

CHAPTER 43A

DEPARTMENT OF EMPLOYEE RELATIONS

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43A.01 POLICIES.

Subdivision 1. **General.** It is the policy of the state to maintain an efficient and effective merit based personnel management system to meet the management needs of the state and the social, economic and program needs of the people of the state. The system shall provide means to recruit, select and develop an effective, productive and responsive work force representative of the labor market according to the demands of society, equity and law, and shall include policies and procedures for employee hiring and advancement, training and career development, job classification, salary administration, employee benefits, discipline, discharge, retirement and other related activities as appropriate, taking into consideration formal and informal labor relations arrangements.

Subd. 2. **Precedence of merit principles and nondiscrimination.** It is the policy of this state to provide for equal employment opportunity consistent with chapter 363 by ensuring that all personnel actions be based on the ability to perform the duties and responsibilities assigned to the position without regard to age, race, creed or religion, color, disability, sex, national origin, marital status, status with regard to public assistance, or political affiliation. It is the policy of this state to take affirmative action to eliminate the underutilization of qualified members of protected groups in the civil service, where such action is not in conflict with other provisions of this chapter or chapter 179, in order to correct imbalances and eliminate the present effects of past discrimination.

No contract executed pursuant to chapter 179 shall modify, waive or abridge sections 43A.01, 43A.07 to 43A.13, 43A.15, and 43A.17 to 43A.21, except to the extent expressly permitted in those sections.

History: 1981 c 210 s 1

43A.02 DEFINITIONS.

Subdivision 1. **Interpretation.** Unless the language or context indicates that a different meaning is intended, the following terms, for the purposes of Laws 1981, Chapter 210, have the meanings given them in this section.

Subd. 2. **Agency.** "Agency" means a department, commission, board, institution, or other employing entity of the civil service, in which all positions are under the same appointing authority.

Subd. 3. **Allocation.** "Allocation" means the assignment of an individual position to an appropriate class on the basis of the kind, difficulty, or responsibility of the work performed in the position.

Subd. 4. **Applicant.** "Applicant" means a person who has completed a state application for employment and has submitted it to the department of employee relations or other appointing authority who has been delegated authority to recruit and examine individuals for state jobs.

Subd. 5. **Appointing authority.** "Appointing authority" means a person or group of persons empowered by the constitution, statute, or executive order to employ persons in or to make appointments to positions in the civil service.

Subd. 6. **Appointment.** "Appointment" means the act of filling a vacancy by placement of a person in a civil service position through selection from an eligible list or a noncompetitive or qualifying process including transfer, demotion or reinstatement.

Subd. 7. **Candidate.** "Candidate" means an applicant whose application for employment has been accepted into the examination process for a class.

Subd. 8. **Certification.** "Certification" means the referral of names from an eligible list to an appointing authority to fill vacant positions in the classified service.

Subd. 9. **Change in allocation.** "Change in allocation" means reclassification resulting from abrupt, management-imposed changes in the duties and responsibilities of a position.

Subd. 10. **Civil service.** "Civil service" means all employees in the legislative, judicial and executive branches of state government and all positions in the classified and unclassified services as provided in sections 43A.07 and 43A.08.

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.

Subd. 12. **Classified service.** "Classified service" means all positions now existing or hereafter created in the civil service and not specifically designated unclassified pursuant to section 43A.08.

Subd. 13. **Commissioner.** "Commissioner" means the commissioner of employee relations.

Subd. 14. **Commissioner's plan.** "Commissioner's plan" means the plan required by section 3.855 regarding total compensation and terms and conditions of employment, including grievance administration, for employees of the executive branch who are not otherwise provided for in Laws 1981, Chapter 210 or other law.

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Subd. 15. **Competitive open.** "Competitive open" means eligibility to compete in an examination for state employment is extended to all interested persons.

Subd. 16. **Competitive promotional.** "Competitive promotional" means eligibility to compete in an examination for state employment is limited to persons currently occupying, or on leave or layoff from, civil service positions.

Subd. 17. **Declassified position.** "Declassified position" means a position which is removed from the classified service and placed in the unclassified service.

Subd. 18. **Department.** "Department" means the department of employee relations.

Subd. 19. **Eligible.** "Eligible" means a person whose name is on an eligible list.

Subd. 20. **Eligible list.** "Eligible list" means a list of candidates qualified under provisions of Laws 1981, Chapter 210 for employment in a specific class.

Subd. 21. **Employee.** "Employee" means any person currently occupying, or on leave from, a civil service position.

Subd. 22. **Executive branch.** "Executive branch" means heads of all agencies of state government, elective or appointive, established by statute or constitution and all employees of those agency heads who have within their particular field of responsibility statewide jurisdiction and who are not within the legislative or judicial branches of government. The executive branch also includes employees of the iron range resources and rehabilitation board. The executive branch does not include agencies with jurisdiction in specifically defined geographical areas, such as regions, counties, cities, towns, municipalities, or school districts, the University of Minnesota, the public employees retirement association, the Minnesota state retirement system, the teachers retirement association, the Minnesota historical society, and all of their employees, and any other entity which is incorporated, even though it receives state funds.

Subd. 23. **Intermittent employee.** "Intermittent employee" means an employee who works an irregular and uncertain schedule which alternately begins, ceases and begins again as the needs of the agency require.

Subd. 24. **Intern.** "Intern" means an individual who, for a work experience, is receiving academic credit from or is fulfilling an academic requirement of, an accredited educational institution.

Subd. 25. **Judicial branch.** "Judicial branch" means all justices of the supreme court, all employees of the supreme court, including commissions, boards and committees established by the supreme court, the board of law examiners, the law library, the office of the public defender, and all judges of all courts of law and other agencies placed in the judicial branch by law.

Subd. 26. **Layoff list.** "Layoff list" means an eligible list by class of former permanent or probationary employees who have been terminated from positions in the class because of a shortage of funds or curtailment of service or for any other reason beyond their control not reflecting discredit on the employee.

Subd. 27. **Legislative branch.** "Legislative branch" means all legislators and all employees of the legislature, legislative committees or commissions.

Subd. 28. **Managerial.** "Managerial" means those positions designated by the commissioner or statute as being accountable for determining, securing, and allocating human, financial, and other resources needed to accomplish objectives. Positions in this category also are accountable for determining overall objectives, priorities, and policies within a program area. Higher level positions in this

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category handle significant and involved relationships with governmental leadership. Incumbents of these positions have the authority to exercise discretionary powers on a regular basis.

Subd. 29. **Officer.** For purposes of chapter 15A the term "officer" may be used interchangeably with the term "employee" within the executive branch.

Subd. 30. **Permanent status.** "Permanent status" means the state or condition achieved by a tenured laborer or by an employee in the classified service who has successfully completed an initial probationary period or a probationary period required following reinstatement or reemployment, or whose probationary period is waived through specific statutory direction.

Subd. 31. **Position.** "Position" means a group of duties and responsibilities assigned or delegated by competent authority, requiring the full-time or less than full-time employment of one person.

Subd. 32. **Probationary period.** "Probationary period", part of the examination process, means a working period following unlimited appointment to a position in the classified service, during which the employee is required to demonstrate ability to perform the duties and fulfill the responsibilities of the position.

Subd. 33. **Protected groups.** "Protected groups" means females; handicapped persons; members of the following minorities: Black, Hispanic, Asian or Pacific Islander, 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 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.

Subd. 34. **Qualifying appointment.** "Qualifying appointment" means the selection, from other than an eligible list, of a candidate who has demonstrated through an examination process that the candidate meets minimum job related requirements.

Subd. 35. **Reallocation.** "Reallocation" means reclassification resulting from significant changes over a period of time in the duties and responsibilities of a position.

Subd. 36. **Reclassification.** "Reclassification" means changing the allocation of a position to a higher, lower or equivalent class.

Subd. 37. **Reemployment list.** "Reemployment list" means an eligible list by class of current or former permanent or probationary employees laid off, demoted in lieu of layoff, or separated in good standing from the class, and whose written applications for consideration for reemployment in the class have been approved by the commissioner.

Subd. 38. **Total compensation.** "Total compensation" means salaries, cash payments and employee benefits including paid time off, group insurance benefits, and other direct and indirect items of compensation with the exception of retirement plans.

Subd. 39. **Unclassified service.** "Unclassified service" means all positions designated not being classified pursuant to section 43A.08.

Subd. 40. **Unlimited appointment.** "Unlimited appointment" means an appointment for which there is no specified maximum duration.

History: 1981 c 210 s 2

NOTE: Subdivision 22 is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.03 DEPARTMENT OF EMPLOYEE RELATIONS.

Subdivision 1. **Creation.** The department of employee relations is created under the control and direction of the commissioner.

Subd. 2. **Commissioner.** The commissioner shall be appointed by the governor under the provisions of section 15.06. The commissioner shall be knowledgeable in executive personnel management and shall have background in labor relations.

Subd. 3. **Organization.** The department shall be organized into two bureaus which shall be designated the personnel bureau and the labor relations bureau. Each bureau shall be responsible for administering the duties and functions assigned to it by law. When the duties of the bureaus are not mandated by law, the commissioner may establish and revise the assignments of either bureau. Each bureau shall be under the direction of a deputy commissioner.

Subd. 4. **Deputy commissioners.** The deputy commissioners of the personnel and labor relations bureaus shall be in the unclassified service and shall be appointed by and serve at the pleasure of the commissioner.

Subd. 5. **Confidential secretary.** The commissioner may appoint a confidential secretary, who shall serve at the pleasure of the commissioner in the unclassified service.

History: 1981 c 210 s 3

43A.04 GENERAL POWERS AND RESPONSIBILITIES OF COMMISSIONER.

Subdivision 1. **Statewide leadership.** The commissioner shall be the chief personnel and labor relations manager of the civil service in the executive branch.

(a) Whenever any power or responsibility is given to the commissioner by any provision of Laws 1981, Chapter 210, unless otherwise expressly provided, the power or authority shall apply to all employees of agencies in the executive branch and to employees in classified positions in the office of the legislative auditor, the Minnesota state retirement system and the teacher's retirement association. Unless otherwise provided by law, the power or authority shall not apply to unclassified employees in the legislative and judicial branches.

(b) The commissioner shall operate an information system from which personnel data, as defined in section 15.1692, concerning employees and applicants for positions in the classified service can be retrieved.

The commissioner shall have access to all public and private personnel data kept by appointing authorities which will aid in the discharge of the commissioner's duties.

(c) The commissioner may consider and investigate any matters concerned with the administration of provisions of Laws 1981, Chapter 210 and may order any remedial actions consistent with law.

Subd. 2. **Executive direction.** The commissioner shall direct all departmental services, appoint employees and may enter into contracts to carry out the provisions of Laws 1981, Chapter 210.

Subd. 3. **Rules.** The commissioner shall promulgate rules pursuant to the administrative procedure act to implement the provisions of Laws 1981, Chapter 210 which directly affect the rights of or processes available to the general public. The rules shall have the force and effect of law and shall include but are not limited to:

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(a) The processes for determining the extent of competition for filling vacancies, for recruiting applicants, for conducting competitive open examinations, for ranking candidates and maintaining competitive open eligible lists, and for certification and appointment of eligibles from competitive open eligible lists;

(b) The process for effecting noncompetitive and qualifying appointments;

(c) The process for temporary designation of positions in the unclassified service and for effecting appointments to the unclassified service;

(d) A statewide affirmative action program to include requirements for agency affirmative action plans, statewide policies and procedures, reporting requirements, accountability and responsibility of employees in the executive branch, and overall objectives of the program;

(e) Conditions under which moving and other expenses may be authorized and paid prior to appointment to persons who have accepted state employment;

(f) Establishment of procedures and rates of reimbursement governing payment of travel expenses for members of boards and commissions and other persons providing services to the state; and

(g) Procedures for administration of the code of ethics for employees of the executive branch.

Subd. 4. Administrative procedures. The commissioner shall develop administrative procedures to effect provisions of Laws 1981, Chapter 210 which do not directly affect the rights of or processes available to the general public. The administrative procedures shall not be subject to the rulemaking provisions of the administrative procedure act. They shall be reproduced and made available for comment to agencies, employees, and appropriate exclusive representatives certified pursuant to sections 179.61 to 179.76, 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.

Subd. 5. Precedence of collective bargaining provisions. A provision of an agreement entered into by the commissioner pursuant to section 179.74, subdivision 5, shall supersede the provisions of any rule or administrative procedure or portion thereof which is inconsistent with the agreement unless the provision is found to violate existing law.

Subd. 6. Payment for grievance settlements. Notwithstanding any other law to the contrary, the commissioner may authorize an appointing authority to pay an employee for hours not worked, pursuant to the resolution of a grievance through a formal grievance procedure established by a collective bargaining agreement or one of the plans established pursuant to section 43A.18.

History: 1981 c 210 s 4

NOTE: Subdivisions 1 and 4 are repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.05 POWERS AND RESPONSIBILITIES THROUGH THE PERSONNEL BUREAU.

Subdivision 1. **General.** The commissioner through the personnel bureau shall perform the duties assigned in Laws 1981, Chapter 210. The deputy for the personnel bureau shall perform any duties delegated by the commissioner.

The commissioner's authority and responsibility shall include but not be limited to maintenance of a classification plan, assignment of all positions in the classified service to job classes, maintenance and approval of total compensation plans for all positions in the executive branch pursuant to the provisions of section 43A.18 and other provisions of law; preparation of examinations, rating of candidates for employment and preparation of eligible lists; maintenance of employee performance appraisal, training and affirmative action programs; and maintenance and publication of logical career paths in the classified civil service.

Subd. 2. **Requests for nonstate funds.** The commissioner shall have the authority to review and comment upon all requests for other than state appropriated funds by any agency for personnel and labor relations purposes before any funding request is made to a federal, local or private agency.

Subd. 3. **Commissioner's plan.** The commissioner shall periodically develop and establish pursuant to Laws 1981, Chapter 210 a commissioner's plan. The commissioner shall submit the plan, before becoming effective, to the legislative commission on employee relations for approval.

Subd. 4. **Time off in emergencies.** The commissioner shall authorize appointing authorities to pay for time off in emergencies. An appointing authority, after consultation with the commissioner of public safety, may excuse employees from duty with full pay in the event of a natural or manmade emergency, if continued operation would involve a threat to the health or safety of individuals. Absence with pay shall not exceed 16 working hours at any one time unless the commissioner authorizes a longer duration.

History: 1981 c 210 s 5

43A.06 POWERS AND RESPONSIBILITIES THROUGH THE LABOR RELATIONS BUREAU.

Subdivision 1. **General.** The commissioner, through the labor relations bureau, shall perform the duties assigned to the commissioner by section 3.855, sections 179.61 to 179.76 and this section.

The deputy commissioner for the labor relations bureau shall be the state labor negotiator for purposes of negotiating and administering agreements with exclusive representatives of employees and shall perform any other duties delegated by the commissioner.

Subd. 2. **Hearings.** The commissioner shall represent the state at hearings conducted by the director of the bureau of mediation services and the public employment relations board.

Subd. 3. **Collective bargaining.** The commissioner through the labor relations bureau shall represent the state in all collective bargaining between the state and exclusive representatives, and shall represent the state in mediation and arbitration of collective bargaining disputes.

Subd. 4. **Reports.** The commissioner shall report to the legislative commission on employee relations pursuant to section 3.855.

Subd. 5. **Interpretation of collective bargaining agreements.** The commissioner shall be responsible for management interpretation of all collective bargain-

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ing agreements between the state and exclusive representatives and provide management personnel with training in the interpretation and application of these collective bargaining agreements.

Subd. 6. **Grievances; arbitration.** The commissioner shall oversee the administration of all written grievances arising under collective bargaining agreements between the state and an exclusive representative and shall represent the state at all grievance arbitrations.

Subd. 7. **Grievance settlement.** The commissioner shall have final authority to decide if a grievance shall be submitted to arbitration or if it shall be settled without arbitration.

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.

History: 1981 c 210 s 6

43A.07 CLASSIFIED SERVICE.

Subdivision 1. **Classification plan.** The commissioner shall maintain, revise and administer a classification plan.

Subd. 2. **Job classes and titles.** An appointing authority shall notify the commissioner when a new position is to be established in the classified service. The commissioner shall allocate the position to an appropriate class in the classification plan or if the position cannot be allocated to an existing class, establish a new class. The commissioner shall assign an appropriate salary rate or range to the class. If the class is in a bargaining unit under the provisions of section 179.741, and there is an applicable provision in the collective bargaining agreement the commissioner shall establish the salary rate or range pursuant to the agreement.

The commissioner may independently conduct classification studies or, upon request of an appointing authority or a permanent employee, shall investigate the duties of a classified position. The commissioner may reclassify the position, change the title of the position or establish a new class. The commissioner shall assign an appropriate salary rate or range to the class. If the class is in a collective bargaining unit under the provisions of section 179.741, and there is an applicable provision in the collective bargaining agreement, the commissioner shall establish the salary rate or range pursuant to the agreement.

Subd. 3. **Protested allocation or reclassification.** An appointing authority who is affected by a position allocation or reclassification or an employee who is affected by a position reclassification may protest the allocation or reclassification in writing to the commissioner. The commissioner shall review the allocation or reclassification and may change the allocation or reclassification decision. This procedure shall not be subject to contested case provisions of the administrative procedure act.

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 179.61 to 179.76 governing reallocation or change in allocation of positions, promotion, transfer, and demotion. If the incumbent is ineligible to

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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 179.61 to 179.76 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.

Subd. 5. Leaves to accept unclassified appointments. An employee who is granted a leave of absence from a position in the classified service to accept a position in the unclassified service shall retain an inactive classified service status. Upon his request, during the unclassified appointment or within sixty days of the end of the unclassified appointment, the employee shall be reappointed in the agency from which the employee was granted the leave, to a classified position comparable to that which he held immediately prior to being appointed to the unclassified position.

Subd. 6. Rights of incumbents of declassified positions. Except for just cause, an employee 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 thirty-day notice period, if he so requests, 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 which he held immediately prior to being appointed to the declassified position.

History: 1981 c 210 s 7

43A.08 UNCLASSIFIED SERVICE.

Subdivision 1. Unclassified positions. Unclassified positions are held by employees who are:

- (a) Chosen by election or appointed to fill an elective office;
- (b) Heads of agencies required by law to be appointed by the governor or other elective officers, and the executive or administrative heads of departments, bureaus, divisions and institutions specifically established by law in the unclassified service;
- (c) The confidential secretary to each of the elective officers of this state and, for the secretary of state, state auditor, and state treasurer, an additional deputy, clerk, or employee;
- (d) Intermittent help employed by the commissioner of public safety to assist in the issuance of vehicle licenses;
- (e) Employees in the offices of the governor and of the lieutenant governor, and one confidential employee for the governor in the office of the adjutant general;
- (f) Employees of the legislature and of legislative committees or commissions; provided that employees of the legislative audit commission, except for the legislative auditor, the deputy legislative auditors, and their confidential secretaries, shall be employees in the classified service;

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(g) Presidents, vice presidents, deans, other managers and professionals in academic and academic support programs, administrative or service faculty, teachers, research assistants and student employees eligible under terms of the federal economic opportunity act work study program in the state universities and community colleges. This paragraph shall not be construed to include the custodial, clerical or maintenance employees, or any professional or managerial employee performing duties in connection with the business administration of these institutions.

(h) Officers and enlisted persons in the national guard;

(i) Attorneys, legal assistants, examiners, and three confidential employees appointed by the attorney general or employed with his authorization;

(j) Judges and all employees of the judicial branch, referees, receivers, jurors, and notaries public, except referees and adjusters employed by the department of labor and industry;

(k) Members of the state highway patrol; provided that selection and appointment of highway patrol troopers shall be made in accordance with applicable laws governing the classified service;

(l) Seasonal help employed by the department of revenue;

(m) Employees of the department of administration permanently assigned to the ceremonial house;

(n) Chaplains employed by the state;

(o) Examination monitors and intermittent training instructors employed by the departments of employee relations and commerce;

(p) Student workers; and

(q) Employees unclassified pursuant to other statutory authority.

Subd. 2. **Additional unclassified positions.** Notwithstanding any other law to the contrary, the commissioner, upon request of the governor, may establish permanent unclassified positions, or unclassify previously classified positions, provided that:

(a) The positions involve only deputy or assistant heads of agencies, or director level positions which are not specifically established by law, and who are appointed by and report directly to a head of an agency who is required by law to be appointed by the governor, or by a board appointed by the governor.

(b) The positions established are limited in number to six in the departments of administration, corrections, economic security, finance, transportation, natural resources, public safety, public welfare, and revenue; to five in the departments of commerce, education, health, labor and industry, employee relations and the housing finance agency; to four in the departments of agriculture, and economic development; to three in the department of public service, the planning agency, and the pollution control agency; and to two in the departments of human rights, veterans affairs, and the crime control planning board; and to one for a confidential secretary of any head of an agency listed in this paragraph. Agencies not enumerated in this paragraph shall not be authorized to establish additional unclassified positions under the provisions of this subdivision.

(c) Funds are available.

Subd. 3. **Unclassified titles; salary rates and ranges; investigations.** Except for those positions listed in section 43A.18, subdivisions 4 and 6, when a new position is to be established in the unclassified service, the commissioner shall compare the position to a class in the classified service if a comparable class exists or if not, establish a salary rate or range and official title for the position.

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The commissioner shall independently or upon request of an appointing authority or employee investigate the duties of a position unclassified under provisions of subdivision 2 or rule. If the commissioner determines the position is incorrectly placed in the unclassified service, the commissioner shall place the position in the classified service. If the commissioner determines the position is improperly compared or assigned to an inappropriate salary range, the commissioner shall recompare the position, change the title or establish a new title or reassign the position to a different salary rate or range.

If a new title is established for the position or if the position is reassigned to a different salary rate or range and the position will be covered by a bargaining unit under the provisions of section 179.741, and if there is an applicable provision in a collective bargaining agreement, the commissioner shall establish the salary rate or range pursuant to the collective bargaining agreement.

History: 1981 c 210 s 8

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.09 RECRUITMENT.

The commissioner in cooperation with appointing authorities of all state agencies shall maintain an active recruiting program publicly conducted and designed to attract sufficient numbers of well qualified people to meet the needs of the civil service, and to enhance the image and public esteem of state service employment. Special emphasis shall be given to recruitment of protected group members to assist state agencies in meeting affirmative action goals to achieve a balanced workforce.

History: 1981 c 210 s 9

43A.10 EXAMINATIONS; ELIGIBILITY TO COMPETE.

Subdivision 1. **General.** Entrance to the classified service shall be through successful competition in an examination and certification and appointment from an eligible list except as provided in section 43A.15 or other law.

Subd. 2. **Examination criteria.** All examinations for positions in the classified service shall be job related and designed to fairly assess ability to perform the duties of the class for which the examination is given.

Subd. 3. **Facilities furnished examiners.** The authorities having control of public buildings in political subdivisions of the state and school districts, upon written request of the commissioner, shall furnish without charge convenient facilities for the administration of examinations. Upon such request, it shall be the duty of state and local authorities and employees, as it is consistent with their other duties, to aid in carrying out the provisions of this section.

Subd. 4. **Candidates, eligibles; expenses.** The commissioner or an appointing authority may pay travel expenses incurred by candidates or eligibles invited for oral examinations or employment interviews in the manner and amounts authorized by the commissioner.

Subd. 5. **Eligibility for competitive open examinations.** Competitive open examinations shall, upon public notice, be open to all applicants who meet reasonable job related requirements fixed by the commissioner.

Subd. 6. **Eligibility for competitive promotional examinations.** Competitive promotional examinations shall be open only to employees of the civil service, the Minnesota state retirement system and the teacher's retirement association. The commissioner may require that competition be extended to all employees as

defined above or may limit competition to employees of one or more agencies or organizational units thereof or to employees meeting specified employment conditions.

Subd. 7. Examination accommodations. Upon request, the commissioner shall provide examination accommodations to a candidate with a handicap that does not prevent performance of the duties of the class. The accommodations shall provide an opportunity to fairly examine the ability of the candidate to perform the duties of the class notwithstanding the handicap but shall preserve, to the extent feasible, the validity of the examination process and equitable comparison of examination scores with competitors without handicaps.

Subd. 8. Eligibility for qualified handicapped examinations. The commissioner shall establish examination procedures for candidates whose handicaps are of such a severe nature that the candidates are unable to demonstrate their abilities in competitive examination processes. The examination procedures shall consist of up to 700 hours on-the-job trial work experience which will be in lieu of a competitive examination and for which the employee will be paid or unpaid at the employee's option. This work experience shall be limited to candidates who are mentally retarded, have severe hearing or visual impairments, are confined to wheelchairs, or have other impairments that comprise serious employment handicaps and who have been referred for employment to a specific suitable vacancy by a vocational rehabilitation, veterans administration, or services for the blind counselor. Implementation of provisions of this subdivision shall not be deemed a violation of other provisions of Laws 1981, Chapter 210 or chapter 363.

History: 1981 c 210 s 10

43A.11 VETERAN'S PREFERENCE.

Subdivision 1. Creation. Recognizing that training and experience in the military services of the government and loyalty and sacrifice for the government are qualifications of merit which cannot be readily assessed by examination, a veteran's preference shall be available pursuant to this section to United States citizens who entered the military service of this country prior to December 31, 1976 and separated under honorable conditions (a) after having served on active duty for 181 consecutive days or (b) by reason of disability incurred while serving on active duty.

Subd. 2. Restrictions. Veteran's preference credit under this section may not be used by any veteran who is currently receiving or is eligible to receive a monthly veteran's pension based exclusively on length of military service.

Subd. 3. Nondisabled veteran's credit. There shall be added to the competitive open examination score of a nondisabled veteran, if he so elects, a credit of five points provided that the veteran obtained a passing score on the examination without the addition of the credit points.

Subd. 4. Disabled veteran's credit. There shall be added to the competitive open examination score of a disabled veteran, if he so elects, a credit of ten points provided that the veteran obtained a passing score on the examination without the addition of the credit points. There shall be added to the competitive promotional examination score of a disabled veteran, if he so elects, a credit of five points provided that (a) the veteran obtained a passing score on the examination without the addition of the credit points and (b) the veteran is applying for his first promotion after securing public employment.

Subd. 5. Disabled veteran; definitions. For the purpose of the preference to be used in securing appointment from a competitive open examination, "disabled

veteran" means a person who has a compensable service connected disability as adjudicated by the United States Veterans Administration, or by the retirement board of one of the several branches of the armed forces, which disability is existing at the time preference is claimed. For purposes of the preference to be used in securing appointment from a competitive promotional examination, "disabled veteran" means a person who, at the time of election to use his promotional preference, is entitled to disability compensation under laws administered by the veterans administration for a permanent service connected disability rated at 50 percent or more.

Subd. 6. **Preference for spouses.** A preference available pursuant to this section may be used by the surviving spouse of a deceased veteran and by the spouse of a disabled veteran who because of the disability is unable to qualify.

Subd. 7. **Ranking of veterans.** An eligible with a score augmented by veteran's preference shall be entered on an eligible list ahead of a nonveteran with the same score.

Subd. 8. **Notification.** A governmental agency when notifying eligibles that they have passed examinations shall show the final examination scores and the preference credits and shall notify eligibles that they may elect to use veteran's preference to augment passing scores.

Subd. 9. **Rejection; explanation.** If the appointing authority rejects a certified eligible who has received veteran's preference, the appointing authority shall notify the eligible in writing of the reasons for the rejection.

History: 1981 c 210 s 11

43A.12 RANKING OF ELIGIBLES.

Subdivision 1. **General.** The commissioner shall prepare eligible lists as provided in this section.

Subd. 2. **Layoff lists.** On layoff lists former employees of the class shall be ranked as provided in collective bargaining agreements, the plans established pursuant to section 43A.18, rules, or procedures implemented pursuant to section 43A.04, subdivision 4.

Subd. 3. **Reemployment lists.** On reemployment lists former employees of the class with satisfactory prior service ratings shall be ranked as provided in collective bargaining agreements, the plans established pursuant to section 43A.18, rules, or procedures implemented pursuant to section 43A.04, subdivision 4.

Subd. 4. **Competitive lists.** On competitive open and competitive promotional lists eligibles shall be ranked according to their ratings in examinations and the veteran's preference provisions of section 43A.11.

Subd. 5. **Qualified handicapped lists.** On qualified handicapped lists eligibles shall be ranked in alphabetical order.

Subd. 6. **Term of eligibility.** The term of eligibility of eligibles on lists shall be determined by the commissioner but shall not be less than six months.

History: 1981 c 210 s 12

43A.13 CERTIFICATION OF ELIGIBLES.

Subdivision 1. **General.** Upon request of an appointing authority the commissioner shall certify eligibles from an eligible list determined appropriate by the commissioner, or as provided in collective bargaining agreements, rules or section 43A.04, subdivision 4. The commissioner shall certify qualified available eligibles

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as provided in this section. Where the vacancy to be filled is in a position covered by a collective bargaining agreement, the list of certified eligibles shall be made available upon request to the exclusive representative as defined in sections 179.61 to 179.76.

Subd. 2. **Layoff.** If an agency has a layoff list for the class and employment conditions of the vacancy to be filled, the commissioner shall certify eligibles as provided in collective bargaining agreements, plans established pursuant to section 43A.18, rules, or procedures implemented pursuant to section 43A.04, subdivision 4.

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 three years of separation.

Subd. 4. **Competitive open.** For positions to be filled by competitive open examination, the commissioner shall certify the first 10 eligibles on the list plus those eligibles having the same score as the tenth eligible certified.

Subd. 5. **Competitive promotional.** For positions to be filled by competitive promotional examination, the commissioner shall certify the first three eligibles on the list plus those eligibles having an examination rating within three points of the eligible with the highest examination rating and any additional eligible having the same score as the last eligible certified.

Subd. 6. **Qualified handicapped.** For a position to be filled by qualified handicapped examination, the commissioner shall certify only the one eligible who has successfully completed the examination processes provided in section 43A.10, subdivision 8 for the position.

Subd. 7. **Expanded certification.** When the commissioner determines that a disparity as defined in rules exists between an agency's work force and its affirmative action plan approved in accordance with section 43A.19, the commissioner shall ensure to the extent possible that eligibles who are members of the protected groups for which the disparity exists are certified for appointment. When fewer than three eligibles of all protected groups for which a disparity has been determined to exist would be certified under subdivisions 4 and 5, the commissioner shall certify as many additional eligibles from all of the protected groups for which disparities have been determined to exist as are necessary to bring the number of such protected group eligibles certified to an aggregate total of three. Implementation of this subdivision shall not be deemed a violation of other provisions of Laws 1981, Chapter 210 or Chapter 363.

Subd. 8. **Refusal to certify.** The commissioner may refuse to certify an eligible who (a) is found to lack any of the requirements established for the examination for which the eligible has applied, (b) has been dismissed from the public service for delinquency or misconduct, (c) has been dismissed from the same or a similar classification within the civil service for unsatisfactory job performance, (d) has, directly or indirectly, given or promised to give anything of value to any person in connection with the eligible's examination, appointment, or proposed appointment, or (e) has made a false statement of any material fact or practiced or attempted to practice any deception or fraud in the application, or examination or in securing eligibility or appointment.

When the commissioner refuses to certify an eligible, the commissioner shall, upon request of the eligible refused, furnish the eligible a statement of the reasons

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for the refusal. Upon receipt of relevant information, the commissioner shall reconsider the refusal and may certify the eligible.

History: 1981 c 210 s 13

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.14 APPOINTMENTS.

All appointments to the classified service shall be based upon merit and ability to perform the duties of the position and the needs of the employing agency, including the need to achieve and maintain a representative work force. For employees in a bargaining unit as defined in section 179.741 appointments shall be subject to applicable provisions of collective bargaining agreements.

History: 1981 c 210 s 14

43A.15 NONCOMPETITIVE AND QUALIFYING APPOINTMENTS.

Subdivision 1. **General.** Positions in the classified service may be filled other than by appointment from eligible lists only as provided in this section or other law, provided that appointments made pursuant to subdivisions 5, 6, 9, 10, 11, and 12 shall be subject to applicable provisions of collective bargaining agreements.

Subd. 2. **Emergency appointments.** An appointing authority may make an emergency appointment for up to 30 working days. No person shall be employed in any one agency on an emergency basis for more than 30 working days in any 12 month period.

Subd. 3. **Temporary appointments.** The commissioner may authorize an appointing authority to make a temporary appointment of up to six months. The commissioner may, in the best interest of the state, grant an extension of a temporary appointment or approve a temporary appointment to fill a vacancy created by an approved leave of absence to a maximum period of one year. When practicable, the commissioner may certify any qualified eligible from an eligible list for the temporary appointment, but may authorize the appointment of any person deemed qualified by the appointing authority.

No person shall be employed on a temporary basis in any one agency for more than 12 months in any 24 month period.

Subd. 4. **Provisional appointments.** The commissioner may authorize an appointing authority to make a provisional appointment if there is an urgent reason for filling a vacancy and no person on an incomplete certification is suitable or available for appointment.

No person shall be provisionally appointed unless the person has passed an appropriate qualifying examination or is qualified in all respects except for completion of a licensure or certification requirement. To the extent possible, the commissioner shall ensure that provisional appointments are kept to a minimum.

No person shall be employed on a provisional basis for more than six months unless the commissioner grants an extension to a maximum of 12 months in the best interest of the state. No extension may be granted beyond 12 months except for persons provisionally appointed to physician positions or other positions requiring licensure or certification where there is a lack of eligibles.

At the request of an appointing authority, the commissioner may authorize the probationary appointment of a provisional appointee who has performed satisfactorily for at least 60 days.

Subd. 5. **Noncompetitive promotions.** The commissioner may authorize an appointing authority to promote the incumbent with permanent or probationary status to a reallocated classified position.

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. An authorized transfer may result in the movement of an employee between different positions in the same class or between positions 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.

Subd. 7. **Appointments for unclassified incumbents of newly classified positions.** The commissioner may authorize the probationary appointment of an incumbent who has passed a qualifying examination and who has served at least one year in an unclassified position which has been placed in the classified service by proper authority.

Subd. 8. **Exceptional appointments.** Where a position requires exceptional qualifications of a scientific, professional or expert character and competition is impracticable, the commissioner may, at the request of an appointing authority, authorize the probationary appointment of a designated person possessing the required exceptional qualifications.

Subd. 9. **Labor service appointments.** The commissioner shall designate classes involving unskilled labor as comprising a labor service and shall authorize appointing authorities to make appointments to such classes without prior approval.

Subd. 10. **Routine service appointments.** The commissioner may authorize the administration of a qualifying selection process where the position to be filled is of a routine, service nature involving unskilled tasks, the performance of which cannot be directly related to qualifications beyond a minimum competency level. Appointing authorities may consider any candidate found so qualified for probationary appointment to such a position.

Subd. 11. **Appointments to positions in shortage occupations.** The commissioner may designate classifications for which qualified applicants are in critically short supply and may develop recruitment, qualifying examination and referral processes as will provide agencies opportunity to make prompt appointments.

Subd. 12. **Work-training appointments.** The commissioner may authorize the probationary appointment of persons who successfully complete on-the-job state training programs which have been approved by the commissioner.

History: 1981 c 210 s 15

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.16 PROBATIONARY PERIODS.

Subdivision 1. **General.** All unlimited appointments to positions in the classified service except as provided in this subdivision shall be for a probationary period the duration of which shall be determined through collective bargaining agreements or plans established pursuant to section 43A.18 but which shall not be less than 30 days of full-time equivalent service nor more than two years of full-time equivalent service. An appointing authority may require a probationary period for transfers, reemployments, reinstatements, voluntary demotions, and

appointments from layoff lists of former employees of a different appointing authority. For employees in a bargaining unit as defined in section 179.741 the requirement of such a probationary period shall be subject to applicable provisions of collective bargaining agreements.

Subd. 2. Termination during probationary period. There is no presumption of continued employment during a probationary period. Terminations or demotions may be made at any time during the probationary period subject to the provisions of this section and collective bargaining agreements or plans established pursuant to section 43A.18.

If during the probationary period an employee with permanent status is dismissed for inability to perform the duties of the new position or for other cause not related to misconduct or delinquency, the employee shall be restored to a position in the employee's former class and agency.

History: 1981 c 210 s 16

43A.17 SALARY LIMITS, RATES, RANGES AND EXCEPTIONS.

Subdivision 1. Salary limits. As used in this section, "salary" means hourly, monthly, or annual rate of pay including any lump-sum payments and cost-of-living adjustment increases but excluding payments due to overtime worked, shift or equipment differentials, work out of class as required by collective bargaining agreements or plans established pursuant to section 43A.18, and back pay on reallocation or other payments related to the hours or conditions under which work is performed rather than to the salary range or rate to which a class is assigned.

The salary, as established in section 15A.081, of the head of a state agency in the executive branch is the upper limit of compensation in the agency. The salary of the commissioner of labor and industry is the upper limit of compensation of employees in the bureau of mediation services. The commissioner may grant exemptions from these upper limits as provided in subdivisions 3 and 4.

Subd. 2. General compensation. For classes or positions covered under the provisions of section 43A.18, subdivision 1, the commissioner shall negotiate compensation. For classes or positions covered under the provisions of section 43A.18, subdivisions 2 and 3, the commissioner shall establish compensation. Employees covered under section 43A.18 shall receive salary at the appropriate single rate or within the limits of the salary range to which their class is assigned or their position compared except for any lump sum payments including cost of living lump sum payments. The commissioner may grant further exemptions from this subdivision as provided in subdivisions 3, 5, 6, and 7.

Subd. 3. Unusual employment situations. Upon the request of the appointing authority, and when the commissioner determines that changes in employment situations create difficulties in attracting or retaining employees, the commissioner may approve an unusual employment situation increase to advance an employee within the compensation plan. Such action will be consistent with applicable provisions of collective bargaining agreements or plans pursuant to section 43A.18. The commissioner shall review each proposal giving due consideration to salary rates paid to other employees in the same class and agency and may approve any request which in the commissioner's judgment is in the best interest of the state. If the commissioner determines that the position requires special expertise necessitating a higher salary to attract or retain qualified persons, the commissioner may grant an exemption not to exceed 120 percent of the base salary of the head of the agency.

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Subd. 4. **Medical specialists.** The commissioner may without regard to subdivision 1 establish special salary rates and plans of compensation designed to attract and retain exceptionally qualified doctors of medicine. In establishing salary rates and eligibility for nomination for payment at special rates, the commissioner shall consider the standards of eligibility established by national medical specialty boards where appropriate. The incumbents assigned to these special ranges shall be excluded from the collective bargaining process.

Subd. 5. **Salary on demotion; special cases.** The commissioner may, upon request of an appointing authority, approve payment of an employee with permanent status at a salary rate above the maximum of the class to which the employee is demoted. The commissioner shall take such action as required by collective bargaining agreements or plans pursuant to section 43A.18. If the action is justified by the employee's long or outstanding service, exceptional or technical qualifications, age, health, or substantial changes in work assignment beyond the control of the employee, the commissioner may approve a rate up to and including the employee's salary immediately prior to demotion. Thereafter, so long as the employee remains in the same position, the employee shall not be eligible to receive any increase in salary until the employee's salary is within the range of the class to which the employee's position is allocated unless such increases are specifically provided in collective bargaining agreements or plans pursuant to section 43A.18.

Subd. 6. **Salary on transfer.** The commissioner may authorize an employee transferring between two classes established as equivalent for purposes of transfer to retain a rate of compensation above the maximum of the range of the class to which the employee is transferring. The commissioner shall take such action as required by a collective bargaining agreement or plans pursuant to section 43A.18. Thereafter, so long as the employee remains in the same class, the employee shall receive an increase in salary only as provided pursuant to applicable collective bargaining agreements or plans pursuant to section 43A.18, until his salary is within the range of the class to which his position is allocated.

Subd. 7. **Injured on duty pay.** Notwithstanding section 176.021, subdivision 5, the commissioner may provide for injured on duty pay through collective bargaining agreements or plans pursuant to section 43A.18.

History: 1981 c 210 s 17

NOTE: Subdivisions 2 and 3 are repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.18 TOTAL COMPENSATION; COLLECTIVE BARGAINING AGREEMENTS; PLANS.

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 shall be governed solely by the collective bargaining agreement executed by the parties and approved by the legislature.

Subd. 2. **Commissioner's plan.** Except as provided in section 43A.01, the compensation, terms and conditions of employment for all classified and unclassified employees, except unclassified employees in the legislative and judicial branches, who are not covered by a collective bargaining agreement and not otherwise provided for in Laws 1981, Chapter 210 or other law shall be governed solely by the commissioner's plan. The legislative commission on employee relations shall review the plan and submit it to the legislature along with any

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recommendations it deems appropriate. The plan need not be adopted in accordance with the rulemaking provisions of chapter 15.

The plan shall not take effect until approved by the legislature, provided that the legislative commission may give interim approval to effect the plan and subsequently submit it to the entire legislature for ratification in the same manner as provided for negotiated agreements and arbitration awards under section 179.74, subdivision 5. If the legislature modifies or rejects the plan or adjourns without action during the following legislative session, any total compensation increases which were provided pursuant to interim approval by the commission and not ratified by the legislature shall not be affected but shall cease to be provided.

Subd. 3. Managerial plan. The commissioner shall identify individual positions or groups of positions in the classified and unclassified service, except those listed in subdivision 4, in the executive branch as being managerial.

(a) The commissioner shall establish appropriate plans for training and development, mobility, total compensation and terms and conditions of employment for employees of those positions identified as being managerial and whose salaries and benefits are not otherwise provided for in law or other plans established under Laws 1981, Chapter 210. The plans shall include a career executive service to provide a system for identifying, developing and recognizing key individuals who occupy managerial positions in the classified service.

(b) Incumbents of managerial positions as identified under this subdivision shall be excluded from any bargaining units under the provisions of chapter 179.

(c) The management compensation plan shall provide methods and levels of compensation for managers that will be generally comparable to those applicable to managers in other public and private employment. Provisions of the plan shall ensure that compensation within assigned salary ranges is related to level of performance.

The commissioner shall develop a total compensation plan for individuals appointed to the career executive service. Salaries established under this plan shall be limited to 120 percent of the maximum of the salary range for the employee's job classification in the classified service. The total compensation established under the provisions of this clause may be extended to unclassified managers and the employee benefits established under the provisions of this clause may be extended to those heads of agencies whose salaries are established in section 15A.081, subdivision 1.

(d) No rights or tenure shall attach to a career executive service assignment. An incumbent in the career executive service may be removed from the career executive service by the appointing authority, provided the action is made without regard to sex, race, religion, color, creed, marital status, age, national origin, disability, status with regard to public assistance or political affiliation. An employee removed from the career executive service shall receive compensation at the level formerly received plus any increases the employee would have received had the employee not been appointed to the career executive service.

An employee who is in the career executive service on July 1, 1981 and whose position, as a result of Laws 1981, Chapter 210, is no longer eligible for inclusion in the career executive service is nonetheless eligible to remain a member of the career executive service in accordance with the provisions of this section so long as the employee remains in that position.

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Subd. 4. **Plans not established but approved by commissioner.** Notwithstanding any other law to the contrary, total compensation for employees listed in this subdivision shall be set by appointing authorities subject to the following limitations:

(a) Total compensation paid pursuant to this subdivision and that paid pursuant to section 6.582, shall be within the limits of compensation plans which shall have been approved by the commissioner before becoming effective;

(b) Total compensation for unclassified employees in the office of the governor shall be determined by the governor;

(c) Total compensation for unclassified employees in the office of the attorney general shall be determined by the attorney general;

(d) Total compensation for unclassified employees of the state board of investment shall be determined by the state board of investment;

(e) Total compensation for unclassified positions pursuant to section 43A.08, subdivision 1, clause (g) and in the higher education coordinating board shall be determined by the state university board, the state board for community colleges, and the higher education coordinating board, respectively; and

(f) Total compensation for classified hearing examiners in the office of administrative hearings shall be determined by the chief hearing examiner.

Subd. 5. **Governor to set certain salaries.** The governor shall, on or before January 31 of each odd numbered year, submit to the legislative commission on employee relations recommendations for salaries for the positions listed in sections 15A.081 and 15A.083. The governor may also propose additions or deletions of positions from those listed.

(a) Before submitting the recommendations, the governor shall consult with the commissioner of administration, the commissioner of finance, and the commissioner of employee relations concerning the recommendations. Before submitting recommendations for an employee in the office of a constitutional officer, the governor shall consult with the constitutional officer concerning the recommendations and shall give due consideration to the advice of the officer;

(b) Except for positions for which salary ranges have been established, the recommendations shall contain a specific salary for each position listed in sections 15A.081 and 15A.083. The governor shall determine only a fixed salary for the positions of the constitutional officers, the judges of the workers' compensation court of appeals and the commissioner of public service;

(c) In making recommendations, the governor shall consider only those criteria established in subdivision 7 and shall not take into account performance of individual incumbents. The governor shall establish an objective system for quantifying knowledge, abilities, duties, responsibilities and accountabilities and in determining recommendations rate each position by this system; and

(d) The initial salary of a head of an agency hereafter established whose salary is not specifically prescribed by law shall be fixed by the governor, after consultation with the commissioner, whose recommendation shall be advisory only, in an amount comparable to the salary of an agency head having similar duties and responsibilities.

Subd. 6. **Legislative and judicial branch compensation.** Total compensation plans for unclassified employees of the legislature and of legislative commissions shall be determined by the legislature consistent with chapter 3, provided that insurance benefits for these employees and for legislators shall be determined by the legislative coordinating commission, consistent with sections 43A.22 to 43A.30.

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Total compensation plans for unclassified employees of the judicial branch shall be determined by the appointing authority, unless other law provides a different method for establishing this compensation. Judicial branch compensation plans shall be consistent with sections 43A.22 to 43A.30.

Subd. 7. **Members of Minnesota national guard.** Members of the Minnesota national guard shall receive the pay and allowances prescribed by the armed forces of the United States for similar rank and time in service.

Subd. 8. **Compensation relationships of positions.** In establishing, recommending and approving total compensation for any position within the plans covered in subdivisions 2, 3 and 4, the commissioner shall assure that:

(a) Compensation for positions in the classified and the unclassified service compare reasonably to one another;

(b) Compensation for state positions bears reasonable relationship to compensation for similar positions outside state service;

(c) Compensation for management positions bears reasonable relationship to compensation of represented employees managed;

(d) Compensation for positions within the classified service bears reasonable relationships among related job classes and among various levels within the same occupation; and

(e) Compensations bear reasonable relationships to one another within the meaning of this subdivision if compensation for positions which require comparable knowledge, abilities, duties, responsibilities and accountabilities is comparable and if compensation for positions which require differing knowledge, abilities, duties, responsibilities and accountabilities is proportional to the knowledge, abilities, duties and responsibilities required.

History: 1981 c 210 s 18

NOTE: Subdivisions 3 and 4 are repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.19 AFFIRMATIVE ACTION.

Subdivision 1. **Statewide affirmative action program.** To assure that positions in the executive branch of the civil service are equally accessible to all qualified persons, and to eliminate the underutilization of qualified members of protected groups, the commissioner shall adopt and periodically revise, if necessary, a statewide affirmative action program. The statewide affirmative action program shall consist of at least the following:

(a) Objectives, goals and policies;

(b) Procedures, standards and assumptions to be used by agencies in the preparation of agency affirmative action plans, including methods by which goals and timetables shall be established; and

(c) Requirements for the periodic submission of affirmative action progress reports from heads of agencies.

The commissioner shall designate a state director of equal employment opportunity to serve in the unclassified service who may be delegated the preparation, revision, implementation and administration of the program.

Subd. 2. **Agency affirmative action plans.** The head of each agency in the executive branch shall prepare and implement an agency affirmative action plan consistent with this section and rules promulgated pursuant to section 43A.04, subdivision 3. No agency affirmative action plan may be implemented without the commissioner's approval.

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

History: 1981 c 210 s 19

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 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 may, and are encouraged to, provide for pay increases based on employee work performance.

History: 1981 c 210 s 20

43A.21 TRAINING PROGRAMS.

Subdivision 1. **Authority; purpose.** The commissioner shall develop and interpret policy and administer and, to the extent possible, conduct programs in training and development for employees to promote individual, group and agency efficiency and effectiveness.

Subd. 2. **Responsibilities.** The commissioner is responsible for developing and coordinating consistent training policy which shall be binding on all state agencies in the executive branch. The policies shall include conditions under which employees may receive or be assigned to training; internships and work-training programs; minimum and maximum training standards for employee participation and agency reporting requirements. Career development training is a permissive subject of collective bargaining. Each appointing authority in the executive branch, including the Minnesota state retirement system and the teachers retirement association, is primarily responsible for planning, budgeting, conducting and evaluating training programs.

Subd. 3. **Programs.** The commissioner shall design and implement a management development program for the state service. The program shall include but not be limited to mandatory training and development requirements for managers and supervisors. No management or supervisory training shall be conducted by any agency in the executive branch without specific approval of the commissioner. No person shall acquire permanent status in a management or supervisory position in the classified service until training and development requirements have been met.

Subd. 4. **Funds.** For purposes of training and development, the commissioner is authorized to apply for and accept funds from any source including reimbursement charges from agencies for reasonable program costs. Funds received shall be deposited in the general fund of the state treasury and shall be appropriated annually to the department for the purposes for which they are received.

History: 1981 c 210 s 21

43A.22 BENEFITS; INTENT.

It is the intent of the state to provide eligible employees and other eligible persons with life insurance and hospital, medical, and dental benefits coverage

through provider organizations, hereafter referred to as "carriers", authorized to do business in the state.

History: 1981 c 210 s 22

43A.23 CONTRACTING AUTHORITY.

Subdivision 1. **General.** The commissioner is authorized to request bids from carriers or to negotiate with carriers and to enter into contracts with carriers which in the judgment of the commissioner are best qualified to underwrite and service the benefit plans. The commissioner shall consider the cost of the plans, conversion options relating to the contracts, service capabilities, character, financial position, and reputation of the carriers and any other factors which the commissioner deems appropriate. Each benefit contract shall be for a uniform term of at least one year, but may be made automatically renewable from term to term in the absence of notice of termination by either party. The commissioner shall, to the extent feasible, make hospital and medical benefits available from at least one carrier licensed to do business pursuant to each of chapters 62A, 62C and 62D. The commissioner need not provide health maintenance organization services to an employee who resides in an area which is not served by a licensed health maintenance organization. The commissioner may refuse to allow a health maintenance organization to continue as a carrier if it was selected by less than 200 employees in the preceding benefit year. The commissioner may elect not to offer all three types of carriers if there are no bids or no acceptable bids by that type of carrier or if the offering of additional carriers would result in substantial additional administrative costs. Any carrier licensed pursuant to chapter 62A shall be exempt from the tax imposed by section 60A.15 on premiums paid to it by the state.

Subd. 2. **Contract to contain statement of benefits.** Each contract under sections 43A.22 to 43A.30 shall contain a detailed statement of benefits offered and shall include any maximums, limitations, exclusions, and other definitions of benefits the commissioner deems necessary or desirable. Each hospital and medical benefits contract shall provide benefits at least equal to those required by section 62E.06, subdivision 2.

History: 1981 c 210 s 23

43A.24 ELIGIBILITY FOR STATE PAID INSURANCE AND BENEFITS.

Subdivision 1. **General.** Employees, including persons on layoff from a civil service position, shall be eligible for state paid life insurance and hospital, medical and dental benefits as provided in collective bargaining agreements or plans established pursuant to section 43A.18.

Subd. 2. **Other eligible persons.** The following persons are eligible for state paid life insurance and hospital, medical and dental benefits as determined in applicable collective bargaining agreements or by the commissioner or by plans pursuant to section 43A.18, subdivision 6 or by the Board of Regents for employees of the University of Minnesota not covered by collective bargaining agreements.

(a) A member of the state legislature, provided that changes in benefits resulting in increased costs to the state shall not be effective until expiration of the term of the members of the existing house of representatives. An eligible member of the state legislature may decline to be enrolled for state paid coverages by filing a written waiver with the commissioner, provided that the waiver shall not prohibit the member from enrolling himself or his dependents for optional coverages,

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without cost to the state, as provided in section 43A.26. A member of the state legislature who returns from a leave of absence to a position he previously occupied in the civil service shall be eligible to receive the life insurance and hospital, medical and dental benefits to which his position is entitled;

(b) A permanent employee of the legislature or a permanent employee of a permanent study or interim committee or commission or a state employee on leave of absence to work for the legislature, during a regular or special legislative session;

(c) A judge of the supreme court or an officer or employee of the court; a judge of the district court, a judge of county court, a judge of county municipal court, a judge of probate court; a district administrator; and an employee of the office of the district administrator of the fifth or the eighth judicial districts;

(d) A salaried employee of the public employees retirement association;

(e) A full-time military or civilian officer or employee in the unclassified service of the department of military affairs whose salary is paid from state funds;

(f) A salaried employee of the Minnesota historical society, whether paid from state funds or otherwise, who is not a member of the governing board; and

(g) An employee of the regents of the University of Minnesota.

History: 1981 c 210 s 24

43A.25 INELIGIBILITY FOR STATE PAID INSURANCE AND BENEFITS.

Except as provided in section 43A.27, subdivision 2, the following persons are excluded from the provisions of sections 43A.22 to 43A.30: emergency employees of the state and interns of the state and unless specifically included in collective bargaining agreements or plans established pursuant to section 43A.18, student workers of the state, temporary employees of the state and intermittent employees of the state.

History: 1981 c 210 s 25

43A.26 OPTIONAL COVERAGES.

The commissioner may make available to eligible persons and their dependents certain optional coverages provided by carriers selected by the commissioner. Eligible employees may elect to purchase optional coverages at their own expense.

History: 1981 c 210 s 26

43A.27 ELIGIBILITY FOR INDIVIDUAL PAID INSURANCE AND BENEFITS.

Subdivision 1. **General.** Notwithstanding any other provisions of Laws 1981, Chapter 210, the persons listed in subdivisions 2 and 3, and their dependents, may elect to enroll at their own expense in the appropriate life insurance, hospital, medical and dental benefits, and optional coverages at the time, in the manner, and under conditions of eligibility the commissioner prescribes and otherwise approves. The commissioner may also provide for payroll deductions to be made in the same manner and under the same conditions as provided in section 43A.30, subdivision 2 authorizing payroll deductions for an eligible employee and his dependents.

Subd. 2. **Elective eligibility.** The following persons, if not otherwise covered by section 43A.24, may elect coverage for themselves or their dependents at their own expense:

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(a) A state employee, including persons on layoff from a civil service position as provided in collective bargaining agreements or a plan established pursuant to section 43A.18;

(b) An employee of the board of regents of the University of Minnesota, including persons on layoff, as provided in collective bargaining agreements or by the Board of Regents;

(c) An officer or employee of the state agricultural society, state horticultural society, Sibley house association, Minnesota humanities commission, Minnesota international center, Minnesota academy of science, science museum of Minnesota, Minnesota safety council, or Minnesota humane society;

(d) A civilian employee of the adjutant general who is paid from federal funds and who is not eligible for benefits from any federal civilian employee group life insurance or health benefits program; and

(e) An officer or employee of the state capitol credit union or the highway credit union.

Subd. 3. Retired employees. A retired employee may elect to purchase coverage for himself or his dependents at his own expense. A retired employee of the state who receives an annuity under a state retirement program may elect to retain coverages to which he was entitled at the time of his retirement and any additional coverages made available through collective bargaining agreements or plans established pursuant to section 43A.18 to employees in positions equivalent to that from which he retired. Coverages shall be coordinated with relevant health insurance benefits provided through the federally sponsored medicare program. Appointing authorities shall provide notice to employees no later than the effective date of their retirement of the right to exercise the option provided in this subdivision. The retired employee must notify the commissioner or his designee within 30 days after the effective date of his retirement of his intention to exercise this option.

Subd. 4. Retired judges; former legislators. A retired judge or a former legislator may elect to purchase coverage for themselves or their dependents at their own expense as provided below:

(a) A retired judge of the state supreme court, a district court, a county court, a county municipal court, or a probate court may elect to purchase coverage provided persons listed in section 43A.24, subdivision 2, clause (c), provided that the retired judge exercises this option with 30 days of the effective date of retirement; or

(b) A former member of the legislature may elect to purchase coverage provided persons listed in section 43A.24, subdivision 2, clause (a).

History: 1981 c 210 s 27

43A.28 ENROLLMENT.

The time, manner, and conditions and terms of eligibility for enrollment of persons eligible for state paid or individual paid life insurance, hospital, medical and dental benefits, and optional coverages authorized shall be determined and prescribed by the commissioner according to collective bargaining agreements and plans established pursuant to section 43A.18.

History: 1981 c 210 s 28

43A.29 CONTRIBUTIONS BY STATE.

The total contribution by the state for eligible state employees and for dependents of eligible state employees shall be prescribed by collective bargaining agreements or plans established pursuant to section 43A.18.

History: 1981 c 210 s 29

43A.30 PAYMENT OF PREMIUMS.

Subdivision 1. **Payments from agency revenues.** Each agency shall pay the amounts due for state paid life insurance and hospital, medical and dental benefits coverage authorized for eligible employees pursuant to Laws 1981, Chapter 210.

Each agency shall pay the amounts from accounts and funds from which the agency receives its revenues, including appropriations from the general fund and from any other fund, now or hereafter existing for the payment of salaries and in the same proportion as it pays therefrom the amounts of salaries. In order to enable the commissioner of finance to maintain proper records covering the appropriations pursuant to this section, the commissioner of finance may require certifications in connection with payments as the commissioner of finance deems necessary from the Minnesota historical society, the University of Minnesota, or any agency whose employees receive benefits pursuant to Laws 1981, Chapter 210. The accounts and funds from which agencies receive appropriations under the terms of this section are a source of revenue for the purposes of any other law or statutory enactment.

Subd. 2. **Payroll deduction.** If an eligible person who is on any payroll of the state enrolls himself or his dependents for any of the optional coverages made available by the commissioner pursuant to section 43A.26 the commissioner of finance, upon the person's written order, shall deduct from the salary or wages of the person those amounts required from time to time to maintain the optional coverages in force, and issue his warrant therefor to the appropriate carrier.

Subd. 3. [Repealed, 1Sp1981 c 4 art 4 s 10]

History: 1981 c 210 s 30

43A.31 ADMINISTRATION.

Subdivision 1. **General.** The commissioner shall maintain records, prepare reports, and perform all functions necessary to carry out the intent of sections 43A.22 to 43A.30. Upon request of the commissioner, the commissioner of finance shall perform necessary accounting and disbursement functions.

Subd. 2. **Commissioner reports.** The commissioner shall transmit a report each biennium to the legislative commission on employee relations concerning the operation of sections 43A.22 to 43A.30.

Subd. 3. **Agency reports and records.** Each agency shall keep the records, make the certifications, and furnish the commissioner or carriers with the information and reports necessary to enable the commissioner or carriers to carry out their functions under sections 43A.22 to 43A.30.

Subd. 4. **Insurance advisory council.** The commissioner shall appoint and serve as chairman of an insurance advisory council consisting of 11 members. Two members shall be selected from names submitted by exclusive representatives of state employees. One member shall be selected from names submitted by exclusive representatives of employees of the University of Minnesota. One member shall be selected from names submitted by organizations representing retired state employees. One member shall be selected from names submitted by

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the regents of the University of Minnesota. The commissioners of administration, insurance, health and finance, and the deputy commissioner for labor relations or their designees, shall serve as the other members. Except as provided in this section, the provisions of section 15.059 shall apply to the members of the council. The council shall advise the commissioner in the selection of carriers. Evidence of discussions, recommendations or decisions by the council shall not be submitted to any court or arbitrator in any matter involving state or University of Minnesota employees.

History: 1981 c 210 s 31

43A.32 POLITICAL ACTIVITIES.

Subdivision 1. **Prohibition.** No employee shall, directly or indirectly, during hours of employment solicit or receive funds for political purposes, or use official authority or influence to compel an employee in the classified service to apply for membership in or become a member of any political organization, to pay or promise to pay any assessment, subscription, or contribution or to take part in any political activity.

Subd. 2. **Leaves of absence for elected public officials, candidates.** Except as herein provided any officer or employee in the classified service shall:

(a) Take leave of absence upon assuming an elected federal or state public office, including elected state legislative office;

(b) Take leave of absence upon assuming any elected public office other than enumerated in clause (a), if, in the opinion of the commissioner, the holding of the office conflicts with his regular state employment;

(c) Upon his request, be granted leave of absence upon becoming a candidate, or during the course of his candidacy, for any elected public office; and

(d) Take leave of absence upon becoming a candidate, or during the course of candidacy, for any elected public office if, in the opinion of the commissioner, the candidacy conflicts with his regular state employment.

All requests for opinions of the commissioner and all opinions from the commissioner under the provisions of clauses (b) and (d) shall be in writing and shall be delivered by certified mail.

The commissioner shall issue an opinion under the provisions of clauses (b) and (d) within seven calendar days of receipt of the request.

History: 1981 c 210 s 32

43A.33 GRIEVANCES.

Subdivision 1. **Discharge, suspension, demotion for cause, salary decrease.** No permanent employee in the classified service shall be discharged, suspended without pay, or reduced in pay or position, except for just cause.

Subd. 2. **Just cause.** For purposes of this section, just cause includes, but is not limited to, consistent failure to perform assigned duties, substandard performance, insubordination, and serious violation of written policies and procedures, provided the policies and procedures are applied in a uniform, nondiscriminatory manner.

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.

(a) For discharge, suspension for more than 30 days, or reduction in pay or position, no later than the effective date of such action, a permanent employee not covered by a collective bargaining agreement shall be given written notice by the appointing authority. The written notice shall include a statement of the nature of the disciplinary action, the specific reasons for the action, the effective date of the action and a statement informing the employee that he may reply within five days in writing or, upon request, in person, to the appointing authority or his designee. The notice shall also include a statement that the employee may appeal the action to the office of administrative hearings within 30 days of the effective date of the disciplinary action. A copy of the notice and the employee's reply, if any, shall be filed 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 suspensions of permanent employees for 30 days or less grievance procedures shall be provided in plans established pursuant to section 43A.18.

(c) For discharge, suspension or reduction in pay or position of employees serving an initial probationary period, grievance procedures shall be provided in plan established pursuant to section 43A.18.

Subd. 4. Appeals; public hearings, findings. Any permanent employee who is discharged, suspended without pay or reduced in pay or position may appeal to the chief hearing examiner of the office of administrative hearings within 30 days after the effective date of the discharge, suspension or reduction in pay or position. Any permanent employee who is covered by a collective bargaining agreement may elect to appeal to the chief hearing examiner within 30 days after the effective date of the discharge, suspension or reduction in pay or position 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 179.61 to 179.76. Within ten days of receipt of the employee's written notice of appeal, the chief hearing examiner shall assign a hearing examiner to hear the appeal.

The hearing shall be conducted pursuant to the contested case provisions of chapter 15 and the procedural rules adopted by the chief hearing examiner. Prior to the hearing, both parties may stipulate on mutually agreed matters relevant to the disciplinary action. The issues and facts on which agreement has not been reached will be decided during the hearing at which technical rules of evidence shall not apply. If the hearing examiner finds, based on the hearing record, that the action appealed was not taken by the appointing authority for just cause, the employee shall be reinstated to his position, or an equal position in another division within the same agency, without loss of pay. If the hearing examiner finds that there exists sufficient grounds for institution of the appointing authority's action but the hearing record establishes extenuating circumstances, he may in his discretion reinstate the employee, with full, partial, or no pay, or may modify the appointing authority's action. The hearing examiner's order shall be the final decision, but it may be appealed according to the provisions of section 15.0424. Settlement of the entire dispute by mutual agreement is encouraged at any stage of the proceedings. Any settlement agreement shall be final and binding when signed by all parties and submitted to the chief hearing examiner of the office of administrative hearings. Except as provided in collective bargaining agreements the appointing authority shall bear the costs of the hearing examiner for hearings provided for in this section.

History: 1981 c 210 s 33

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.34 RETIREMENT.

Subdivision 1. **Age.** Employees in the executive branch who are subject to the provisions of the Minnesota state retirement system or the teacher's retirement association must retire from employment by the state upon reaching the age of 70 except as provided in other law.

Subd. 2. **Physicians exempted.** Notwithstanding any provision to the contrary, a physician in the civil service may upon reaching the maximum retirement age specified in subdivision 1, continue to be employed subject to annual certification by his appointing authority to the commissioner that the employee is physically and mentally competent to fulfill the duties of his position.

Subd. 3. **Correctional personnel exempted.** Notwithstanding the provisions of subdivision 1, 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 his appointing authority that he be authorized 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 his employment, he shall be continued in his 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 public welfare. Based on the information provided, the decision of the applicable commissioner shall be made in writing and shall be final.

Subd. 4. **Conservation and crime bureau officers exempted.** Notwithstanding any provisions of chapter 352B or any other law to the contrary, conservation officers and crime bureau officers who were first employed on or after July 1, 1973 and are members of the highway patrolmen's retirement association by reason of their employment, shall not continue employment after attaining the age of 60 years, except for a fractional portion of one year that will enable the employee to complete his next full year of allowable service. Notwithstanding any provisions of chapter 352B or any other law to the contrary, conservation officers and crime bureau officers who were first employed and are members of the highway patrolmen's retirement association by reason of their employment before July 1, 1973, shall be governed by the same mandatory retirement rules applied to other employees who are covered by the Minnesota state retirement system.

History: 1981 c 210 s 34

43A.35 DEATH BENEFIT FOR RETIRED EMPLOYEES.

Employees who retire from the civil service on or after July 1, 1977, and before July 1, 1981, shall be entitled to a \$500 cash death benefit payable to a beneficiary designated by the employee, if, at the time of the employee's death, the employee is entitled to an annuity under a state retirement program. A \$500 cash death benefit shall also be payable to the designated beneficiary of an employee

who becomes totally and permanently disabled after July 1, 1979, and before July 1, 1981, and who at the time of death is receiving a state disability benefit and is eligible for a deferred annuity under a state retirement program.

Employees who retire from the civil service on or after July 1, 1981 shall be entitled to a cash death benefit payable to a beneficiary designated by the employee if provided in collective bargaining agreements or plans pursuant to section 43A.18 in effect at the time of the employee's retirement.

History: 1981 c 210 s 35

43A.36 RELATIONSHIPS WITH OTHER AGENCIES AND JURISDICTIONS.

Subdivision 1. Cooperation; state agencies. The commissioner may delegate administrative functions associated with the duties of the commissioner to appointing authorities who have the capability to perform such functions when the commissioner determines that it is in the best interests of the state civil service. The commissioner shall consult with agencies and agencies shall cooperate as appropriate in implementation of Laws 1981, Chapter 210.

The commissioner, in conjunction with appointing authorities, shall analyze and assess current and future human resource requirements of the civil service and coordinate personnel actions throughout the civil service to meet the requirements. The commissioner shall permit appointing authorities to use eligible lists in making appointments to positions in the unclassified service and shall provide recruiting assistance.

The head of each agency in the executive branch shall designate an agency personnel officer. The agency personnel officer shall be accountable to the agency head for all personnel functions prescribed by laws, rules, collective bargaining agreements, the commissioner and the agency head. Except when otherwise prescribed by the agency head in a specific instance, the personnel officer shall be assumed to be the authority accountable to the agency head over any other officer or employee in the agency for personnel functions.

The head of each agency in the executive branch shall designate an affirmative action officer who shall have primary responsibility for the administration of the agency's affirmative action plan. The officer shall report directly to the head of the agency on affirmative action matters.

Subd. 2. Services available to political subdivisions. The services and facilities of the department and its staff may be made available upon request to political subdivisions of the state. Enforcement and administration of other provisions of Laws 1981, Chapter 210 shall take precedence over the provision of the services and facilities. Political subdivisions shall reimburse the state for the reasonable cost of services and facilities.

Subd. 3. Services exchanged with other jurisdictions. The commissioner may enter into arrangements with personnel agencies in other jurisdictions to exchange services. The commissioner may also join or subscribe to any association or service having as its purpose the interchange of information relating to the practices of personnel administration and labor relations. The commissioner is authorized as an agent of the state of Minnesota to enter into contracts or cooperative agreements involving matters of personnel and labor relations with other governments within the United States.

History: 1981 c 210 s 36

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43A.37 PAYROLLS.

Subdivision 1. **Certification.** Neither the commissioner of finance nor any other fiscal officer of this state shall draw, sign, or issue, or authorize the drawing, signing, or issuing of any warrant on the treasurer or other disbursing officer of the state, nor shall the treasurer or other disbursing officer of the state pay any salary or compensation to any person in the civil service, unless a payroll register for the salary or compensation containing the name of every person to be paid shall bear the certificate of the commissioner that the persons named in the payroll register have been appointed, as required by law, rules, or administrative procedures and that the salary or compensation is within the compensation plan fixed pursuant to law. The appointing authority shall certify that all employees named in the payroll register are performing service as required by law. This provision shall not apply to positions defined in section 43A.08, subdivision 1, clauses (f), (g), (h) and (j). Employees to whom this subdivision does not apply may be paid on the state's payroll system and the appointing authority or fiscal officer submitting their payroll register shall be responsible for the accuracy and legality of the payments.

Salary or compensation claims presented against existing appropriations, which have been deemed in violation of the provisions of this subdivision, may be certified for payment if, upon investigation, the commissioner determines the personal services for which payment is claimed actually have been rendered in good faith without collusion and without intent to defraud.

Subd. 2. **Salaries paid contrary to provisions recovered from appointing employee.** Any sum intentionally paid contrary to the provisions of this section may be recovered from any employee making the appointments in contravention of the provisions of law or the rules, or from any employee signing or countersigning or authorizing the signing or countersigning of any warrant for the payment of the sum, or from the sureties on the official bond of any employee, in an action maintained by the commissioner in the district court of any county within the state. All moneys recovered in any action brought under this section when collected shall be paid into the state treasury.

Subd. 3. **Action against appointing employees; not reimbursed for sums paid.** Any person appointed contrary to the provisions of this chapter and the rules, whose payroll or account is refused certification, shall have an action against the employee employing or appointing or attempting to appoint the person for the amount due by reason of the employment or purported employment and the costs of the action. No employee, during the time of official service, or thereafter, shall be reimbursed by the state for any sum recovered in any court action under subdivision 2.

History: 1981 c 210 s 37

43A.38 CODE OF ETHICS FOR EMPLOYEES IN THE EXECUTIVE BRANCH.

Subdivision 1. **Purpose.** Employees in the executive branch shall have equal opportunity with all citizens to develop private, economic, and social interests; however, it is necessary to distinguish between those minor and inconsequential conflicts which are unavoidable in a free society and those conflicts which are substantial and material and conflict with the employee's responsibility to the public. This section shall not be interpreted to apply to any activity which is protected by sections 179.61 to 179.76, collective bargaining agreements and practices thereunder nor to prevent a current or former employee from accepting employment with a labor or employee organization representing employees.

Subd. 2. **Definitions.** For the purpose of this section the following definitions shall apply:

(a) "Business" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual or any other legal entity which engages either in non-profit or profit making activities.

(b) "Confidential information" means any information obtained under government authority which has not become part of the body of public information and which, if released prematurely or in non-summary form, may provide unfair economic advantage or adversely affect the competitive position of an individual or a business.

(c) "Private interest" means any interest, including but not limited to a financial interest, which pertains to a person or business whereby the person or business would gain a benefit, privilege, exemption or advantage from the action of a state agency or employee that is not available to the general public.

Subd. 3. **Acceptance of gifts; favors.** Employees in the executive branch in the course of or in relation to their official duties shall not directly or indirectly receive or agree to receive any payment of expense, compensation, gift, reward, gratuity, favor, service or promise of future employment or other future benefit from any source, except the state for any activity related to the duties of the employee unless otherwise provided by law. However, the acceptance of any of the following shall not be a violation of this subdivision:

(a) Advertising gifts of nominal value having wide distribution.

(b) Plaques or similar mementos recognizing individual services in a field of specialty or to a charitable cause.

(c) Payment of reimbursement expenses for travel or meals, not to exceed actual expenses incurred, which are not reimbursed by the state and which have been approved in advance by the appointing authority as part of the work assignment.

(d) Honoraria or expenses paid for papers, talks, demonstrations or appearances made by employees on their own time for which they are not compensated by the state.

Subd. 4. **Use of confidential information.** An employee in the executive branch shall not use confidential information to further the employee's private interest, and shall not accept outside employment or involvement in a business or activity that will require the employee to disclose or use confidential information.

Subd. 5. **Use of state property.** An employee shall not use or allow the use of state time, supplies or state owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law.

Subd. 6. **Conflicts of interest.** The following actions by an employee in the executive branch shall be deemed a conflict of interest and subject to procedures regarding resolution of the conflicts, section 43A.39 or disciplinary action as appropriate:

(a) Use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages for the employee or the employee's immediate family or an organization with which the employee is associated which are different from those available to the general public;

(b) acceptance of other employment or contractual relationship that will affect the employee's independence of judgment in the exercise of official duties; or

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(c) actions as an agent or attorney in any action or matter pending before the employing agency except in the proper discharge of official duties or on the employee's behalf.

Subd. 7. Determination of conflicts of interest. When an employee believes the potential for a conflict of interest exists, it is the employee's duty to avoid the situation. A conflict of interest shall be deemed to exist when a review of the situation by the employee, the appointing authority or the commissioner determines any one of the following conditions to be present:

(a) the use for private gain or advantage of state time, facilities, equipment or supplies or badge, uniform, prestige or influence of state office or employment;

(b) receipt or acceptance by the employee of any money or other thing of value from anyone other than the state for the performance of an act which the employee would be required or expected to perform in the regular course or hours of state employment or as part of the duties as an employee;

(c) employment by a business which is subject to the direct or indirect control, inspection, review, audit or enforcement by the employee;

(d) the performance of an act in other than the employee's official capacity which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by the employee. If the employee, appointing authority or commissioner determine that a conflict of interest exists, the employee shall, if possible, assign the matter to another employee who does not have a conflict of interest. If it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the assignment.

Subd. 8. Precedence of chapter 10A. Where specific provisions of chapter 10A apply to employees and would conflict with this section, the provisions of chapter 10A shall apply.

History: 1981 c 210 s 38

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.39 COMPLIANCE WITH LAW.

Subdivision 1. Prohibited acts; penalties. All employees shall comply with and aid in all proper ways the enforcement of the provisions of Laws 1981, Chapter 210. No employee or any other person shall intentionally:

(a) Make any false oral or written statement, mark, rating or report concerning any application, examination, certification or appointment made under provisions of Laws 1981, Chapter 210 or in any manner commit or attempt to commit any fraud preventing the impartial execution of Laws 1981, Chapter 210;

(b) Directly or indirectly, give, render, pay, offer, solicit, or accept any money, service or other valuable consideration for any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in obtaining, a position in the civil service;

(c) Defeat, deceive or obstruct any person in rights to examination, eligibility, certification or appointment under Laws 1981, Chapter 210, 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 appointment, advancement or retention in the classified service;

(d) Violate the provisions of sections 43A.37 or 43A.38; or

(e) If in the classified service, engage in activities prohibited by section 43A.32.

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Subd. 2. **Noncompliance.** Any employee who intentionally fails to comply with the provisions of Laws 1981, Chapter 210 shall be subject to disciplinary action and action pursuant to chapter 609. An appointing authority shall report in writing to the legislative auditor when there is probable cause to believe that a substantial violation has occurred. Any person convicted of a misdemeanor based on violations of Laws 1981, Chapter 210 shall be ineligible for appointment in the civil service for three years following conviction.

Subd. 3. **Violations; position vacated.** Intentional violation of section 43A.37 may be cause for disciplinary action and conviction of an employee in the classified service under section 43A.32 shall render the position vacant.

History: 1981 c 210 s 39

43A.40 JOB SHARING; TEMPORARY.

The purpose of sections 43A.40 to 43A.46 is to increase career opportunities in the Minnesota state service through job sharing.

History: 1981 c 210 s 40

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.41 DEFINITIONS.

Subdivision 1. **Interpretation.** For the purposes of sections 43A.40 to 43A.46 the following terms shall have the meanings given them in this section.

Subd. 2. **Agency.** "Agency" means a department, agency, commission, board, institution, or other entity in the executive branch in which all positions are under the same appointing authority.

Subd. 3. **Coordinator.** "Coordinator" means the coordinator of the Minnesota demonstration job sharing program.

Subd. 4. **Shared position.** "Shared position" means a classified position which has been converted from a full-time position into part-time positions of equivalent class for purposes of sections 43A.40 to 43A.46.

Subd. 5. **Program.** "Program" means the Minnesota demonstration job sharing program.

Subd. 6. **Appropriate shared time percent.** "Appropriate shared time percent" means the percent of full-time hours allocated to a particular shared time position.

History: 1981 c 210 s 41

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.42 POSITIONS AFFECTED.

A total of 50 full-time positions within agencies of state government shall be selected for inclusion within the program. These positions shall be selected within as few separate agencies as possible, and in no case shall positions be selected in more than ten agencies. No fewer than 15 of these positions shall be either professional, supervisory or managerial positions. In no instance shall a person in a shared time position work less than 40 percent time. No position shall be selected if it is contained in a unit which is represented by an exclusive representative which has a collective bargaining agreement covering the unit unless the exclusive representative agrees to the selection. All shared time positions shall be equivalent in classification to the full-time position from which they are converted.

History: 1981 c 210 s 42

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

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43A.43 PROGRAM MANAGEMENT.

Subdivision 1. **Coordinator.** The commissioner shall designate from among the employees of the department a coordinator of the program.

Subd. 2. **Duties and powers.** The coordinator shall have the following powers and duties to:

(a) Select, in cooperation with the affected agencies and the commissioner, the agencies and the positions within the agencies to be included in the program;

(b) Design and implement, in cooperation with the affected agencies and the commissioner, an evaluation plan for the program, in accordance with accepted research criteria, to ascertain the effect of job sharing on employee satisfaction, productivity, absenteeism, administrative and supervisory time demands, and increased costs both direct and indirect, as well as any other relevant impact on employer or employee;

(c) Coordinate the conversion of full-time to shared positions in the affected agencies and to assist in the design of the shared positions, with attention to employee and employer needs and to the potential for replicability of the program experience in other agencies throughout state government. All shared positions shall be equivalent in classification to the full-time position from which they are converted;

(d) Assist the affected agencies and the commissioner in recruitment, selection and hiring for the affected positions;

(e) Assist both supervisors and employees in the affected agencies in the transition to shared positions under the program and to recommend to the commissioner any modifications in rules, executive authority or statutes deemed desirable to effectuate the purposes of sections 43A.40 to 43A.46;

(f) Monitor the positions selected pursuant to section 43A.41, in cooperation with the affected agencies and the commissioner, throughout the term of the program; and

(g) Assist the commissioner in reporting to the governor and the legislature on January 1, 1981 and January 1, 1982. The commissioner's report shall provide an evaluation of the experience of the program, with attention to the items listed in clause (b) in addition to any other relevant information, and shall offer recommendations concerning the further increase of shared positions in the state service.

History: 1981 c 210 s 43

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.44 TOTAL COMPENSATION.

Subdivision 1. **Salaries; class.** A position selected by the coordinator pursuant to section 43A.43 shall be divided into shared positions to be paid at the rate of the appropriate shared time percent of the otherwise appropriate salary. The classification of a shared position shall be the same as that applicable to the full-time position from which it is converted.

Subd. 2. **Benefits.** Employees in shared positions shall be eligible for the following benefits and subject to the following obligations:

(a) Membership in the Minnesota state retirement system, the teachers retirement association or the highway patrol retirement fund, whichever is appropriate. This provision shall be retroactive to July 1, 1980;

(b) Vacation and sick leave accrual at the rate of the appropriate shared time percent of the entitlement of comparable full-time employees;

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(c) Employee dental, medical and hospital benefits coverage shall be available of the same type and coverage afforded to comparable full-time employees. Employees in shared positions who elect such coverage shall pay, by payroll deduction, the difference between the actual cost to the employer and the appropriate shared time percent of the actual cost. The remaining percent shall be paid by the employer. Employee life insurance coverage shall be available to employees in shared positions on the same terms as for comparable full-time employees;

(d) Dependent life insurance coverage shall be available to employees in shared positions on the same terms as for comparable full-time employees. Dependent medical, hospital and dental benefits coverage shall be available to employees in shared positions of the same type and coverage afforded to comparable full-time employees, except that the employer shall contribute the appropriate shared time percent of the dollar amount contributed for comparable full-time employees electing the same program, the remainder to be paid by payroll deduction by the employee electing such coverage;

(e) Employees in shared positions shall be entitled to the appropriate shared time percent of the holiday pay to which comparable full-time employees are entitled for holidays observed by the full-time employees whenever the employee in a shared position would otherwise be scheduled to work on that day. The employee may be allowed to reschedule working hours to avoid any loss in pay due to the prorating of holiday pay. When an employee in a shared position is not scheduled to work on an observed holiday, the next scheduled working day shall be treated as the holiday;

(f) Employees in shared positions shall accrue seniority time in every relevant category at the same rate accorded to comparable full-time employees. No full-time employee accepting a shared position shall suffer any loss of or gap in seniority time in the relevant categories applicable to the full-time employment; and

(g) Any other benefits of employment for employees in shared positions shall be prorated at a rate of the appropriate shared time percent of those available to comparable full-time employees, whenever the benefits are divisible. Contributions by the employer toward the benefits, if any, shall be equal to the appropriate shared time percent of the full-time benefits. When not divisible, the cost of the full-time benefits normally allocable to the employer shall be allocated, the appropriate shared time percent to the employee in a shared position, by payroll deduction, and the remaining percent to the employer.

History: 1981 c 210 s 44

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.45 ACCEPTANCE OF SHARED POSITIONS.

No employee holding a full-time or three-quarter time position on July 1, 1980 shall be required to accept a shared position pursuant to sections 43A.40 to 43A.46.

History: 1981 c 210 s 45

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

43A.46 CONFLICTING LAWS.

Sections 43A.40 to 43A.46 shall be given effect notwithstanding any law or rule to the contrary. Sections 43A.40 to 43A.46 shall not affect, except as expressly provided therein, any existing labor agreement or personnel rule.

History: 1981 c 210 s 46

NOTE: This section is repealed by Laws 1981, Chapter 210, Section 55 effective June 30, 1982.

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43A.465 CREDIT FOR PRIOR PART-TIME SERVICE.

Any person who was employed in a shared position in the Minnesota demonstration job-sharing program pursuant to Laws 1980, Chapter 572, prior to May 1, 1981 shall have service credit for that service in the applicable retirement fund recalculated in accordance with the provisions of section 43.60, subdivision 3.

History: 1981 c 68 s.2

43A.47 TRANSITIONAL PROVISIONS.

All rights, privileges, liabilities and obligations possessed or created under Minnesota Statutes 1980, Chapter 43, shall be continued if they are consistent and compatible with the provisions of Laws 1981, Chapter 210.

History: 1981 c 210 s 53