

Chapter 240

1979 REPLACEMENT PART

Merit System for State Employes

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ADMINISTRATIVE PROVISIONS

240.005 Short title of chapter. This chapter shall be known as the State Merit System Law.

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.005 as amended is set forth for the users' convenience.

240.005 This chapter shall be known as the State Personnel Relations 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.

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.010 as amended is set forth for the users' convenience.

240.010. The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles.

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

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

240.013 Job-sharing positions; adjustment of benefits and detriments. In so far as reasonably possible, individuals who hold job-sharing positions shall be entitled to bene-

fits and privileges and suffer detriments under this chapter in proportion to their seniority as adjusted in the proportion that their monthly time employed bears to the monthly time employed by individuals holding full-time positions. [1979 c.302 §7]

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

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

(2) "Class" or "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) "Board" means the Employment Relations Board.

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

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

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

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

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

(12) "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.

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

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

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

(16) "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; 1969 c.80 §30; 1975 c.147 §9; 1979 c.302 §4]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.015 as amended is set forth for the users' convenience.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) A member of the board shall not hold any other office or position of profit or pursue any other business or vocation or serve on or under any committee of any political party, but shall devote his entire time to the duties of his office. [Amended by 1969 c.80 §32; 1973 c.536 §26; 1975 c.147 §10; 1977 c.808 §1]

240.065 Appointment; terms; vacancies. (1) The members of the board shall be appointed by the Governor for a term of four years. The members first appointed to the board after July 27, 1977 shall serve in the following manner:

(a) One shall serve for a term ending June 30, 1979.

(b) One shall serve for a term ending June 30, 1980.

(c) One shall serve for a term ending June 30, 1981.

(d) The chairperson first appointed after July 27, 1977 shall serve for a term ending June 30, 1979.

(2) Each member shall be appointed for a term ending four 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. Appointments to the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.560 and 171.570.

(3) On July 27, 1977, the terms of all members of the Employment Relations Board expire and the Governor shall appoint to the board members who meet the qualifications of ORS 240.060. [Amended by 1969 c.80 §34; 1973 c 536 §27; 1973 c.792 §6a; 1977 c.808 §2]

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

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

240.075 Removal of members. A member of the board 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 Chairperson appointed by Governor; meetings; quorum; hearings. The Governor shall appoint one of the members of the board as chairperson, who shall serve for a term not to exceed four years. The chairperson shall be the chief administrative

officer of the board. The board shall meet at such times and places as are specified by call of the chairperson or a majority of the board. All hearings shall be open to the public. A majority of the members of the board constitutes a quorum for the transaction of business. Any agent designated by the board to make investigations and conduct hearings may administer oaths and affirmations, examine witnesses and receive evidence. [Amended by 1973 c.536 §29; 1977 c.808 §4]

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

240.086 Duties of board. The primary responsibility of the board shall be to foster and protect a merit system of personnel administration in state government. In carrying out this function it shall:

(1) Review and hear comments on any rules or modifications thereof adopted by the Personnel Division and on any schedule adopted by the Department of General Services under ORS 182.435. Such a rule or modification or schedule does not become effective if the board finds that it is arbitrary, improper or contrary to law and disapproves it on that basis.

(2) Review any personnel action that is alleged by an affected party, or an organization certified by the rules of the board as representing an affected party, to be arbitrary or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct. The board on its own motion may act with like effect under this subsection.

(3) Adopt such rules or hold such hearings as it finds necessary properly to perform the duties, functions and powers imposed on or vested in it by law. [1969 c.80 §35a (enacted in lieu of 240 085); 1971 c.575 §5; 1975 c.605 §14]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.086 as amended is set forth for the users' convenience.

240.086. The duties of the board shall be to :

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

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

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

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

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

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

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

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

(g) The award is in violation of law.

(3) Adopt such rules or hold such hearings as it finds necessary to perform the duties, functions and powers imposed on or vested in it by law.

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

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

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981

240.090 [Repealed by 1969 c.80 §92]

240.091 Division required to provide services to municipalities and political subdivisions when federal funds involved.

(1) The division shall enter into agreements

with any municipality or political subdivision in the state to furnish services and facilities of the division in administering a personnel program under a merit system when such service or facility is requested by the municipality or subdivision when a merit system is required in order for the municipality or subdivision to qualify for the receipt of federal funds.

(2) Any agreement under subsection (1) of this section must provide for reimbursement to the state for the costs of services and facilities furnished under the agreement. The reimbursement shall be deposited to the credit of the Local Government Personnel Assistance Account.

Note: Section 1, chapter 468, Oregon Laws 1979, provides:

Sec. 1. ORS 240.091, 240.093, 240.095, 240.097, 240.125, 240.130, 240.135, 240.140, 240.155, 240.180, 240.220, 240.225, 240.230, 240.305, 240.310, 240.315, 240.320, 240.325, 240.330, 240.335, 240.340, 240.345, 240.350, 240.355, 240.360, 240.370, 240.375, 240.380, 240.387, 240.390, 240.405, 240.415, 240.505, 240.510, 240.515, 240.520, 240.525, 240.530, 240.535, 240.540, 240.545, 240.550, 240.565, 240.572 and 240.575 are repealed [operative July 1, 1981].

240.093 Division sole agency for certain certification of merit system of municipality or political subdivision. Unless federal law requires otherwise, the division shall be the sole state agency to certify the merit system of any municipality or political subdivision in this state whenever such certification is required by any federal program as a condition to the receipt of federal funds. Certification of a merit system shall depend on the division's finding that it complies with any federal requirement, with applicable state law, rule or regulation, and with any charter or special election and rules and regulations adopted pursuant thereto. [1971 c.576 §3]

Note: See note under 240.091.

240.095 Division authorized to provide services to municipalities and political subdivisions. (1) The division may enter into agreement with any municipality or political subdivision of the state to furnish services and facilities of the division to the 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, such reimbursements to be deposited to the credit of the Local Government Personnel Assistance Account. All municipalities and political sub-

divisions of the state may enter into such agreements.

(2) The division 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. [Amended by 1969 c.80 §37; 1969 c.489 §5]

Note: See note under 240.091.

240.097 Local Government Personnel Assistance Account. There is created in the General Fund of the State Treasury a Local Government Personnel Assistance Account. All moneys in the account are appropriated continuously to the division for purposes of furnishing services and facilities to municipalities and political subdivisions of this state, with respect to the administration of their personnel system on merit principles, under authority of any provision of this chapter. [1969 c.489 §2]

Note: See note under 240.091.

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

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

240.105 Use of public facilities of state or municipalities. All officers and employes of the state and of municipalities and political subdivisions of the state shall allow the division or board the reasonable use of public buildings under their control, and furnish heat, light, and furniture, for any examination, hearing or investigation authorized by this chapter or ORS 243.005 to 243.215, 243.305, 243.315 and 243.400 to 243.940. The division or board shall pay to a municipality or political subdivision the reasonable cost of any such facilities furnished by it. [Amended by 1969 c.80 §38a]

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

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

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

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

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

(3) The board shall designate a member of the Oregon State Bar as its general counsel to assist it in the performance of its functions and duties. Notwithstanding ORS chapter 180 and independently of the Attorney General, the general counsel may represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested. The board may also delegate to its general counsel such other administrative duties and responsibilities as it finds advisable. [1969 c.80 §35e; 1973 c.536 §30; 1977 c.808 §5]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.123 as amended is set forth for the users' convenience.

240.123. (1) The board shall employ such personnel as it considers necessary for efficient administration of its vested duties, and fix the compensation of its employes in accordance with the compensation plan for classified employes.

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

(3) The board shall designate a member of the Oregon State Bar as its general counsel to assist it in the performance of its functions and duties. Notwithstanding ORS chapter 180 and independently of the Attorney General, the general counsel may represent the board in any litigation or other matter pending in a court of law to which the board is a party or in which it is otherwise interested. The general counsel shall not appear before the board in any capacity other than general counsel to the board. The board may also delegate to its general counsel such other administrative duties and responsibilities as it finds advisable.

240.125 Administrator; appointment; confirmation. (1) The Personnel Division shall be under the supervision and control of an administrator, who is responsible for the performance of the duties, functions and powers imposed upon the division.

(2) Not later than the 20th day after any vacancy in the position of administrator, the board shall conduct a competitive examination for the position of administrator and not later than the fifth day thereafter certify to the Governor a list of the names of the five highest ranking eligibles who are willing to accept the appointment. On request, the board shall certify to the Governor a second list of names of the next five highest ranking eligibles who are willing to accept an appointment. The Governor shall appoint the administrator from among the persons so certified. The person appointed may hold no other public office or employment. The administrator shall serve for a term of four years beginning on the date of his appointment.

(3) The appointment of the administrator is subject to confirmation by the Senate by the affirmative vote of the majority of the Senators voting on the confirmation, a quorum being present. In case the Governor's choice of the administrator is not confirmed, the Governor shall make another appointment subject to the confirmation by the Senate as provided in this subsection. If an appointment is made in the interim between legislative sessions, the Senate shall act through the Committee on Executive Appointments as provided by ORS 171.560, and the administrator so appointed is subject to the confirmation of the Senate when it next convenes. [Amended by 1969 c.80 §40]

Note: See note under 240.091.

240.130 Removal of administrator. The Governor may remove the administrator for cause, but before taking such action he shall first give to the administrator a statement in writing of his intention to effect his removal and the reason therefor. Not later than the fifth day after receipt of such statement in writing, the administrator may appeal in writing to the board for a hearing. Not later than the 10th day after the hearing, the board shall render its decision which shall be binding and final. [Amended by 1969 c.80 §41]

Note: See note under 240.091.

240.135 Salaries of division personnel. Salaries and positions of personnel in the

division shall conform to the classifications and pay plan provided by this chapter.

[Amended by 1969 c.80 §42]

Note: See note under 240.091.

240.140 Deputy administrator. The administrator may designate an employe of the division as the assistant administrator, to act for him when he is unable to act. [Amended by 1969 c.80 §42a]

Note: See note under 240.091.

240.145 Duties of administrator. The administrator, subject to the approval of the Director of the Executive Department, shall direct and supervise all the administrative and technical activities of the division. In addition to the duties imposed upon him elsewhere in this chapter, he shall:

(1) Attend personally or through his designated representative all hearings of the board pertaining to this chapter.

(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 he holds, his salary or pay; any change in his class title, pay, status or merit rating; and any other data about him that the division deems necessary.

(3) Select for appointment, under this chapter, such employes of the division and such experts and special assistants as are 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 Director of the Executive Department.

(8) Make annual reports to the Director of the Executive Department regarding the work

of the division, and such special reports as the director considers desirable. [Amended by 1969 c.80 §43; 1971 c.695 §1]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.145 as amended is set forth for the users' convenience.

240.145. The administrator, subject to the approval of the Director of the Executive Department, shall direct and supervise all the administrative and technical activities of the division. In addition to the duties imposed upon the administrator elsewhere in this chapter, the administrator shall:

(1) Establish and maintain a roster of all 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 about the employe that the division deems necessary.

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

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

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

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

(6) Make annual reports to the Director of the Executive Department regarding the work of the division, and such special reports as the director considers desirable.

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

240.155 Merit system examiners. The administrator, with the approval of the Director of the Executive Department, 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. [Amended by 1969 c.80 §44]

Note: See note under 240.091.

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

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

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

[Amended by 1969 c.80 §46; 1969 c.489 §6]

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

employees of all divisions of the service in the classified service, or on any other basis that the board determines to be equitable.

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

240.170 Personnel Account; Public Employe Relations Account. (1) The separate account in the General Fund formerly known as the Civil Service Department Account is continued as the Personnel Account. All moneys received by the division pursuant to the state personnel management program shall be deposited in the State Treasury to the credit of the Personnel Account. Moneys deposited to the credit of the Personnel Account are appropriated continuously out of that account for the payment of all expenses incurred by the division for administration of the state personnel management program.

(2) There is established in the General Fund a separate account to be known as the Public Employe Relations Account. All moneys received by the board shall be deposited in the State Treasury to the credit of the account. Moneys deposited to the credit of the Public Employe Relations Account are appropriated continuously out of the account for the payment of all expenses incurred by the board. [Amended by 1957 c.437 §2; 1969 c.80 §47; 1969 c.489 §8]

240.180 Rulemaking authority of administrator. The administrator, subject to approval by the Director of the Executive Department and the board and in compliance with ORS 183.310 to 183.500, shall make such rules as are necessary to carry out the duties, functions and powers of the Personnel Division under chapter 80, Oregon Laws 1969. [1969 c.80 §36; 1971 c.734 §20]

Note: 240.180 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See the Preface to Oregon Revised Statutes for further explanation.

Note: See note under 240.091.

240.185 Maximum number of state employes; applicability; exceptions. (1) On and after January 1, 1980, the number of persons employed by the state shall not exceed 1.6 percent of the state's population of the prior year.

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

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

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

(5) This section does not apply to personnel who administer unemployment insurance benefits programs of the Employment Division of the Department of Human Resources, to personnel who administer programs required to be implemented as a condition for the continued certification of the Employment Division Law by the United States Secretary of Labor or to personnel who administer programs implemented by the United States Department of Labor under federal law if the state is required to enter into contracts to provide such programs. [1979 c.604 §1]

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

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 who serve on a part-time basis and who, if compensated, receive compensation on a per diem basis.

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

(4) Officers and employees of the Legislative Assembly.

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

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

240.205 Unclassified service. The unclassified service shall comprise:

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

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

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

(4) Principal assistants and deputies and one private secretary for each executive or administrative officer specified in subsection (1) of ORS 240.200 and in subsections (1), (2) and (3) of this section. "Deputy" means the deputy (or deputies) to an above-specified executive or administrative officer who is authorized to exercise that officer's authority upon his or her absence. "Principal assistant" means a manager of a major agency organizational component who reports directly to an above-specified executive or administrative officer or deputy and who is designated as such by that executive or administrative offi-

cer with the approval of the Director of the Executive Department.

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

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

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

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

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

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

(11) Lawyers employed in their professional capacities.

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

(13) The deputy superintendent and five associate superintendents in the Department of Education.

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

(15) Division administrators of the Department of Transportation designated as follows:

(a) State Highway Engineer.

(b) Administrator of the Motor Vehicles Division.

(c) Aeronautics Administrator.

(16) Any individual employed and paid from federal funds received under the Comprehensive Employment and Training Act of 1973 (United States Public Law 93-203) and the Emergency Job and Unemployment Assistance Act of 1974 (United States Public Law 93-567) or any other federal program intended primarily to alleviate unemployment.

(17) Any other position designated by law as unclassified. [Amended by 1953 c.699 §3; 1955 c.738 §4; 1957 c.597 §1; 1959 c.230 §1; 1959 c.566 §4; 1961 c.645 §1; 1965 c.405 §2; 1969 c.80 §49; 1969 c.199 §18; 1969 c.564 §3; 1969 c.599 §§66a, 66b; 1971 c.301 §19; 1971 c.467 §25c; 1975 c.3 §1; 1975 c.393 §1a; 1975 c.427 §2a; 1977 c.271 §1; 1979 c.747 §1]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.205 as amended is set forth for the users' convenience.

240.205. The unclassified service shall comprise:

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

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

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

(4) Principal assistants and deputies and one private secretary for each executive or administrative officer specified in subsection (1) of ORS 240.200 and in subsections (1), (2) and (3) of this section. Deputy means the deputy (or deputies) to an above-specified executive or administrative officer who is authorized to exercise that officer's authority upon the absence of the officer. "Principal assistant" means a manager of a major agency organizational component who reports directly to an above-specified executive or administrative officer or deputy and who is designated as such by that executive or administrative officer with the approval of the Director of the Executive Department.

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

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

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

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

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

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

(11) Lawyers employed in their professional capacities.

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

(13) The deputy superintendent and five associate superintendents in the Department of Education.

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

(15) Division administrators of the Department of Transportation designated as follows:

(a) State Highway Engineer.

(b) Administrator of the Motor Vehicles Division.

(c) Aeronautics Administrator.

(16) Any individual employed and paid from federal funds received under the Comprehensive Employment and Training Act of 1973 (United States Public Law 93-203) and the Emergency Job and Unemployment Assistance Act of 1974 (United States Public Law 93-567) or any other federal program intended primarily to alleviate unemployment. However, persons employed under this subsection shall be treated as classified employes for purposes of ORS 243.650 to 243.782.

(17) Any other position designated by law as unclassified.

240.207 Other unclassified positions.

(1) In addition to those positions designated by ORS 240.205, the unclassified service shall include:

(a) The chancellor of the state system of higher education, the vice chancellors and the assistants and one private secretary to the chancellor; and

(b) All staff members of the state system of higher education in the following positions, whether the type of service is teaching, research, extension or counseling:

(A) President and one private secretary to each president.

(B) Vice president.

(C) Comptroller, chief budget officer, business manager, director of admissions and registrar.

(D) Dean, associate dean and assistant dean.

(E) Professor, associate professor, assistant professor, instructor, lecturer, research assistant, research associate, scholar and fellow.

(F) Director of athletics, coach and trainer.

(2) No position may be filled and no appointment made under this section, other than to a position directly involved in teaching, research, extension or counseling, unless a determination has been made by the Personnel Division as to whether the position shall be in the classified or unclassified service.

(3) Pending legislative action, the division may exclude from the classified service any additional positions within the state system of higher education that it finds not to be in the best interests of this state to be within the classified service. Such exclusions are effective

tive only when promulgated as a rule of the division under ORS 240.180. [1969 c.564 §2]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.207 as amended is set forth for the users' convenience.

240.207. (1) In addition to those positions designated by ORS 240.205, the unclassified service shall include:

(a) The chancellor of the state system of higher education, the vice chancellors and the assistants and one private secretary to the chancellor; and

(b) All staff members of the state system of higher education in the following positions, whether the type of service is teaching, research, extension or counseling:

(A) President and one private secretary to each president.

(B) Vice president.

(C) Comptroller, chief budget officer, business manager, director of admissions and registrar.

(D) Dean, associate dean and assistant dean.

(E) Professor, associate professor, assistant professor, instructor, lecturer, research assistant, research associate, scholar and fellow.

(F) Director of athletics, coach and trainer.

(2) No position may be filled and no appointment made under this section, other than to a position directly involved in teaching, research, extension or counseling, unless a determination has been made by the Personnel Division as to whether the position shall be in the classified or unclassified service.

(3) Pending legislative action, the division may exclude from the classified service any additional positions within the state system of higher education that it finds not to be in the best interests of this state to be within the classified service. Such exclusions are effective only when promulgated as a rule of the division.

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 division shall adopt a classification plan which shall group all positions in the classified service in classes based on their duties, authority and responsibilities; and which shall set forth for each class of positions, a class title and a statement of the duties, authority and responsibilities thereof. 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 an appropriate manner. The classification plan and minimum qualifications shall be effective only when approved by the Governor.

(2) After consultation with appointing authorities, the administrator 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 administrator a written request for reconsideration thereof, be given a reasonable opportunity to be heard by the board.

(3) In adopting a classification system, the division shall consult with appointing authorities to determine the positions in a class of positions that can be classified as job-sharing positions. [Amended by 1969 c.80 §50; 1979 c.302 §5]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.215 as amended is set forth for the users' convenience.

240.215. (1) The division shall adopt a classification plan which shall group all positions in the classified service in classifications based on their duties, authority and responsibilities; and which shall set forth for each classification, a class title, a statement of the minimum qualifications, duties, authority and responsibilities thereof. Each classification of positions may be subdivided and classes may be grouped and ranked in an appropriate manner.

(2) The allocation of positions within the various operating agencies to the classifications in the classification plan shall be performed by the agency appointing authority with post-audit review by the division.

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

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

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

Note: Section 3, chapter 6, Oregon Laws 1978, provides:

Sec. 3. This 1977 Act applies to any change in class specifications made on or after January 1, 1977.

240.220 Modification of classification plan or minimum qualifications. (1) 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 that service, shall notify the division in writing of the proposed change. Any employe affected by the contemplated change may appeal the change to the board.

(2) A modification of the classification plan or the minimum qualifications shall be effective only when approved by the Governor. [Amended by 1969 c.80 §51]

Note: See note under 240.091.

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.

Note: See note under 240.091.

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 administrator as appropriate to the duties to be performed.

Note: See note under 240.091.

240.233 Continuing salary survey program. (1) The division shall maintain a continuing salary survey program. For this purpose the division 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) Annually the division shall publish a report on the results of the salary survey during the preceding year. The report 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 division in compiling the data required for the salary survey and shall conduct salary surveys only with the approval of the administrator. [1955 c.738 §8; 1969 c.80 §52; 1975 c.139 §1]

Note: See note under 240.091.

240.235 Compensation plan for classified service. (1) The division 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 the rates the division shall consider 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 division and shall be effective only when approved 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) Following any modification under ORS 240.220 affecting a position, the division may provide that the rate of compensation of the employe holding such position shall not be reduced by reason of any such modification. An employe holding such a position shall not be eligible for any salary increase during such period of time that the employe's salary is above the top step of the salary range of the classification to which the employe's position is allocated. [Amended by 1961 c.451 §1; 1969 c.80 §53; 1975 c.305 §1]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.235 as amended is set forth for the users' convenience.

240.235. (1) The division shall establish and implement a merit pay system which shall take into consideration individual performance and organizational accomplishment, prevailing rates of pay for the services performed and for comparable services in public and private employment, living costs, maintenance or other benefits received, obligations established by collective bargaining agreements, and the state's financial condition and policies. The merit pay system may provide for monetary

awards to employes for past meritorious service and contribution to the mission and goals of the employing agency.

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

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

(4) Following any modification of the classification plan affecting a position, the division may provide that the rate of compensation of the employe holding such position shall not be reduced by reason of any such modification. An employe holding such a position shall not be eligible for any salary increase during such period of time that the employe's salary is above the maximum of the salary range of the classification to which the employe's position is allocated.

240.240 Salary plans and leave with pay arrangements for unclassified service. (1) The unclassified service shall not be subject to this chapter, except that employes and officers in the unclassified service shall be subject to the laws and regulations pertaining to any type of leave with pay except as otherwise provided in subsections (4) and (5) of this section, and shall be subject to the laws and regulations pertaining to salary plans except as otherwise provided in subsections (3) and (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, the division shall adopt 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. The division shall maintain this unclassified salary plan in accordance with the procedures established for the classified salary plan as provided in ORS 240.235.

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

(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.

(5) With regard to unclassified instructors and teachers under annual teaching contracts for an academic year in facilities operated under ORS 346.010, arrangements for leave

with pay shall be established by the Department of Education. [1955 c.738 §5; 1969 c.80 §54; 1971 c.695 §2; 1975 c.427 §4]

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

METHOD OF SELECTING EMPLOYEES 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 administrator. Vacancies in the classified service shall be filled only by appointment of an eligible certified by the administrator from a list or by provisional or temporary appointment or by transfer or demotion of a regular employe. [Amended by 1975 c.427 §5]

Note: See note under 240.091.

240.306 Recruitment, selection and promotion of state employes; criteria; procedures; duties of division. (1) Recruiting, selecting and promoting employes shall be on the basis of their relative ability, knowledge, experience and skills, determined by open competition and consideration of qualified applicants, without regard to an individual's race, color, religion, sex, marital status, national origin, political affiliation, age, handicap or other nonjob related factors, with proper regard for an individual's privacy. Nothing in this subsection shall be construed to enlarge or diminish the obligation of the state or the rights of employes concerning claims of employment discrimination as prescribed by applicable state and federal employment discrimination laws.

(2) The division shall establish procedures to provide for state-wide open recruitment and selection for classifications which are common to state agencies. Such procedures shall include adequate public notice, affirmative action to seek out underutilized members of protected minorities, and job related testing. The division may delegate to individual operating agencies the responsibility for recruit-

ment and selection of classifications where appropriate.

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

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

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

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

(7) The division or delegated agencies shall establish systems to provide opportunities for promotion through meritorious service, training, education and career development assignments. The division shall certify to the eligibility of persons selected for promotion or delegate that responsibility to operating agencies in appropriate situations. Provision shall be made to bring persons into state service through open competition at higher levels where such competition provides abilities not available among existing employes, enrich state service or contribute to improved employment opportunity for underrepresented groups.

(8) Temporary employes may be given nonstatus appointments without open competition and consideration for a period of less than one year in appropriate circumstances. Temporary nonstatus appointments shall not be used to defeat the open competition and consideration system, and temporary service shall not be used as any portion of a required trial service period. [1979 c.468 §20]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.310 Lists to be maintained. In accordance with rules adopted by the division, the administrator shall establish and main-

tain divisional layoff, reemployment, employment and promotion lists. [Amended by 1969 c.80 §56; 1975 c.427 §6]

Note: See note under 240.091.

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

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

Note: See note under 240.306.

240.315 Layoff and reemployment lists. (1) Divisional layoff lists and reemployment 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 layoff 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 division, but shall not exceed two years from the date of their separation from the service in which they earned reemployment rights.

(4) The division may strike the name of a person from a layoff list of a division of the service 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. [Amended by 1969 c.80 §57; 1975 c.427 §7]

Note: See note under 240.091.

240.316 Trial service; regular status; procedures for transfer, demotion and separation of employes; discipline for certain disclosures prohibited. (1) Persons initially appointed to a permanent or seasonal position in state service shall be subject to a trial service period. Any employe who serves the trial service period designated by the division or a delegated operating agency for a given classification shall be given regular employe status.

(2) Employes who have acquired regular status will not be subject to separation except for cause as defined by ORS 240.555 or lack of

work, curtailment of funds, or reorganization requiring a reduction in force.

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

(4) Procedures shall also be established by the division for the transfer, discipline or demotion of employes for the good of the service or separation of employes whose conduct or performance continues to be improper or inadequate after reasonable attempts have been made to correct it, where appropriate.

(5) No employe shall be subject to disciplinary action or separation for disclosure, not prohibited by law, of violation of laws, rules, other improper actions or inefficiency of superior officers or fellow employes. The division shall:

(a) Establish a procedure whereby employes may report wrongdoing or inefficiency to an independent agency;

(b) Prohibit reprisals against employes because of their disclosures;

(c) Protect employes against reprisals because of their disclosures; and

(d) Establish an appeal procedure for employes who suffer reprisal because of their disclosures. [1979 c.468 §23]

Note: See note under 240.306.

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 division may consolidate or cancel promotion lists and employment lists as the needs of the service may require and as authorized by the rules of the division. 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.

[Amended by 1969 c 80 §58]

Note: See note under 240.091.

240.321 Collective bargaining; Director of Labor Relations; effect of collective bargaining agreements on State Personnel Relations Law; grievance procedures.

(1) All collective bargaining between the state and its agencies and any certified or recognized exclusive employe representative of classified employes shall be under the direction and supervision of a Director of Labor Relations, who shall be appointed by and serve at the pleasure of the Director of the Executive Department.

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

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

(4) The division shall assure the speedy resolution of employe grievances by adopting a grievance procedure resulting in a final employer determination within 60 days of the filing of a written grievance, with appeal thereafter to the board, the Civil Rights Division of the Bureau of Labor and Industries, or other appropriate review agency. Employes in collective bargaining units shall have their grievances resolved as provided for by the collective bargaining agreement. [1979 c.468 §24]

Note: See note under 240.306.

240.325 Extending eligibility of lists. The division 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. [Amended by 1969 c.80 §59]

Note: See note under 240.091.

240.330 Entrance and promotion tests. In accordance with the rules adopted by the division, the administrator shall from time to time conduct entrance tests and pro-

motion tests as necessary for establishing employment lists and promotion lists. [Amended by 1969 c.80 §60]

Note: See note under 240.091.

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.

Note: See note under 240.091.

240.340 Limitations on inquiries in application or test; discrimination based on race, sex, marital status, 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. All disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened or promised by any person in the employ of any division of the service or of the Personnel Division against or in favor of any applicant, eligible or employe because of his race, sex or marital status or religious or political opinions or affiliations or solely because of age if he is 18 years of age or older and under 70 years of age. As used in this section, discrimination solely because of age does not include denial of employment to an applicant, eligible or employe who fails to meet a statutory age requirement for such employment.

(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 Constitutions of the United States of America and of the State of Oregon. [Amended by 1959 c.689 §5; 1959 c.694 §1; 1969 c.80 §61, 1973 c.189 §1; 1973 c.827 §23; 1975 c.427 §8; 1979 c.861 §7]

Note: See note under 240.091.

240.345 Admission to tests. The division 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. [Amended by 1969 c.80 §62]

Note: See note under 240.091.

240.350 Public notice of tests. (1) The administrator 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 division.

(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. [Amended by 1969 c.80 §63]

Note: See note under 240.091.

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 division. Each person competing in any test shall be given written notice of his final earned rating or of his failure to attain a place on the list. In addition each person successfully completing an agency promotion test shall upon his request be furnished with information concerning his relative standing 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 division, 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. Procedures adopted for retaking a test shall be in accordance with rules adopted by the division. In all cases, the most recent score obtained on a retake shall be used to determine the candidate's rank on the eligible list or his failure to attain a place on the list. [Amended by 1969 c.80 §64; 1971 c.695 §3; 1975 c.325 §1]

Note: See note under 240.091.

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 administrator 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) Layoff lists of divisions of the service which contain only those names of employees 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 Personnel Division. [Amended by 1955 c.140 §1; 1969 c.80 §65; 1975 c.427 §9]

Note: See note under 240.091.

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

240.370 Removal of names from list. The rules of the division may provide that the names of persons who have been certified for appointments three times to the same appointing authority and who have not received appointment, persons who have been placed on a list by error or as the result of incorrect information, persons who are physically or emotionally unable to perform the duties of the classification for which the list was established, or persons who have expressed unwillingness to accept appointment or to whom a notice of certification was sent by mail to the person's last-known address and the notice was returned as undeliverable, may be removed from a list. [Amended by 1971 c.696 §1]

Note: See note under 240.091.

240.375 Provisional appointments. If there is no appropriate list available, the administrator 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 division 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 Personnel Division 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; 1969 c.80 §67]

Note: See note under 240.091.

240.380 Temporary appointments. Whenever there is need of an employe for a temporary period the appointing authority may appoint any person for a period not to exceed 90 days. The appointing authority shall report each temporary appointment to the administrator forthwith. Temporary appointments of the same person by the appointing authority shall not total more than 90 days in any one year. [Amended by 1971 c.695 §6]

Note: See note under 240.091.

240.385 [Repealed by 1971 c.695 §10]

240.387 Limited duration appointments of technical or professional persons; rights and limitations of employes. The rules of the division may authorize limited duration appointments of technical or professional persons, appointed in accordance with ORS 240.365, for special studies or projects of uncertain or limited duration which are subject to the continuation of a grant, contract or award. Such appointments shall be for a stated period not exceeding two years, but shall expire upon the earlier termination of the special study or project. Successive appointments may be approved by the administrator. Notwithstanding ORS 240.525, a person completing a trial service period on a limited duration appointment shall not be entitled to layoff rights. A person appointed from regular status to a limited duration appointment shall be entitled to reappointment in his former class under the layoff procedure provided in ORS 240.525. A person accepting such appointment shall be informed of the conditions of the appointment and acknowledge in writing that he accepts the appointment under these conditions. [1971 c.697 §2]

Note: See note under 240.091.

240.390 Procedure for selecting unskilled, semiskilled and part-time employes. (1) For positions involving unskilled or semiskilled 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 administrator, 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 employees 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 administrator 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.

Note: See note under 240.091.

240.391 Definitions for ORS 240.391 to 240.394. As used in ORS 240.391 to 240.394, unless the context requires otherwise, "severely handicapped person" means a person who:

(1) Has a severe physical or mental disability which seriously limits functional capacities including but not limited to mobility, communication, self-care, self-direction, work tolerance or work skills, in terms of employability; and

(2) Has one or more physical or mental disabilities resulting from amputation; arthritis; blindness; cancer; cerebral palsy; cystic fibrosis; deafness; heart disease; hemiplegia; hemophilia; respiratory or pulmonary dysfunction; mental retardation; mental illness; multiple sclerosis; muscular dystrophy; musculoskeletal disorders; neurological disorders, including stroke and epilepsy; paraplegia; quadriplegia and other spinal cord conditions; sickle cell anemia; and end-stage renal disease; or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential to cause comparable substantial functional limitation.
[1979 c.217 §2]

240.392 Employment of severely handicapped persons; policy statement. The Legislative Assembly finds that many severely handicapped people are unable to compete successfully on state merit system examinations. The Legislative Assembly further finds

that many severely handicapped people could profit greatly from an opportunity to demonstrate their abilities under a 90-day appointment instead of taking a competitive examination. [1979 c.217 §3]

240.393 Certification of severely handicapped person for temporary appointment. A severely handicapped person may be certified to the appointing authority by the Vocational Rehabilitation Division for a 90-day appointment without examination. In the case of persons who are legally blind, the certificate shall be by the Commission for the Blind. The Vocational Rehabilitation Division, in conjunction with the Commission for the Blind, shall adopt and circulate rules to establish the certification procedure. [1979 c.217 §4]

240.394 Satisfactory completion by severely handicapped person of temporary appointment; trial service status without additional examination. A person certified under ORS 240.393 may be appointed to a position in the classified service for a period not to exceed 90 days. However, such an appointment is not an appointment subject to ORS 240.380 and, upon satisfactory completion of the 90-day appointment, as evidenced by a written statement from the appointing authority, the severely handicapped person shall be placed in trial service status in the position without additional examination. Service under the 90-day appointment immediately preceding the appointment may be counted as part of the trial service period.
[1979 c.217 §5]

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

(2) When the division determines that the emergency or abnormal condition no longer exists, and the Governor so certifies, the regular examination, certification and employ-

ment procedures shall be reestablished. Temporary appointments made with the approval of the division during the emergency period shall terminate 90 days after the date of establishment of eligible lists for positions to which temporary appointments have been made. [Amended by 1969 c.80 §68]

240.400 Designation by appointing authority of staff employes to act as his alternates. An appointing authority may file in writing with the division up to three staff employes to act in his name and to perform any act or duty of the appointing authority authorized under the provisions of this chapter. [1971 c.695 §5]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.400 as amended is set forth for the users' convenience.

240.400. An appointing authority may file in writing with the division names of staff employes to act in the name of the appointing authority and to perform any act or duty of the appointing authority authorized under the provisions of this chapter.

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, or a reemployment list containing the names of eligibles who have separated voluntarily from positions in the state service, 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 the 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 administrator may require, the appointing authority shall report to the administrator 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 train-

ing 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 division, including but not limited to the training of accountants and auditors, which program has been approved by the administrator 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; 1969 c.80 §69; 1969 c.346 §1]

Note: See note under 240.091.

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 administrator.

(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 administrator, 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 administrator.

(4) The administrator may remove an employe during his trial service period if he finds, after giving him notice and an opportunity to be heard by the board, 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 administrator 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.

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.410 as amended is set forth for the users' convenience.

240.410. At any time during the trial service period, 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 duties satisfactorily or that the habits and dependability of the employe do not merit continuance in the service.

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 administrator in writing that the employe's services have not been satisfactory.

Note: See note under 240.091.

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 division 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. [Amended by 1969 c.80 §70]

240.430 Merit ratings. (1) In cooperation with appointing authorities, the division 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 layoff 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. [Amended by 1969 c.80 §71]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.430 as amended is set forth for the users' convenience.

240.430. In cooperation with appointing authorities, the division shall establish a system of merit ratings to determine the quality of performance and relative merit of employes in the classified service.

WORKING HOURS, LEAVES, VACATIONS, LAYOFFS, 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.

Note: See note under 240.091.

240.510 Leaves of absence. (1) Written leave of absence without pay may be granted by the appointing authority with the approval of the division 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; 1969 c.80 §72]

Note: See note under 240.091.

240.515 Vacations. (1) Vacation with pay shall be granted to employes in accordance with the rules adopted by the division. Except as otherwise provided in subsection (3) of this section, an employe shall be entitled to a vacation of at least five and one-half working days with pay on completion of the first full six calendar months of service, and shall accrue at least five and one-half working days of vacation with pay for each subsequent six full calendar months of service. An employe may accumulate a maximum of 250 hours 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 division 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 five and one-half working days 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; 1969 c.80 §73; 1973 c.471 §1]

Note: See note under 240.091

240.520 Sick and disability leave. Sick and disability leave shall be granted with pay

to employes in accordance with rules adopted by the division. [Amended by 1969 c.80 §74]

Note: See note under 240.091.

240.525 Layoffs. (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 layoff of a regular employe, the appointing authority shall, 15 days before the effective date thereof, give written notice to the employe and the administrator. In any case where an appointing authority refuses, or fails to certify before the effective date thereof, that the layoff 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.

Note: See note under 240.091.

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.

Note: See note under 240.091.

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 of the service. Upon making such an assignment, the appointing authority shall forthwith give written notice of his action to the administrator. [Amended by 1969 c.80 §75]

Note: See note under 240.091.

240.540 Transfers between divisions. A transfer of an employe from a position in one division of the service to a position in the same class or rank in another division of the service may be made with the approval of the administrator and of the appointing authorities of both divisions of the service. [Amended by 1969 c.80 §76]

Note: See note under 240.091.

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.

Note: See note under 240.091.

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 administrator a written request for change to a class of lower rank, and the request is granted, such change shall be termed a "voluntary demotion."

Note: See note under 240.091.

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

Note: See note under 240.306.

240.555 Suspension, reduction, demotion or dismissal. (1) The division shall establish by rule a procedure in accordance with this chapter whereby the appointing authority in any division of the service may suspend, reduce, demote or dismiss an employe thereof for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service.

(2) The appointing authority may suspend a regular employe for disciplinary reasons and without pay for a period not exceeding 30 days in any 12 months. [Amended by 1969 c.80 §77; 1975 c.427 §11]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.555 as amended is set forth for the users' convenience.

240.555. The appointing authority in any division of the service may suspend, reduce, demote or dismiss an

employe thereof for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service.

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

(2) The hearing shall be conducted as provided for a contested case in ORS 183.310 to 183.500.

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

(4) In all other cases, if the board finds that the action was not taken in good faith for cause, it shall order the immediate reinstatement and the reemployment of the employe in his position without the loss of pay. The board in lieu of affirming the action, may modify it by directing a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in classification, grade or pay. The findings and order of the board shall be certified in writing to the appointing authority and shall be forthwith put into effect by the appointing authority.

(5) Reinstatement or settlement agreements entered into either prior to or subsequent to hearing as provided in this section shall be subject to the provisions of subsection (3) of ORS 657.315. [Amended by 1957 c.205 §1; 1959 c.689 §6; 1969 c.80 §78; 1971 c.734 §35; 1975 c.427 §12; 1977 c.400 §1; 1977 c.770 §6]

240.563 Judicial review. Judicial review of orders under ORS 240.560 shall be as provided in ORS 183.310 to 183.500. [1971 c.734 §31]

240.565 Reemployment after dismissal without reinstatement. When any regular employe is dismissed and is not reinstated after appeal, the division may, where the circumstances are found to warrant reemployment, place his name on an appropriate reemployment list. [Amended by 1969 c.80 §79]

Note: See note under 240.091.

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]

Note: Section 38, chapter 468, Oregon Laws 1979, provides:

Sec. 38. Sections 1 to 6, 8 to 23, 26 to 35 and subsections (2) to (4) of section 24 of this Act first become operative on July 1, 1981.

240.570 as amended is set forth for the users' convenience.

240.570. Positions in the unclassified and exempt service may be filled by classified employes. After termination of unclassified or exempt service, for reasons other than specified by ORS 240.555, such employes shall be restored to their former status in the classified service.

240.572 Return of certain employes to classified service. An employe whose position is placed in the unclassified service pursuant to ORS 240.205 shall, after termination of service in the unclassified position, be restored to his or her status in the classified service in accordance with rules adopted by the division. [1977 c.271 §3]

Note: See note under 240.091.

240.575 Temporary employes of Oregon State Fair excluded from certain overtime and holiday pay benefits. Notwithstanding the provisions of any other law to the contrary, the overtime and holiday pay provisions of the Personnel Division shall not apply to persons hired to work on a temporary basis at the Oregon State Fair during the period beginning five days before and ending five days after the annual Oregon State Fair. [1971 c.542 §2]

Note: See note under 240.091.

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 division, 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. [Amended by 1969 c.80 §80]

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 subpoena or to answer any question or produce any books or papers pertinent to any investigation or hearing authorized by this chapter is guilty of a misdemeanor.

(3) A state officer or 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, Thomas G. Clifford, 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,
October 1, 1979

Thomas G. Clifford
Legislative Counsel