

CHAPTER 114—H.F.No. 1748

An act relating to state employees; modifying grievance appeal procedures; eliminating a medical examination requirement; amending Minnesota Statutes 2004, sections 43A.33, subdivision 3; 43A.34, subdivision 3; repealing Minnesota Statutes 2004, section 43A.33, subdivision 4.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2004, section 43A.33, subdivision 3, is amended to read:

Subd. 3. **PROCEDURES.** Procedures for discipline and discharge of employees covered by collective bargaining agreements shall be governed by the agreements. Procedures for employees not covered by a collective bargaining agreement shall be governed by this subdivision and by the commissioner's and managerial plans.

(a) For discharge, suspension without pay or demotion, no later than the effective date of such action, a permanent classified employee not covered by a collective bargaining agreement shall be given written notice by the appointing authority. The content of that notice as well as the employee's right to reply to the appointing authority shall be as prescribed in the grievance procedure contained in the applicable plan established pursuant to section 43A.18. The notice shall also include a statement that the employee may elect to appeal the action to the Office of Administrative Hearings Bureau of Mediation Services within 30 calendar days following the effective date of the disciplinary action. A copy of the notice and the employee's reply, if any, shall be filed by the appointing authority with the commissioner no later than ten calendar days following the effective date of the disciplinary action. The commissioner shall have final authority to decide whether the appointing authority shall settle the dispute prior to the hearing provided under subdivision 4.

(b) For discharge, suspension, or demotion of an employee serving an initial probationary period, and for noncertification in any subsequent probationary period, grievance procedures shall be as provided in the plan established pursuant to section 43A.18.

(c) ~~Any permanent employee who is covered by a collective bargaining agreement may elect to appeal to the chief administrative law judge within 30 days following the effective date of the discharge, suspension, or demotion if the collective bargaining agreement provides that option. In no event may an employee use both the procedure under this section and the grievance procedure available pursuant to sections 179A.01 to 179A.25. Within ten days of receipt of the employee's written notice of appeal, the commissioner of the Bureau of Mediation Services shall provide both parties with a list of potential arbitrators according to the rules of the Bureau of Mediation Services to hear the appeal. The process of selecting the arbitrator from the list shall be determined by the plan.~~

The hearing shall be conducted pursuant to the rules of the Bureau of Mediation Services. If the arbitrator finds, based on the hearing record, that the action appealed

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was not taken by the appointing authority for just cause, the employee shall be reinstated to the position, or an equal position in another division within the same agency, without loss of pay. If the arbitrator finds that there exists sufficient grounds for institution of the appointing authority's action but the hearing record establishes extenuating circumstances, the arbitrator may reinstate the employee, with full, partial, or no pay, or may modify the appointing authority's action. The appointing authority shall bear the costs of the arbitrator for hearings provided for in this section.

Sec. 2. Minnesota Statutes 2004, section 43A.34, subdivision 3, is amended to read:

Subd. 3. **CORRECTIONAL PERSONNEL EXEMPTED.** Any employee of the state of Minnesota in a covered classification as defined in section 352.91, who is a member of the special retirement program for correctional personnel established pursuant to sections 352.90 to 352.95, may elect or be required to retire from employment in the covered correctional position upon reaching the age of 55 years.

A correctional employee occupying a position covered by provisions of section 352.91, desiring employment beyond the conditional mandatory retirement age shall, at least 30 days prior to the date of reaching the conditional mandatory retirement age of 55 years, and annually thereafter, request in writing to the employee's appointing authority authorization to continue in employment in the covered position. Upon receiving the request, the appointing authority shall have a medical examination made of the employee. If the results of the medical examination establish the mental and physical ability of the employee to continue the duties of employment, the employee shall be continued in employment for the following year. If the determination of the appointing authority based upon the results of the physical examination is adverse, the disposition of the matter shall be decided by the commissioner of corrections or, for employees of the Minnesota security hospital, the commissioner of human services. Based on the information provided, the decision of the applicable commissioner shall be made in writing and shall be final.

Sec. 3. **REPEALER.**

Minnesota Statutes 2004, section 43A.33, subdivision 4, is repealed.

Presented to the governor May 24, 2005

Signed by the governor May 26, 2005, 8:30 p.m.

CHAPTER 115—H.F.No. 400

An act relating to unemployment insurance; making an eligibility exception permanent for certain school food service workers; amending Minnesota Statutes 2004, section 268.085, subdivision 8.

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