

# 2018

## Human Resource Management Rules



◦ STATE OF UTAH ◦



Utah Department of  
**HUMAN  
RESOURCE**  
Management

Effective July 1, 2018

# **2018 Department of Human Resource Management Rules**

**State of Utah Department of Human Resource Management**

**Effective July 1, 2018**

**Pursuant to 67-19-6(1) Utah Code Annotated, as Amended**

**For the most current and accurate version of these rules, please visit the Utah Department of Administrative Services, Division of Administrative Rules site at:**

<http://www.rules.utah.gov/publicat/code/r477/r477.htm>



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## **R477-1. DEFINITIONS.**

### ***R477-1-1. Definitions.***

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: An adjustment to a salary range approved by DHRM that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head.

- (9) Agency: An entity of state government that is:
- (a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;
  - (b) authorized to employ personnel; and
  - (c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) Agency Head: The executive director or commissioner of each agency or a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human

Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) Break in Service: A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) Career Mobility: A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(21) Career Service Exempt Employee: An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(24) Category of Work: A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force.

Category of work may be further reduced as follows:

- (a) a unit smaller than the agency upon providing justification and rationale for approval, including:
  - (i) unit number;
  - (ii) cost centers;
  - (iii) geographic locations;
  - (iv) agency programs.
- (b) positions identified by a set of essential functions, including:
  - (i) position analysis data;
  - (ii) certificates;
  - (iii) licenses;
  - (iv) special qualifications;
  - (v) degrees that are required or directly related to the position.

(25) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) Detailed Position Record Management Report: A document that lists an

agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) DHRM: The Department of Human Resource Management.

(35) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

(36) Direct Supervisor: An employee's primary supervisor who normally directs day to day job activity such as assigning work, approving time records, and considering leave requests.

(37) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(38) Disciplinary Action: Action taken by management under Rule R477-11.

(39) Dismissal: A separation from state employment for cause under Section R477-11-2.

(40) Dual State Employment: Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(41) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(42) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(43) Employment Eligibility Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(44) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(45) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(46) Employee's Family Member: An employee's relative or household member as defined in Section 52-3-1 including, step-siblings, step-parents, and, step-children.

(47) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(48) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(49) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(50) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(51) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(52) GOMB: Governor's Office of Management and Budget.

(53) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

(54) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

(55) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(56) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle

- under 49 CFR 383 (January 18, 2006);
- (ii) directly related to law enforcement;
- (iii) involving direct access or having control over direct access to controlled substances;
- (iv) directly impacting the safety or welfare of the general public;
- (v) requiring an employee to carry or have access to firearms; or
- (b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:
  - (i) financial assets, liabilities, and account information;
  - (ii) social security numbers;
  - (iii) wage information;
  - (iv) medical history;
  - (v) public assistance benefits; or
  - (vi) driver license

(57) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(58) HRE: Human Resource Enterprise; the state human resource management information system.

(59) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(60) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(61) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(62) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(63) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(64) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(65) Job Family: A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.

(66) Job Requirements: Skill requirements defined at the job level.

(67) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(68) Leave Benefit: A benefit provided to an employee that includes: Annual leave, sick leave, converted sick leave, and holiday leave. These benefits are not provided to non-benefited employees.

(69) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(70) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(71) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(72) Market Comparability Adjustment: An adjustment to a salary range approved by the legislature that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an agency.

(73) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(74) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(75) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(76) Nonfeasance: Failure to perform either an official duty or legal requirement.

(77) Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

(78) Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined, measurement procedures are in place, and specific incentives are provided when goals and targets are met.

(79) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(80) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(81) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(82) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(83) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(84) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq. for all human resource policies and practices not covered by the state employee's grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(85) Phased Retirement: Employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date. During phased retirement retiree will receive a reduced retirement allowance.

(86) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(87) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(88) Position Identification Number: A unique number assigned to a position for FTE management.

(89) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

- (a) where a fatality occurs;
- (b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or
- (c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(90) Preemployment Drug Test: A drug test conducted on:

- (a) final applicants who are not current employees;
- (b) final candidates for a highly sensitive position;
- (c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or
- (d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(91) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(92) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(93) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(94) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(95) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(96) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(97) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(98) Reappointment Register: A register of individuals who have prior to March 2, 2009:

- (a) held career service status and been separated in a reduction in force;
- (b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or
- (c) by Career Service Review Board decision been placed on the reappointment register.

(99) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(100) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(101) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(102) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(103) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(104) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(105) Salary Range: Established minimum and maximum rates assigned to a job.

(106) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(107) Separation: An employee's voluntary or involuntary departure from state employment.

(108) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

(109) Structure Adjustment: An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources.

(110) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

(111) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

(112) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(113) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(114) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

(115) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who

served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(116) Veteran Employment Opportunity Program (VEOP): A program designed to appoint a qualified veteran through an on the job examination period.

(117) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(118) Wage: The fixed hourly rate paid to an employee.

(119) Work Period: The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

**KEY: personnel management, rules and procedures, definitions**

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**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-15; 67-19-18**

## **R477-2. ADMINISTRATION.**

### ***R477-2-1. Rules Applicability.***

These rules apply to the executive branch of Utah State Government and its career service and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

- (1) members of the Legislature and legislative employees;
- (2) members of the judiciary and judicial employees;
- (3) officers, faculty, and other employees of state institutions of higher education;
- (4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Board of Education;
- (5) employees of the Office of the Attorney General;
- (6) elected members of the executive branch and their Schedule A employees;
- (7) employees of independent entities, quasi-governmental agencies and special service districts;
- (8) employees in any position that is determined by statute to be exempt from these rules.

### ***R477-2-2. Compliance Responsibility.***

Agencies shall comply with these rules.

- (1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed when:
  - (a) applying the rule prevents the achievement of legitimate government objectives; or
  - (b) applying the rule infringes on the legal rights of an employee.
- (2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

### ***R477-2-3. Fair Employment Practice and Discrimination.***

All state personnel actions shall provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions may not be based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, except as provided under Subsection 67-19-15(2)(b)(ii).

(3) An employee who alleges unlawful discrimination may:

(a) submit a complaint to the agency head; and

(b) file a charge with the Utah Labor Commission Antidiscrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

### ***R477-2-4. Control of Personal Service Expenditures.***

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Management and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Detailed Position Record Management Report.

### ***R477-2-5. Records.***

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA) and applicable federal laws. DHRM shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:

(a) Social Security number, date of birth, home address, and private phone number.

(i) This information is classified as private under GRAMA.

(ii) DHRM may grant agency access to this information for state business purposes. Agencies shall maintain the privacy of this information.

(b) performance ratings;

(c) records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.

(2) DHRM shall maintain, on behalf of agencies, personnel files.

(3) DHRM shall maintain, on behalf of agencies, a confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G-2.

(4) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.

(a) An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy personnel file, through the following process:

(i) The employee shall request in writing to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed Title and the authority for the action.

(6) Upon employee separation, DHRM shall retain electronic records for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.

(7) When an employee transfers from one agency to another, the former agency

shall transfer the employee's personnel file, medical and I-9 records to the new agency.

(8) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

(9) Records related to conduct for which an employee may be disciplined under R477-11-1(1) are classified as private records under Subsection 62G-2-302(2)(a).

(i) If disciplinary action under R477-11-1(4) has been sustained and completed and all time for appeal has been exhausted, the documents issued in the disciplinary process are classified as public records under Subsection 63G-2-301(3)(o).

#### ***R477-2-6. Release of Information in a Reference Inquiry.***

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

#### ***R477-2-7. Employment Eligibility Verification (Immigration Reform and Control Act -- 1986).***

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.

#### ***R477-2-8. Public Officers Supervising a Relative or Household Member.***

A public officer may not appoint, directly supervise, or make salary, performance, disciplinary, or other employment matter decisions regarding a family member, including a household member.

(1) A public officer supervising a family member, including a household member, shall make a complete written disclosure of any such relationship to the agency head and be recused from any and all employment matter discussions or decisions relating to the

family member, including a household member.

***R477-2-9. Employee Liability.***

An employee who becomes aware of any occurrence which may give rise to a lawsuit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, under Subsection 63G-7-902(2).

***R477-2-10. Alternative Dispute Resolution.***

Agency management may establish a voluntary alternative dispute resolution program under Chapter 63G, Chapter 5.

**KEY: administrative responsibility, confidentiality of information, fair employment practices, public information**

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## **R477-3. CLASSIFICATION.**

### ***R477-3-1. Job Classification Applicability.***

(1) The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions except for the following positions, which include:

- (a) employees already exempted from DHRM rules in R477-2-1;
- (b) all employees in:
  - (i) the office and residence of the governor;
  - (ii) the Utah Science Technology and Research Initiative (USTAR);
  - (iii) the Public Lands Policy Coordinating Council;
  - (iv) the Office of the Utah State Auditor; and
  - (v) the Utah State Treasurer's Office;
- (c) employees of the State Board of Education, who are licensed by the State Board of Education;
- (d) employees in any position that is determined by statute to be exempt from classified service;
- (e) employees whose agency has authority to make rules regarding performance, compensation, and bonuses for its employees;
- (f) other persons appointed by the governor under statute;
- (g) temporary employees who work part time indefinite or work on a time limited basis;
- (h) patients and inmates designated as schedule AU;
- (i) members of state and local boards and councils and other employees designated as schedule AQ; and
- (j) educational interpreters and educators as defined by Section 53A-25b-102 who are employed by the Utah Schools for the Deaf and the Blind.

(2) The Executive Director, DHRM, may designate specific job titles, job and position identification numbers, schedule codes, and other administrative information for all employees exempted in R477-2-1 and R477-3-1 for identification and reporting purposes only. These employees are not to be considered classified employees.

(3) Employees in schedule codes AD and AR are not considered classified employees but are subject to the Job Description and Assignment of Duties sections of this rule.

### ***R477-3-2. Job Description.***

DHRM shall maintain job descriptions, as appropriate.

- (1) Job descriptions shall contain:
- (a) job title;
  - (b) distinguishing characteristics;

- (c) a description of tasks commonly associated with most positions in the job;
- (d) statements of required knowledge, skills, and other requirements;
- (e) FLSA status and other administrative information as approved by DHRM.

### ***R477-3-3. Assignment of Duties.***

(1) Management may assign, modify, or remove any position task or responsibility in order to accomplish reorganization, improve business practices or processes, or for any other reason deemed appropriate by agency management.

(2) Significant changes in the assigned duties may require a position classification review as described in R477-3-4.

### ***R477-3-4. Position Classification Review.***

(1) A formal classification review may be conducted under the following circumstances:

- (a) as part of a classification study;
- (b) at the request of agency management, with the approval of the Executive Director, DHRM or designee; or
- (c) as part of a classification grievance review

(2) DHRM shall determine if there have been sufficient significant changes in the duties of a position to warrant a formal review.

(3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted until an appropriate settling period has occurred.

(4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

### ***R477-3-5. Position Classification Grievances.***

(1) Under 67-19-31, an agency or a career service employee may grieve formal classification decisions regarding the classification of a position.

(a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.

(b) An employee may only grieve a formal classification decision regarding the employee's own position.

(2) Formal service for classification grievance communication to employees shall

be made by:

- (a) certified mail to the employee's address of record, and
- (b) email to the employee's state email account.

***R477-3-6. Policy Exceptions.***

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

**KEY: administrative procedures, grievances, job descriptions, position classifications**

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**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12**

## **R477-4. FILLING POSITIONS.**

### ***R477-4-1. Authorized Recruitment System.***

Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

### ***R477-4-2. Career Service Exempt Positions.***

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

- (4) Appointments made on a temporary basis shall be career service exempt and:
- (a) be Schedule IN, in which the employee is hired to work part time indefinitely and shall work less than 1560 hours per fiscal year; or
  - (b) be Schedule TL, in which the employee is hired to work on a time limited basis;
  - (c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.
  - (d) if the required work hours of the position meet or exceed 1560 hours per fiscal year for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Career service exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under Subsection R477-4-8.

(6) Agency management shall ensure that all new hire appointees in Schedules AB, AC, AD, AR and AS submit disclosure statements pursuant to Utah Code Section 67-16-7.

### ***R477-4-3. Career Service Positions.***

- (1) Selection of a career service employee shall be governed by the following:
- (a) DHRM business practices;

- (b) career service principles as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;
- (c) equal employment opportunity principles;
- (d) Section 52-3-1, employment of relatives;
- (e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

***R477-4-4. Recruitment and Selection for Career Service Positions.***

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

- (a) reemployment of a veteran eligible under USERRA;
- (b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;
- (c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;
- (d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;
- (e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;
- (f) reclassification; or
- (g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitments shall comply with federal and state laws and DHRM rules and procedures.

- (a) All recruitment announcements shall include the following:
  - (i) Information about the DHRM approved recruitment and selection system; and
  - (ii) opening and closing dates.
- (b) Recruitments for career service positions shall be posted for a minimum of three business days, excluding state holidays.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

- (a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.
- (b) from a hiring list of qualified applicants for the position, or from another

process pre-approved by the Executive Director, DHRM.

#### ***R477-4-5. Transfer and Reassignment.***

- (1) Positions may be filled through a transfer or reassignment.
  - (a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.
  - (b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.
  - (c) A transfer may not include an increase but may include a decrease in actual wage.
  - (d) A reassignment may not include a decrease in actual wage except as provided in federal or state law.
  - (e) An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and may not be eligible for a longevity increase. Employees shall be eligible for a longevity increase only after they have been above the salary range maximum for 12 months and all other longevity criteria are met.
  - (f) An employee with a wage that is above the salary range maximum because of a longevity increase, who is transferred or reassigned and remains at or above the salary range maximum, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous 12 months.

- (2) A reassignment or transfer may include assignment to:
  - (a) a different job or position with an equal or lesser salary range maximum;
  - (b) a different work location; or
  - (c) a different organizational unit.

#### ***R477-4-6. Rehire.***

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

(2) Employees rehired under the Phased Retirement Program pursuant to Utah Code Section 49-11-13 shall be:

- (a) Classified as time-limited (Schedule TL) for the duration of a phased retirement employment period; and
- (b) Placed at or below the employee's wage at the time of retirement.

Employees cannot be placed below the minimum of the established salary range of the job.

***R477-4-7. Examinations.***

- (1) Examinations shall be designed to measure and predict applicant job performance.
- (2) Examinations shall be based on documented job related criteria and include the following:
  - (a) an initial, impartial screening of the individual's qualifications;
  - (b) an impartial evaluation and results; and
  - (c) reasonable accommodation(s) for qualified individuals with disabilities.
- (3) Examinations and ratings shall remain confidential and secure.

***R477-4-8. Hiring Lists.***

- (1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.
  - (a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.
  - (b) Hiring lists shall be constructed using a DHRM approved recruitment and selection system.
  - (c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.
  - (d) All applicants included on a hiring list shall be examined with the same examination or examinations.
- (2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.
- (3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants on a hiring list whose final score or rating is equal to or greater than that of the applicant hired.
- (4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

***R477-4-9. Job Sharing.***

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program,

individual employees may request approval for job sharing status through agency management.

***R477-4-10. Internships.***

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

***R477-4-11. Volunteer Experience Credit.***

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

- (a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.
- (b) Court ordered community service experience may not be considered.

***R477-4-12. Reorganization.***

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.

***R477-4-13. Career Mobility Programs.***

(1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

- (a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.
- (b) Career mobility assignments shall only become permanent if:
  - (i) the position was originally filled through a competitive recruitment process; or
  - (ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, career service status subject to R477-5-2, and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in R477-6-6(10).

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

#### ***R477-4-14. Assimilation.***

(1) An employee assimilated by the state from another government career service system to fill a Schedule B position shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process prescribed in DHRM Rules.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

(b) An assimilated employee shall accrue leave at the same rate as other career service employees with the same seniority.

#### ***R477-4-15. Hiring of Administrative Law Judges.***

(1) Utah Code Section 67-19e-104.5 applies to hiring Administrative Law Judges. Utah Code Section 67-19e-104.5 does not apply to:

- (a) An administrative law judge who is appointed by the governor; or
- (b) Procurement of administrative law judge service under Utah Code Section 63G-6a-116.

(2) The hiring panel shall consist of:

- (a) The head or designee of the hiring agency;
- (b) The Executive Director, DHRM or designee; and
- (c) The head of another agency, as appointed by the Executive Director, DHRM. The appointed agency head may select a designee to serve on her

or his behalf.

(3) Only the agency heads described in subsection (2) may designate another individual to serve on the hiring panel on the agency head's behalf in consultation with the designee of the Executive Director, DHRM.

(4) In addition to the panel members established in subsection (2), the hiring agency may select one or more additional subject matter experts to serve on the panel, in consultation with DHRM.

***R477-4-16. Policy Exceptions.***

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

**KEY: employment, fair employment practices, hiring practices**

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## **R477-5. Employee Status and Probation.**

### ***R477-5-1. Career Service Status.***

(1) Only an employee who is hired through a pre-approved process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period prior to receiving career service status.

(3) Management may convert a career service exempt employee to career service status, in a position with an equal or lower salary range to the previous career service position held, when:

(a) the employee previously held career service status with no break in service between the last career service position held and career service exempt status;

(b) the employee was hired from a hiring list to a career service exempt position, in the same job title to which they would convert, as prescribed by Subsection R477-4-8; or

(c) the employee was hired through the Alternative State Application Program (ASAP) or Veterans Employment Opportunity Program (VEOP) and successfully completed a six month on the job examination period.

### ***R477-5-2. Probationary Period.***

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive an opportunity to demonstrate competence in a career service position. A performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career service position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers compensation leave,

temporary transitional assignment, or donated leave from an approved leave bank.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period including when changing agencies unless there is a break in service.

(3) An employee in a career service position who works at least 50% of the regular work schedule or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) An employee serving probation in a career service position may be transferred, reassigned or promoted to another career service position including a career mobility assignment. Each new appointment to a career service position shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. The probationary period shall be the full probationary period defined in the job description of the new position.

### ***R477-5-3. Policy Exceptions.***

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

**KEY: employment, personnel management, state employees**

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## **R477-6. Compensation.**

### ***R477-6-1. Pay Plans.***

(1) With approval of the Governor, the Executive Director, DHRM, shall develop salary ranges for pay plans for each job.

- (a) Each job description shall include a salary range.
- (b) Agency approved wage increases within salary ranges shall be:
  - (i) at least 1/2%, or
  - (ii) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.
- (c) Agency approved wage decreases within salary ranges shall be:
  - (i) at least 1/2%, or
  - (ii) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.
- (d) Salary increases and decreases shall not place an employee below the salary range minimum or above the salary range maximum unless the criteria for longevity increases has been met.

### ***R477-6-2. Allocation to the Pay Plans for Classified Employees.***

- (1) Each job in classified service shall be:
  - (a) assigned to a salary range and job family.
  - (b) surveyed in the market in accordance with the benchmark job(s).
  - (c) included in a market comparability adjustment recommendation if warranted.
  
- (2) Salary ranges can be adjusted through:
  - (a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary data in the market;
  - (b) a structure adjustment when all agencies involved agree to resolve budgetary impacts prior to implementation; or
  - (c) a market comparability adjustment to a job's salary range based upon salary data and other relevant information for similar jobs in the market through an annual compensation benchmark survey or other sources.
    - (i) Market comparability adjustment recommendations shall be included in the annual compensation plan and are submitted to the Governor no later than October 31 of each year.
    - (ii) Funding for market comparability adjustments shall be legislatively approved if the adjustment would cause a budgetary impact.

(iii) If market comparability adjustments are funded and approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) Salary ranges may not be adjusted more frequently than on an annual basis without an exception by the Executive Director, DHRM.

***R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.***

(1) Each job in an AD/AR pay plan shall be assigned to a salary range that is no more than 40% above and below the salary range midpoint.

(2) Salary ranges may be adjusted through:

(a) An administrative adjustment determined appropriate by DHRM for administrative purposes.

(b) A structure adjustment.

(i) DHRM will consult with the Governor's Office of Management and Budget (GOMB) prior to making structure adjustments that require legislative funding. Adjustments that impact deputy directors or issues addressed in state code must be approved by GOMB.

(ii) Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact or all agencies involved agree to resolve budgetary impacts prior to implementation.

(iii) Structure adjustment recommendations that require funding may be included in the annual compensation plan.

(iv) Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.

(v) Structure adjustments may not be approved for cross agency jobs unless all agencies involved agree to resolve budgetary impacts prior to implementation.

***R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, AQ and all employees of the State Board of Education.***

(1) Each job exempted from classified service that are identified in positions under R477-3-1(1) shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

### ***R477-6-5. Appointments.***

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position. Reemployment shall include the same seniority status, wage, including any cost of living adjustments, general increase, reclassification of the service member preservice position, or market comparability adjustments that would have affected the service member's preservice position during the time spent by the affected service member in the uniformed services. Performance related salary increases are not included.

### ***R477-6-6. Salary.***

(1) Promotions.

- (a) An employee who is not in designated schedule IN or TL and is promoted to a job with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage increase of at least 5%.
- (b) An employee who is promoted may not be placed higher than the maximum or lower than the minimum in the new salary range except as provided in subsection R477-6-6(3), governing longevity salary increases.
- (c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(2) Reclassifications.

- (a) At agency management's discretion, an employee reclassified to a job with a salary range maximum exceeding the employee's current salary range maximum may receive a wage increase of at least 1/2% or up to the salary range maximum. An employee shall be placed within the new salary range. An employee's eligibility for a longevity salary increase shall be consistent with Subsection R477-6-6(3).
- (b) An employee whose job is reclassified to a job with a lower salary range shall retain the current wage.

(3) Longevity Salary Increase.

- (a) An employee shall receive an initial longevity salary increase of 2.75% when:
  - (i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous.
  - (ii) the employee has been at or above the maximum of the current salary range for at least one year; and
  - (iii) received a passing performance appraisal rating within the 12-

month period preceding the longevity increase.

(b) An employee who has received the initial longevity increase is then eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(c) An employee with a wage that is above the maximum salary range because of a longevity salary increase:

(i) shall retain the current actual wage if receiving an administrative adjustment or is reassigned or reclassified to a job with a lower salary range maximum.

(ii) who is reclassified to a job with a higher salary range maximum shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. At the discretion of agency management, the salary increase shall be at least 1/2% or up to the salary range maximum of the new job.

(iii) who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.

(iv) who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains at or above the salary range maximum, shall receive their next longevity salary increase three years from the date they received the most recent increase subject to (3)(a).

(d) An employee with a wage that is not at or above the salary range maximum who is reclassified, transferred, reassigned, or receives an administrative adjustment and has a current actual wage that is above the salary range maximum of the new job is considered to be above maximum and may be eligible for a longevity salary increase after meeting the requirements of (3)(a).

(e) An employee in Schedules AB, IN, or TL is not eligible for the longevity salary increase program.

(4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes may not receive an adjustment in the current actual wage unless the employee is below the minimum of the new salary range.

(b) An employee whose position is changed by administrative adjustment to a job with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum.

(5) Reassignment.

An employee's current actual wage may not be decreased except as provided in federal or state law.

(6) Transfer.

- (a) Management may decrease the current actual wage of an employee who transfers to another job with the same or lower salary range maximum.
- (b) An employee who applies for a job with a lower salary range maximum shall be placed within the salary range of the new job.

(7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum as determined by the agency head or designee. The agency head or designee may move an employee to a job with a lower salary range concurrent with the reduction in the current actual wage.

(8) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

- (a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum.
- (b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.
- (c) Justifications for administrative salary increases shall be:
  - (i) in writing;
  - (ii) approved by the agency head or designee;
  - (iii) supported by unique situations or considerations in the agency.
- (d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.
- (e) Administrative salary increases may be given during the probationary period. Wage increases shall be at least 1/2% or up to the salary range maximum. These increases alone do not constitute successful completion of the probationary period or the granting of career service status.
- (f) An employee at or above the salary range maximum may not be granted administrative salary increases.
- (g) Increasing an employee's wage as part of a transfer or reassignment action must be justified as an administrative salary increase in a separate action.

(9) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

- (a) The final wage may not be less than the salary range minimum.

- (b) Wage decreases shall be at least 1/2% or down to the salary range minimum.
- (c) Justification for administrative salary decreases shall be:
  - (i) in writing;
  - (ii) approved by the agency head; and
  - (iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.
- (d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(10) Career Mobility.

If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage and the same or higher salary range that the employee would have received without the career mobility assignment.

(11) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage increases or decreases.

***R477-6-7. Incentive Awards.***

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

- (a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.
- (b) Individual awards may not exceed \$4,000 per pay period and \$8,000 in a fiscal year, except when approved by DHRM and the governor.
  - (i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.
  - (ii) A single payment of up to \$8,000 may be granted as a retirement incentive.
- (c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

- (a) Cash Incentive Awards
  - (i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or

accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

(A) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of \$50 per occurrence and \$200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based bonuses shall be approved by the DHRM Executive Director or designee.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

(A) budget;

(B) recruitment difficulties;

- (C) a mission critical need to attract or retain unique or hard to find skills in the market; or
  - (D) other market based reasons.
- (b) Retention Bonus - An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.
  - (c) Recruitment or Signing Bonus - An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.
  - (d) Scarce Skills Bonus - An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.
  - (e) Relocation Bonus - An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.
  - (f) Referral Bonus - An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.
  - (g) Geographic Job Market Bonus - An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

***R477-6-8. Employee Benefits.***

- (1) An employee shall be eligible for benefits when:
  - (a) in a position designated by the agency as eligible for benefits; and
  - (b) in a position which normally requires working a minimum of 40 hours per pay period.
  
- (2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans or other tax-advantaged arrangement offered by PEHP and authorized under the Internal Revenue Code for the benefit of the employee.
  - (a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.
  
- (3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.
  
- (4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.
  - (a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.
  
- (5) An employee eligible for retirement benefits shall be electronically enrolled

using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

(7) All insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or

(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

(8) An employee who is not eligible for benefits under R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

***R477-6-9. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.***

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum. An employee at or above the current salary range maximum shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-10.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if the employee had previously earned career service. However, the employee may not be eligible for a severance package, increased annual leave accrual, or exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the exempt life insurance coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

***R477-6-10. State Paid Life Insurance.***

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Hourly wage \$24.03 or less shall receive \$125,000 of term life insurance;

(ii) Hourly wage between \$24.04 and \$28.84 shall receive \$150,000

of term life insurance;

(iii) Hourly wage \$28.85 or higher shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC, AE, or AS may be provided these benefits at the discretion of the appointing authority.

***R477-6-11. Severance Benefit.***

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AE, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of separation a severance benefit equal to:

(a) salary at the rate of:

(i) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch for schedule AC, AD, AE, AR, AS or AT employees; or

(ii) two weeks of salary, up to a maximum of 24 weeks, for each year of consecutive exempt service in the executive branch for schedule AB employees; and

(b) if eligible for COBRA, the level of medical insurance coverage only at the time of severance shall be provided at the rate of two pay periods for each year of consecutive exempt service, up to a maximum of 13 pay periods.

***R477-6-12. Human Resource Transactions.***

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

**KEY: wages, employee benefit plans, insurance, personnel management**

**Date of Enactment or Last Substantive Amendment: July 1, 2018**

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## **R477-7. LEAVE.**

### ***R477-7-1. Conditions of Leave.***

- (1) An employee shall be eligible for a leave benefit when:
  - (a) in a position designated by the agency as eligible for benefits; and
  - (b) in a position which normally requires working a minimum of 40 hours per pay period.
  
- (2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.
  
- (3) An employee shall use leave in no less than quarter hour increments.
  
- (4) An employee may not use annual, sick, or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.
  
- (5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.
  
- (6) Management may not require employees to maintain a minimum balance of accrued leave.
  
- (7) An employee may not use any type of leave except military and jury leave to accrue excess hours.
  
- (8) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.
  
- (9) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.
  - (a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.
  - (b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.
  - (c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:
    - (i) leave without pay;
    - (ii) administrative leave specifically approved by management to be used after the last day worked;
    - (iii) leave granted under the FMLA; or
    - (iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.

(10) After four months cumulative leave in a 24 month period, the employee may be separated from employment regardless of paid leave status unless prohibited by state or federal law. Decisions to separate the employee shall be made by the agency head in consultation with DHRM.

(11) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

***R477-7-2. Holiday Leave.***

(1) The following dates are paid holidays for eligible employees:

- (a) New Year's Day -- January 1
- (b) Dr. Martin Luther King Jr. Day -- third Monday of January
- (c) Washington and Lincoln Day -- third Monday of February
- (d) Memorial Day -- last Monday of May
- (e) Independence Day -- July 4
- (f) Pioneer Day -- July 24
- (g) Labor Day -- first Monday of September
- (h) Columbus Day -- second Monday of October
- (i) Veterans' Day -- November 11
- (j) Thanksgiving Day -- fourth Thursday of November
- (k) Christmas Day -- December 25
- (l) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

- (a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.
- (b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

### ***R477-7-3. Annual Leave.***

(1) An eligible employee shall accrue leave based on the following years of benefits eligible state service:

- (a) less than 5 years -- four hours per pay period;
- (b) at least 5 and less than 10 years -- five hours per pay period;
- (c) at least 10 and less than 20 years -- six hours per pay period;
- (d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee, effective from the day the employee is appointed through the duration of the appointment under the following conditions:

- (a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions; or
- (b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

### ***R477-7-4. Sick Leave.***

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management may grant sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or disability of the employee, a spouse, children; or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be supported by administratively acceptable evidence.

(7) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce administratively acceptable evidence regardless of the number of sick hours used.

(8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee accepting a benefit eligible position within one year of forfeiting unused sick leave for accepting a non-benefit eligible position shall have their sick leave reinstated as Program III.

(d) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

#### ***R477-7-5. Converted Sick Leave.***

(1) An employee may not accrue converted sick leave hours on or after January 3, 2014. Converted sick leave hours accrued before January 3, 2014 can be used for retirement per R477-7-5(6) or cashed out if the employee leaves employment.

(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

(2) An employee may use converted sick leave as annual leave or as regular sick leave.

(3) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(4) Employees retiring from LTD who have converted sick leave balances still

intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

(5) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employee's PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

(6) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

### ***R477-7-6. Sick Leave Retirement Benefit.***

Upon retirement from active employment, including when a retirement eligible employee passes away, an employee or surviving spouse shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3) (a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006, but before January 4, 2014, shall be Program II sick leave hours.

(c) Sick leave hours accrued on or after January 4, 2014, shall be Program III sick leave hours, which shall have no benefit upon retirement.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to

an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The

premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of additional medical coverage under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5)(b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A retired employee who is reemployed in a benefited position with the state shall have a benefit calculated on any Program II sick leave hours if:

(i) The employee chooses to suspend pension;

(ii) The employee was separated for one year or more;

(iii) The employee was reemployed before January 2, 2014; and

(iv) The employee must work for two years or more to receive this benefit.

(7) A retired employee who is reemployed in a benefited position with the state after January 3, 2014 shall accrue Program III sick leave, which shall have no benefit upon subsequent retirement.

**R477-7-7. Administrative Leave.**

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

- (a) administrative;
  - (i) governor approved holiday leave;
  - (ii) during management decisions that benefit the organization;
  - (iii) when no work is available due to unavoidable conditions or influences; or
  - (iv) other reasons consistent with agency policy.
- (b) protected;
  - (i) suspension with pay pending hearing results;
  - (ii) personnel decision making prior to discipline;
  - (iii) removal from adverse or hostile work environment situations;
  - (iv) fitness for duty or employee assistance; or
  - (v) other reasons consistent with agency policy.
- (c) reward in lieu of cash;
  - (i) the agency head or designee may grant paid administrative leave up to one day per occurrence;
  - (ii) administrative leave in excess of one day may be granted with written approval by the agency head.
  - (iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.
  - (iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.
- (d) employee education assistance.

(2) An employee shall be granted up to two hours of administrative leave to vote in an official election if the employee has fewer than three total hours off the job between the time the polls open and close, and the employee applies for the leave at least 24 hours in advance.

(a) Management may specify the hours when the employee may be absent.

(3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

(5) Administrative leave taken shall be documented in the employee's leave record.

***R477-7-8. Witness and Jury Leave.***

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

- (a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or
- (b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or
- (c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll staff for deposit with the State Treasurer.

(4) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

***R477-7-9. Bereavement Leave.***

An employee may receive a maximum of three work days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

- (a) spouse;
- (b) parents;
- (c) siblings;
- (d) children;
- (e) all levels of grandparents; or
- (f) all levels of grandchildren.

***R477-7-10. Military Leave.***

A benefited or non-benefited employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Utah Code Section 39-3-2. Military leave for part-time employees shall be based on a prorated basis that is no

more than the average hours worked in the last 12 months, or if employed less than 12 months, the average hours worked since date of hire.

(1) An employee may not claim salary for non-working days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(a) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave the employee would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual

leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

- (a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;
- (b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or
- (c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

***R477-7-11. Disaster Relief Volunteer Leave.***

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any 12-month period to participate in disaster relief services for a non-governmental disaster relief organization. To request this leave an employee shall be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

- (a) a copy of a written request for the employee's services from an official of the disaster relief organization;
- (b) the anticipated duration of the absence;
- (c) the type of service the employee is to provide; and
- (d) the nature and location of the disaster where the employee's services will be provided.

***R477-7-12. Organ Donor Leave.***

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

***R477-7-13. Leave of Absence Without Pay.***

(1) An employee shall apply in writing to agency management and be approved before taking a leave of absence without pay.

(2) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(3) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.

(4) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(5) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(6) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

#### ***R477-7-14. Furlough.***

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entirely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

#### ***R477-7-15. Family and Medical Leave.***

(1) An eligible employee is allowed up to 12 workweeks of family and medical

leave each calendar year for any of the following reasons:

- (a) birth of a child;
- (b) adoption of a child;
- (c) placement of a foster child;
- (d) a serious health condition of the employee; or
- (e) care of a spouse, child, or parent with a serious medical condition.
- (f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is allowed up to 26 workweeks of family and medical leave during a 12-month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

- (5) To be eligible for family and medical leave, the employee shall:
- (a) be employed by the state for at least 12 months;
  - (b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12-month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

- (a) thirty days in advance for foreseeable needs; or
- (b) as soon as practicable in emergencies.

(7) An employee with a serious health condition may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

- (a) An employee who chooses to use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period shall notify the agency.
- (b) If an employee fails to notify the agency under this Subsection, accrued leave will be used to pay the employee's payroll deductions in the following order:

- (i) Program III sick leave;
- (ii) (A) Compensatory time;  
(B) Excess leave; or  
(C) Annual leave;
- (iii) (A) Converted sick leave;  
(B) Program II sick leave; or  
(C) Program I sick leave.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

- (i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;
- (ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken after childbirth or placement of a healthy child for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Medical records created for purposes of FMLA and the Americans with Disabilities Act shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

#### ***R477-7-16. Workers Compensation Leave.***

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall

only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by a licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, the employee shall be eligible to receive a medical coverage stipend in their LTD check each month, beginning the day after the employee's last day worked pursuant to R477-7-17(2).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee may be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

***R477-7-17. Long Term Disability Leave.***

(1) Upon approval of an LTD claim:

(a) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(b) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(c) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(d) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(e) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(2) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work prior to termination under this section, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(4) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

### ***R477-7-18. Disabled Law Enforcement Officer Amendments.***

(1) A law enforcement officer or state correctional officer, as defined in 67-19-27, who is injured in the course of employment, as defined in 67-19-27, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits, either:

- (a) during the period the employee has a temporary disability; or
- (b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49 or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware.

- (a) These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply R477-7-16, workers compensation leave, and R477-7-17, long term disability leave rules first. They then must consider any benefit amounts received under (2). If the total of these benefits is less than 100% of the employee's monthly salary and benefits, the agency shall make arrangements through payroll to pay the employee the difference.

(4) DHRM shall work with the Division of Risk Management, Workers' Compensation, and the Public Employee's Health Program on a periodic and case-by-case basis to assure that eligible employees receive full benefits.

- (a) If at any time it is discovered that the employee is receiving less than 100% of their regular monthly salary and benefits, the agency shall make up the difference to the employee.

(5) If an employee discloses other time-loss benefits received under (2) after these additional payments by the agency have been made, the employee shall reimburse the agency for salary and benefits paid in overage.

### ***R477-7-19. Leave Bank.***

With the approval of the agency head, agencies may establish a leave bank program.

- (1) A leave bank program shall include a policy with the following:
  - (a) Access to a leave bank is not an employee right and shall be authorized at management discretion.
  - (b) Any application for a leave bank program shall be supported by administratively acceptable medical documentation.
  - (c) An approval process that prohibits leave donors, supervisors, managers or management teams from reviewing any employee's medical certifications

or physician statements.

(d) An employee may not receive donated leave until all individually accrued leave is exhausted.

(e) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(f) Employees using donated leave may not work a second job without written consent of the agency head.

(g) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(h) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) All medical records created for the purpose of a leave bank, shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

***R477-7-20. Policy Exceptions.***

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

**KEY: holidays, leave benefits, vacations**

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## **R477-8. Working Conditions.**

### ***R477-8-1. Work Week.***

(1) The state's standard work week begins Saturday at 12:00am and ends the following Friday at 11:59pm. FLSA nonexempt employees may not deviate from this work week.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

### ***R477-8-2. Telecommuting.***

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

- (a) establish a written policy governing telecommuting;
- (b) enter into a written contract with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;
- (c) not allow participating employees to violate overtime rules;
- (d) not compensate for normal commute time; and
- (e) document telecommuting authorization in the Utah Performance Management system.

### ***R477-8-3. Lunch, Break and Exercise Release Periods.***

(1) Each full time work day may include a minimum of 30 minutes non-compensated lunch period, at the discretion of agency management.

- (a) Lunch periods may not be used to shorten a work day.

- (2) An employee may take a 15 minute compensated break period for every four hours worked.
  - (a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.
  
- (3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.
  - (a) Participating agencies shall have a written policy regarding exercise release time.
  - (b) Work time exercise that is a bona fide job requirement is not subject to this section.
  
- (4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.
  
- (5) As requested and after consultation with an employee, reasonable, daily break periods shall be granted for the first year following the birth of a child to allow an employee to express breast milk for her child.
  - (a) A private location, other than a restroom, shall be provided.
  - (b) Appropriate temporary storage shall be provided for expressed milk.

***R477-8-4. Overtime Standards.***

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

- (1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:
  - (a) prior supervisory approval for all overtime worked;
  - (b) recordkeeping guidelines for all overtime worked;
  - (c) verification that there are sufficient funds in the budget to compensate for overtime worked.
  
- (2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.
  - (a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.
  
- (3) An FLSA nonexempt employee may not work more than 40 hours a week

without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

#### ***R477-8-5. Compensatory Time for FLSA Nonexempt Employees.***

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

- (i) transferred from one agency to a different agency; or
- (ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.

#### ***R477-8-6. Compensatory Time for FLSA Exempt Employees.***

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services,

will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) The limit on compensatory time accrued by an FLSA exempt employee may not be less than 80 hours.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency;

(iii) changes FLSA status to nonexempt; or

(iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

#### ***R477-8-7. Nonexempt Public Safety Personnel.***

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

(a) be a uniformed or plain clothes sworn officer;

(b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accidental or willful injury, and to prevent and detect crimes;

(c) have the power to arrest;

(d) be POST certified or scheduled for POST training; and

(e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(a) 171 hours in a work period of 28 consecutive days; or

(b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(a) 212 hours in a work period of 28 consecutive days; or

(b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) the Fair Labor Standards Act, Section 207(k);

- (b) 29 CFR 553.230;
- (c) the state's payroll period; and
- (d) the approval of the Executive Director, DHRM.

### ***R477-8-8. Time Reporting.***

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

- (a) approved and unapproved overtime;
- (b) on-call time;
- (c) stand-by time;
- (d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and
- (e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

### ***R477-8-9. Hours Worked.***

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

- (i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;
- (ii) the employee is completely relieved from duty and allowed to leave the job;
- (iii) the employee is relieved until a definite specified time; or
- (iv) the relief period is long enough for the employee to use as the employee sees fit.

### ***R477-8-10. On-call Time.***

(1) An FLSA non-exempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

### ***R477-8-11. Stand-by Time.***

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless an express agreement excludes the time.

### ***R477-8-12. Commuting and Travel Time.***

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the

normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special one-day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to non-working days, as well as regular working days. However, regular meal period time is not counted.

(6) Management may compensate employees for travel and meal period not required by federal law as implemented in Sections (4) and (5).

### ***R477-8-13. Excess Hours.***

- (1) An employee may use excess hours the same way as annual leave.
  - (a) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.
  - (b) An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.
  - (c) An employee may not accumulate more than 80 excess hours.
  - (d) Agency management shall pay out excess hours:
    - (i) for all hours accrued above the limit set by DHRM;
    - (ii) when an employee is assigned from one agency to another; and
    - (iii) upon separation.
  - (e) Agency management may pay out excess hours:
    - (i) automatically in the same pay period accrued;
    - (ii) at any time during the year as determined appropriate by a state agency or division; or
    - (iii) upon request of the employee and approval by the agency head.

### ***R477-8-14. Dual State Employment.***

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

***R477-8-15. Reasonable Accommodation.***

Employees and applicants seeking reasonable accommodation shall be evaluated under state and federal law. This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

***R477-8-16. Fitness For Duty Evaluations.***

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

***R477-8-17. Temporary Transitional Assignment.***

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions. Time spent on such an assignment may be counted as leave for purposes of R477-7-1(10).

- (2) Temporary transitional assignments may also be part of any of the following:
- (a) when management determines that there is a direct threat to the health or safety of self or others;
  - (b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;
  - (c) where there is a bona fide occupational qualification for retention in a position;
  - (d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

***R477-8-18. Change in Work Location.***

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one-way commute, unless:

- (a) the change in work location is communicated to the employee at employment; or
- (b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

***R477-8-19. Agency Policies and Exemptions.***

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

***R477-8-20. Background Checks.***

In order to protect the citizens of the State of Utah and state resources and with

the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

***R477-8-21. Workers' Compensation Interference Prohibited.***

(1) Agency management may not interfere with an employee's effort to make a claim for workers' compensation.

(2) Agency management may not retaliate against an employee who makes or attempts to make a claim for workers' compensation, reports an employer's noncompliance Utah Code Sections 34A-2 or 34A-3, or testifies or intends to testify in a workers' compensation proceeding.

***R477-8-22. Policy Exceptions.***

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

**KEY: breaks, telecommuting, overtime, dual employment**

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## **R477-9. EMPLOYEE CONDUCT.**

### ***R477-9-1. Standards of Conduct.***

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full time for which they are compensated.

(a) An employee shall:

- (i) comply with the standards established in the individual performance plans;
- (ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;
- (iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;
- (iv) inform the supervisor of any unclear instructions or procedures.

(2) An employee shall make prudent and frugal use of state funds, equipment, buildings, time, and supplies.

(3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or other intoxicant, including use of illicit drugs, non-prescribed controlled substances, and misuse of volatile substances, shall be subject to administrative action in accordance with Section R477-10-2, Rule R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Section 63G-7-202 of the Utah Governmental Immunity Act.

(4) An employee may not drive a state vehicle or any other vehicle, on state time, while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to administrative action under Section R477-10-2, Rules R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection 63G-7-202(3)(c)(ii) of the Utah Governmental Immunity Act.

(5) An employee shall provide the agency with a current personal mailing address.

(a) The employee shall notify the agency in writing of any change in address.

(b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

### ***R477-9-2. Outside Employment.***

(1) An employee shall notify agency management in writing of outside employment. Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action.

(2) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:

- (a) Outside employment may not interfere with an employee's performance.
- (b) Outside employment may not conflict with the interests of the agency nor the State of Utah.
- (c) Outside employment may not give reason for criticism nor suspicion of conflicting interests or duties.

(3) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.

(4) The provisions of this rule do not apply when two or more government positions are held by the same individual, unless the personal interest of the individual is not shared by the general public.

### ***R477-9-3. Conflict of Interest.***

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

- (a) Outside activities may not interfere with an employee's performance, the interests of the agency nor the State of Utah.
- (b) Outside activities may not give reasons for criticism nor suspicion of conflicting interests or duties.

(2) An employee may not use a state position; any influence, power, authority or confidential information received in that position; nor state time, equipment, property, or supplies for private gain.

(3) An employee may not accept economic benefit tantamount to a gift, under Section 67-16-5 and the Governor's Executive Order, 1/26/2010, nor accept other compensation that might be intended to influence or reward the employee in the performance of official business.

(4) An employee shall declare a potential conflict of interest when required to do

or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

#### ***R477-9-4. Political Activity.***

A state employee may voluntarily participate in political activity, except as restricted by this section or the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508.

(1) As modified by the Hatch Modernization Act of 2012, 5 U.S.C. Section 1502(a)(3), the federal Hatch Act restricts the political activity of state government employees whose salary is 100% funded by federal loans or grants.

(a) State employees in positions covered by the Hatch Act may run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, contribute money to political organizations, and attend political fundraising functions.

(b) State employees in positions covered by the federal Hatch Act may not be candidates for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(2) Prior to filing for candidacy, a state employee who is considering running for a partisan office shall submit a statement of intent to become a candidate to the agency head.

(a) The agency head shall consult with DHRM.

(b) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

(c) Employees in violation of section R477-9-4(1)(b) may be disciplined up to dismissal.

(3) If a determination is made that the employee's position is covered by the Hatch Act, the employee may not run for a partisan political office.

(a) If it is determined that the employee's position is covered by the Hatch Act, the state shall dismiss the employee if the employee files for candidacy.

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

(5) During work time, no employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of

employment. However, a state employee may voluntarily contribute to any party or any candidate.

(6) This rule incorporates by reference the Governor's Executive Order of March 5, 2018, regarding communications with legislators by state employees.

(7) Decisions regarding employment, promotion, demotion, dismissal, or any other human resource actions may not be based on partisan political activity.

#### ***R477-9-5. Employee Reporting Protections.***

(1) Under Section 67-21-3, an agency may not adversely affect the employment conditions of an employee who communicates in good faith, and in accordance with statute:

- (a) the waste or misuse of public property, manpower, or funds;
- (b) gross mismanagement;
- (c) unethical conduct;
- (d) abuse of authority; or
- (e) violation of law, rule, or regulations.

#### ***R477-9-6. Employee Indebtedness to the State.***

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.

(a) The following three conditions shall be met before withholding of salary may occur:

- (i) The debt shall be a legitimately owed amount which can be validated through physical documentation or other evidence.
- (ii) The employee shall know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the salary.
- (iii) An employee shall be notified of this rule which allows the state to withhold salary.

(b) An employee separating from state service will have salary withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have salary withheld from their last paycheck.

(d) The state may withhold an employee's salary to satisfy the following specific obligations:

- (i) travel advances where travel and reimbursement for the travel has already occurred;
- (ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the

- credit card company by the employee;
- (iii) evidence that the employee negligently caused loss or damage of state property;
- (iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;
- (v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;
- (vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;
- (vii) excessive reimbursement of funds from flexible reimbursement accounts;
- (viii) other obligations that satisfy the requirements of Subsection R477-9-5(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

#### ***R477-9-7. Acceptable Use of Information Technology Resources.***

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

#### ***R477-9-8. Personal Blogs and Social Media Sites.***

(1) An employee who participates in blogs and social networking sites for personal purposes may not:

- (a) claim to represent the position of the State of Utah or an agency;
- (b) post the seal of the State of Utah, or trademark or logo of an agency;
- (c) post protected or confidential information, including copyrighted information, confidential information received from agency customers, or agency issued documents without permission from the agency head; or
- (d) unlawfully discriminate against, harass or otherwise threaten a state employee or a person doing business with the State of Utah.

(2) An agency may establish policy to supplement this section.

(3) An employee may be disciplined according to R477-11 for violations of this section or agency policy.

***R477-9-9. Policy Exceptions.***

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

**KEY: conflict of interest, government ethics, Hatch Act, personnel management**

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## **R477-10. EMPLOYEE DEVELOPMENT.**

### ***R477-10-1. Performance Evaluation.***

Agency management shall utilize the Utah Performance Management (UPM) system for employee performance plans and evaluations. The Executive Director, DHRM, may authorize exceptions to the use of UPM and this rule consistent with Section R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

- (1) Performance management systems shall satisfy the following criteria:
  - (a) Agency management shall select an overall performance rating scale.
  - (b) Performance standards and expectations for each employee shall be specifically written in a performance plan.
  - (c) Managers or supervisors shall notify employees when their performance plans are implemented or modified.
  - (d) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and behavior outlined in their performance plans.
  
- (2) Each fiscal year a state employee shall receive a performance evaluation.
  - (a) An employee shall have the right to include written comments pertaining to the employee's performance evaluation.
  - (b) A probationary employee may receive a performance evaluation at the end of the probationary period.

### ***R477-10-2. Performance Improvement.***

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, and after consulting with DHRM, agency management may place an employee on an appropriate and documented performance improvement plan in accordance with the following rules:

- (1) The supervisor shall discuss the substandard performance with the employee and determine appropriate action.
  
- (2) Performance improvement plans shall identify or provide for:
  - (a) a designated period of time for improvement;
  - (b) an opportunity for remediation;
  - (c) performance expectations;
  - (d) closer supervision to include regular feedback of the employee's progress;
  - (e) notice of disciplinary action for failure to improve; and,
  - (f) a written performance evaluation at the conclusion of the performance

improvement plan.

(3) An employee shall have the right to submit written comment to accompany the performance improvement plan.

(4) Performance improvement plans may also identify or provide for the following based on the nature of the performance issue:

- (a) training;
- (b) reassignment;
- (c) use of appropriate leave;

(5) Following successful completion of a performance improvement plan, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

### ***R477-10-3. Written Warnings.***

Agency management may use written warnings to address performance or conduct problems.

### ***R477-10-4. Employee Development and Training.***

(1) Agency management may establish programs for training and staff development that shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs.

(5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

(6) Training shall be presented or made available online unless there is a physical or interactive component, the training takes place over consecutive, full-day sessions, or

no attendee travels more than 50 miles from their primary residence or place of employment, whichever is closer to the training site, to attend the training.

***R477-10-5. Education Assistance.***

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

- (a) The educational program will provide a benefit to the state.
- (b) The employee shall successfully complete the required course work or the educational requirements of a program.
- (c) The employee shall agree to repay any assistance received if the employee resigns from state employment within one year of completing educational work.
  - (i) Agencies may require the employee to repay any assistance received if the employee transfers to another agency within one year of completing educational work.
- (d) Education assistance may not exceed \$5,250 per employee in any one calendar year unless approved in advance by the agency head.
- (e) The employee shall disclose all scholarships, subsidies and grant monies provided to the employee for the educational program.
  - (i) Except for funding that must be repaid by the employee, the amount reimbursed by the State may not include funding received from sources in Subsection R477-10-4(1)(e).

(2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.

**KEY: educational tuition, employee performance evaluations, employee productivity, training programs**

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## **R477-11. DISCIPLINE.**

### ***R477-11-1. Disciplinary Action.***

(1) Agency management may discipline any employee for any of the following causes or reasons:

- (a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;
- (b) work performance that is inefficient or incompetent;
- (c) failure to maintain skills and adequate performance levels;
- (d) insubordination or disloyalty to the orders of a superior;
- (e) misfeasance, malfeasance, or nonfeasance;
- (f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;
- (g) no longer meets the requirements of the position;
- (h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;
- (i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;
- (j) dishonesty; or
- (k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee.

(3) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

- (a) The agency representative notifies the employee in writing of the proposed discipline, the reasons supporting the intended action, and the right to reply within five working days.
- (b) The employee's reply shall be received within five working days in order to have the agency representative consider the reply before discipline is imposed.
- (c) If an employee waives the right to reply or does not reply within the time frame established by the agency representative or within five working days, whichever is longer, discipline may be imposed in accordance with these rules.

(4) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to,

the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following forms of disciplinary action:

- (a) written reprimand;
- (b) suspension without pay up to 30 calendar days per incident requiring discipline;
- (c) demotion in accordance with Section R477-1(32), reducing the employee's current actual wage, as determined by the agency head.
- (d) dismissal in accordance with Section R477-11-2.

(5) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

- (a) paid administrative leave; or
- (b) temporary reassignment to another position or work location at the same current actual wage.

(6) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(7) Imposed disciplinary actions are subject to the grievance and appeals procedure by law for career service employees, except under Section 67-19a-402.5. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

### ***R477-11-2. Dismissal or Demotion.***

An employee may be dismissed or demoted for cause under Subsection R477-10-2(3)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) A probationary employee or career service exempt employee may be dismissed or demoted for any or for no reason without right of appeal, except under Sections 67-21-3.5 and 67-19a-402.5.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

- (a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.
- (b) The employee shall have up to five working days to reply. The

employee shall reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. This meeting shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the meeting the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the meeting. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Section 63G-2-3.

(d) Following the meeting, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. The reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

### ***R477-11-3. Discretionary Factors.***

(1) When deciding the specific type and severity of agency action, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(i) the agency head or representative need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.

(ii) In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

- (h) the potential of the violations for causing damage to persons or property;
- (i) the strength of the evidence of conduct;
- (j) dishonesty or failing to disclose relevant information;
- (k) the effect on agency operations, including:
  - (i) how the wrongdoing relates to the employee's job duties;
  - (ii) the potential of the conduct to adversely affect public confidence in the agency;
  - (iii) the potential of the conduct to adversely affect morale and effectiveness of the agency;
- (l) willful or intentional conduct; or
- (m) likelihood of recurrence.

**KEY: discipline of employees, dismissal of employees, grievances, government hearings**

**Date of Enactment or Last Substantive Amendment: July 1, 2018**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3**

## **R477-12. SEPARATIONS.**

### ***R477-12-1. Resignation.***

A career service employee may resign or retire by giving written or verbal notice to the supervisor or an appropriate representative of agency management.

(1) After giving a notice, withdrawal of a resignation or retirement may occur only with the consent of the agency head or designee.

### ***R477-12-2. Abandonment of Position.***

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned the position and to have resigned from the employing agency.

- (1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.
- (a) Management shall send the employee notice of intent to separate to the employee's last known address.
  - (b) The employee shall have the right to appeal separation to the agency head within five working of receipt, delivery, or attempted postal delivery of the notice of abandonment to the last known address.
  - (c) If the separation is appealed, management may not be required to prove intent to abandon the position.

### ***R477-12-3. Reduction in Force.***

Reductions in force (RIF) shall be governed by DHRM rules and business practices.

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed by the Executive Director, DHRM, or designee and approved by Agency Head or designee. The following items shall be addressed in the WFAP:

- (a) the categories of work to be eliminated;
- (b) specifications of measures taken to facilitate the placement of affected employees through reassignment, transfer and relocation to vacant positions for which the employee qualifies;
- (c) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and
- (d) When more than one employee is affected, employees shall be listed in

order of retention points.

(e) Retention points do not have to be calculated for a single incumbent WFAP.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity to be heard by the agency head or designee may be RIF'd.

(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.

(3) Retention points shall be determined for all affected employees within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service status with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, agency management shall develop the criteria they will use for determining retention points.

(i) Agency Management shall consult with Executive Director, DHRM or designee.

(ii) Agency plans shall comply with current DHRM business practices.

(4) The order of separation shall be:

(a) temporary employees in schedule IN or TL positions;

(b) probationary employees; then

(c) career service employees with the lowest retention points.

(5) An employee, including one covered under USERRA, who is identified for separation due to a RIF shall receive written notification of:

(a) the pending RIF; and

(b) final written notification of separation on the day of separation.

(6) An employee separated due to a RIF may appeal to the agency head by submitting a written notice of appeal within 20 working days after the date of separation.

(a) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Office.

(7) A career service employee who is separated in a RIF shall be governed by the rules in place at the time of separation.

(8) A career service employee who is separated in a RIF shall be given preferential consideration to the application score in the process of developing the hiring list as outlined in DHRM business practices when applying for a career service position.

(a) Preferential consideration shall end once the RIF'd individual accepts a career service position.

(b) A RIF'd individual may be rehired under Section R477-4-6.

(c) At agency discretion, an individual rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(9) A career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer shall be given preferential consideration as outlined in Subsection R477-12-3(8).

(10) Prior to separation and in lieu of a RIF, management may reassign an employee to a vacant career service position for which the employee qualifies under Section R477-4-5.

***R477-12-4. Exceptions.***

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

**KEY: administrative procedures, employees' rights, grievances, retirement**

**Date of Enactment or Last Substantive Amendment: July 1, 2018**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18**

## **R477-13. VOLUNTEER PROGRAMS.**

### ***R477-13-1. Volunteer Programs.***

(1) Agency management may establish a volunteer program.

(a) A volunteer program shall include:

- (i) documented agreement of the type of work and duration for which the volunteer services will be provided;
- (ii) orientation to the conditions of state service and the volunteer's specific assignments;
- (iii) adequate supervision of the volunteer; and
- (iv) documented hours worked by a volunteer.

(2) A volunteer may not donate any service to an agency unless the volunteer's services are approved by the agency head or designee, and by DHRM.

(a) Agency management shall approve all work programs for volunteers before volunteers serve the state or any agency or subdivisions of the state.

(3) A volunteer is considered a government employee for purposes of workers' compensation, operation of motor vehicles or equipment, if properly licensed and authorized to do so, and liability protection and indemnification.

(4) The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

**KEY: personnel management, administrative rules, rules and procedures, volunteers**

**Date of Enactment or Last Substantive Amendment: July 1, 2013**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-3; 67-20-4; 67-20-8**

## **R477-14. SUBSTANCE ABUSE AND DRUG-FREE WORKPLACE.**

### ***R477-14-1. Rules Governing a Drug-Free Workplace.***

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportation Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

- (a) Provide a safe and productive work environment that is free from the effects of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.
- (b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.
- (c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute, use or be under the influence of any controlled substance or alcohol during working hours, on state property, or while operating a state vehicle at any time, or other vehicle while on duty.

- (a) Employees shall follow Subsection R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of \$25,000 or more.

(3) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(6) Final applicants, who are not current employees, may be subject to preemployment drug testing at agency discretion, except as required by law.

- (7) Employees are subject to one or more of the following drug or alcohol tests:
- (a) reasonable suspicion;
  - (b) critical incident;
  - (c) post accident;
  - (d) return to duty; and
  - (e) follow up.

(8) Final candidates for transfer or promotion to a highly sensitive position are subject to preemployment drug testing at agency discretion, except as required by law.

- (a) An employee transferring or promoted from one highly sensitive position to another highly sensitive position is subject to preemployment drug testing at agency discretion except as required by law.
- (b) An employee who is reassigned to a highly sensitive position or assigned the duties of a highly sensitive position is not subject to preemployment drug testing.

(9) Employees in highly sensitive positions, as designated by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, random drug or alcohol testing of employees in highly sensitive positions shall be conducted at the discretion of the employing agency.

(10) This rule incorporates by reference the requirements of 49 CFR 40.87 (2003).

(11) The State of Utah will use a blood alcohol concentration level of .04 for safety sensitive positions and .08 for all other positions as the cut off for a positive alcohol test except where designated otherwise by federal regulations.

(12) Agencies with employees in federally regulated positions shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current federal regulation and the DHRM Drug and Alcohol Testing Policy and Procedures.

(13) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level, when tested before, during, or immediately after performing highly sensitive functions, shall be removed from performing highly sensitive duties for 8 hours, or until another test is administered and the result is less than the applicable federal cut off level.

(14) Employees in federally regulated positions whose confirmation test for alcohol results are at or exceed the applicable federal cut off level when tested before, during or after performing highly sensitive duties, are subject to discipline.

- (15) Management may take disciplinary action if:
- (a) there is a positive confirmation test for controlled substances;
  - (b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level; or
  - (c) management determines an employee is unable to perform assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

### ***R477-14-2. Management Action.***

(1) Under Rules R477-10, R477-11 and Section R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include dismissal.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include dismissal.

(4) An employee who substitutes, adulterates, or otherwise tampers with a drug or alcohol testing sample, or attempts to do so, is subject to disciplinary action which may include dismissal.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per Rule R477-11, under the following conditions:

(a) if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of \$25,000.00; or

(b) if the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be provided the opportunity for a last chance agreement and be required to agree to participate, at the employee's expense, in a rehabilitation program, under Subsection 67-19-38(3). If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee shall sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Section 63G-2-302.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in the previously held position, or a position with a comparable or lower salary range.

(f) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(7) An employee who has a confirmed positive test for use of a controlled

substance or alcohol is subject to follow up testing.

(8) An employee who is convicted for a violation under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing, selling or using a controlled substance, shall notify the agency head of the conviction no later than five calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

- (i) the judicial system;
- (ii) other sources;
- (iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

### ***R477-14-3. Drug and Alcohol Test Records.***

(1) A separate confidential file of drug and alcohol test results and documents related to the last chance agreements shall be maintained and stored in the agency human resource field office.

(2) Test results shall be retained in accordance with the retention schedule.

### ***R477-14-4. Policy Exceptions.***

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

**KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees**

**Date of Enactment or Last Substantive Amendment: July 1, 2017**

**Notice of Continuation: October 31, 2016**

**Authorizing, and Implemented or Interpreted Law: 63G-2-3; 67-19-6; 67-19-18; 67-19-33; 67-19-34; 67-19-35; 67-19-36; 67-19-37; 67-19-38**

## **R477-15. WORKPLACE HARASSMENT PREVENTION.**

### ***R477-15-1. Policy.***

It is the policy of the State of Utah to provide a work environment free from discrimination and harassment based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity or class under state or federal law.

- (1) Workplace harassment includes the following subtypes:
  - (a) conduct in violation of Section R477-15-1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;
  - (b) conduct in violation of Section R477-15-1 that results in a tangible employment action against the harassed employee.
  
- (2) An employee may be subject to discipline for violating workplace policies, even if:
  - (a) the conduct occurs outside of scheduled work time or work location; or
  - (b) the conduct is not sufficiently severe to constitute a violation of law.
  
- (3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.

### ***R477-15-2. Retaliation.***

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing, or is otherwise engaged in protected activity.

### ***R477-15-3. Complaint Procedure.***

Management shall permit employees who allege workplace harassment, retaliation, or both to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

- (1) Employees who feel they are being subjected to workplace harassment, retaliation, or both should do the following:
  - (a) document the occurrence;
  - (b) continue to report to work; and
  - (c) identify a witness(es), if applicable.

(2) An employee may file an oral or written complaint of workplace harassment, retaliation, or both with their immediate supervisor, any other supervisor within their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any employee, witness, volunteer or other individual.

(b) Complaints may be made through either oral or written notification and shall be handled in compliance with investigative procedures and records requirements in Sections R477-15-5 and R477-15-6.

(c) Any supervisor who has knowledge of workplace harassment, retaliation, or both shall take immediate, appropriate action in consultation with DHRM and document the action.

(3) All complaints of workplace harassment, retaliation, or both shall be acted upon following receipt of the complaint.

(4) If an immediate investigation by agency management is deemed unwarranted, the complainant shall be notified.

#### ***R477-15-4. Investigative Procedure.***

(1) When warranted investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

(a) If the investigation finds the allegations to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in workplace harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the appropriate parties shall be notified.

#### ***R477-15-5. Workplace Harassment Records.***

(1) A separate confidential file of all workplace harassment and retaliation complaints shall be maintained and stored in the agency human resource field office, or in the possession of an authorized official.

(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.

(b) Files shall be retained in accordance with the retention schedule after the active case ends.

(c) All information contained in the complaint file shall be classified as

protected under Section 63G-2-305.

(d) Information contained in the workplace harassment and retaliation file shall only be released by the agency head or Executive Director, DHRM, when required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment or retaliation.

(3) Participants in any workplace harassment or retaliation proceeding shall treat all information pertaining to the case as confidential.

***R477-15-6. Training.***

(1) DHRM shall provide employees training, including additional training for supervisors, on the prevention of workplace harassment.

(a) The curriculum shall be approved by the Division of Risk Management.

(b) Agencies shall ensure employees complete workplace harassment prevention training upon hire and at least every two years thereafter.

(c) Training records shall be submitted to DHRM including who provided the training, who attended the training and when they attended it.

**KEY: administrative procedures, hostile work environment**

**Date of Enactment or Last Substantive Amendment: July 1, 2017**

**Notice of Continuation: April 27, 2017**

**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-305; E.O. No. 12 "Prohibiting Unlawful Harassment" (December 2006)**

## **R477-16. ABUSIVE CONDUCT PREVENTION.**

### ***R477-16-1. Policy.***

It is the policy of the State of Utah to provide a work environment free from abusive conduct.

(1) Abusive conduct includes physical, verbal or nonverbal conduct, such as derogatory remarks, insults, or epithets made by an employee that a reasonable person would determine:

- (a) was intended to cause intimidation, humiliation, or unwarranted distress;
- (b) exploits a known physical or psychological disability; or
- (c) results in substantial physical or psychological harm caused by intimidation, humiliation or unwarranted distress.

(2) The following actions do not constitute abusive conduct unless they are especially severe and egregious:

- (a) a single act;
- (b) appropriate disciplinary or administrative actions;
- (c) appropriate coaching or work-related feedback;
- (d) reasonable work assignments or job reassignments; or
- (e) reasonable differences in styles of management, communication, expression, or opinion.

(3) An employee may be subject to discipline under this rule even if the conduct occurs outside of scheduled work time or work location.

(4) Once a complaint of abusive conduct has been filed, the accused may not communicate with the complainant regarding allegations in the complaint.

### ***R477-16-2. Complaint Procedure.***

Management shall permit employees who allege abusive conduct to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation.

(1) Employees who feel they are being subjected to abusive conduct should do the following:

- (a) document the occurrence;
- (b) continue to report to work; and
- (c) identify a witness(es), if applicable

(2) An employee shall file a written complaint of abusive conduct with their immediate supervisor, any other supervisor in their direct chain of command, or the

Department of Human Resource Management, including the agency human resource field office.

- (a) Complaints may be submitted by any employee, witness, volunteer or other individual.
- (b) Any supervisor who has knowledge of abusive conduct shall take immediate, appropriate action in consultation with DHRM and document the action.

### ***R477-16-3. Investigative Procedure.***

(1) When warranted, investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

- (a) If an investigation finds the allegations of abusive conduct to be sustained, agency management shall take appropriate administrative action.
- (b) If an investigation reveals evidence of criminal conduct in abusive conduct allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.
- (c) At the conclusion of the investigation, the appropriate parties shall be notified of investigative findings and procedure to request an administrative review of findings pursuant to Utah Code Section 67-19a-501.

(3) Participants in any abusive conduct investigation shall treat all information pertaining to the case as confidential.

### ***R477-16-4. Abusive Conduct Training.***

(1) DHRM shall provide employees and supervisors training on the prevention of abusive conduct.

- (a) Training shall include information regarding what constitutes abusive conduct, how to prevent it, options available under rule, and grievance procedures provided by Utah Code Section 67-19a.
- (b) Agencies shall ensure employees complete training within a reasonable time after hire and at least every two years thereafter.
- (c) Training records shall be submitted to DHRM including who provided the training, who attended the training and when they attended it.

**KEY: abusive conduct, administrative procedures, hostile work environment**  
**Date of Enactment or Last Substantive Amendment: July 1, 2018**  
**Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-44**

## **R477-101. ADMINISTRATIVE LAW JUDGE CONDUCT COMMITTEE.**

### ***R477-101-1. Authority and Purpose.***

This rule is enacted pursuant to Utah Code Section 67-19e-104, requiring the Department of Human Resource Management to establish rules governing minimum performance standards for administrative law judges, procedures for addressing and reviewing complaints against administrative law judges, standards for complaints, and standards of conduct for administrative law judges.

### ***R477-101-2. Definitions.***

In addition to the terms defined in Utah Code Section 67-19e-102:

(1) "Administrative Law Judge" (ALJ) includes Hearing Officers employed or contracted by a state agency that meet the criteria described in Utah Code Section 67-19e-102(1)(a).

(2) "Chair" means the Executive Director, Department of Human Resource Management, or designee.

(3) "Code of Conduct" means the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges (November 1993) incorporated by reference.

(4) "Committee" means the Administrative Law Judge Committee created in Utah Code Section 67-19e-108.

(5) "Committee Meeting" means a proceeding at which a Complaint is presented to the Committee by the investigator. Respondent ALJ shall also have the opportunity to appear and speak regarding the Complaint and its allegations.

(6) "Complaint" means a written document filed with the Department pursuant to Utah Administrative Code R477-101-8 alleging Misconduct by an ALJ.

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

(8) "Final Agency Action" occurs when the substantive rights or obligations of litigants in an administrative proceeding have been determined or legal consequences flow from a determination and when the agency decision is not preliminary, preparatory, procedural or intermediate.

(9) "Full investigation" means that portion of an investigation where the Respondent ALJ may respond, in writing, to specific allegations identified in a Complaint. A Full Investigation may also include, but is not limited to: examination by the Investigator of documents, correspondence, hearing records, transcripts or tapes; interviews of the complainant, counsel, hearing staff, Respondent ALJ, interested parties, and other witnesses.

(10) "Good cause" means a cause or reason in law, equity or justice that provides responsible basis for action or a decision.

(11) "Interested Party" means an individual or entity who participated in an event or proceeding giving rise to a Complaint against the Respondent ALJ.

(12) "Investigator" means a person employed by the department to perform investigations mandated under Utah Code Section 67-19e-107 and present information at the Committee Meeting.

(13) "Misconduct" means a violation of the Code of Conduct or Utah Code Section 67-19e-101 et seq.

(14) "Preliminary Investigation" means that portion of an investigation conducted by the Department upon receipt of a Complaint. A Preliminary Investigation may include, but is not limited to: examination of documents, correspondence, interviews of the complainant, counsel, hearing staff, and other witnesses.

(15) "Respondent ALJ" means an ALJ against whom a Complaint is filed.

### ***R477-101-3. Jurisdiction.***

(1) Administrative Law Judges. The Committee has jurisdiction over ALJs to investigate, review, hear, and make recommendations regarding Complaints filed against ALJs.

(2) Former ALJs. The Committee has continuing jurisdiction over former ALJs regarding allegations that Misconduct occurred during service as an ALJ if a Complaint is received before the ALJ's appointment concludes.

### ***R477-101-4. Records Classification and Retention.***

(1) Records prepared by and for the Committee, including all Complaints, investigative reports, recommendations, and votes on recommended action against an ALJ are classified as protected under Utah Code Section 63G-2-305.

(2) Committee records shall be maintained by the department for a period of three

years following the conclusion of any Committee activity.

***R477-101-5. Committee.***

(1) The Executive Director or designee shall serve as Chair of the Committee, and appoint four Executive Directors or their designees to serve on the Committee.

(2) Only Executive Directors of agencies that employ or contract with ALJs may serve on the Committee.

(3) If a Department investigation establishes a Complaint requires further action, the Executive Director and Chair shall convene the Committee.

(4) An Executive Director of the agency that employs or contracts with the Respondent ALJ may not participate in a Committee proceeding involving the Respondent ALJ.

(5) After convening the Committee, the Department shall provide a copy of the Complaint and its investigative results to the Committee and the Respondent ALJ.

(6) Within 30 days of the date the Committee is convened on a complaint the Committee shall schedule a Committee Meeting. At the Committee Meeting the Respondent ALJ shall be given the opportunity to appear, speak and present documents in response to a Complaint.

(7) Committee members may attend Committee meetings in person, by telephone, by videoconference, or by other means approved in advance by the Chair.

(8) After consideration of all information provided at the Committee Meeting, the Committee shall dispose of the Complaint by issuing a decision or report with a recommendation to the agency containing:

- (a) a brief description of the Complaint and the investigative results;
- (b) findings, and;
- (c) recommendations.

(9) Committee members shall not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or ALJs.

***R477-101-6. Duties of the Chair.***

(1) The Chair shall:

- (a) receive, acknowledge receipt of and review Complaints;
- (b) notify complainants about the status and disposition of their Complaints,
- (c) make recommendations to the Committee regarding further

- proceedings or the disposition of a Complaint;
- (d) stay investigation(s) or committee proceedings pending Final Agency Action of the matter giving rise to the Complaint against the Respondent ALJ;
- (e) maintain records of the Committee's operations and actions;
- (f) compile data to aid in the administration of the Committee's operations and actions;
- (g) prepare and distribute an annual report of the Committee's operations and actions;
- (h) direct the operations of the Committee's office, and supervise other members of the Committee's staff;
- (i) make available to the public the laws, rules, and procedures of the Committee and its operations;
- (j) consider requests for extension of time periods and, upon a showing of Good Cause, grant such requests for a period not to exceed 20 days for each request.

(2) Subject to the duty to direct and supervise, the Chair may delegate any of the foregoing duties to other members of the Committee's staff.

#### ***R477-101-7. Code of Conduct.***

(1) ALJs shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges.

(2) In order to suit a specific agency need, an agency may make an addendum or modification to the Code of Conduct. Any such addendum or modification shall be specific to their agency. In addition, any addendum or modification to the Code of Conduct must be reviewed and approved by the Committee before being implemented. The Committee may be convened for the purpose of reviewing any proposed addendum or modification.

#### ***R477-101-8. Filing Procedure.***

(1) Each agency shall include a copy of DHRM Rule R477-101 in the administrative rule materials that they provide to parties, or shall otherwise make them readily available to parties, at the commencement of administrative proceedings.

(2) An individual who alleges a violation of the Code of Conduct or otherwise has a Complaint against an ALJ may file a timely Complaint with the Department. To be timely a Complaint must be in writing and filed with the Department within 20 working days of Final Administrative Action in the matter in which the individual is an Interested Party.

(3) Complaints filed with the Department are deemed filed on the date actually received by the Department. The Department shall date-stamp all Complaints on the date received. All filing and other time periods are based upon the Department's working days.

(4) Complaints must contain specific facts and allegations of Misconduct and must be signed by the person filing the Complaint or by the person's authorized representative. Complaints shall also contain the name, address, and telephone number of the complainant, and the name, business address, and telephone number of the representative, if a party or person is being represented.

### ***R477-101-9. Investigation.***

(1) Preliminary Investigation.

(a) The Department shall review all timely filed Complaints and shall, regardless of whether the allegations contained therein would constitute misconduct if true, conduct a Preliminary Investigation.

(b) If the Preliminary Investigation determines that the Complaint is untimely, frivolous, without merit, or if the Complaint merely indicates disagreement with the Respondent ALJ's decision, without further alleged Misconduct, the Complaint may be similarly dismissed without further action.

(c) If, after a Preliminary Investigation is completed, there is a reasonable basis to find Misconduct occurred, the Investigator shall initiate a Full Investigation.

(2) Full Investigation. Within ten days after a determination to conduct a Full Investigation is made, the Investigator shall notify the Respondent ALJ that a Full Investigation is being conducted. The notice shall:

(a) inform the Respondent ALJ of the specific facts and allegations being investigated and the canons or statutory provisions allegedly violated;

(b) inform the Respondent ALJ that the investigation may be expanded if appropriate;

(c) invite the Respondent ALJ to respond to the Complaint in writing within 10 working days;

(d) include a copy of the Complaint, the Preliminary Investigation report(s), and any other documentation reviewed in determining whether to authorize a Full Investigation; and

(e) unless continued by the Chair, Full Investigations shall be completed within three months of the determination to conduct a Full Investigation.

### ***R477-101-10. Full Investigative Findings.***

Results of the investigation shall be provided to the Chair, who shall determine whether to convene a Committee Meeting.

***R477-101-11. Notice.***

(1) If after review of the Full Investigative result and findings the Chair determines the Complaint is factually or legally insufficient to establish Misconduct, the Chair shall similarly dismiss the Complaint and take no further action.

(2) If after review of the Full Investigative result and findings the Chair determines the Complaint requires further action, the Chair shall convene the Committee and order a Committee Meeting be scheduled.

(3) After convening the Committee the Chair shall provide Respondent ALJ written notice of the ALJ's right to appear, speak, and present documents at the Committee Meeting. The Chair shall also provide the Respondent ALJ with a copy of the Complaint and the results of the Department's investigation.

(4) Notice that a Committee has been convened and a Committee Meeting ordered shall be made by personal service or certified mail upon the Respondent ALJ or the Respondent ALJ's representative. Service of all other notices or papers may be regular mail.

(5) Within 20 days after receiving written notice from the Chair that a Committee has been convened the Respondent ALJ may provide the Committee a written response to the Complaint.

(6) After receipt of the Respondent ALJ's response or after expiration of the time to respond the Committee shall, in consultation with the ALJ, schedule a Committee Meeting. The Committee shall notify the ALJ in writing of the date, time, and place of the Committee Meeting. Unless continued for Good Cause, Committee Meetings shall be held within four months of the date a Committee is convened on a Complaint.

(7) No later than 20 days before the scheduled Committee Meeting the Chair shall provide the Respondent ALJ with copies of all documents proposed for use at the Committee Meeting or to be relied upon in making its report and recommendation.

(8) Respondent ALJ shall be entitled to representation at every stage of the Committee proceedings or the Committee Meeting.

(9) Neither the Utah Rules of Evidence nor the Utah Rules of Civil Procedure apply in Committee proceedings.

***R477-101-12. Effect of Respondent ALJ's Resignation or Retirement during Proceeding.***

If the Respondent ALJ resigns or retires during the proceedings, the Committee shall determine whether to proceed or dismiss the proceedings.

***R477-101-13. Committee Meetings.***

(1) The Chair shall rule on all motions or objections raised during a Committee Meeting, set reasonable limits on the statements or documents presented, including any statements from the complainant. The Chair may limit the time allowed for the presentation of information, may bifurcate any and all issues to be considered, and may make any and all other rulings regarding any Committee proceeding or Committee Meeting.

(2) To hold a Committee Meeting there must be at least 3 members of the Committee present.

(3) The Respondent ALJ shall be permitted to present information to, make statements and produce witnesses for the Committee's consideration.

(4) Committee members may ask questions of any witness including the Respondent ALJ.

(5) Immediately following the conclusion of the Committee Meeting, the Committee shall deliberate and decide whether there is sufficient evidence the Respondent ALJ violated the Code of Conduct or otherwise engaged in Misconduct. Any such decision shall require a majority vote of the participating Committee members.

(6) Committee decisions shall be supported by a preponderance of the evidence.

(7) Within 30 days of the conclusion of the Committee Meeting, the Chair shall prepare a memorandum decision or report, with a recommendation for any proposed personnel action(s), and shall forward the decision and recommendation to the Respondent ALJ and the agency head of the Respondent ALJ.

(8) After deliberation, if the Committee finds insufficient evidence or reason to determine Misconduct occurred, the complaint shall be dismissed.

***R477-101-14. Discipline.***

(1) At any time after the commencement of a Full Investigation and before any Committee action, the ALJ may admit to any or all of the allegations in exchange for a stated sanction. The admission shall be submitted to the Committee for a

recommendation.

(2) Any corrective and/or disciplinary action taken against a career service employee by the employing agency shall be implemented in accordance with applicable Department or state rule(s) governing discipline.

***R477-101-15. Reinstatement of Proceedings.***

(1) Reinstatement upon Request by Complainant.

(a) If a Complaint is dismissed, the complainant may, within 20 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

(c) A determination not to reinstate the Complaint is not reviewable.

(2) Reinstatement by the Chair.

(a) If the Committee dismisses a Complaint, the Chair may, at any time upon the receipt of newly discovered evidence, request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which the reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

***R477-101-16. Performance Standard.***

(1) The following minimum performance standards shall apply to all ALJ's:

(a) The ALJ shall have no more than one agency disciplinary action or one Committee recommendation for disciplinary action during the ALJ's four-year evaluation cycle; and

(b) The ALJ shall receive a satisfactory rating on the survey. A satisfactory rating is achieved when an average of at least 65% of collected responses to survey questions for an ALJ is "Agree". Any survey question with a response of "Not enough information to respond" will not be used when calculating the rating.

(2) For any question that does not use the "Agree"/"Disagree" response option, the Committee shall establish the minimum performance standard. Any established performance standard shall be substantially equivalent to the standard required by Utah Code Section 67-19e-105.

***R477-101-17. Performance Surveys.***

(1) The department shall establish and follow a schedule to survey the performance of each ALJ every four years. The schedule shall be staggered to survey the performance of approximately one quarter of all ALJ's each calendar year.

(2) Survey respondents shall include:

- (a) Attorneys who have appeared before the administrative law judge as counsel in the proceeding; and
- (b) Staff who have worked with the administrative law judge.

(3) Additional respondents may include any other persons who have appeared on record before the administrative law judge, including, but not limited to, pro se parties and witnesses.

(3) Survey results shall be maintained by the department and shall not be maintained in the ALJ's personnel file.

(4) Survey results shall be made available to the ALJ's supervisor for consideration in completing annual performance evaluations.

***R477-101-18. Training.***

(1) The department shall provide an annual webcast on the topic of procedural fairness for administrative law judges. The content of the webcast shall comply with the provisions and requirements set forth in Utah Code 67-19e-110.

(2) Each year that an administrative law judge receives a performance evaluation conducted by the department under this section, the administrative law judge shall complete the procedural fairness training program established by the department.

***R477-101-19. Hiring of Administrative Law Judges.***

(1) Hiring of administrative law judges must comply with Utah Code Section 67-19e-104.5 and DHRM Rule R477-4-15.

**KEY: administrative law judges, conduct committee**

**Date of Enactment or Last Substantive Amendment: July 1, 2018**

**Authorizing, and Implemented or Interpreted Law: 67-19e-101 through 67-19e-109**

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## Appendix A

### Annual, Holiday, and Sick Leave Accrual Table

The following tables provide leave and position schedule information. Annual, holiday, and sick leave shall be accrued at a pro-rated basis in whole hour increments. Annual leave is accrued based on the total number of hours paid in the pay period. Sick leave accrues based on the number of hours paid in the pay period and accrues at a maximum of four (4) hours per pay period for all eligible employees regardless of their years of service. Holiday leave is accrued according to the number of hours paid in the pay period, excluding the holiday hours, and the number of holidays within that pay period. Example: A less than full-time employee is paid 40 hours in the pay period, excluding the holiday hours. He/she will accrue 4 hours if there is one holiday in the pay period. If two holidays fall in the pay period, that same employee will accrue 5 hours for each holiday. Holiday leave is accrued at a maximum of (8) hours per holiday.

Annual leave is accrued based on eligible years of state service.

Less than 5 years	=	4 hours accrual per pay period
At least 5 and less than 10 years	=	5 hours accrual per pay period
At least 10 and less than 20 years	=	6 hours accrual per pay period
20 years or more	=	7 hours accrual per pay period

**Table A1**

Annual Leave Accrual					Sick Leave Accrual
Total Hours Paid in the Pay Period	4 Hours	5 Hours	6 Hours	7 Hours	
4	0	0	0	0	0
8	0	1	1	1	0
12	1	1	1	1	1
16	1	1	1	1	1
20	1	1	2	2	1
24	1	2	2	2	1
28	1	2	2	2	1
32	2	2	2	3	2
36	2	2	3	3	2
40	2	3	3	4	2
44	2	3	3	4	2
48	2	3	4	4	2
52	3	3	4	5	3
56	3	4	4	5	3
60	3	4	5	5	3
64	3	4	5	6	3
68	3	4	5	6	3
72	4	5	5	6	4
76	4	5	6	7	4
80	4	5	6	7	4

# Appendix A

Table A2

## Holiday Accrual Tables

<b>Holiday Accrual (1 Holiday Per Pay Period)</b>		
<b>Total Hours Paid in the Pay Period</b>	<b>Hours Paid in the Pay Period (Excluding Holiday Hours)</b>	<b>Holiday Accrual</b>
4-8	4-7	0
9-12	8-11	1
13-17	12-15	1
18-21	16-19	2
22-26	20-23	2
27-30	24-27	3
31-35	28-31	3
36-39	32-35	4
40-43	36-39	4
44-48	40-43	4
49-52	44-47	5
53-57	48-51	5
58-61	52-55	6
62-66	56-59	6
67-70	60-63	7
71-75	64-67	7
76-79	68-71	8
80-83 (Full-Time)	72-75	8
84-87	76-79	8
88	80	8

<b>Holiday Accrual (2 Holiday's Per Pay Period)</b>		
<b>Total Hours Paid in the Pay Period</b>	<b>Hours Paid in the Pay Period (Excluding Holiday Hours)</b>	<b>Holiday Accrual</b>
4-9	4-7	0
10-13	8-11	1
14-19	12-15	1
20-23	16-19	2
24-29	20-23	2
30-33	24-27	3
34-39	28-31	3
40-43	32-35	4
44-49	36-39	4
50-53	40-43	5
54-59	44-47	5
60-63	48-51	6
64-69	52-55	6
70-73	56-59	7
74-79	60-63	7
80-83 (Full-Time)	64-67	8
84-87	68-71	8
88-91	72-75	8
92-95	76-79	8
96	80	8

## Appendix A

Table A3

### Annual and Sick Leave Accrual Table for Employees Working 106 Hour Pay Periods

Regular Hours Worked Per Pay Period	Annual Leave Accrual				Sick Leave Accrual
	5.6 Hours	7 Hours	8.4 Hours	9.8 Hours	
10	.5	.75	.75	1	.5
21	1.0	1.5	1.75	2	1.0
31	1.75	2.0	2.5	3	1.75
42	2.25	2.75	3.25	4	2.25
53	2.75	3.5	4.25	5	2.75
63	3.25	4.25	5.0	5.75	3.25
74	4.0	5.0	5.75	6.75	4.0
84	4.5	5.5	6.75	7.75	4.5
95	5.0	6.25	7.5	8.75	5.0
106	5.5	7.0	8.5	9.75	5.5
Annual Hours	145.6	182.0	218.4	254.8	

## Appendix B

### Position Schedules Benefit Eligibility Table

The executive director, after consultation with agencies, shall allocate positions to the appropriate position schedule as follows:

Schedule of Position		Holidays, Paid Leave	Health, Life, Dental	Retirement	Severance Eligible
B	Competitive Career Service	Yes	Yes	Yes	No
AA	Governor, Elected Officials, Legislature	No	Yes <sup>②</sup>	Yes	No
AB	Department Heads, Commissioners (67-22-2)	Yes	Yes	Yes	Yes <sup>④</sup>
AC	Employees in Offices of Elected Officials <sup>⑤</sup>	Optional <sup>③</sup>	Optional <sup>③</sup>	Optional <sup>③</sup>	Optional <sup>④</sup>
AD	Employees who report to a Department Head, Commissioner or Deputy Director; and have a confidential relationship with Department Head or Commissioner	Yes	Yes	Yes	Yes <sup>④</sup>
AG	Employees in the Office of the Attorney General	①	①	Optional	①
AH	Educators and Educational Interpreters (53A-25b-102) (USDB)	No <sup>①</sup>	Yes	Yes	No
AN	Employees of the Legislature	①	①	Optional	①
AO	Employees of the Judiciary	①	①	Optional	①
AP	Judges in the Judiciary	①	①	Yes	①
AQ	Boards and Councils	Optional	Optional	Optional	No
AR	Employees who: determine policy; determine how to carry out policy; or are approved for AR by DHRM	Yes	Yes	Yes	Yes <sup>④</sup>
AS	Employees who are: required by law to be exempt; employees in agencies exempt from 67-19; or employees in agencies that can set comp/bonuses	Optional <sup>③</sup>	Optional <sup>③</sup>	Optional <sup>③</sup>	Optional <sup>④</sup>
AT	Executive/Professional employees of the Department of Technology Services	Yes	Yes	Yes	Yes <sup>④</sup>
AU	Patients/Inmates employed in State institutions	No	No	No	No
AW	Workforce Services employees who: are Federally Funded Temporary; or voluntarily apply for and are accepted to work in a pay for performance program	Optional <sup>③</sup>	Optional <sup>③</sup>	Optional <sup>③</sup>	No
IN	<u>Temporary</u> employees employed on an <u>Indefinite</u> basis. (May not work more than 30 hours per week)	Optional <sup>③</sup>	Optional <sup>③</sup>	Optional <sup>③</sup>	No
TL	<u>Temporary</u> employees employed on a <u>Time-Limited</u> basis.	Optional <sup>③</sup>	Optional <sup>③</sup>	Optional <sup>③</sup>	No

① Separate System

② May adopt State's benefits

③ Benefits must be all or none

④ See rule R477-6-11 for more eligibility criteria

⑤ Employees in the office/residence of the Gov, USTAR, Public Lands Policy Coord Council, and Auditor's and Treasurer's Offices.

## Appendix C

### **Veterans Preference Calculation**

Five percent of the total possible score shall be added to the exam score or an appropriate adjustment shall be made when examination results are other than a numeric score for any applicant claiming veterans preference who:

- (a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or
- (b) is the spouse, unremarried widow or widower of any veteran.

Ten percent of the total possible score shall be added to the exam score or an appropriate adjustment shall be made when examination results are other than a numeric score for any applicant claiming veterans preference who:

- (a) was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty; or
- (b) is the spouse, unremarried widow or widower of any disabled veteran.

## Appendix D

### **Employment Discrimination Protection**

Employees are protected from employment discrimination under the following laws:

- The Age Discrimination in Employment Act of 1967, 29 USC 621, as implemented by 29 CFR 1625(1999). This act prohibits discrimination on the basis of age for individuals forty years and over.
- The Vocational Rehabilitation Act of 1973, 29 USC 701, as implemented by 34 CFR 361(1999). This act prohibits discrimination on the basis of disability status under any program or activity that receives federal financial assistance. Employers with federal contracts or subcontracts greater than \$10,000.00 must have an affirmative action plan to accommodate qualified individuals with disabilities for employment and advancement. All of an employer's operations and facilities must comply with Section 503 as long as any of the operations or facilities are included in federal contract work. Section 504 incorporates the employment provisions of Title I of the Americans With Disabilities Act of 1990.
- The Equal Pay Act of 1963, 29 USC 206(d), as implemented by 29 CFR 1620(1999). This act prohibits discrimination on the basis of sex.
- Title VII of the Civil Rights Act of 1964 as amended, 42 USC 2000e. This act prohibits discrimination on the basis of sex, race, color, national origin, religion, or disability.
- The Americans with Disabilities Act of 1990, 42 USC 12201. This act prohibits discrimination against qualified individuals with disabilities in recruitment, selection, benefits and all other aspects of employment.
- Uniformed Services Employment and Reemployment Act of 1994, 38 USC 4301 (USERRA). This act requires a state to reemploy eligible veterans who left state employment for military service and return to work within specified time periods defined by USERRA.

## Appendix E

### Employee Benefits During Leave of Absence June 2013

Leave Type	Payroll LWOP		Health/Dental/Life* LWOP		Retirement LWOP	
	Leave Used	Leave Used	Leave Used	Leave Used	Leave Used	Leave Used
<b>FMLA</b>	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Benefits will continue. See *** below.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	No service credit is given. Employee's retirement eligibility dates will be delayed by the amount of time employee is on LWOP.	If 40 hours for the pay period are used, employee will receive full credit. If less than 40 hours, employee may get service credit only for those hours. This loss of this time may result in lower retirement benefits.
<b>Military Leave -called into active duty by state or federal government to serve during times of crisis and/or conflict.</b>	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Benefits will continue. See *** below.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	Employee will receive full service credit for the length of the leave. Agency will be billed for past contributions plus interest owed when the employee returns.	Employee will receive full service credit for the length of the leave. The payroll check will trigger the agency's payment of contributions owed.
<b>Military Leave -Active Duty during peace times.</b>	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Employee receives health/dental coverage for first 30 days. After, benefits may continue if employee uses leave balances or pays 100% of the group rate premium. Life ins. continues during the leave. See **** below.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	Employee will receive full service credit for the length of the leave. Agency will be billed for past contributions plus interest owed when the employee returns.	Employee will receive full service credit for the length of the leave. The payroll check will trigger the agency's payment of contributions owed.
<b>Worker's Compensation</b>	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Benefits will continue. See *** below.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	Employee will receive full service credit for the length of the leave. Agency will be billed for past contributions plus interest owed when the employee returns.	Employee will receive full service credit for the length of the leave. The payroll check will trigger the agency's payment of contributions owed.
<b>Other Approved Leave</b>	Deductions that the employee is responsible for won't be paid. See ** below .	If sufficient leave is used, there is no effect. If not, all back premiums and other deductions the employee is responsible for may be paid in arrears in the next check(s) employee receives.	Employee not eligible for health/dental coverage after the first 30 days unless employee elects to continue benefits by paying 100% of the group rate premium.	No effect as long as enough leave is used to cover the employee portion of the premium. Otherwise, PEHP will bill the employee for his/her portion.	No service credit is given. Employee's retirement eligibility dates will be delayed by the amount of time employee is on LWOP.	If 40 hours for the pay period are used, employee will receive full credit. If less than 40 hours, employee may get service credit only for those hours. This loss of this time may result in lower retirement benefits.
<b>Long-term Disability (After approval)</b>	No payroll is processed for employees on LTD.	Use of leave is not available.	A stipend for benefits may be provided. Contact PEHP for eligibility.	Use of leave is not available	An employee hired before July 1, 2011 will receive full service credit until employee is terminated from LTD Employees hired on or after July 1, 2011 do not receive service credit while on LTD.	Use of leave is not available.

\*Life refers to the \$25,000 minimum coverage \*\* HRE Business Practice indicates that LWOP should be entered into HRE if the leave without pay is more than one pay period so that the employment record is accurate. When LWOP is entered into HRE, employee is billed by the provider for deductions and premiums owed. These would include contributions towards a contributory retirement plan, health and dental premiums, and premiums for voluntary plans such as Metlife Home and Auto and Hyatt Legal. When payroll codes of N, NA, NF or NM are used, employee's premiums and other deductions are put into arrears then deducted in the next check(s) employee receives. \*\*\* When LWOP is entered into HRE, both employer and employee are billed by PEHP for their respective portions of the premium. When payroll codes of N, NA, NF or NM are used, state-paid health, dental and life are paid automatically and the employee is billed by PEHP for employee portion. HRE Business Practice indicates that LWOP should be entered into HRE if the leave without pay is more than one pay period, so that the employment record is accurate. \*\*\*\*Allowing employee to use leave balances in order to continue insurance benefits is at the agency's discretion.

## Appendix F

### **Public Information concerning current or former state employees**

Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. The following information concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions is given to the public upon request where appropriate with the exception of employees whose records are private or protected:

- (a) the employee's name;
- (b) gross compensation;
- (c) salary range;
- (d) contract fees;
- (e) the nature of employer paid benefits;
- (f) the basis for and the amount of any compensation in addition to salary, including expense reimbursement;
- (g) job title;
- (h) performance plan;
- (i) education and training background as it relates to qualifying the individual for the position;
- (j) previous work experience as it relates to qualifying the individual for the position;
- (k) date of first and last employment in state government;
- (l) the final disposition of any appeal action by the Career Service Review Board;
- (m) the final disposition of any disciplinary action;
- (n) work location;
- (o) a work telephone number;
- (p) city and county of residence, excluding street address;
- (q) honors and awards as they relate to state government employment;
- (r) number of hours worked per pay period;
- (s) gender;
- (t) other records as approved by the State Records Committee.

## Appendix G

### Calculating On-Call Time

On-call pay is calculated at a rate of one hour for every 12 hours that an employee is on-call (maximum of 24 hours), rounded to the nearest two decimal points. If an employee works during the on-call period, then the hours that the employee works is deducted from the on-call hours for which the employee is on-call. Therefore, the following formula should be used to determine on-call.

#### On-Call Formula:

$(\# \text{ of Hours in the On-Call Period} - \# \text{ of Hours Worked in the On-Call Period}) / (12)$

#### On-Call Example:

David is scheduled to be on-call for 24 hours on a Saturday from 12:00am to 11:59pm. David is called to come into work for 5.25 hours to take care of an issue that has come up. Because David worked for 5.25 hours during his on-call period he should deduct those hours from his on-call hours ( $24 - 5.25 = 18.75$  hours of on-call). To figure out the amount that David should be paid he would divide the number of actual hours of on-call by 12 ( $18.75/12.00 = 1.56$ ).

For his on-call period, David will be compensated for 5.25 hours of regular work time and 1.56 hours for the time that he was actually on-call.

$(24 - 5.25) / (12) = 1.56$

Note: DHRM rule R477-8-10(a) states that , “An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty”. Therefore, this formula doesn’t allow for leave hours to be used and should be deducted from on-call hours. Additionally, this on-call formula adheres to the rounding limits set in the payroll system. If an amount is entered that exceeds the daily limit, an error message will display with the daily limit.