

CHAPTER 182—S.F.No. 2017

An act relating to public employment; making technical and administrative changes; modifying definitions; redesigning administrative procedures for certain pilot projects; amending Minnesota Statutes 1998, sections 13.43, subdivision 2; 43A.02, subdivisions 11 and 33; 43A.04, subdivision 4; 43A.06, subdivision 8; 43A.07, subdivisions 4 and 6; 43A.13, subdivision 3; 43A.15, subdivision 6, and by adding a subdivision; 43A.17, subdivision 8; 43A.18, subdivision 1; 43A.19, subdivision 3; 43A.20; 43A.317, subdivisions 3 and 4; and 43A.421; Laws 1995, chapter 248, article 13, section 2, subdivisions 5, as amended, and 6, as amended; repealing Minnesota Statutes 1998, sections 43A.13, subdivision 9; 43A.40; 43A.41; 43A.42; 43A.43, subdivision 2; 43A.44; 43A.45; 43A.46; and 43A.465; Laws 1995, chapter 248, article 13, section 2, subdivision 8; Minnesota Rules, parts 3910.0100; 3910.0200; 3910.0300; 3910.0400; 3910.0500; 3910.0600; 3910.0700; 3910.0800; 3910.0900; 3910.1000; 3910.1100; 3910.1200; 3910.1300; 3910.1400; 3910.1500; 3910.1600; and 3910.1700.

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

Section 1. Minnesota Statutes 1998, section 13.43, subdivision 2, is amended to read: -

Subd. 2. **PUBLIC DATA.** (a) Except for employees described in subdivision 5, the following personnel data on current and former employees, volunteers, and independent contractors of a state agency, statewide system, or political subdivision and members of advisory boards or commissions is public:

(1) name; actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary;

(2) job title and bargaining unit; job description; education and training background; and previous work experience;

(3) date of first and last employment;

(4) the existence and status of any complaints or charges against the employee, regardless of whether the complaint or charge resulted in a disciplinary action;

(5) the final disposition of any disciplinary action together with the specific reasons for the action and data documenting the basis of the action, excluding data that would identify confidential sources who are employees of the public body;

(6) the terms of any agreement settling any dispute arising out of an employment relationship, including a buyout agreement as defined in section 123B.143, subdivision 2, paragraph (a); except that the agreement must include specific reasons for the agreement if it involves the payment of more than \$10,000 of public money;

(7) work location; a work telephone number; badge number; and honors and awards received; and

(8) payroll time sheets or other comparable data that are only used to account for employee's work time for payroll purposes, except to the extent that release of time sheet data would reveal the employee's reasons for the use of sick or other medical leave or other not public data; and city and county of residence.

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(b) For purposes of this subdivision, a final disposition occurs when the state agency, statewide system, or political subdivision makes its final decision about the disciplinary action, regardless of the possibility of any later proceedings or court proceedings. In the case of arbitration proceedings arising under collective bargaining agreements, a final disposition occurs at the conclusion of the arbitration proceedings, or upon the failure of the employee to elect arbitration within the time provided by the collective bargaining agreement. Final disposition includes a resignation by an individual when the resignation occurs after the final decision of the state agency, statewide system, political subdivision, or arbitrator.

(c) The state agency, statewide system, or political subdivision may display a photograph of a current or former employee to a prospective witness as part of the state agency's, statewide system's, or political subdivision's investigation of any complaint or charge against the employee.

(d) A complainant has access to a statement provided by the complainant to a state agency, statewide system, or political subdivision in connection with a complaint or charge against an employee.

(e) Notwithstanding paragraph (a), clause (5), upon completion of an investigation of a complaint or charge against a public official, or if a public official resigns or is terminated from employment while the complaint or charge is pending, all data relating to the complaint or charge are public, unless access to the data would jeopardize an active investigation or reveal confidential sources. For purposes of this paragraph, "public official" means:

- (1) the head of a state agency and deputy and assistant state agency heads;
- (2) members of boards or commissions required by law to be appointed by the governor or other elective officers; and
- (3) executive or administrative heads of departments, bureaus, divisions, or institutions.

Sec. 2. Minnesota Statutes 1998, section 43A.02, subdivision 11, is amended to read:

Subd. 11. **CLASS.** "Class" means one or more positions sufficiently similar with respect to duties and responsibilities that the same descriptive title may be used with clarity to designate each position allocated to the class and that the same general qualifications are needed for performance of the duties of the class, ~~that the same tests of fitness may be used to recruit employees,~~ and that the same schedule of pay can be applied with equity to all positions in the class under the same or substantially the same employment conditions.

Sec. 3. Minnesota Statutes 1998, section 43A.02, subdivision 33, is amended to read:

Subd. 33. **PROTECTED GROUPS.** For affirmative action purposes, "protected groups" means females; handicapped, persons with disabilities, and members of the following minorities: Black, Hispanic, Asian or Pacific Islander, and American Indian or Alaskan native; and, until 1989, veterans who served in the military service of this country during the period from August 5, 1964 to May 7, 1975, and separated under honorable

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conditions from any branch of the armed forces of the United States after having served on active duty for 181 consecutive days or because of disability incurred while serving on active duty and who are permanent residents of the state of Minnesota.

Sec. 4. Minnesota Statutes 1998, section 43A.04, subdivision 4, is amended to read:

Subd. 4. **ADMINISTRATIVE PROCEDURES.** The commissioner shall develop administrative procedures, which are not subject to the rulemaking provisions of the Administrative Procedure Act, to effect provisions of chapter 43A which do not directly affect the rights of or processes available to the general public. The commissioner may also adopt administrative procedures, not subject to the Administrative Procedure Act, which concern topics affecting the general public if those procedures concern only the internal management of the department or other agencies and if those elements of the topics which affect the general public are the subject of department rules.

Administrative procedures shall be reproduced and made available for comment to agencies, employees, and appropriate exclusive representatives certified pursuant to sections 179A.01 to 179A.25, for at least 15 days prior to implementation and shall include but are not limited to:

(a) maintenance and administration of a plan of classification for all positions in the classified service and for comparisons of unclassified positions with positions in the classified service;

(b) procedures for administration of collective bargaining agreements and plans established pursuant to section 43A.18 concerning total compensation and the terms and conditions of employment for employees;

(c) procedures for effecting all personnel actions internal to the state service such as conduct of competitive promotional examinations, ranking and certification of employees for promotion, noncompetitive and qualifying appointments of employees and leaves of absence; and

(d) maintenance and administration of employee performance appraisal, training and other programs; and

(e) procedures for pilots of the reengineered employee selection process. Employment provisions of this chapter, associated personnel rules adopted under subdivision 3, and administrative procedures established under clauses (a) and (c) may be waived for the purposes of these pilots. The pilots may affect the rights of and processes available to members of the general public seeking employment in the classified service. The commissioner will provide public notice of any pilot directly affecting the rights of and processes available to the general public and make the administrative procedures available for comment to the general public, agencies, employees, and appropriate exclusive representatives certified pursuant to sections 179A.01 to 179A.25 for at least 30 days prior to implementation.

Sec. 5. Minnesota Statutes 1998, section 43A.06, subdivision 8, is amended to read:

Subd. 8. **UNFAIR LABOR PRACTICE CHARGES.** The commissioner shall direct investigations and shall have authority to decide whether agencies in the executive branch shall settle unfair labor practice charges filed against the employer, appointing authorities or their agents pursuant to chapter ~~179~~ 179A.

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Sec. 6. Minnesota Statutes 1998, section 43A.07, subdivision 4, is amended to read:

Subd. 4. **EFFECT OF RECLASSIFICATION.** Except as provided in section 43A.17, subdivision 5, the incumbent of a position which has been reclassified shall continue in the position only if the employee is eligible for and is appointed to the position of the new class in accordance with the provisions of this chapter and the rules, administrative procedures or a collective bargaining agreement entered into under sections 179A.01 to 179A.25 governing reallocation or change in allocation of positions, promotion, transfer, and demotion. If the incumbent is ineligible to continue in the position and is not transferred, promoted or demoted, the layoff provisions of ~~this chapter and plans pursuant to section 43A.18 or a collective bargaining agreement entered into under sections 179A.01 to 179A.25 shall apply.~~ Personnel changes required by the reclassification of positions shall be completed within a reasonable period of time, as prescribed by the commissioner, following the reclassification notice to an appointing authority. ~~Any employee with permanent or probationary status whose position is reallocated shall be considered eligible to compete in any examination held to fill the reallocation position, as provided in the rules or administrative procedures.~~

Sec. 7. Minnesota Statutes 1998, section 43A.07, subdivision 6, is amended to read:

Subd. 6. **RIGHTS OF INCUMBENTS OF DECLASSIFIED POSITIONS.** Except for just cause, an ~~employee incumbent~~ with permanent status shall not be removed from a position which is declassified for a period of one year following the declassification. An appointing authority may remove an incumbent of a declassified position after one year with 30 days' prior notice. At any time after the declassification, and prior to the end of the 30-day notice period, if so requested, the employee shall be appointed within the same agency to a classified position comparable to the position that was declassified or, if a comparable position is unavailable, to a position in that agency comparable to that held immediately prior to being appointed to the declassified position. This section applies only to the incumbent at the time the position is declassified and not to employees subsequently appointed to the declassified position.

Sec. 8. Minnesota Statutes 1998, section 43A.13, subdivision 3, is amended to read:

Subd. 3. **REEMPLOYMENT.** ~~For positions to be filled by reemployment of a former employee, The commissioner may certify any eligible on the reemployment list for the class or approve direct reinstatement of a former classified employee within four years of separation.~~

Sec. 9. Minnesota Statutes 1998, section 43A.15, subdivision 6, is amended to read:

Subd. 6. **APPOINTMENTS THROUGH TRANSFER OR DEMOTION.** The commissioner may authorize the transfer or demotion of an employee in the classified service within an agency or between agencies. Prior to authorizing a transfer or demotion, the commissioner shall determine that the employee to be transferred or demoted is qualified for the new position. An authorized transfer may result in the movement of an employee between ~~different positions~~ agencies in the same class or between ~~positions or~~ within agencies in different classes provided that the compensation for the classes is similar.

The commissioner may enter into arrangements with public personnel agencies in other jurisdictions for the purpose of effecting transfers or voluntary demotions of employees between jurisdictions.

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Sec. 10. Minnesota Statutes 1998, section 43A.15, is amended by adding a subdivision to read:

Subd. 15. **REINSTATEMENT.** An appointing authority may directly reinstate a person who is a former permanent or probationary employee of the job class, within four years of separation from the class.

Sec. 11. Minnesota Statutes 1998, section 43A.17, subdivision 8, is amended to read:

Subd. 8. **ACCUMULATED VACATION LEAVE.** The commissioner of employee relations shall not agree to a collective bargaining agreement or recommend a compensation plan pursuant to section 43A.18, subdivisions 1, 2, 3, and 4, nor shall an arbitrator issue an award under sections 179A.01 to 179A.25, if the compensation plan, agreement, or award permits an employee to convert accumulated vacation leave into cash before separation from state service.

This section does not prohibit the commissioner from negotiating a collective bargaining agreement or recommending approval of a compensation plan which: (1) permits an employee to receive payment for accumulated vacation leave upon beginning an unpaid leave of absence approved for more than one year in duration if the leave of absence is not for the purpose of accepting an unclassified position in state civil service; or (2) permits an employee to receive payment for accumulated vacation leave upon layoff; or (3) permits an employee to receive payment for accumulated vacation leave if a change in employment results in the employee being ineligible to accrue further vacation leave.

Sec. 12. Minnesota Statutes 1998, section 43A.18, subdivision 1, is amended to read:

Subdivision 1. **COLLECTIVE BARGAINING AGREEMENTS.** Except as provided in section 43A.01 and to the extent they are covered by a collective bargaining agreement, the compensation, terms and conditions of employment for all employees represented by an exclusive representative certified pursuant to chapter ~~179~~ 179A shall be governed solely by the collective bargaining agreement executed by the parties and approved by the legislature.

Sec. 13. Minnesota Statutes 1998, section 43A.19, subdivision 3, is amended to read:

Subd. 3. **EXEMPTIONS.** Implementation of the provisions of this section shall not be deemed a violation of other provisions of ~~Laws 1981,~~ chapter ~~210~~ 43A or 363.

Sec. 14. Minnesota Statutes 1998, section 43A.20, is amended to read:

43A.20 PERFORMANCE APPRAISAL AND PAY.

The commissioner shall design and maintain a performance appraisal system under which each employee in the civil service in the executive branch shall be evaluated and counseled on work performance at least once a year. Individual pay increases for all employees not represented by an exclusive representative certified pursuant to chapter ~~179~~ 179A shall be based on the evaluation and other factors the commissioner includes in the plans developed pursuant to section 43A.18. Collective bargaining agreements entered into pursuant to chapter ~~179~~ 179A may, and are encouraged to, provide for pay increases based on employee work performance.

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Sec. 15. Minnesota Statutes 1998, section 43A.317, subdivision 3, is amended to read:

Subd. 3. **ADMINISTRATION.** After consulting with the chairs of the senate governmental operations and veterans committee and the house of representatives governmental operations and veterans affairs policy committee, the commissioner may determine when the program provided under this section is available. When the commissioner makes the program available, the commissioner shall, consistent with the provisions of this section, administer the program and determine its coverage options, funding and premium arrangements, contractual arrangements, and all other matters necessary to administer the program. The commissioner's contracting authority for the program, including authority for competitive bidding and negotiations, is governed by section 43A.23.

Sec. 16. Minnesota Statutes 1998, section 43A.317, subdivision 4, is amended to read:

Subd. 4. **ADVISORY COMMITTEE.** After the commissioner consults as required in subdivision 3 and then determines to make the program available, the commissioner shall establish a ten-member advisory committee that includes five members who represent eligible employers and five members who represent eligible individuals. The committee shall advise the commissioner on issues related to administration of the program. The committee is governed by sections 15.014 and 15.059, and continues to exist while the program remains in operation.

Sec. 17. Minnesota Statutes 1998, section 43A.421, is amended to read:

43A.421 SUPPORTED WORK PROGRAM.

A total of 50 additional full-time positions within agencies of state government may be selected for inclusion for a supported work program for persons with severe disabilities. A full-time position may be shared by up to three persons with severe disabilities and their job coach. The job coach is not a state employee within the scope of section 43A.02, subdivision 21, or 179A.03, subdivision 14, unless the job coach holds another position within the scope of section 43A.02, subdivision 21, or 179A.03, subdivision 14.

Sec. 18. Laws 1995, chapter 248, article 13, section 2, subdivision 5, as amended by Laws 1997, chapter 97, section 14, is amended to read:

Subd. 5. **PILOT PROJECT.** During the biennium ending June 30, 1999 2001, the department of employee relations in conjunction with union representatives shall designate state job classifications to be included in one or more pilot projects. Under this pilot project: (1) resumes of applicants for positions to be filled through this process will be evaluated through an objective computerized system that will identify which applicants have the required skills; and (2) information on applicants determined to have required skills will be forwarded to the agency seeking to fill a vacancy, without ranking these applicants, and without a limit on the number of applicants that may be forwarded to the hiring agency. This process is in lieu of the procedures provided in Minnesota Statutes, sections 43A.10 to 43A.13, and related rules and procedures adopted under Minnesota Statutes, section 43A.04, subdivision 4, except that applicants who are being referred and who qualify for veterans preference under Minnesota Statutes, section 43A.11, will be placed ahead of referrals who meet the required skills of the vacant position and who do not qualify for veterans preference. Before designating a job classification under this

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subdivision, the department must assure that the hiring process for those job classifications complies with the policies in subdivision 1.

Sec. 19. Laws 1995, chapter 248, article 13, section 2, subdivision 6, as amended by Laws 1997, chapter 97, section 15, is amended to read:

Subd. 6. **EVALUATION.** The commissioner of employee relations, in consultation with union representatives, shall design and implement a system for evaluating the success of the pilot project in subdivision 5. By October 1, 1997 1999, and October 1, 1998 2000, the commissioner must report to the legislature on the pilot project. The report must:

(1) list job classifications subject to each pilot project, and the number of positions filled in these job classes under the pilot;

(2) evaluate the extent to which the project has been successful in maintaining a merit-based system in the absence of traditional civil service laws and rules;

(3) quantify time and money saved in the hiring process under these pilot projects, as compared to hiring under the traditional laws and rules;

(4) document the extent of complaints or problems arising under the new system; and

(5) recommend any changes in laws or rules needed to make permanent the successes of the pilot projects.

Sec. 20. REPEALER.

Minnesota Statutes 1998, sections 43A.13, subdivision 9; 43A.40; 43A.41; 43A.42; 43A.43, subdivision 2; 43A.44; 43A.45; 43A.46; and 43A.465; Laws 1995, chapter 248, article 13, section 2, subdivision 8, are repealed.

Minnesota Rules, parts 3910.0100; 3910.0200; 3910.0300; 3910.0400; 3910.0500; 3910.0600; 3910.0700; 3910.0800; 3910.0900; 3910.1000; 3910.1100; 3910.1200; 3910.1300; 3910.1400; 3910.1500; 3910.1600; and 3910.1700, are repealed.

Sec. 21. EFFECTIVE DATE.

Sections 1 to 20 are effective the day following final enactment.

Presented to the governor May 15, 1999

Signed by the governor May 19, 1999, 4:16 p.m.

CHAPTER 183—S.F.No. 556

An act relating to liability; limiting liability on certain municipal power agency land for certain purposes; amending Minnesota Statutes 1998, sections 604A.20; 604A.21, subdivisions 3, 4, and by adding a subdivision; 604A.24; and 604A.25.

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