

352.91 COVERED CORRECTIONAL SERVICE.

Subdivision 1. **Qualifying jobs.** "Covered correctional service" means service performed by a state employee, as defined in section 352.01, employed at a state correctional facility, the Minnesota Security Hospital, or the Minnesota sex offender program as:

- (1) a corrections officer 1;
- (2) a corrections officer 2;
- (3) a corrections officer 3;
- (4) a corrections officer supervisor;
- (5) a corrections lieutenant;
- (6) a corrections captain;
- (7) a security counselor;
- (8) a security counselor lead; or
- (9) a corrections canine officer.

Subd. 2. **Maintenance, correctional industry, and trades.** "Covered correctional service" also means service rendered at any time by state employees as maintenance personnel, correctional industry personnel, or members of trades certified by the commissioner of management and budget to the executive director as being engaged for at least 75 percent of the employee's working time in the rehabilitation, treatment, custody, or supervision of inmates at a Minnesota correctional facility, or of patients at the Minnesota Security Hospital or the Minnesota sex offender program.

Subd. 2a. **Special teachers.** "Covered correctional service" also means service rendered by a state employee as a special teacher employed by the Department of Corrections or by the Department of Human Services at a security unit, provided that at least 75 percent of the employee's working time is spent in direct contact with inmates or patients and the fact of this direct contact is certified to the executive director by the appropriate commissioner, unless the person elects to retain the current retirement coverage under Laws 1996, chapter 408, article 8, section 21.

Subd. 3. [Repealed, 1996 c 408 art 8 s 29]

Subd. 3a. **Security guards.** "Covered correctional service" also means service rendered before January 1, 1981, in the classification of security guard by any employee employed in a covered correctional position on January 1, 1981.

Subd. 3b. **Older employees formerly excluded.** "Covered correctional service" also means service performed by certain state employees in positions usually covered by this section who: (1) were excluded by law from coverage between July 1973 and July 1980; (2) were age 45 or over when hired; (3) were state employees on March 26, 1986; and (4) who elected coverage before July 1, 1986. An employee who did not elect coverage before July 1, 1986, is not covered by the correctional retirement plan, even if the employee's employment classification may be considered to be covered correctional service under another subdivision of this section.

Subd. 3c. **Nursing personnel.** (a) "Covered correctional service" means service by a state employee in one of the employment positions at a correctional facility or at the Minnesota Security Hospital, or in the Minnesota sex offender program that are specified in paragraph (b) if at least 75 percent of the employee's working time is spent in direct contact with inmates or patients and the fact of this direct contact is certified to the executive director by the appropriate commissioner.

(b) The employment positions are as follows:

- (1) registered nurse - senior;
- (2) registered nurse;
- (3) registered nurse - principal;
- (4) licensed practical nurse 2; and
- (5) registered nurse advance practice.

Subd. 3d. **Other correctional personnel.** (a) "Covered correctional service" means service by a state employee in one of the employment positions at a correctional facility or at the Minnesota Security Hospital specified in paragraph (b) if at least 75 percent of the employee's working time is spent in direct contact with inmates or patients and the fact of this direct contact is certified to the executive director by the appropriate commissioner.

(b) The employment positions are:

- (1) automotive mechanic;
- (2) baker;
- (3) central services administrative specialist, intermediate;
- (4) central services administrative specialist, principal;
- (5) chaplain;
- (6) chief cook;
- (7) cook;

- (8) cook coordinator;
- (9) corrections program therapist 1;
- (10) corrections program therapist 2;
- (11) corrections program therapist 3;
- (12) corrections program therapist 4;
- (13) corrections inmate program coordinator;
- (14) corrections transitions program coordinator;
- (15) corrections security caseworker;
- (16) corrections security caseworker career;
- (17) corrections teaching assistant;
- (18) delivery van driver;
- (19) dentist;
- (20) electrician supervisor;
- (21) general maintenance worker lead;
- (22) general repair worker;
- (23) library/information research services specialist;
- (24) library/information research services specialist senior;
- (25) library technician;
- (26) painter lead;
- (27) plant maintenance engineer lead;
- (28) plumber supervisor;
- (29) psychologist 1;
- (30) psychologist 3;
- (31) recreation therapist;
- (32) recreation therapist coordinator;
- (33) recreation program assistant;
- (34) recreation therapist senior;

- (35) sports medicine specialist;
- (36) work therapy assistant;
- (37) work therapy program coordinator; and
- (38) work therapy technician.

Subd. 3e. **Minnesota extended treatment options program.** (a) "Covered correctional service" means service by a state employee in one of the employment positions with the Minnesota extended treatment options program specified in paragraph (b) if at least 75 percent of the employee's working time is spent in direct contact with patients who are in the Minnesota extended treatment options program and if service in such a position is certified to the executive director by the commissioner of human services.

(b) The employment positions are:

- (1) behavior analyst 1;
- (2) behavior analyst 2;
- (3) behavior analyst 3;
- (4) group supervisor;
- (5) group supervisor assistant;
- (6) human services support specialist;
- (7) residential program lead;
- (8) psychologist 2;
- (9) recreation program assistant;
- (10) recreation therapist senior;
- (11) registered nurse senior;
- (12) skills development specialist;
- (13) social worker senior;
- (14) social worker specialist; and
- (15) speech pathology specialist.

Subd. 3f. **Additional Department of Human Services personnel.** (a) "Covered correctional service" means service by a state employee in one of the employment positions specified in paragraph (b) at the Minnesota Security Hospital or in the Minnesota sex offender program if at

least 75 percent of the employee's working time is spent in direct contact with patients and the determination of this direct contact is certified to the executive director by the commissioner of human services.

(b) The employment positions are:

- (1) behavior analyst 2;
- (2) behavior analyst 3;
- (3) certified occupational therapy assistant 1;
- (4) certified occupational therapy assistant 2;
- (5) chemical dependency counselor senior;
- (6) client advocate;
- (7) customer services specialist principal;
- (8) dental assistant registered;
- (9) group supervisor;
- (10) group supervisor assistant;
- (11) human services support specialist;
- (12) licensed alcohol and drug counselor;
- (13) licensed practical nurse 1;
- (14) management analyst 3;
- (15) occupational therapist;
- (16) occupational therapist, senior;
- (17) psychologist 1;
- (18) psychologist 2;
- (19) psychologist 3;
- (20) recreation program assistant;
- (21) recreation therapist lead;
- (22) recreation therapist senior;
- (23) rehabilitation counselor senior;
- (24) security supervisor;

- (25) skills development specialist;
- (26) social worker senior;
- (27) social worker specialist;
- (28) social worker specialist, senior;
- (29) special education program assistant;
- (30) speech pathology clinician;
- (31) work therapy assistant; and
- (32) work therapy program coordinator.

Subd. 3g. **Additional Corrections Department personnel.** (a) "Covered correctional service" means service by a state employee in one of the employment positions specified in paragraph (b) if at least 75 percent of the employee's working time is spent in direct contact with inmates and the determination of this direct contact is certified to the executive director by the commissioner of corrections.

(b) The qualifying employment positions are:

- (1) corrections discipline unit supervisor;
- (2) dental assistant registered;
- (3) dental hygienist;
- (4) psychologist 2; and
- (5) sentencing to service crew leader involved with the inmate community work crew program.

Subd. 3h. **Employment occupation name changes.** (a) If the occupational title of a state employee covered by the Minnesota correctional employees retirement plan changes from the applicable title listed in subdivision 1, 2, 2a, 3c, 3d, 3e, 3f, or 3g, qualification for coverage by the correctional state employees retirement plan continues until the July 1 next following the title change if the commissioner of management and budget certifies to the executive director of the Minnesota State Retirement System and to the executive director of the Legislative Commission on Pensions and Retirement that the duties, requirements, and responsibilities of the new occupational title are substantially identical to the duties, requirements, and responsibilities of the prior occupational title.

(b) If the commissioner of management and budget does not certify a new occupational title under paragraph (a), eligibility for future correctional state employees retirement coverage

terminates as of the start of the first payroll period next following the effective date of the occupational title change.

(c) For consideration by the Legislative Commission on Pensions and Retirement during the legislative session next following an occupational title change involving a state employee in covered correctional service, the commissioner of management and budget shall submit the applicable draft proposed legislation reflecting the occupational title change covered by this section.

Subd. 3i. **Lateral transfers to new correctional facilities.** If a new correctional facility is established, a state employee rendering covered correctional service immediately before the transfer remains eligible for coverage by the correctional state employees retirement plan for future state employment at the new facility if the person is employed in the same occupational title at the new facility. The eligibility for future coverage continues until the July 1 next following the effective date of the establishment of the new facility.

Subd. 4. [Repealed, 2000 c 461 art 6 s 6]

Subd. 4a. **Process for evaluating and recommending potential employment positions for membership inclusion.** (a) The Department of Corrections and the Department of Human Services must establish a procedure for evaluating periodic requests by department employees for qualification for recommendation by the commissioner for inclusion of the employment position in the correctional facility or human services facility in the correctional retirement plan and for periodically determining employment positions that no longer qualify for continued correctional retirement plan coverage.

(b) The procedure must provide for an evaluation of the extent of the employee's working time spent in direct contact with patients or inmates, the extent of the physical hazard that the employee is routinely subjected to in the course of employment, and the extent of intervention routinely expected of the employee in the event of a facility incident. The percentage of routine direct contact with inmates or patients may not be less than 75 percent.

(c) The applicable commissioner shall notify the employee of the determination of the appropriateness of recommending the employment position for inclusion in the correctional retirement plan, if the evaluation procedure results in a finding that the employee:

(1) routinely spends 75 percent of the employee's time in direct contact with inmates or patients; and

(2) is regularly engaged in the rehabilitation, treatment, custody, or supervision of inmates or patients.

(d) After providing the affected employee an opportunity to dispute or clarify any evaluation determinations, if the commissioner determines that the employment position is appropriate for inclusion in the correctional retirement plan, the commissioner shall forward that recommendation and supporting documentation to the chair of the Legislative Commission on Pensions and Retirement, the chair of the State and Local Governmental Operations Committee of the senate, the chair of the Governmental Operations and Veterans Affairs Policy Committee of the house of representatives, and the executive director of the Legislative Commission on Pensions and Retirement in the form of the appropriate proposed legislation. The recommendation must be forwarded to the legislature before January 15 for the recommendation to be considered in that year's legislative session.

Subd. 4b. Department of Corrections; procedure for coverage change considerations.

(a) The commissioner of corrections shall appoint a standing review committee to review and determine positions that should be included in legislative requests for correctional employees retirement plan coverage under subdivision 4a.

(b) Periodically, the Department of Corrections will convene meetings of the review committee. The review committee must review all requests and the supporting documentation for coverage by the correctional employees retirement plan and must determine which classes or positions meet the statutory requirements for coverage. The review committee also must determine if incumbents of and recent retirees from classes or positions determined for inclusion in correctional employees retirement plan coverage have prior Department of Corrections employment which also qualified as correctional service and which should be transferred from the general state employees retirement plan to the plan and the initial date for each potential service credit transfer.

(c) The review committee must evaluate and determine the eligibility date for initial plan participation and all periods of eligibility in the correctional employees retirement plan.

(d) The department must provide a notice of each determination and of the employee's right to appeal from the review committee to each employee who requested inclusion. Appeals must be filed with the agency human resource manager within 30 days of the date of the notice of determination.

(e) The commissioner of corrections shall appoint a standing appeals committee to hear appeals of determinations for coverage. The appeal committee must include relevant department employees and employee representatives. Appeal committee determinations are final.

(f) All positions approved for inclusion must be forwarded to the commissioner of corrections for the preparation of legislation to implement the coverage change and submission.

The commissioner will submit a written recommendation documenting classes or positions that should or should not be covered by the correctional employees retirement plan. Documentation of each request and the final determination must be retained in the Department of Corrections' Office of Human Resource Management.

Subd. 5. **Correction of errors.** (a) If it is determined that an employee should have been covered by the correctional retirement plan but was placed in the general employees retirement plan or Teachers Retirement Association in error, the commissioner of corrections or the commissioner of human services must report the error to the executive director of the Minnesota State Retirement System. The service must be properly credited under the correctional employees retirement plan for a period of not to exceed five years before the date on which the commissioner of corrections or human services notifies the executive director of the Minnesota State Retirement System in writing or five years from the date on which an employee requests, in writing, the applicable department to determine if the person has appropriate retirement plan coverage, whichever is earlier. If the error covers more than a five-year period, the service before the five-year period must remain under the plan originally credited the service. The employee shall pay the difference between the employee contributions actually paid during the five-year period and what should have been paid under the correctional employees retirement plan. The department making the error shall pay to the correctional employees retirement plan an amount equal to the difference in the present value of accrued retirement benefits caused by the change in coverage after subtracting the amount paid by the employee. Calculation of this amount must be made by the executive director of the Minnesota State Retirement System using the applicable preretirement interest rate specified in section 356.215, subdivision 8, and the mortality table adopted for the Minnesota State Retirement System. The calculation must assume continuous future service in the correctional employees retirement plan until the employee would reach the age eligible for normal retirement. The calculation must also assume a future salary history that includes annual salary increases at the salary increase rate or rates specified in section 356.215, subdivision 8.

(b) If an employee was covered under the correctional employees retirement plan, but it is determined that the person should have been covered under the general employees retirement plan, the error must be corrected if written notification is provided to the employee and the executive director of the Minnesota State Retirement System within three years of the date on which the coverage was improperly started. The difference in employee and employer contributions actually paid to the correctional employees retirement plan in excess of the amount that should have been paid to the general employees retirement plan must be refunded to the employee and the employer paying the additional contributions.

History: *1973 c 653 s 40; 1974 c 520 s 1; 1975 c 368 s 35; 1978 c 781 s 2; 1980 c 600 s 3-5; 1980 c 617 s 47; 1981 c 224 s 59; 1981 c 297 s 3; 1984 c 654 art 5 s 58; 1986 c 444; 1986 c 458 s 31; 1987 c 229 art 6 s 1; art 11 s 1; 1987 c 372 art 1 s 4; 1996 c 408 art 8 s 10-17; 1999 c 222 art 13 s 2; 2000 c 461 art 6 s 1-4; 2002 c 392 art 11 s 52; 2004 c 267 art 1 s 1; 2005 c 56 s 1; 1Sp2005 c 8 art 4 s 3; 2006 c 271 art 2 s 2-11; 2007 c 134 art 3 s 1-4; 2008 c 204 s 42; 2008 c 349 art 6 s 1; 2009 c 101 art 2 s 109; 2009 c 169 art 3 s 1*