division pursuant to Section 34-35-7.1.

History: C. 1953, 67-19-32, enacted by L. 1989, ch. 191, § 5; 1989 (2nd S.S.), ch. 3, § 1; 1991, ch. 101, § 1.

Amendment Notes. — The 1989 (2nd S.S.) amendment, effective October 10, 1989, substituted "ten working days" for "five working days" in Subsection (2).

The 1991 amendment, effective April 29, 1991, inserted "a probationary employee, career service employee, or an exempt employee"

and deleted "in hiring" after "practice" in Subsection (1); substituted "a written grievance" for "the applicant's written grievance" and inserted "under Subsection (1)" in Subsection (2); and substituted "grievant" for "applicant" in two places in Subsection (3).

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19-33. Controlled substances and alcohol use prohibited.

An employee may not:

(1) manufacture, dispense, possess, use, distribute, or be under the influence of a controlled substance or alcohol during work hours or on state property except where legally permissible;

(2) manufacture, dispense, possess, use, or distribute a controlled substance or alcohol if the activity prevents:

(a) state agencies from receiving federal grants or performing under federal contracts of \$25,000 or more; or

(b) the employee to perform his services or work for state government effectively as regulated by the rules of the executive director in accordance with Section 67-19-34; or

(3) refuse to submit to a drug or alcohol test under Section 67-19-36.

History: C. 1953, 67-19-33, enacted by L. 1990, ch. 280, § 2.

Effective Dates. — Laws 1990, ch. 280 be-

came effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

67-19-34. Rulemaking power to executive director.

In accordance with this chapter and Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the executive director shall make rules regulating:

- (1) disciplinary actions for employees subject to discipline under Section 67-19-37;
- (2) the testing of employees for the use of controlled substances or alcohol as provided in Section 67-19-36;
- (3) the confidentiality of drug testing and test results performed under Section 67-19-36 in accordance with Title 63, Chapter 2, Government Records Access and Management Act; and
- (4) minimum blood levels of alcohol or drug content for work effectiveness of an employee.

History: C. 1953, 67-19-34, enacted by L. 1990, ch. 280, § 3; 1991, ch. 259, § 71.

Amendment Notes. — The 1991 amendment substituted "Government Records Access and Management Act" for "Archives and Records Services and Information Practices Act" in Subsection (3).

Compiler's Notes. — Laws 1992, ch. 280,

§ 63, effective July 1, 1992, amended L. 1991, ch. 259, § 76, to change the effective date of that act, which amended this section, from April 1, 1992 to July 1, 1992.

Effective Dates. — Laws 1990, ch. 280 became effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

67-19-35. Reporting of convictions under federal and state drug laws.

(1) An employee who is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance shall report the conviction to the director of his agency within five calendar days after the date of conviction.

(2) Upon notification either under Subsection (1) or otherwise, the director of the agency shall notify the federal agency for which a contract is being performed within ten days after receiving notice.

History: C. 1953, 67-19-35, enacted by L. 1990, ch. 280, § 4.

came effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1990, ch. 280 be-

67-19-36. Drug testing of state employees.

(1) Except as provided in Subsection (2), when there is reasonable suspicion that an employee is using a controlled substance or alcohol unlawfully during work hours, an employee may be required to submit to medically accepted testing procedures for a determination of whether the employee is using a controlled substance or alcohol in violation of this part.

(2) In highly sensitive positions, as identified in department class specifications, random drug testing of employees may be conducted by an agency in accordance with the rules of the executive director.

(3) All drug or alcohol testing shall be:

(a) conducted by a federally certified and licensed physician, a federally certified and licensed medical clinic, or testing facility federally certified and licensed to conduct medically accepted drug testing;

(b) conducted in accordance with the rules of the executive director made under Section 67-19-34; and

(c) kept confidential in accordance with the rules of the executive director made in accordance with Section 67-19-34.

(4) A physician, medical clinic, or testing facility may not be held liable in any civil action brought by a party for:

- (a) performing or failing to perform a test under this section;
- (b) issuing or failing to issue a test result under this section; or
- (c) acting or omitting to act in any other way in good faith under this section.

History: C. 1953, 67-19-36, enacted by L. 1990, ch. 280, § 5. came effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1990, ch. 280 be-

67-19-37. Discipline of employees.

An employee shall be subject to the rules of discipline of the executive director made in accordance with Section 67-19-34, if he:

- (1) refuses to submit to testing procedures provided in Section 67-19-36;
- (2) refuses to complete a drug rehabilitation program in accordance with Subsection 67-19-38(3);
- (3) is convicted under a federal or state criminal statute regulating the manufacture, distribution, dispensation, possession, or use of a controlled substance; or
- (4) manufactures, dispenses, possesses, uses, or distributes a controlled substance in violation of state or federal law during work hours or on state property.

History: C. 1953, 67-19-37, enacted by L. 1990, ch. 280, § 6. came effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1990, ch. 280 be-

67-19-38. Violations and penalties.

In addition to other criminal penalties provided by law, an employee

- (1) fails to notify his director under Section 67-19-35 is subject to disciplinary proceedings as established by the executive director by rule in accordance with Section 67-19-34;
- (2) refuses to submit to testing procedures provided for in Section 67-19-36, may be suspended immediately without pay pending further disciplinary action as set forth in the rules of the executive director in accordance with Section 67-19-34;
- (3) tests positive for the presence of unlawfully used controlled substances or alcohol may be required, as part of his disciplinary treatment, to complete a drug rehabilitation program at his expense within 60 days after receiving the positive test results or be subject to further disciplinary procedures established by rule of the executive director in accordance with Section 67-19-34.

History: C. 1953, 67-19-38, enacted by L. 1990, ch. 280, § 7. came effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1990, ch. 280 be-

67-19-39. Exemptions.

Peace officers, as defined under Section 77-1a-1, acting in their official capacity as peace officers in undercover roles and assignments, are exempt from the provisions of this act.

History: C. 1953, 67-19-39, enacted by L. 1990, ch. 280, § 8.

Meaning of "this act." — The phrase "this act" means Laws 1990, ch. 280 which enacted §§ 67-19-33 through 67-19-39.

Effective Dates. — Laws 1990, ch. 280 became effective on April 23, 1990, pursuant to Utah Const., Art. VI, Sec. 25.

67-19-40. State benefits for servicemembers activated due to Operation Desert Shield and Operation Desert Storm.

- (1) All agencies may continue to pay, for employees activated due to Operation Desert Shield and Operation Desert Storm, their portion of:
 - (a) the premium for health and dental insurance; and
 - (b) the premium for the basic life insurance provided by the state.
- (2) All agencies may also grant the 15-day military leave for employees activated due to Operation Desert Shield and Operation Desert Storm.

History: C. 1953, 67-19-40, enacted by L. 1991, ch. 253, § 2.

Effective Dates. — Laws 1991, ch. 253 became effective on April 29, 1991, pursuant to Utah Const., Art. VI, Sec. 25.

CHAPTER 19a
GRIEVANCE AND APPEAL
PROCEDURES

Part 1
General Provisions

Section
67-19a-101. Definitions.

Part 2
Career Service Review Board

67-19a-201. Career Service Review Board created — Members — Appointment — Removal — Terms — Organization — Compensation.
67-19a-202. Powers — Jurisdiction.
67-19a-203. Rulemaking authority.
67-19a-204. Administrator — Powers.

Part 3
Grievance and Appeal Procedures

67-19a-301. Charges submissible under grievance and appeals procedure.

Section
67-19a-302. Levels of appealability of charges submissible under grievance and appeals procedure.
67-19a-303. Employees' rights in grievance and appeals procedure.

Part 4
Procedural Steps to Be Followed by Aggrieved Employee

67-19a-401. Time limits for submission of appeal by aggrieved employee — Voluntary termination of employment — Group grievances.
67-19a-402. Procedural steps to be followed by aggrieved employee.
67-19a-403. Appeal to administrator — Jurisdictional hearing.
67-19a-404. Administrator's responsibilities.

Section		Section	
67-19a-405.	Prehearing conference.	67-19a-407.	Appeal to Career Service Review Board.
67-19a-406.	Procedural steps to be followed by aggrieved employee — Hearing before hearing officer — Evidentiary and procedural rules.	67-19a-408.	Career Service Review Board hearing — Evidentiary and procedural rules.

PART 1

GENERAL PROVISIONS

67-19a-101. Definitions.

As used in this chapter:

- (1) "Administrator" means the person employed by the board to assist in administering personnel policies.
- (2) "Board" means the Career Service Review Board created by this chapter.
- (3) "Career service employee" means a person employed in career service as defined in Section 67-19-3.
- (4) "Employer" means the state of Utah and all supervisory personnel vested with the authority to implement and administer the policies of the department.
- (5) "Grievance" means:
 - (a) a complaint by a career service employee concerning any matter touching upon the relationship between the employee and his employer; and
 - (b) any dispute between a career service employee and his employer.
- (6) "Supervisor" means the person to whom an employee reports and who assigns and oversees the employee's work.

History: C. 1953, 67-19a-101, enacted by L. 1989, ch. 191, § 6; 1991, ch. 101, § 2; 1991, ch. 204, § 7.

Amendment Notes. — The 1991 amendment by ch. 101, effective April 29, 1991, added present Subsection (3); designated former Subsections (3) to (5) as present Subsections (4) to (6); and substituted "the policies of the department" for "the state's personnel policies" at the end of present Subsection (4).

The 1991 amendment by ch. 204, effective April 29, 1991, substituted "a career service" for "an" in present Subsections (5)(a) and (5)(b).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

PART 2
CAREER SERVICE REVIEW BOARD

67-19a-201. Career Service Review Board created — Members — Appointment — Removal — Terms — Organization — Compensation.

- (1) There is created a Career Service Review Board.
- (2) (a) The governor, with the advice and consent of the Senate, shall appoint five members to the board no more than three of which are members of the same political party.
(b) The governor shall appoint members whose gender and ethnicity represent the career service work force.
(c) The governor may remove any board member for cause and appoint a replacement to complete the unexpired term of the member removed for cause.
- (3) The governor shall ensure that appointees to the board:
 - (a) are qualified by knowledge of employee relations and merit system principles in public employment; and
 - (b) are not:
 - (i) members of any local, state, or national committee of a political party;
 - (ii) officers or members of a committee in any partisan political club; and
 - (iii) holding or a candidate for a paid public office.
- (4) (a) The governor shall appoint board members to serve four-year terms as follows:
 - (i) three members shall be appointed to a term beginning and ending with the governor's term; and
 - (ii) two members shall be appointed to four-year terms beginning January 1 of the third year of the governor's regular term in office.
- (b) The members of the board shall serve until their successors are appointed and qualified.
(c) Persons serving on the board as of the effective date of this act may complete the term for which they were appointed.
(d) If a vacancy occurs on the board, the governor may appoint a new person to fill the unexpired term.
- (5) Each year, the board shall choose a chairman and vice-chairman from its own members.
- (6) (a) Three members of the board are a quorum for the transaction of business.
(b) Action by a majority of members when a quorum is present is action of the board.
- (7) Members of the board shall serve without compensation, but they may be reimbursed for expenses incurred in the performance of their official duties as established by the Division of Finance.

History: C. 1953, 67-19a-201, enacted by L. 1989, ch. 191, § 7.
Effective Dates. — Laws 1989, ch. 191 be-

came effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19a-202. Powers — Jurisdiction.

(1) (a) The board shall serve as the final administrative body to review appeals from career service employees and agencies of decisions about promotions, dismissals, demotions, suspensions, written reprimands, wages, salary, violations of personnel rules, issues concerning the equitable administration of benefits, reductions in force, and disputes concerning abandonment of position that have not been resolved at an earlier stage in the grievance procedure.

(b) The board has no jurisdiction to review or decide any other personnel matters.

(2) The time limits established in this chapter supersede the procedural time limits established in Title 63, Chapter 46b, Administrative Procedures Act.

(3) In conjunction with any inquiry, investigation, hearing, or other proceeding, any member of the board may:

(a) administer oaths;

(b) certify official acts;

(c) subpoena witnesses, documents, and other evidence; and

(d) grant continuances pursuant to board rule.

History: C. 1953, 67-19a-202, enacted by L. 1989, ch. 191, § 8; 1991, ch. 101, § 3; 1991, ch. 204, § 8.

Amendment Notes. — The 1991 amendment by ch. 101, effective April 29, 1991, added Subsection (3)(d), making a related grammatical change, and made a change in the style of the chapter reference in Subsection (2).

The 1991 amendment by ch. 204, effective April 29, 1991, inserted "career service" before

"employees" in Subsection (1)(a), and "Administrative Procedures Act" after "Title 63" in Subsection (2).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

NOTES TO DECISIONS

Personnel rules.

Commission's requirement that employee take unpaid leave of absence to attend law school and decision not to allow job sharing by employee were not violations of personnel

rules and the board did not have jurisdiction to hear the employee's employment grievance. *Lopez v. Career Serv. Review Bd.*, 834 P.2d 568 (Utah Ct. App. 1992).

67-19a-203. Rulemaking authority.

The board may make rules governing:

(1) definitions of terms, phrases, and words used in the grievance process established by this chapter;

(2) what matters constitute excusable neglect for purposes of the waiver of time limits established by this chapter;

(3) the application for and service of subpoenas, the service and filing of pleadings, and the issuance of rulings, orders, determinations, summary judgments, transcripts, and other legal documents necessary in grievance proceedings;

- (4) the use, calling, attendance, participation, and fees of witnesses in grievance proceedings;
- (5) continuances of grievance proceedings;
- (6) procedures in jurisdictional and evidentiary hearings, unless governed by Title 63, Chapter 46b, the Administrative Procedures Act;
- (7) the presence of media representatives at grievance proceedings; and
- (8) procedures for sealing files or making data pertaining to a grievance unavailable to the public.

History: C. 1953, 67-19a-203, enacted by L. 1989, ch. 191, § 9.

came effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1989, ch. 191 be-

67-19a-204. Administrator — Powers.

(1) The board shall employ a person with demonstrated ability to administer personnel policies to assist it in performing the functions specified in this chapter.

(2) (a) The administrator may:

(i) assign qualified, impartial hearing officers on a per case basis to adjudicate matters under the jurisdiction of the board;

(ii) subpoena witnesses, documents, and other evidence in conjunction with any inquiry, investigation, hearing, or other proceeding; and

(iii) upon motion made by a party or person to whom the subpoena is directed and upon notice to the party who issued the subpoena, quash or modify the subpoena if it is unreasonable, requires an excessive number of witnesses, or requests evidence not relevant to any matter in issue.

(b) In selecting and assigning hearing officers under authority of this section, the administrator shall appoint hearing officers that have demonstrated by education, training, and experience the ability to adjudicate and resolve personnel administration disputes by applying employee relations principles within a large, public work force.

History: C. 1953, 67-19a-204, enacted by L. 1989, ch. 191, § 10; 1991, ch. 101, § 4.

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, added Subsection (2)(a)(iii) and made related changes.

PART 3

GRIEVANCE AND APPEAL PROCEDURES

67-19a-301. Charges submissible under grievance and appeals procedure.

(1) This grievance procedure may only be used by career service employees who are not:

- (a) public applicants for a position with the state's work force;
- (b) public employees of the state's political subdivisions;
- (c) public employees covered by other grievance procedures; or
- (d) employees of state institutions of higher education.

(2) Whenever a question or dispute exists as to whether an employee is qualified to use this grievance procedure, the administrator shall resolve the question or dispute. The administrator's decision is reviewable only by the Court of Appeals.

(3) Any career service employee may submit a grievance based upon a claim or charge of injustice or oppression, including dismissal from employment, resulting from an act, occurrence, omission, or condition for solution through the grievance procedures set forth in this chapter.

History: C. 1953, 67-19a-301, enacted by L. 1989, ch. 191, § 11; 1991, ch. 101, § 5.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, added Subsections (1) and (2) and designated the former section as Subsection (3).

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19a-302. Levels of appealability of charges submissible under grievance and appeals procedure.

(1) A career service employee may grieve promotions, dismissals, demotions, suspensions, written reprimands, wages, salary, violations of personnel rules, issues concerning the equitable administration of benefits, reductions in force, and disputes concerning abandonment of position to all levels of grievance procedure.

(2) (a) A career service employee may grieve all other matters only to the level of his department head.

(b) The decision of the department head is final and unappealable to the board.

History: C. 1953, 67-19a-302, enacted by L. 1989, ch. 191, § 12; 1991, ch. 204, § 9.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, substituted "A career service" for "An aggrieved" in Subsection (1).

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19a-303. Employees' rights in grievance and appeals procedure.

(1) For the purpose of processing a grievance, a career service employee may:

- (a) obtain assistance by a representative of the employee's choice to act as an advocate at any level of the grievance procedure;
 - (b) request a reasonable amount of time during work hours to confer with the representative and prepare the grievance; and
 - (c) call other employees as witnesses at a grievance hearing.
- (2) The state shall allow employees to attend and testify at the grievance hearing as witnesses if the employee has given reasonable advance notice to his immediate supervisor.
- (3) No person may take any reprisals against any career service employee for use of grievance procedures specified in this chapter.
- (4) (a) The employing agency of an employee who files a grievance may not place grievance forms, grievance materials, correspondence about the grievance, agency and department replies to the grievance, or other documents relating to the grievance in the employee's personnel file.
- (b) The employing agency of an employee who files a grievance may place records of disciplinary action in the employee's personnel file.
- (c) If any disciplinary action against an employee is rescinded through the grievance procedures established in this chapter, the agency and the Department of Human Resource Management shall remove the record of the disciplinary action from the employee's agency personnel file and central personnel file.
- (d) An agency may maintain a separate grievance file relating to an employee's grievance, but shall discard the file after three years.

History: C. 1953, 67-19a-303, enacted by L. 1989, ch. 191, § 13; 1991, ch. 204, § 10.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, substituted "a career service" for "an" in Subsection (1).

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

COLLATERAL REFERENCES

C.J.S. — 51A C.J.S. Labor Relations §§ 402 to 500.

PART 4 PROCEDURAL STEPS TO BE FOLLOWED BY AGGRIEVED EMPLOYEE

67-19a-401. Time limits for submission of appeal by aggrieved employee — Voluntary termination of employment — Group grievances.

- (1) Subject to the standing requirements contained in Part 3 and the restrictions contained in this part, a career service employee may have a grievance addressed by following the procedures specified in this part.
- (2) The employee and the person to whom the grievance is directed may agree in writing to waive or extend grievance steps 2, 3, or 4 or the time limits specified for those grievance steps, as outlined in Section 67-19a-402.
- (3) Any writing made pursuant to Subsection (2) must be submitted to the administrator.
- (4) (a) Unless the employee meets the requirements for excusable neglect established by rule, if the employee fails to process the grievance to the

next step within the time limits established in this part, he has waived his right to process the grievance or to obtain judicial review of the grievance.

(b) Unless the employee meets the requirements for excusable neglect established by rule, if the employee fails to process the grievance to the next step within the time limits established in this part, the grievance is considered to be settled based on the decision made at the last step.

(5) (a) Unless the employee meets the requirements for excusable neglect established by rule, an employee may submit a grievance for review under this chapter only if the employee submits the grievance:

(i) within 20 working days after the event giving rise to the grievance; or

(ii) within 20 working days after the employee has knowledge of the event giving rise to the grievance.

(b) Notwithstanding Subsection (4)(a), an employee may not submit a grievance more than one year after the event giving rise to the grievance.

(6) A person who has voluntarily terminated his employment with the state may not submit a grievance after he has terminated his employment.

(7) (a) When several employees allege the same grievance, they may submit a group grievance by following the procedures and requirements of this chapter.

(b) In submitting a group grievance, each aggrieved employee shall sign the complaint.

(c) The administrator and board may not treat a group grievance as a class action, but may select one aggrieved employee's grievance and address that grievance as a test case.

History: C. 1953, 67-19a-401, enacted by L. 1989, ch. 191, § 14; 1991, ch. 101, § 6; 1991, ch. 204, § 11.

Amendment Notes. — The 1991 amendment by ch. 101, effective April 29, 1991, substituted "grievance steps 2, 3, or 4 or the time limits specified for those grievance steps, as outlined in Section 67-19a-402" for "any grievance step or the time limits specified for any grievance step" at the end of Subsection (2); added present Subsection (3); and redesignated

former Subsections (3) to (6) as present Subsections (4) to (7).

The 1991 amendment by ch. 204, effective April 29, 1991, substituted "a career service" for "an aggrieved" in Subsection (1).

This section is set out as reconciled by the Office of Legislative Research and General Counsel.

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19a-402. Procedural steps to be followed by aggrieved employee.

(1) (a) A career service employee who believes he has a grievance shall attempt to resolve the grievance through discussion with his supervisor.

(b) Within five days after the employee discusses the grievance with him, the employee's supervisor may issue a verbal decision on the grievance.

(2) (a) If the grievance remains unanswered for five working days after its submission, or if the aggrieved employee is dissatisfied with the supervisor's verbal decision, the employee may resubmit the grievance in writing to his immediate supervisor within five working days after the expiration of the period for response or receipt of the decision, whichever is first.

(b) Within five working days after the employee's written grievance is submitted, the employee's supervisor shall issue a written response to the

grievance stating his decision and the reasons for the decision.

(c) Immediately after submitting the written grievance to his supervisor, the employee shall notify the administrator of the board that he has submitted the written grievance.

- (3) (a) If the written grievance submitted to the employee's supervisor remains unanswered for five working days after its submission, or if the aggrieved employee is dissatisfied with the decision issued, the employee may submit the grievance in writing to his agency or division director within ten working days after the expiration of the period for decision or receipt of the decision, whichever is first.

(b) Within five working days after the employee's written grievance is submitted, the employee's agency or division director shall issue a written response to the grievance stating his decision and the reasons for the decision.

- (4) (a) If the written grievance submitted to the employee's agency or division director remains unanswered for five working days after its submission, or if the aggrieved employee is dissatisfied with the decision issued, the employee may submit the grievance in writing to his department head within ten working days after the expiration of the period for decision or receipt of the decision, whichever is first.

(b) Within ten working days after the employee's written grievance is submitted, the department head shall issue a written response to the grievance stating his decision and the reasons for the decision.

(c) The decision of the department head is final in all matters except those matters that the board may review under the authority of Part 3.

- (5) If the written grievance submitted to the employee's department head meets the subject matter requirements of Section 67-19a-302 and if the grievance remains unanswered for ten working days after its submission, or if the aggrieved employee is dissatisfied with the decision issued, the employee may submit the grievance in writing to the administrator within ten working days after the expiration of the period for decision or receipt of the decision, whichever is first.

History: C. 1953, 67-19a-402, enacted by L. 1989, ch. 191, § 15; 1989 (2nd S.S.), ch. 3, § 2; 1991, ch. 204, § 12.

Amendment Notes. — The 1989 (2nd S.S.) amendment, effective October 10, 1989, substituted "ten working days" for "five working days" in Subsection (4)(b).

The 1991 amendment, effective April 29, 1991, substituted "A career service" for "An" in Subsection (1)(a).

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19a-403. Appeal to administrator — Jurisdictional hearing.

(1) At any time after a career service employee submits a grievance to the administrator under the authority of Section 67-19a-402, the administrator may attempt to settle the grievance informally by conference, conciliation, and persuasion with the employee and the agency.

- (2) (a) When an employee submits a grievance to the administrator under the authority of Section 67-19a-402, the administrator shall determine:

(i) whether or not the employee is a career service employee and is entitled to use the grievance system;

(ii) whether or not the board has jurisdiction over the grievance;

- (iii) whether or not the employee has been directly harmed; and
- (iv) the issues to be heard.
- (b) In order to make the determinations required by Subsection (2), the administrator may:
 - (i) hold a jurisdictional hearing, where the parties may present oral arguments, written arguments, or both; or
 - (ii) conduct an administrative review of the file.
- (3) (a) If the administrator holds a jurisdictional hearing, he shall issue his written decision within 15 days after the hearing is adjourned.
- (b) If the administrator chooses to conduct an administrative review of the file, he shall issue his written decision within 15 days after he receives the grievance.

History: C. 1953, 67-19a-403, enacted by L. 1989, ch. 191, § 16; 1991, ch. 204, § 13.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, added present Subsection (2)(a)(i) and redesignated former

Subsections (2)(a)(i) through (2)(a)(iii) as present Subsections (2)(a)(ii) through (2)(a)(iv).

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

NOTES TO DECISIONS

Cited in *Lopez v. Career Serv. Review Bd.*, 834 P.2d 568 (Utah Ct. App. 1992).

67-19a-404. Administrator's responsibilities.

If the administrator determines that the grievance meets the jurisdictional requirements of Part 3, he shall:

- (1) appoint a hearing officer to adjudicate the complaint; and
- (2) set a date for the hearing that is either:
 - (a) not later than 30 days after the date the administrator issues his decision that the board has jurisdiction over the grievance; or
 - (b) at a date agreed upon by the parties and the administrator.

History: C. 1953, 67-19a-404, enacted by L. 1989, ch. 191, § 17.

Effective Dates. — Laws 1989, ch. 191 be-

came effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19a-405. Prehearing conference.

(1) The administrator may require the presence of each party, the representatives of each party, and other designated persons at a prehearing conference.

- (2) At the conference, the administrator may require the parties to:
 - (a) identify which allegations are admitted and which allegations are denied;
 - (b) submit a joint statement detailing:
 - (i) stipulated facts that are not in dispute;
 - (ii) the issues to be decided; and
 - (iii) applicable laws and rules;
 - (c) submit a list of witnesses, exhibits, and papers or other evidence that each party intends to offer as evidence; and
 - (d) confer in an effort to resolve or settle the grievance.

- (3) At the conclusion of the prehearing conference, the administrator may require the parties to prepare a written statement identifying:
- (a) the items presented or agreed to under Subsection (2); and
 - (b) the issues remaining to be resolved by the hearing process.
- (4) The prehearing conference is informal and is not open to the public or press.

History: C. 1953, 67-19a-405, enacted by L. 1989, ch. 191, § 18. came effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1989, ch. 191 be-

67-19a-406. Procedural steps to be followed by aggrieved employee — Hearing before hearing officer — Evidentiary and procedural rules.

- (1) (a) The administrator shall employ a certified court reporter to record the hearing and prepare an official transcript of the hearing.
- (b) The official transcript of the proceedings and all exhibits, briefs, motions, and pleadings received by the hearing officer are the official record of the proceeding.
- (2) (a) The agency has the burden of proof in all grievances resulting from dismissals, demotions, suspensions, written reprimands, reductions in force, and disputes concerning abandonment of position.
- (b) The employee has the burden of proof in all other grievances.
- (c) The party with the burden of proof must prove their case by substantial evidence.
- (3) (a) The hearing officer shall issue a written decision within 20 working days after the hearing is adjourned.
- (b) If the hearing officer does not issue a decision within 20 working days, the agency that is a party to the grievance is not liable for any claimed back wages or benefits after the date the decision is due.
- (4) The hearing officer may:
- (a) not award attorneys' fees or costs to either party;
 - (b) close a hearing by complying with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings Act;
 - (c) seal the file and the evidence produced at the hearing if the evidence raises questions about an employee's character, professional competence, or physical or mental health;
 - (d) grant continuances according to board rule; and
 - (e) decide questions or disputes concerning standing in accordance with Section 67-19a-301.

History: C. 1953, 67-19a-406, enacted by L. 1989, ch. 191, § 19; 1991, ch. 101, § 7.

Amendment Notes. — The 1991 amendment, effective April 29, 1991, inserted the subdivision designation "(a)" in Subsection (4); designated former Subsections (5) and (6) as present Subsections (4)(b) and (4)(c); added

Subsections (4)(d) and (4)(e); and made stylistic changes and appropriate changes in phraseology.

Effective Dates. — Laws 1989, ch. 191 became effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

NOTES TO DECISIONS

Cited in *Hatton-Ward v. Salt Lake City Corp.*, 828 P.2d 1071 (Utah Ct. App. 1992).

67-19a-407. Appeal to Career Service Review Board.

- (1) (a) The employee or the agency may appeal the hearing officer's decision on a grievance to the board if:
 - (i) the appealing party files a notice of appeal with the administrator within ten working days after the receipt of the decision or the expiration of the period for decision, whichever is first; and
 - (ii) the appealing party meets the requirements for appeal established in Subsection (2).
- (b) The appealing party shall submit a copy of the official transcript of the hearing to the administrator.
- (2) The employee or the agency may appeal the hearing officer's decision on a grievance to the board only if the appealing party alleges that:
 - (a) the hearing officer did not issue a decision within 20 working days after the hearing adjourned;
 - (b) the appealing party is dissatisfied with the decision;
 - (c) the appealing party believes that the decision was based upon an incorrect or arbitrary interpretation of the facts; or
 - (d) the appealing party believes that the hearing officer made an erroneous conclusion of law.

History: C. 1953, 67-19a-407, enacted by L. 1989, ch. 191, § 20.
Effective Dates. — Laws 1989, ch. 191 be-

came effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.

67-19a-408. Career Service Review Board hearing — Evidentiary and procedural rules.

- (1) The board shall:
 - (a) hold a hearing to review the hearing officer's decision not later than 30 days after it receives the official transcript and the briefs;
 - (b) review the decision of the hearing officer by considering the official record of that hearing and the briefs of the parties; and
 - (c) issue its written decision addressing the hearing officer's decision within 40 working days after the record for its proceeding is closed.
- (2) In addition to whatever other remedy the board grants, it may order that the employee be placed on the reappointment roster provided for by Section 67-19-17 for assignment to another agency.
- (3) If the board does not issue its written decision within 40 working days after closing the record, the agency that is a party to the grievance is not liable for any claimed back wages or benefits after the date the decision is due.
- (4) The board may not award attorneys' fees or costs to either party.
- (5) The board may close a hearing by complying with the procedures and requirements of Title 52, Chapter 4, the Open and Public Meetings Act.
- (6) The board may seal the file and the evidence produced at the hearing if the evidence raises questions about an employee's character, professional competence, or physical or mental health.

History: C. 1953, 67-19a-408, enacted by L. 1989, ch. 191, § 21. came effective on April 24, 1989, pursuant to Utah Const., Art. VI, Sec. 25.
Effective Dates. — Laws 1989, ch. 191 be-

CHAPTER 19b

SUGGESTION AWARDS PROGRAM

(Repealed by Laws 1993, ch. 174, § 2.)

67-19b-101 to 67-19b-303. Repealed.

Repeals. — Laws 1993, ch. 174, § 2 repeals §§ 67-19b-101 through 67-19b-303, as enacted by Laws 1990, ch. 243, §§ 1 through 10, establishing the Utah Suggestion Awards Program, effective May 3, 1993. For present comparable provisions, see § 67-19c-101.

CHAPTER 19c

EMPLOYEE RECOGNITION

Section
67-19c-101. Department award program.

67-19c-101. Department award program.

(1) As used in this section:

(a) "Department" means the Department of Administrative Services, the Department of Agriculture, the Department of Alcoholic Beverage Control, the Department of Commerce, the Department of Community and Economic Development, the Department of Corrections, the Department of Employment Security, the Department of Environmental Quality, the Department of Financial Institutions, the Department of Health, the Department of Human Resource Management, the Department of Human Services, the Industrial Commission, the Insurance Department, the National Guard, the Department of Natural Resources, the Department of Public Safety, the Public Service Commission, the State Board of Education, the State Board of Regents, the State Tax Commission, and the Department of Transportation.

(b) "Department head" means the individual or body of individuals in whom the ultimate legal authority of the department is vested by law.

(2) There is created a department awards program to award an outstanding employee in each department of state government.

(3) (a) By April 1 of each year, each department head shall solicit nominations for outstanding employee of the year for his department from the employees in his department.

(b) By July 1 of each year, the department head shall:

(i) select a person from the department to receive the outstanding employee of the year award using the criteria established in Subsection (c); and

(ii) announce the recipient of the award to his employees.

- (c) Department heads shall make the award to a person who demonstrates:
- (i) extraordinary competence in performing his function;
 - (ii) creativity in identifying problems and devising workable, cost-effective solutions to them;
 - (iii) excellent relationships with the public and other employees;
 - (iv) a commitment to serving the public as the client; and
 - (v) a commitment to economy and efficiency in government.
- (4) (a) The Department of Human Resource Management shall divide any appropriation for outstanding department employee awards that it receives from the Legislature equally among the departments.
- (b) If the department receives monies from the Department of Human Resource Management or if the department budget allows, the department head shall provide the employee with a bonus, a plaque, or some other suitable acknowledgement of the award.
- (5) (a) The department head may name the award after an exemplary present or former employee of the department.
- (b) A department head may not name the award for himself or for any relative as defined in Section 52-3-1.
- (c) Any awards or award programs existing in any department as of May 3, 1993, shall be modified to conform to the requirements of this section.

History: C. 1953, 67-19c-101, enacted by L. 1993, ch. 174, § 1.

came effective on May 3, 1993, pursuant to Utah Const., Art. VI, Sec. 25.

Effective Dates. — Laws 1993, ch. 174 be-

CHAPTER 20

VOLUNTEER GOVERNMENT WORKERS ACT

Section		Section	
67-20-1.	Short title.	67-20-4.	Approval of volunteer.
67-20-2.	Definitions.	67-20-5.	Repealed.
67-20-3.	Purposes for which volunteer considered a government employee.	67-20-6.	Workers' compensation benefits.
		67-20-7.	Workers' compensation benefits for volunteer firefighters.

67-20-1. Short title.

This chapter is known as the "Volunteer Government Workers Act."

History: L. 1983, ch. 174, § 1; 1986, ch. 136, § 1.