

## CHAPTER 43A

## DEPARTMENT OF EMPLOYEE RELATIONS

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**43A.047 CONTRACTED SERVICES.**

(a) Executive agencies, including the Minnesota State Colleges and Universities system, must demonstrate that they cannot use available staff before hiring outside consultants or services. If use of consultants is necessary, agencies are encouraged to negotiate contracts that will involve permanent staff, so as to upgrade and maximize training of state employees.

(b) If agencies reduce operating budgets, agencies must give priority to reducing spending on professional and technical service contracts before laying off permanent employees.

(c) This section does not apply to an agency's use of inmates pursuant to sections 241.20 to 241.23 or to an agency's use of persons required by a court to provide:

- (1) community service; or
- (2) conservation or maintenance services on lands under the jurisdiction and control of the state.

**History:** 2005 c 136 art 13 s 2

**43A.10 SELECTION PROCESS; ELIGIBILITY TO COMPETE.**

*[For text of subs 1 to 4, see M.S.2004].*

Subd. 6a. **Limited consideration of applicants.** The commissioner may limit consideration to only those applicants who have indicated availability for the geographic location, employment condition, travel status, and job grouping of the vacant position and who have indicated possession of the minimum qualifications for the vacant position. In addition, the commissioner may limit consideration to only those applicants who are:

(1) employees on a layoff list for the job class of the position. The appointing authority shall consider those names as provided in collective bargaining agreements and plans established under section 43A.18;

(2) current employees of the civil service, the Minnesota State Retirement System, the Public Employees Retirement Association, and the Teacher's Retirement Association, or employees of one or more agencies or organizational units under them;

(3) former permanent and probationary employees of the job class who separated from the class within the past four years and have indicated availability for reinstatement to the class; or

(4) current permanent and probationary employees who have indicated availability for transfer or demotion to the job class.

*[For text of subs 6b and 7, see M.S.2004]*

**History:** 2005 c 144 s 1

**43A.11 VETERAN'S PREFERENCE.**

*[For text of subd 1, see M.S.2004]*

Subd. 2. [Repealed, 2005 c 95 s 1; 2005 c 156 art 4 s 12]

*[For text of subs 5 to 9, see M.S.2004]*

**43A.15 NONCOMPETITIVE AND QUALIFYING APPOINTMENTS.**

*[For text of subs 1 and 2, see M.S.2004]*

**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 appointing authority may search the employment database for qualified applicants or, when necessary, the commissioner 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.

*[For text of subs 4 to 15, see M.S.2004]*

**History:** 2005 c 144 s 2

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

*[For text of subs 1 to 8, see M.S.2004]*

**Subd. 9. Political subdivision compensation limit.** (a) The salary and the value of all other forms of compensation of a person employed by a political subdivision of this state, excluding a school district, or employed under section 422A.03 may not exceed 110 percent of the salary of the governor as set under section 15A.082, except as provided in this subdivision. For purposes of this subdivision, "political subdivision of this state" includes a statutory or home rule charter city, county, town, metropolitan or regional agency, or other political subdivision, but does not include a hospital, clinic, or health maintenance organization owned by such a governmental unit.

(b) Beginning in 2006, the limit in paragraph (a) shall be adjusted annually in January. The limit shall equal the limit for the prior year increased by the percentage increase, if any, in the Consumer Price Index for all-urban consumers from October of the second prior year to October of the immediately prior year.

(c) Deferred compensation and payroll allocations to purchase an individual annuity contract for an employee are included in determining the employee's salary. Other forms of compensation which shall be included to determine an employee's total compensation are all other direct and indirect items of compensation which are not specifically excluded by this subdivision. Other forms of compensation which shall not be included in a determination of an employee's total compensation for the purposes of this subdivision are:

(1) employee benefits that are also provided for the majority of all other full-time employees of the political subdivision, vacation and sick leave allowances, health and dental insurance, disability insurance, term life insurance, and pension benefits or like benefits the cost of which is borne by the employee or which is not subject to tax as income under the Internal Revenue Code of 1986;

(2) dues paid to organizations that are of a civic, professional, educational, or governmental nature; and

(3) reimbursement for actual expenses incurred by the employee which the governing body determines to be directly related to the performance of job responsibilities, including any relocation expenses paid during the initial year of employment.

The value of other forms of compensation shall be the annual cost to the political subdivision for the provision of the compensation.

(d) The salary of a medical doctor or doctor of osteopathy occupying a position that the governing body of the political subdivision has determined requires an M.D. or D.O. degree is excluded from the limitation in this subdivision.

(e) The commissioner may increase the limitation in this subdivision for a position that the commissioner has determined requires special expertise necessitating a higher salary to attract or retain a qualified person. The commissioner shall review each proposed increase giving due consideration to salary rates paid to other persons with similar responsibilities in the state and nation. The commissioner may not increase the limitation until the commissioner has presented the proposed increase to the Legislative Coordinating Commission and received the commission's recommendation on it. The recommendation is advisory only. If the commission does not give its recommendation on a proposed increase within 30 days from its receipt of the proposal, the commission is deemed to have made no recommendation. If the commissioner grants or granted an increase under this paragraph, the new limitation shall be adjusted beginning in August 2005 and in each subsequent calendar year in January by the percentage increase equal to the percentage increase, if any, in the Consumer Price Index for all-urban consumers from October of the second prior year to October of the immediately prior year.

*[For text of subs 10 and 11, see M.S.2004]*

**History:** 2005 c 169 s 1

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

*[For text of subs 1 to 3a, see M.S.2004]*

Subd. 3b. **State Board of Investment plan.** Total compensation for unclassified positions not covered by a collective bargaining agreement under section 11A.04 in the State Board of Investment must be determined by the State Board of Investment. Before submitting a compensation plan to the legislature and the Legislative Coordinating Commission, the State Board of Investment must submit the plan to the commissioner of employee relations for review and comment. The commissioner must complete the review within 14 days of its receipt. Compensation plans established under this subdivision must be approved by the legislature and the Legislative Coordinating Commission under section 3:855, before becoming effective.

*[For text of subs 4 to 8, see M.S.2004]*

**History:** 2005 c 55 s 4

#### **43A.183 PAYMENT OF SALARY DIFFERENTIAL FOR RESERVE FORCES WHO REPORTED FOR ACTIVE SERVICE.**

(a) Each agency head shall pay to each eligible member of the National Guard or other reserve component of the United States armed forces an amount equal to the person's salary differential for each month or portion of month that the person is ordered to serve in active military service. The person's salary differential is calculated as the difference between:

(1) the person's monthly total gross earnings as an active state employee, excluding any overtime pay received but including all other earnings, averaged over the last three full months of the person's active state employment prior to reporting to active military service, and including any additional salary or earnings adjustments that the person would have received at any time during the person's military leave had the person been serving as an active state employee during that time; and

(2) the person's monthly base pay in active military service.

This payment may be made only to a person for whom the amount in clause (1) is greater than the amount in clause (2). Payments must be made at the intervals at which the member received pay as a state employee, except that any back pay due under this section may be paid as a lump sum. Payment under this section must not extend beyond four years from the date the employee reported for active service, plus any additional time the employee may be legally required to serve. An eligible member of the National Guard or other reserve component of the United States armed forces may

apply for the pay differential benefits authorized under this section prior to, during, or following the person's active military service on or after May 29, 2003.

(b) An eligible member of the reserve components of the United States armed forces is a reservist or National Guard member who was an employee of the state of Minnesota at the time the member took military leave under section 192.261 to report for active military service.

(c) For purposes of this section, an employee of the state is an employee of the executive, judicial, or legislative branch of state government or an employee of the Minnesota State Retirement System, the Public Employee Retirement Association, or the Teachers Retirement Association.

(d) For purposes of this section, the term "active service" has the meaning given in section 190.05, subdivision 5, but excludes service performed exclusively for purposes of:

(1) basic combat training, advanced individual training, annual training, and periodic inactive duty training;

(2) special training periodically made available to reserve members;

(3) service performed in accordance with section 190.08, subdivision 3; and

(4) service performed as part of the active guard/reserve program pursuant to United States Code, title 32, section 502(f), or other applicable authority.

(e) The agency head must continue the employee's enrollment in health and dental coverage, and the employer contribution toward that coverage, until the employee reports for active military service. If the employee had elected dependent coverage for health or dental coverage as of the time that the employee reported for active service, the agency head must offer the employee the option to continue the dependent coverage at the employee's own expense. The agency head must permit the employee to continue participating in any pretax account in which the employee participated when the employee reported for active service, to the extent of employee pay available for that purpose. An employee who has opted to continue a permitted benefit may cancel that continuation at any time during the person's military leave by written notification from the employee, or from the employee's designated attorney-in-fact under a power of attorney, to the agency head or the commissioner of employee relations.

(f) The agency head must periodically inform in writing all agency personnel who are or may be members of the reserve component of the United States armed forces of the benefits provided under this section and of the procedures relevant to securing those benefits, including, but not limited to, any procedures regarding the continuation and discontinuation of any optional deductions. It will suffice to meet this requirement if the agency head posts the information on the agency Web site in a highly recognizable manner that can be easily found and understood by the employees to whom it might apply.

Upon being ordered to active duty, the employee must notify the agency head of that order in a timely manner and must provide to the agency head the name of and contact information for the employee's designated attorney-in-fact under a power of attorney. Prior to the commencement of the employee's military leave, the agency head must ensure the agency's receipt of that information and immediately convey that information to the commissioners of finance and employee relations, including any subsequent change in that designation by the employee. When communicating with the employee during the person's military leave, the agency head and the commissioners of finance and employee relations must immediately provide a copy of the communication to the employee's designated attorney-in-fact. Those officials must also honor requests for information or other appropriate directives from that designee on behalf of the employee during the employee's military leave.

(g) The commissioners of employee relations and finance shall adopt procedures required to implement this section. The procedures are exempt from chapter 14.

(h) This section does not apply to a judge, legislator, or constitutional officer of the executive branch.

**History:** 2005 c 35 s 1

**NOTE:** This section applies to state employees serving in active military service on or after May 29, 2003. Laws 2005, chapter 35, section 1.

#### 43A.23 CONTRACTING AUTHORITY.

Subdivision 1. **General.** The commissioner is authorized to request bids and to enter into contracts with parties which in the judgment of the commissioner are best qualified to provide service to the benefit plans. Contracts entered into are not subject to the requirements of sections 16C.16 to 16C.19. The commissioner may negotiate premium rates and coverage. Contracts to underwrite the benefit plans must be bid or negotiated separately from contracts to service the benefit plans, which may be awarded only on the basis of competitive bids. 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 must 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. A carrier licensed under chapter 62A is exempt from the taxes imposed by chapter 297I on premiums paid to it by the state.

All self-insured hospital and medical service products must comply with coverage mandates, data reporting, and consumer protection requirements applicable to the licensed carrier administering the product, had the product been insured, including chapters 62J, 62M, and 62Q. Any self-insured products that limit coverage to a network of providers or provide different levels of coverage between network and nonnetwork providers shall comply with section 62D.123 and geographic access standards for health maintenance organizations adopted by the commissioner of health in rule under chapter 62D.

*[For text of subs 2 and 3, see M.S.2004]*

**History:** 2005 c 156 art 3 s 1

#### 43A.31 ADMINISTRATION.

*[For text of subs 1 to 5, see M.S.2004]*

Subd. 6. **Dissemination of information.** The commissioner may electronically transmit to active employees all information necessary to administer sections 43A.22 to 43A.30, including, but not limited to, information necessary for open enrollment elections. The commissioner must provide notification that the information will be electronically transmitted.

**History:** 2005 c 144 s 3

#### 43A.33 GRIEVANCES.

*[For text of subs 1 to 2a, see M.S.2004]*

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

(a) For discharge, suspension without pay or demotion, no later than the effective date of such action, a permanent classified employee not covered by a collective bargaining agreement shall be given written notice by the appointing authority. The content of that notice as well as the employee's right to reply to the appointing authority shall be as prescribed in the grievance procedure contained in the applicable plan established pursuant to section 43A.18. The notice shall also include a statement that the employee may elect to appeal the action to the Bureau of Mediation Services

within 30 calendar days following the effective date of the disciplinary action. A copy of the notice and the employee's reply, if any, shall be filed by the appointing authority with the commissioner no later than ten calendar days following the effective date of the disciplinary action. The commissioner shall have final authority to decide whether the appointing authority shall settle the dispute prior to the hearing provided under subdivision 4.

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

(c) Within ten days of receipt of the employee's written notice of appeal, the commissioner of the Bureau of Mediation Services shall provide both parties with a list of potential arbitrators according to the rules of the Bureau of Mediation Services to hear the appeal. The process of selecting the arbitrator from the list shall be determined by the plan.

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

Subd. 4. [Repealed, 2005 c 114 s 3]

**History:** 2005 c 114 s 1

#### 43A.34 RETIREMENT.

*[For text of subd 1, see M.S.2004]*

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

*[For text of subd 4, see M.S.2004]*

**History:** 2005 c 114 s 2

#### 43A.346 POSTRETIREMENT OPTION.

Subdivision 1. **Definition.** For purposes of this section, "state employee" means a person currently occupying a civil service position in the executive branch of state government, the Minnesota State Retirement System, or the Office of the Legislative Auditor, or a person employed by the Metropolitan Council.

Subd. 2. **Eligibility.** This section applies to a state or Metropolitan Council employee who:

(1) for at least the five years immediately preceding separation under clause (2), has been regularly scheduled to work 1,044 or more hours per year in a position covered by a pension plan administered by the Minnesota State Retirement System or the Public Employees Retirement Association;

(2) terminates state or Metropolitan Council employment;

(3) at the time of termination under clause (2), meets the age and service requirements necessary to receive an unreduced retirement annuity from the plan and satisfies requirements for the commencement of the retirement annuity or, for an employee under the unclassified employees retirement plan, meets the age and service requirements necessary to receive an unreduced retirement annuity from the plan and satisfies requirements for the commencement of the retirement annuity or elects a lump-sum payment; and

(4) agrees to accept a postretirement option position with the same or a different appointing authority, working a reduced schedule that is both (i) a reduction of at least 25 percent from the employee's number of regularly scheduled work hours; and (ii) 1,044 hours or less in state or Metropolitan Council service.

Subd. 3. **Unclassified service.** Notwithstanding any law to the contrary, state postretirement option positions shall be in the unclassified service but shall not be covered by the Minnesota State Retirement System unclassified employees plan.

Subd. 4. **Annuity reduction not applicable.** Notwithstanding any law to the contrary, when an eligible state employee in a postretirement option position under this section commences receipt of the annuity, the provisions of section 352.115, subdivision 10, or 353.37 governing annuities of reemployed annuitants, shall not apply for the duration of employment in the position.

Subd. 5. **Appointing authority discretion.** The appointing authority has sole discretion to determine if and the extent to which a postretirement option position under this section is available to a state employee. Any offer of such a position must be made in writing to the employee by the appointing authority on a form prescribed by the Department of Employee Relations and the Minnesota State Retirement System or the Public Employees Retirement Association. The appointing authority may not require a person to waive any rights under a collective bargaining agreement or unrepresented employee compensation plan as a condition of participation.

Subd. 6. **Duration.** Postretirement option employment shall be for an initial period not to exceed one year. During that period, the appointing authority may not modify the conditions specified in the written offer without the employee's agreement, except as required by law or by the collective bargaining agreement or compensation plan applicable to the employee. At the end of the initial period, the appointing authority has sole discretion to determine if the offer of a postretirement option position will be renewed, renewed with modifications, or terminated. Postretirement option employment may be renewed for periods of up to one year, not to exceed a total duration of five years. No person shall be employed in one or a combination of postretirement option positions under this section for a total of more than five years.

Subd. 7. **Copy to fund.** The appointing authority shall provide the Minnesota State Retirement System or the Public Employees Retirement Association with a copy of the offer, the employee's acceptance of the terms, and any subsequent renewal agreement.

Subd. 8. **No service credit.** Notwithstanding any law to the contrary, a person may not earn service credit in the Minnesota State Retirement System or the Public Employees Retirement Association for employment covered under this section, and employer contributions and payroll deductions for the retirement fund must not be made based on earnings of a person working under this section. No change shall be made to a monthly annuity or retirement allowance based on employment under this section.

Subd. 9. **Insurance contribution.** Notwithstanding any law to the contrary, the appointing authority must make an employer insurance contribution for a person who is employed in a postretirement option position under this section and who is not receiving any other state-paid or Metropolitan Council-paid employer insurance contribution. The amount of the contribution must be equal to the percent time worked in the postretirement option position (hours scheduled to be worked annually divided by 2,088) times 1.5 times the full employer contribution for employee-only health and dental coverage. The appointing authority must contribute that amount to a health reimbursement arrangement.

Subd. 10. **Subsequent employment.** If a person has been in a postretirement option position and accepts any other position in state or Metropolitan Council-paid service, in the subsequent state or Metropolitan Council-paid employment the person may not earn service credit in the Minnesota State Retirement System or Public Employees Retirement Association, no employer contributions or payroll deductions for the retirement fund shall be made, and the provisions of section 352.115, subdivision 10, or section 353.37, shall apply.

**History:** 2005 c 156 art 3 s 2