# Chapter 240

## 1967 REPLACEMENT PART

# Civil Service for State Employes


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## GENERAL PROVISIONS

**240.005 Short title of chapter.** This chapter shall be known as the State Civil Service Law.

**240.010 Purpose of chapter.** The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles and scientific methods, governing the appointment, promotion, transfer, layoff, removal and discipline of its officers and employes, and other incidents of state employment. Except as otherwise provided in this chapter, all appointments and promotions to positions in the state service shall be made on the basis of merit and fitness, to be ascertained by competitive examinations.

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

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

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

(3) "Commission" means the Civil Service Commission.

(4) "Department" means the Department of Civil Service.

(5) "Director" means the Merit System Director.

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

(7) "Eligible" means a person whose name is on a list.

(8) "Employment list" means a list of persons who have been found qualified by an entrance test for appointment to a position in a particular class.

(9) "Entrance test" means a test for positions in a particular class, admission to which is not limited to persons employed in the state service.

(10) "List" means an employment list, a promotion list or a reemployment list.

(11) "Promotion list" means a list of persons who have been found qualified by a promotion test for appointment to a position in a particular class.

(12) "Promotion test" means a test for positions in a particular class, admission to which is limited to employes in the classified service who have held a position in another class for a period of not less than six months.

(13) "Reemployment list" means a list of persons who have been regular employes in a particular class and who are entitled to have their names certified for appointment to a position in that class.

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

(15) "State service" means all offices and positions in the employ of the state other than those of commissioned, warrant and enlisted personnel in the military and naval services thereof.

[Amended by 1959 c.690 §1]

**240.020 to 240.050** [Reserved for expansion]

**240.055 Department of Civil Service; Civil Service Commission.** There shall be in the state government a Department of Civil Service which shall be governed by a Civil Service Commission of three members.

**240.060 Qualification of members of commission.** The members of the commission shall be citizens of the state known to be in sympathy with the application of merit principles to public employment and of recognized standing and known interest in public administration and in the development of efficient methods of selecting and administering personnel. No member of the commission shall hold, or be a candidate for, any public office. No person shall be appointed as a member of the commission who has held an elective public office or an appointive public office of a political nature, or position in a political party, within six months immediately preceding his appointment. No member of the commission shall have been an employe of any of the divisions within one year prior to his appointment.

**240.065 Appointment; terms; vacancies.** The members of the commission shall be appointed by the Governor for a term of three years, with the term of one member expiring on June 30 of each year. Each

member shall be appointed for a term ending three years from the date of the expiration of the term for which his predecessor was appointed, except that a person appointed to fill a vacancy occurring prior to the expiration of such term shall be appointed for the remainder of the term. Each member of the commission shall hold office until his successor is appointed and qualifies.

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

**240.071 Compensation and expenses of members.** A member, other than one employed in full-time public service, may receive a payment of $20 for each day or portion thereof during which he is actually engaged in the performance of his official duties. In addition, all members may receive actual and necessary travel and other expenses incurred in the performance of their official duties within limits as provided by law or by the Department of Finance under ORS 292.220 and 292.230.
[1967 c.73 §4 (enacted in lieu of 240.070)]

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

**240.080 Chairman of commission; meetings; hearings.** The commission shall elect one of its members chairman. It shall meet at such times and places as are specified by call of the chairman or the Governor. All hearings shall be open to the public. Two members shall constitute a quorum for the transaction of business.

**240.085 Duties of commission.** The commission shall:

(1) Administer the Department of Civil Service.

(2) Make necessary investigations of the personnel administration.

(3) Review any action by the department which may appear to be arbitrary or illegal.

(4) Make annual reports, and special reports as necessary, to the Governor regarding personnel administration in the state service and recommendations for improvement therein.

**240.090 Rules of commission.** The commission, assisted by the director, shall make such rules as may be necessary and consistent with this chapter. Any rule so adopted shall be filed with the Secretary of State as provided in ORS 183.010 to 183.050, and shall become effective 10 days after it is filed.

**240.095 Agreements and cooperation with other governmental agencies.** (1) Subject to the rules the commission may enter into agreement with any municipality or political subdivision of the state to furnish services and facilities of the department to such municipality or political subdivision in the administration of its personnel on merit principles. Any such agreement shall provide for the reimbursement to the state of the cost of the services and facilities furnished. All municipalities and political subdivisions of the state may enter into such agreements.

(2) The commission may cooperate with governmental agencies for other jurisdictions charged with personnel administration in conducting joint tests and establishing joint lists from which eligibles shall be certified for appointment in accordance with the provisions of this chapter.

**240.100 Administer oaths; subpena witnesses; compel production of papers.** Each member of the commission may administer oaths, subpena witnesses, and compel the production of books and papers pertinent to any investigation or hearing authorized by this chapter.

**240.105 Department allowed use of public facilities of state or municipalities.** All officers and employes of the state and of municipalities and political subdivisions of the state shall allow the department the reasonable use of public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing or investigation authorized by this chapter. The department shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it.

**240.110 Records and information to be furnished department.** All officers and employes shall furnish any records or information, except records made confidential by statute, or administrative order or rule, which the director or the commission may request for any purpose of this chapter.

**240.115 Action to secure compliance with chapter.** The commission may maintain such action or proceeding at law or in equity

as it considers necessary or appropriate to secure compliance with this chapter and its rules and orders thereunder.

**240.120 Department records public.** The records of the department, except such records as the rules may require to be held confidential for reasons of public policy, shall be public records and shall be open to public inspection, subject to regulations as to the time and manner of inspection which may be prescribed by the commission.

**240.125 Selection and qualifications of Merit System Director.** (1) Within 90 days after the appointment of the commission and thereafter within 40 days after a vacancy occurs in the office of director, the commission shall conduct a competitive test for the position of director and shall thereafter select and appoint a director.

(2) The director shall be in the classified service and shall have had experience in the field of merit system personnel administration and be familiar with its principles and methods. He shall hold no other public office or employment.

**240.130 Removal of director.** The commission may remove the director for cause, but before taking such action it shall first give to the director a statement in writing of its intention to effect his removal and the reason therefor. Any time within five days after receipt of such statement in writing, the director may appeal in writing to the commission for investigation and review. Within 40 days thereafter, the commission shall render its decision which shall be binding and final.

**240.135 Salaries of director and assistants.** The commission shall employ such assistants to the director as appear necessary and shall, with the approval of the Director of the Department of Finance, fix salaries for each, including the director. However, such salaries and positions shall conform to the classifications and pay plan provided by this chapter.

**240.140 Deputy director.** The commission may designate an employe of the department as deputy, to act as director when the director is unable to act.

**240.145 Duties of director.** The director, subject to the approval of the commission, shall direct and supervise all the administrative and technical activities of the department. In addition to the duties imposed upon him elsewhere in this chapter, he shall:

(1) Attend all meetings of the commission and act as its secretary and keep minutes of its proceedings.

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

(3) Select for appointment, under the provisions of this chapter, such employes of the department, and such experts and special assistants as may be necessary to carry out effectively the provisions of this chapter.

(4) Prepare, in accordance with the provisions of this chapter and the rules adopted thereunder, appropriate tests, rating of candidates for appointment and eligible lists.

(5) Make certifications for appointment within the classified service, in accordance with the provisions of this chapter.

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

(7) Investigate from time to time the operation and effect of this chapter and the rules thereunder and report his findings and recommendations to the commission.

(8) Make annual reports to the commission regarding the work of the department, and such special reports as are considered desirable to the commission.

**240.150 Payrolls must be certified by director before payment can be made.** No state disbursing or auditing officer shall make or approve or take any part in making or approving any payment for personal service to any person holding a position in the classified service unless the payroll voucher or account of such pay bears the certification of the director or his authorized agent that the persons named therein have been appointed and employed in accordance with the provisions of this chapter and the rules, regulations and orders thereunder.

**240.155 Civil service examiners.** The director, with the approval of the commission, shall select officers or employes in the state service to act as examiners in the preparation and rating of tests. An appointing authority shall excuse an employe in his

division from his regular duties for the time required for his work as an examiner. Officers and employes shall not be entitled to extra pay for their service as examiners, but shall be entitled to reimbursement for necessary traveling and other expenses.

**240.160 Division personnel officers.** Subject to the rules of the commission, a division may designate a staff employe to serve as division personnel officer. Such divisional personnel officers shall administer, within the division, training and educational programs developed by the director in cooperation with appointing authorities and others and such other functions of the department as are authorized by the commission or director.

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

(2) The department shall, at such times as it may deem proper, determine the expenses incurred during a given period and, upon approval by the Director of the Department of Finance, the department shall render to each state division affected thereby an invoice for its pro rata share of such expenses. Each division shall pay such invoice as an administrative expense of the division from funds or appropriations available to the division in the same manner as other claims against the state are paid.

**240.170 Civil Service Department Account.** There is established in the General Fund, a separate account to be known as the Civil Service Department Account. The moneys, in the amount of $75,000, deposited in such account pursuant to section 32, chapter 400, Oregon Laws 1945, to chapter 55, Oregon Laws 1953, and to section 1, chapter 437, Oregon Laws 1957, are to be used as a working fund by the department. All moneys received by the department pursuant to the provisions of this chapter shall be deposited in the State Treasury to the credit of the Civil Service Department Account. Such amount as may be necessary and no more, hereby is appropriated out of that account for the payment of all expenses incurred in the administration of this chapter.
[Amended by 1957 c.437 §2]

## CLASSIFICATION AND COMPENSATION PLANS

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

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

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

(3) The exempt service as defined in ORS 240.200.
[1955 c.738 §1]

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

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

(2) Members of boards and commissions and heads of departments required by law to be appointed by the Governor or the Board of Control.

(3) Judges, referees, receivers, court reporters, bailiffs, officers of the court, jurors and notaries public.

(4) Officers and employes of the Legislative Assembly.

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

(6) Any other position designated by law as exempt.
[1955 c.738 §2]

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

(1) One executive officer and one secretary for each board or commission, the members of which are elected officers, or are appointed by the Governor, the Board of Control, the director of a department of state government, except the Civil Service Commission.

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

(3) One principal assistant or deputy and one private secretary for each elective executive or administrative officer, and for each executive or administrative officer re-

quired by law to be appointed by the Governor or the Board of Control.

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

(5) One secretary or clerk of each judge of a court of record.

(6) The deans, professors, principals, instructors and teachers in the Oregon State School for the Deaf and in the Oregon State School for the Blind.

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

(8) Student employes on part-time basis in the state system of higher education.

(9) Licensed physicians and dentists employed part time, student nurses, interns, and patient or inmate help in state institutions.

(10) Lawyers employed in their professional capacities.

(11) The deputy superintendent, all captains, lieutenants, sergeants, corporals, privates first class, privates, recruits, and the directors and assistant directors of the bureaus of the Oregon State Police.

(12) Chancellor of the state system of higher education, one assistant to the chancellor and all staff members of the state system of higher education in the position of president, bursar, chief budget officer, dean, assistant dean, professor, associate professor, assistant professor, instructor, business manager, lecturer, registrar, research assistant, scholar, fellow, director of athletics, coach or trainer, whether the type of service should be teaching, research, extension or counseling; provided, however, that the State Civil Service Commission may review all new appointments to fill the positions listed in this subsection, and if the commission and the State Board of Higher Education cannot agree upon such new appointments, or any of them, final decision in the matter shall be made by the Governor.

(13) The deputy superintendent and assistant superintendents in the State Department of Education.

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

(15) Any other positions designated by law as unclassified.

[Amended by 1953 c.699 §3; 1955 c.738 §4; 1957 c.597 §1; 1959 c.230 §1; 1959 c.566 §4; 1961 c.645 §1; 1965 c.405 §2]

**240.210 Classified service.** The classified service comprises all positions in the state service existing on June 16, 1945, or thereafter created and which are not listed in ORS 240.200 or 240.205.

[Amended by 1955 c.738 §7]

**240.215 Classification plan; minimum qualifications for each class.** (1) The commission shall adopt a classification plan which shall group all positions in the classified service in classes based on their duties, authority and responsibilities, which shall set forth for each class of positions, a class title and a statement of the duties, authority and responsibilities. A statement of the minimum qualifications for each class shall be adopted in like manner. Each class of positions may be subdivided and classes may be grouped and ranked in such manner as may be deemed appropriate. The classification plan and minimum qualifications shall be effective only when adopted by procedure specified in ORS 240.090 for the adoption of a rule and in addition approved by the Governor.

(2) After consultation with appointing authorities, the director shall allocate each position in the classified service to the appropriate class therein on the basis of its duties, authority and responsibilities. Any employe affected by allocation of a position to a class shall, after filing with the director a written request for reconsideration thereof, be given a reasonable opportunity to be heard by the commission.

**240.220 Modification of classification plan or minimum qualifications.** (1) The director or an appointing authority desiring to establish a new position in the classified service or to make any permanent and substantial change in the duties, authority or responsibilities of a position in such service, shall notify the commission in writing of the proposed change. Any employe affected by such contemplated changes may appeal from such change in duties, authority or responsibilities and resulting classification.

(2) A modification of the classification plan or the minimum qualifications shall be effective only when adopted by procedure specified in ORS 240.090 for the adoption of a rule and in addition approved by the Governor.

**240.225 Class titles used to designate positions.** The class titles set forth in the classification plan shall be used to designate

the positions allocated to such classes in all official records, vouchers and communications.

**240.230 Employment only under approved class titles.** No person shall be appointed to or employed in a position in the classified service under a class title which has not been approved by the director as appropriate to the duties to be performed.

**240.233 Continuing salary survey program.** (1) The Civil Service Commission shall initiate a continuing salary survey program. For this purpose the commission shall compile information and prepare statistics on prevailing rates of salaries and wages in all positions of state service, regardless of position classification under ORS 240.195, as compared with salaries and wages for similar positions in private industry, in the service of other state governments and in federal service.

(2) Beginning with the year 1956, the commission shall annually on December 1 publish a report on the results of the salary survey during the preceding year which shall disclose, among other things, the source of the information upon which the salary and wage comparison is based. Copies of the report shall be furnished to the Governor, the members of the legislature and the appointing authorities in the several state agencies.

(3) The appointing authorities and department heads of the state agencies shall cooperate with and assist the Civil Service Commission in compiling the data required for the salary survey.

[1955 c.738 §8]

**240.235 Compensation plan for classified service.** (1) The commission shall adopt a compensation plan which shall include, for each class or position, a minimum and a maximum rate, and such intermediate rates as are considered necessary or equitable. In establishing such rates, consideration shall be given the prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, maintenance or other benefits received by employes, and the state's financial condition and policies.

(2) Modifications of the plan may be adopted by the commission and shall be effective only after recommendation by the director or an appointing authority, consultation with appointing authorities and the Director of the Department of Finance and approval by the Governor.

(3) Except as provided in subsection (4) of this section, each employe in the classified service shall be paid at one of the rates set forth in the compensation plan for the class of positions in which he is employed.

(4) For a period not longer than 120 days next following any modification under ORS 240.220 affecting a position, the commission may provide that the rate of compensation of the employe holding such position shall not be reduced by reason of any such modification.

[Amended by 1961 c.451 §1]

**240.240 Salary plans and leave with pay arrangements for unclassified service.** (1) The unclassified service is not subject to the provisions of this chapter except that employes and officers in the unclassified service are subject to the laws and regulations pertaining to any type of leave with pay, except as otherwise provided in subsection (4) of this section.

(2) With regard to any unclassified position for which the salary is not fixed by law, and except as otherwise provided in subsections (3) and (4) of this section, a salary plan which is equitably applied to various categories in the unclassified service and is in reasonable conformity with the general salary structure of the state shall be maintained by the elected officials and other appointing authorities. For the purpose of establishing a salary plan, the appointing authorities may request the advice and assistance of the Civil Service Commission. Any salary plan under this subsection shall be approved by the Department of Finance. The Department of Finance shall, before approval, submit all salary plans established by an appointing authority under this subsection to the Civil Service Commission for review and recommendation if the salary plan was not submitted to the Civil Service Commission by the appointing authority.

(3) The Secretary of State and the State Treasurer may for the purpose of maintaining a salary plan for unclassified positions in their departments request the advice and assistance of the Civil Service Commission.

(4) With regard to unclassified positions in the state system of higher education, the salary plan and arrangements for leave with pay shall be established by the State Board of Higher Education.

[1955 c.738 §5]

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

## METHOD OF SELECTING EMPLOYES FOR SERVICE IN CLASSIFIED POSITIONS

**240.305 Filling positions in classified service.** No person shall be appointed or promoted to a position in the classified service unless certified as eligible by the director. Vacancies in the classified service shall be filled only by appointment of an eligible certified by the director from a list or by provisional, temporary or emergency appointment or by transfer or demotion of a regular employe.

**240.310 Lists to be maintained.** In accordance with rules adopted by the commission, the director shall establish and maintain divisional reemployment, reemployment, employment and promotion lists.

**240.315 Reemployment lists.** (1) Divisional reemployment lists and reemployments lists, shall contain the names of persons who have been regular employes, and who were separated from their positions for reasons other than fault or delinquency on their part.

(2) The order in which names shall be placed on divisional reemployment or reemployment lists shall be established by the rules in which merit rating and length of service shall be taken into account.

(3) The term of eligibility of such candidates shall be determined by the commission, but shall not exceed two years from the date of their separation from the service in which they earned reemployment rights.

(4) The commission may strike the name of a person from a divisional reemployment list or a reemployment list, if it finds, after giving him notice and an opportunity to be heard, that such person is not qualified to perform satisfactorily the necessary duties.

**240.320 Promotion and employment lists.** (1) Promotion lists and employment lists for the various classes of positions in the classified service as are found necessary or desirable to meet the needs of the service, shall contain the names of persons who have been found qualified for appointment to a particular position by test.

(2) The eligibles shall be ranked in order of their ratings earned in the tests given for the purpose of establishing such lists.

(3) The commission may consolidate or cancel promotion lists and employment lists as the needs of the service may require and as authorized by the rules. A promotion list or employment list which has been in force for six months or more shall be deemed canceled upon the establishment of a new promotion list or employment list, as the case may be, for the same class of positions.

**240.325 Extending eligibility of lists.** The commission may extend the period of eligibility of any list by order made before the expiration of the list, but the eligibility of a list shall not be extended to a total of more than two years.

**240.330 Entrance and promotion tests.** In accordance with the rules adopted by the commission, the director shall from time to time conduct entrance tests and promotion tests as necessary for establishing employment lists and promotion lists.

**240.335 Character of tests.** (1) The entrance and promotion tests shall be competitive and shall be of such character as to determine the qualifications, fitness and ability of the persons tested to perform the duties of the class of positions for which a list is to be established.

(2) The tests may be written, oral, physical or in the form of a demonstration of skill, or any combination of such types.

(3) The tests may take into consideration education, experience, aptitude, capacity, knowledge, character, physical fitness and other qualifications as enter into the determination of the relative fitness of the applicants.

**240.340 Limitations on inquiries in application or test; discrimination based on race, religion or political opinions prohibited.** (1) No question in any form of application or in any test shall be so framed as to elicit any

information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations and all disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened or promised by any person in the employ of any division or the commission against or in favor of any applicant, eligible or employe because of his race or religious or political opinions or affiliations or solely because of age if he is 25 years of age or older and under 65 years of age.

(2) However, the limitations of subsection (1) of this section shall not prevent any inquiry as to whether the applicant, employe or eligible supports the Constitution of the United States of America and of the State of Oregon.

[Amended by 1959 c.689 §5; 1959 c.694 §1]

**Note:** As indicated in the source note to ORS 240.340, that section was amended by two 1959 Acts, i.e., chapters 689 and 694, Oregon Laws 1959. Chapter 689, which was signed by the Governor on May 28, 1959, added the words "or solely because of age if he is 25 years of age or older and under 65 years of age" to subsection (1). Chapter 694, which was signed by the Governor on May 29, 1959, amended subsection (2) but did not include the amendment to subsection (1) made by chapter 689. Both Acts took effect on August 5, 1959.

**240.345 Admission to tests.** The commission shall establish rules specifying the qualifications for admission to any test. Subject to the rules, admission to tests shall be open to all persons who appear to possess the required qualifications and may be lawfully appointed to a position in the class for which a list is to be established and who pay the fee, if any, prescribed by the rules.

**240.350 Public notice of tests.** (1) The director shall give public notice of each test at least two weeks in advance of such tests in the manner specified by rules adopted by the commission.

(2) Each official notice of a test shall state the duties and pay of positions in the class for which the test is to be held, the qualifications required therefor, the time, place and manner of making application for admission to such test, the estimated number of vacancies to be filled, and other information considered pertinent.

**240.355 Test ratings; notice and review.** The rating of each test shall be completed and the resulting list established not later than 90 days after the date on which the test was held, unless such time is extended by the commission. Each person competing in any test shall be given written notice of his final earned rating and of his relative standing on the list, or of his failure to attain a place on the list. Each person competing in a test may, not later than one month after the establishment of the list and in accordance with the rules adopted by the commission, have his rating in any and all parts reviewed and corrected if manifest errors are found. No such correction shall invalidate any appointment previously made from such a list.

**240.360 Order in which eligibles are certified.** (1) Upon written notice of an appointing authority that a position in the classified service is to be filled, the director shall certify the names of highest ranking eligibles who are willing to accept appointment from lists for the class to which the position is allocated, or a comparable class.

(2) Divisional reemployment lists which contain only those names of employes laid off in good standing shall be used first in filling any vacant position. The order of priority of all other lists shall be governed by rules of the commission.

[Amended by 1955 c.140 §1]

**240.365 Number of names certified for each vacancy.** (1) The number of names certified from:

(a) Divisional reemployment lists shall be equal to the number of vacancies to be filled.

(b) Employment lists may be five in the case of one vacancy with two additional names for each additional vacancy.

(c) Other lists shall be three in the case of one vacancy, four in the case of two vacancies and, for more than two vacancies, five-thirds of the number of vacancies.

(2) The detailed condition and provisions for certification and appointments shall be prescribed by rule of the commission.

(3) If the appropriate lists do not contain the names of a sufficient number of eligibles willing to accept appointment to make possible the certification provided for herein, the names of all eligibles on such lists who are willing to accept appointment shall be certified.

**240.370 Removal of eligibles from list.** The names of persons who have been certified for appointments three times to the same

appointing authority and who have not received appointment, and the names of persons who have expressed unwillingness to accept appointment may, in the discretion of the director, be removed from a list.

**240.375 Provisional appointments.** If there is no appropriate list available, the director may authorize the provisional appointment of a person meeting at least the minimum prerequisites for the class to which the position is allocated. No position shall be filled by provisional appointment for more than 90 days unless the commission declares an emergency pending the establishment of an appropriate employment list. No position shall be filled by provisional appointment more than once in any fiscal year, nor shall any person be appointed as a provisional employe more than once in any fiscal year, nor shall a provisional appointment in any event be extended more than 180 days; except that in those instances where a provisional appointee meeting the minimum qualifications for the class has served the specified 180 days and no examination has been given, the employe shall be placed in trial service status if the operating agency declares in writing that such employe is competent and the Department of Civil Service determines him qualified by an appropriate examination which includes an evaluation of performance. Any employe appointed to provisional status prior to January 1, 1959, shall be placed in trial service status upon passing the examination for his classification.

[Amended by 1959 c.375 §1]

**240.380 Temporary appointments.** Whenever there is need of an employe for a temporary period the director may authorize a selection from the five highest ranking available eligibles on the appropriate employment, promotion or reemployment list. Successive temporary appointments of the same person to the same position shall not total more than 90 days in any one year.

**240.385 Emergency appointments.** To prevent the stoppage of work or inconvenience to the public in case of an emergency, any appointing authority may appoint any person to any position for the duration of the emergency but not to exceed 60 days. A vacancy of which the appointing authority has had reasonable notice, or an employment condition of which he had previous knowledge, shall not be considered an emergency under this section. The appointing authority shall report each emergency appointment to the director forthwith. No emergency appointment shall be renewed.

**240.390 Procedure for selecting unskilled, semi-skilled and part-time employes.** (1) For positions involving unskilled or semi-skilled labor, or domestic, attendant or custodial work, or part-time positions, when the character or place of the work or other conditions of employment make it impracticable to supply the needs of the service by appointments made in accordance with the procedure prescribed by this chapter, the director, subject to the rules, may adopt, or authorize the use of, such other procedures as he determines to be appropriate in order to meet the needs of the service, while assuring the selection of such employes on the basis of merit and fitness.

(2) Such procedures may include the testing of applicants and maintenance of lists of eligibles by localities; the testing of applicants, singly or in groups, at periodic intervals, at the place of employment or elsewhere, after such notice as the director considers adequate; the registration of applicants who pass a noncompetitive test or submit satisfactory evidence of their qualifications; or any variation or combination of the foregoing, or other suitable method.

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

(2) When the commission determines that the emergency or abnormal condition no longer exists, and the Governor so certifies, the regular examination, certification and employment procedures shall be reestablished. Temporary appointments made with the approval of the commission during the

emergency period shall terminate 90 days after the date of establishment of eligible lists for positions to which temporary appointments have been made.

## TRIAL SERVICE AND REGULAR STATUS; MERIT RATINGS

**240.405 Trial service period.** (1) Except as provided in subsection (4) of this section, every person appointed to a position in the classified service after certification of his name from a promotional or an employment list shall serve a trial service period of not to exceed six months.

(2) Uninterrupted service in a position by a provisional employe which immediately precedes appointment to such position shall be counted as part of the trial service period.

(3) At such times during the trial service period and in such manner as the director may require, the appointing authority shall report to the director his observation of the employe's work, and judgment as to the employe's willingness and ability to perform his duties satisfactorily, and as to his habits and dependability.

(4) Where the appointing authority has established a professional or technical training program for positions requiring graduation from a four-year college or university or the satisfactory equivalent thereof in training and experience as established by the commission, including but not limited to the training of accountants and auditors, which program has been approved by the director and which is for the purpose of developing the skills or knowledge necessary for competent job performance in the specialized work of such authority, the employe may be required to train under such program for a period not exceeding six months and the trial service period for such employe shall be the length of the approved training program plus six months.

[Amended by 1961 c.647 §1; 1963 c.185 §1]

**240.410 Removals during trial period.** (1) The appointing authority may remove an employe within the first two months of his trial service period only with the approval of the director.

(2) At any time during his trial service period, after the first two months thereof, the appointing authority may remove an employe if, in the opinion of the appointing authority, the trial service indicates that such employe is unable or unwilling to perform his duties satisfactorily or that his habits and dependability do not merit his continuance in the service. Upon such removal, the appointing authority shall forthwith report to the director, and to the employe removed, his action and the reason therefor.

(3) No more than three employes shall be removed successively from the same position during their trial service periods without the approval of the director.

(4) The director may remove an employe during his trial service period if he finds, after giving him notice and an opportunity to be heard by the commission, that such employe was appointed as a result of fraud or error.

(5) If any employe is removed from his position during or at the end of his trial service period, and the director determines that he is suitable for appointment to another position, his name may be restored to the list from which it was certified. If any such employe was a regular employe in another position in the classified service immediately prior to his appointment, he shall be reinstated to his former position unless charges are filed and he is discharged as provided in this chapter.

**240.415 Regular employe status upon satisfactory completion of trial service period.** The employe shall be deemed to have served his trial service period satisfactorily, and to be a regular employe, unless at least 10 days prior to the expiration of the trial service period the appointing authority has notified the director in writing that the employe's services have not been satisfactory.

240.420 [Repealed by 1961 c.646 §1]

**240.425 Regular seasonal employes.** Positions which occur, terminate and recur periodically and regularly regardless of the duration thereof shall be designated by rule of the commission as seasonal positions, and employes regularly certified for and serving satisfactorily in such positions through one seasonal service period shall be entitled to permanent status as regular seasonal employes.

**240.430 Merit ratings.** (1) In cooperation with appointing authorities, the commission shall establish standards of performance for employes in each class of position in the classified service or for groups of

classes, and a system of merit ratings based upon such standards.

(2) In such manner and with such weight as shall be provided in the rules, merit ratings shall be considered:

(a) In determining salary increases and decreases within the limits established by law and by the compensation plan.

(b) As a factor in promotion tests.

(c) As a factor in determining the order of lay-off when forces must be reduced because of lack of funds or work, and the order in which names are to be placed on reemployment lists.

(d) As a means of discovering employes who should be promoted, demoted, transferred or dismissed.

## WORKING HOURS, LEAVES, VACATIONS, LAY-OFFS, TRANSFERS, SUSPENSION, REDUCTION, DEMOTION, DISMISSAL

**240.505 Working hours.** The rules shall provide for the hours of work, holidays, and attendance regulations in the various classes of positions in the classified service.

**240.510 Leaves of absence.** (1) Written leave of absence without pay may be granted by the appointing authority with the approval of the commission for a period not to exceed one year. Upon expiration of the leave the employe shall be reinstated to the position held before the leave was granted. Failure of the employe to report promptly at the expiration of the leave shall be cause for dismissal.

(2) Leaves of absence shall be automatically granted all regular employes who have entered the service of the United States or its allies, since September 14, 1940, or who hereafter enter such military service. Such employes who are honorably discharged at the expiration of their military service, and who report for duty within six months following discharge, shall be returned to their last held position and at the salary rates prevailing for such positions on the date of resumption of duty, without loss of seniority or other employment rights. Term of military leave shall be counted in computing seniority according to rules established.

(3) Leaves of absence without pay for at least two years shall be granted automatically to all regular employes who serve in the Peace Corps as volunteers. Upon expiration of the leave the employe shall have the right to be reinstated to the position held before the leave was granted and at the salary rates prevailing for such positions on the date of resumption of duty without loss of seniority or other employment rights. Failure of the employe to report within 90 days after termination of his service shall be cause for dismissal.

[Amended by 1963 c.199 §3]

**240.515 Vacations.** (1) Vacation with pay shall be granted to employes in accordance with the rules adopted by the commission. Except as otherwise provided in subsection (3) of this section, an employe shall be entitled to a vacation of at least two work weeks with pay on completion of the first full 12 calendar months of service, and shall accrue at least one week of vacation with pay for each subsequent six full calendar months of service. An employe may accumulate a maximum of five work weeks of vacation with pay.

(2) Upon termination of employment:

(a) If a claim has been filed with the appointing authority charging that the employe has damaged or misappropriated state property or equipment, payment for accrued vacation shall be withheld until the claim has been settled. If the employe takes no action toward settlement of the claim within 60 days of the date his employment terminated, the appointing authority may declare the cash value of the accrued vacation forfeited.

(b) If no claim has been filed with the appointing authority against the employe, the appointing authority shall authorize payment of cash remuneration for accrued vacation earned up to the end of the last full month of service.

(3) The commission may provide that employes whose full work year is an academic year, that is, that period between July 1 and June 30 next following during which school is normally in session, shall accrue at least one week of vacation with pay for each six full calendar months of service and shall be entitled to a vacation with pay of all accrued vacation time at the end of each academic year.

[Amended by 1953 c.353 §2; 1961 c.450 §1]

**240.520 Sick and disability leave.** Sick and disability leave shall be granted with pay to employes in accordance with rules adopted by the commission.

**240.525 Lay-offs.** (1) Whenever a reduction in employes is required because of a shortage of funds or work or a material change in duties or organization, employes shall be laid off by appointing authorities and under rules, which shall take into account length of service and merit rating.

(2) In every case of lay-off of a regular employe, the appointing authority shall, 15 days before the effective date thereof, give written notice to the employe and the director. In any case where an appointing authority refuses, or fails to certify before the effective date thereof, that the lay-off was for reasons not reflecting discredit on the employe, it shall be deemed a dismissal and shall be subject to the provisions concerning dismissals in this chapter.

**240.530 Transfers from discontinued or reclassified positions.** Subject to the rules, a regular employe whose position is discontinued or reclassified may be transferred to a vacant position in the same or comparable class, or may elect to accept voluntary transfer to a vacant position for which he is qualified and have his name placed upon an appropriate reemployment list. An incumbent of a reclassified position may be retained in the position under the new classification, or, advanced thereto if he passes a noncompetitive test for the new position.

**240.535 Transfers within a division.** An appointing authority may at any time assign an employe from one position to another position in the same class or rank in his division. Upon making such an assignment, the appointing authority shall forthwith give written notice of his action to the director.

**240.540 Transfers between divisions.** A transfer of an employe from a position in one division to a position in the same class or rank in another division may be made with the approval of the director and of the appointing authorities of both divisions.

**240.545 Transfer to higher class.** No employe shall be transferred from a position in one class to a position in another class of a higher rank or for which there are substantially dissimilar requirements for appointment unless he is appointed to such latter position after certification of his name from a list in accordance with the provisions of this chapter.

**240.550 Transfer to lower class.** Any change of an employe from a position in one class to a position in a class of lower rank shall be considered a demotion and shall be made only in accordance with the procedure prescribed for dismissal, except when an employe submits to the director a written request for change to a class of lower rank, and the request is granted, such change shall be termed a "voluntary demotion."

**240.555 Suspension, reduction, demotion or dismissal.** (1) The commission, by rule, shall establish a procedure in accordance with this chapter whereby the appointing authority in any division may suspend, reduce, demote or dismiss such employe for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service, and for the investigation and public hearing of appeals of such suspended, reduced, demoted or dismissed employe.

(2) The appointing authority for disciplinary purposes may suspend without pay a regular employe for a period not exceeding 30 days in any 12 months.

**240.560 Appeal from suspension, reduction, demotion or dismissal; hearings; findings; reinstatement or modification of order of dismissal.** (1) A regular employe who is reduced, dismissed, suspended or demoted, shall have the right to appeal to the commission not later than 10 days after the effective date of such reduction, dismissal, suspension or demotion. Such appeal shall be in writing and shall be heard by the commission within 30 days after its receipt. The commission shall furnish the division concerned with a copy of the appeal in advance of the hearing.

(2) The hearing shall be open to the public and informal. Both the employe and his appointing authority shall be notified reasonably in advance of the hearing and shall have the right to have subpenas issued, present witnesses, give evidence before the commission and be represented by counsel or other representative of his own choosing. The finding and decision of the commission as to such appeal shall be in writing and a copy thereof shall be mailed or delivered to the appellant within 10 days of the hearing.

(3) If the commission finds that the action complained of was taken by the appointing authority for any political, religious or

racial reasons, or was an unlawful employment practice as described in subsection (1) of ORS 659.026, the employe shall be reinstated to his position and shall not suffer any loss in pay.

(4) In all other cases, if the commission finds that the dismissal was not made in good faith for cause, it shall order the immediate reinstatement and the reemployment of the employe in the position from which he was dismissed without the loss of pay. The commission in lieu of affirming the dismissal, may modify the order of dismissal, by directing a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in classification, grade or pay. The findings and order of the commission shall be certified in writing to the appointing authority and shall be forthwith put into effect by the appointing authority.
[Amended by 1957 c.205 §1; 1959 c.689 §6]

**240.565 Reemployment after dismissal without reinstatement.** When any regular employe is dismissed and is not reinstated after appeal, the commission shall, where the circumstances are found to warrant reemployment, place his name on an appropriate reemployment list.

**240.570 Classified employe filling position in unclassified or exempt service.** Positions in the unclassified and exempt service may be filled by classified employes upon request of the appointing authority. Any classified employe so appointed shall, after termination of service in an unclassified or exempt position, be restored to his status in the classified service.
[1955 c.738 §6]

## PROHIBITED CONDUCT

240.705 [Repealed by 1967 c.630 §5]

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

(2) No person shall, directly or indirectly, give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position in the classified service.

(3) No employe of the department, examiner or other person shall defeat, deceive or obstruct any person in his right to examination, eligibility, certification or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in the classified service.

## PENALTIES

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

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

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

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

**CERTIFICATE OF LEGISLATIVE COUNSEL**

Pursuant to ORS 173.170, I, Robert W. Lundy, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on December 1, 1967.

Robert W. Lundy
Legislative Counsel