

CHAPTER 43A

DEPARTMENT OF EMPLOYEE RELATIONS

43A.04	General powers and responsibilities of commissioner.	43A.19	Affirmative action.
43A.07	Classified service.	43A.191	Agency affirmative action programs.
43A.08	Unclassified service.	43A.192	Transition.
43A.10	Examinations; eligibility to compete.	43A.21	Training programs.
43A.11	Veteran's preference.	43A.27	Eligibility for individual paid insurance and benefits.
43A.15	Noncompetitive and qualifying appointments.	43A.30	Payment of premiums.
43A.17	Salary limits, rates, ranges and exceptions.	43A.38	Code of ethics for employees in the executive branch.
43A.18	Total compensation; collective bargaining agreements; plans.		

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, the public employees retirement association, 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 13.43, 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.

[For text of subd 2, see M.S.1984]

Subd. 3. **Rules.** The commissioner shall promulgate rules pursuant to the administrative procedure act to implement the provisions of this chapter 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:

(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) procedures for administration of the code of ethics for employees of the executive branch; and

(g) examination procedures for candidates with handicaps as described in section 43A.10, subdivision 8.

[For text of subs 4 to 8, see M.S.1984]

History: 1985 c 11 s 3; 1Sp1985 c 13 s 164

43A.07 CLASSIFIED SERVICE.

[For text of subd 1, see M.S.1984]

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 179A.10, 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 a permanent employee, may investigate the duties of a classified position. If a request is denied, the employee must be given a written explanation. The commissioner shall investigate the duties of a classified position upon request of an appointing authority. 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 179A.10, and there is an applicable provision in the collective bargaining agreement, the commissioner shall establish the salary rate or range pursuant to the agreement.

[For text of subs 3 to 6, see M.S.1984]

History: 1Sp1985 c 13 s 165

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) Deputy and assistant agency heads, and one confidential secretary in the agencies listed in subdivision 1a;

(d) 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;

(e) Intermittent help employed by the commissioner of public safety to assist in the issuance of vehicle licenses;

(f) 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;

(g) 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;

(h) 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.

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

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

(k) 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;

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

(m) Chaplains employed by the state;

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

(o) Student workers; and

(p) Employees unclassified pursuant to other statutory authority.

[For text of subds 1a to 3, see M.S.1984]

History: *1Sp1985 c 13 s 166*

43A.10 EXAMINATIONS; ELIGIBILITY TO COMPETE.

[For text of subds 1 to 5, see M.S.1984]

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, the public employees retirement association, 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.

[For text of subd 7, see M.S.1984]

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 disabled person will be paid or unpaid at his or her option. This work experience shall be limited to candidates for appointment,

promotion, or transfer who have a physical or mental impairment for which there is no reasonable accommodation in the examination process. Implementation of provisions of this subdivision shall not be deemed a violation of other provisions of Laws 1981, chapter 210 or chapter 363.

History: 1985 c 11 s 4; 1Sp1985 c 13 s 167

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 a veteran as defined in section 197.447.

[For text of subds 2 to 9, see M.S.1984]

History: 1984 c 468 s 1; 1985 c 248 s 85; 1Sp1985 c 16 art 2 s 8

43A.15 NONCOMPETITIVE AND QUALIFYING APPOINTMENTS.

[For text of subds 1 to 12, see M.S.1984]

Subd. 13. **Revenue seasonal employees.** The commissioner may authorize the administration of a qualifying selection process for the filling of seasonal positions in the department of revenue used in the processing of returns and providing information during the tax season. The commissioner of revenue may consider any candidate found qualified through this process for probationary appointment.

History: 1Sp1985 c 13 s 168

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

[For text of subds 1 to 7, see M.S.1984]

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

This section does not prohibit the commissioner from negotiating a collective bargaining agreement or recommending approval of a compensation plan which permits an employee to receive payment for accumulated vacation leave upon beginning an unpaid leave of absence approved for more than one year in duration if the leave of absence is not for the purpose of accepting an unclassified position in state civil service.

[For text of subd 9, see M.S.1984]

History: 1Sp1985 c 17 s 7

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

[For text of subds 1 to 4, see M.S.1984]

Subd. 5. **Governor to recommend certain salaries.** The governor shall, on or before July 1 of each odd-numbered year, submit to the legislative commission on

employee relations recommendations for salaries within the salary range for the positions listed in section 15A.081, subdivisions 1 and 7. 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.

(b) In making recommendations, the governor shall consider only those criteria established in subdivision 8 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.

(c) Before the governor's recommended salaries take effect, the recommendations shall be reviewed and approved, rejected or modified by the legislative commission on employee relations and the legislature in the same manner as provided for the commissioner's plan in subdivision 2. The governor may also at any time propose changes in the salary rate of any positions covered by this subdivision, which shall be submitted and approved in the same manner as provided in this subdivision.

(d) The initial salary of a head of an agency or a chair of a metropolitan board or commission 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 or commission chair having similar duties and responsibilities.

[For text of subds 6 to 8, see M.S.1984]

History: *1Sp1985 c 10 s 48; 1Sp1985 c 13 s 170*

43A.19 AFFIRMATIVE ACTION.

Subdivision 1. **Statewide affirmative action program.** (a) 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:

(1) objectives, long-range and interim goals and policies;

(2) 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

(3) requirements for annual submission of affirmative action progress reports from heads of agencies.

(b) The commissioner shall base interim goals on at least the following factors:

(1) the percentage of members of each protected class in the recruiting area population who have the necessary skills;

(2) the availability for promotion or transfer of members of protected classes in the recruiting area population;

(3) the extent of unemployment of members of protected classes in the recruiting area population;

(4) the existence of training programs in needed skill areas offered by employing agencies and other institutions; and

(5) the expected number of available positions to be filled.

(c) The commissioner shall designate a state director of equal employment opportunity who may be delegated the preparation, revision, implementation and administration of the program. The commissioner of employee relations may place the director's position in the unclassified service if the position meets the criteria established in section 43A.08, subdivision 1a.

Subd. 2. [Repealed, 1Sp1985 c 13 s 376]

[For text of subd. 3, see M.S.1984]

History: 1Sp1985 c 13 s 171

43A.191 AGENCY AFFIRMATIVE ACTION PROGRAMS.

Subdivision 1. **Affirmative action officers.** (a) Each agency with an approved complement over 1,000 shall have at least one affirmative action officer, who shall have primary responsibility for developing and maintaining the agency's affirmative action plan. The officer shall devote full time to affirmative action activities. The affirmative action officer shall report administratively and on policy issues directly to the agency head.

(b) The commissioner shall assign affirmative action officers for agencies with approved complements of less than 1,000.

Subd. 2. **Agency affirmative action plans.** (a) The head of each agency in the executive branch shall prepare and implement an agency affirmative action plan consistent with this section and rules issued under section 43A.04, subdivision 3.

(b) The agency plan must include a plan for the provision of reasonable accommodation in the hiring and promotion of qualified handicapped persons. The reasonable accommodation plan shall consist of at least the following:

(1) procedures for compliance with section 363.03 and, where appropriate, regulations implementing United States Code, title 29, section 794, as amended through December 31, 1984, which is section 504 of the Rehabilitation Act of 1973, as amended;

(2) methods and procedures for providing reasonable accommodation for handicapped job applicants, current employees, and employees seeking promotion; and

(3) provisions for funding reasonable accommodations.

(c) The agency plan must be prepared by the agency head with the assistance of the agency affirmative action officer and the director of equal employment opportunity. The council for the handicapped shall provide assistance with the agency reasonable accommodation plan.

(d) An agency affirmative action plan may not be implemented without the commissioner's approval.

Subd. 3. **Sanctions and incentives.** (a) The director of equal employment opportunity shall annually audit the record of each agency to determine the rate of compliance with annual hiring goals of each goal unit and to evaluate the agency's overall progress toward its affirmative action goals and objectives.

(b) By January 1 of each year, the commissioner shall submit a report on affirmative action progress of each agency and the state as a whole to the governor and to the finance committee of the senate, the appropriations committee of the house of representatives, and the governmental operations committees of both houses of the legislature. The report must include each agency's rate of compliance with annual hiring goals. Any agency in which less than 75 percent of the interim hiring

goals in any goal unit were unmet must be designated in the report as an agency not in compliance with affirmative action requirements.

(c) The commissioner shall study methods to improve the performance of agencies not in compliance with affirmative action requirements. By January 15, 1986, the commissioner shall submit to the legislature a proposal for improving compliance rates. This proposal must include penalties for noncompliance.

(d) The commissioner shall establish a program to recognize agencies that have made significant and measurable progress toward achieving affirmative action objectives.

History: *1Sp1985 c 13 s 172*

43A.192 TRANSITION.

An agency that has a majority of its approved staff complement assigned to campuses or institutions separate from its administrative offices and that is not in compliance with section 43A.191, subdivision 1, on January 1, 1985, shall come into compliance by July 1, 1987. Until it comes into compliance, the agency shall provide the equivalent of one full-time affirmative action officer by assigning part-time affirmative action duties to employees on each campus or at each institution.

History: *1Sp1985 c 13 s 173*

43A.21 TRAINING PROGRAMS.

[For text of subds 1 to 4, see M.S.1984]

Subd. 5. Career executive service. The commissioner shall develop and administer a process to select the membership of the career executive service.

(a) The commissioner, in consultation with the agency head, shall designate persons in the civil service as eligible for inclusion in the career executive service. By January 1, 1985, at least 20 percent of the persons designated for inclusion in the career executive service must be women. By January 1, 1987, the number of women designated for inclusion in the career executive service shall be proportional to the number of women eligible for membership. The positions designated as eligible for inclusion in the career executive service shall include those that carry basic responsibilities for high level professional or scientific competence, policy determination, leadership, or the internal management and administration of a department or other major unit.

(b) The commissioner shall prepare a plan for training, development, and mobility of career executive service members consistent with applicable provisions of collective bargaining agreements. The plan need not be adopted in accordance with the rulemaking provisions of chapter 14. The career executive service plan shall not contain additional compensation for members.

(c) No rights or tenure attach to a career executive service assignment. An incumbent in the career executive service may be removed from the service by the commissioner in consultation with the agency head, provided the action is made without regard to sex, race, religion, color, creed, marital status, age, national origin, disability, or political affiliation.

(d) An employee in career executive service on July 1, 1983, who is receiving compensation at a level beyond the maximum of the assigned salary range shall continue to receive that rate of pay until the rate is within the assigned salary range.

(e) The commissioner is authorized to assess agencies a fee for each employee of the agency who belongs to the career executive service in order to cover the cost of providing training and development services to members. The fee shall be established and reviewed pursuant to section 16A.128.

History: *1Sp1985 c 17 s 8*

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

[For text of subd 1, see M.S.1984]

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:

(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, Minnesota humane society, state office of disabled American veterans, state office of the American Legion and its auxiliary, or state office of veterans of foreign wars and its auxiliary;

(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.

[For text of subds 3 to 5, see M.S.1984]

History: *1985 c 32 s 1*

43A.30 PAYMENT OF PREMIUMS.

[For text of subds 1 and 2, see M.S.1984]

Subd. 4. Employee insurance trust fund. The commissioner of employee relations may direct that all or a part of the amounts paid for life insurance, hospital, medical, and dental benefits, and optional coverages authorized for eligible employees and other eligible persons be deposited by the state in an employee insurance trust fund in the state treasury, from which the approved claims of eligibles are to be paid. Investment income and investment losses attributable to the investment of the fund shall be credited to the fund. There is appropriated from the fund to the commissioner of finance amounts needed to pay the approved claims of eligibles, related service charges, insurance premiums, and refunds. The commissioner shall not market or self-insure life insurance or optional coverages.

Subd. 5. Administration. The commissioner of employee relations may administer the employee insurance program. The commissioner may assess agencies the cost of these administrative services and include it in the amounts billed for life insurance, hospital, medical, and dental benefits, and optional coverages authorized.

Receipts from the assessments must be deposited in the state treasury and credited to a special account in the employee insurance trust fund and are appropriated to the commissioner to pay these administrative costs.

History: *1Sp1985 c 13 s 174,175*

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

[For text of subds 1 to 4, see M.S.1984]

Subd. 5. 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;

(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; or

(d) the solicitation of a financial agreement for the employee or entity other than the state when the state is currently engaged in the provision of the services which are the subject of the agreement or where the state has expressed an intention to engage in competition for the provision of the services; unless the affected state agency waives this clause.

[For text of subds 6 to 9, see M.S.1984]

History: *1Sp1985 c 17 s 9*