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**DIVISION 1**

**PROCEDURAL RULES**

**105-001-0000**  
**Notice of Rulemaking**

Prior to the adoption, amendment or repeal of any permanent rule, the Department of Administrative Services, Personnel Division, shall give notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State’s Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule.

(2) By sending a copy of the notice to persons on the Department of Administrative Services’ mailing list established pursuant to ORS 183.335 at least 28 days before the effective date of the rule.

(3) By sending a copy of the notice to:

- (a) The Associated Press;
- (b) Agency Heads;
- (c) Agency Personnel Managers;

(d) Employee organizations certified by the Employment Relations Board if the rule affects employees represented by them; and

(e) The Capitol Press Room.

(4) By sending a copy of the notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 183.335, 183.341, 184.340, 240.250 & 240.145(3)  
Stats. Implemented: ORS 183.335 & 183.341

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94; HRSD 5-2003, f. 5-15-03, cert. ef. 5-21-03; HRSD 2-2006, f. & cert. ef. 11-13-06

**105-001-0005**  
**Model Rules of Procedure**

Pursuant to ORS 183.341, the Division adopts the Attorney General’s Model Rules of Procedure under the Administrative Procedures Act as amended and effective January 1, 2006.

[ED. NOTE: The full text of the Attorney General’s Model Rules of Procedure is available from the Attorney General or the Department of Administrative Services, Personnel Division.]

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341

Hist.: PD 5-1981, f. & ef. 12-1-81; PD 3-1983, f. & ef. 10-14-83; PD 1-1986, f. & ef. 2-11-86; PD 3-1988, f. & cert. ef. 4-8-88; PD 5-1990, f. & cert. ef. 12-21-90; PD 3-1992, f. & cert. ef. 3-17-92; PD 2-1994, f. & cert. ef. 8-1-94; HRMD 2-1996, f. 3-28-96, cert. ef. 4-1-96; HRSD 1-2006, f. & cert. ef. 1-30-06

**DIVISION 20**

**CLASSIFICATION COMPENSATION**

**105-020-0001**

**Comparability of Work**

(1) The Department of Administrative Services (DAS) shall use the Hay Method of job evaluation as the neutral and objective method to determine the comparability of the value of work performed by employees in the classified services within the State Executive Branch and the compensation and classification structure of the state system.

(2) DAS shall use a neutral and objective method to determine the comparability of the value of work performed by State Executive Branch employees in unclassified and management service, except those employees and agencies identified in ORS 240.240 as exempt from ORS 240.240. DAS shall use this method to determine the compensation and classification system for these categories or service, pursuant to ORS 292.951.

Stat. Auth.: ORS 184.340, 240.145, 240.250

Stats. Implemented: ORS 240.190, ORS 240.235, 240.240, 240.245, 292.951, 292.956

Hist.: PD 4-1988, f. & cert. ef. 4-29-88; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-030-0095; HRSD 8-2003, f. 5-15-03, cert. ef. 5-21-03; CHRO 2-2016, f. 6-22-16, cert. ef. 7-1-16

**105-020-0015**

**“Pick-up” of Employee Contributions to Retirement**

(1) The Department of Administrative Services shall treat any employee contribution to PERS from the employees’ salaries as the employer’s contribution, thus “picking up” that contribution for purposes of Internal Revenue Code Section 414(h)(2).

(2) The contribution shall be deducted directly from the employee’s wages and the employee shall not have the option of receiving his or her contribution as salary and of making the contribution himself or herself.

(3) The employee’s reported salary on the W-2 form for tax purposes shall be reduced by the amount of that contribution.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 184.340, 240.145(3), 240.250, 26 USC § 414(h)

Stats. Implemented: ORS 238.200, 238.205, EO 94-23 & 26 USC § 414(h)

Hist.: PD 3-1994(Temp), f. 12-23-94, cert. ef. 1-1-95; PD 1-1995, f. 3-31-95, cert. ef. 4-1-95; CHRO 2-2016, f. 6-22-16, cert. ef. 7-1-16

**DIVISION 40**

**FILLING POSITIONS**

**105-040-0001**

**Equal Employment Opportunity and Affirmative Action**

(1) Oregon State Government is committed to achieving a workforce that represents the diversity of the Oregon community and being a leader in providing its citizens with fair and equal employment opportunities. Accordingly:

(a) State agency heads shall ensure:

(A) Equal employment opportunities are afforded to all applicants and employees by making non-discriminatory employment related decisions;

(B) Employment practices shall be in compliance with the state’s Affirmative Action Guidelines, state and federal laws to:

(i) Promote good faith efforts to achieve established affirmative action objectives; and

(ii) Take proactive steps to develop diverse applicant pools for position vacancies.

(b) The Department of Administrative Services (DAS) shall:

(A) Maintain an automated affirmative action tracking system which uses a uniform methodology for communicating affirmative action objectives for each state agency.

(B) Produce periodic reports showing Oregon State Government's progress toward achieving established affirmative action objectives identified by the Chief Human Resources Office at DAS and the Governor's Office of Diversity and Inclusion.

(c) Persons, who believe they have been subjected to discrimination by an agency in violation of this rule, may file a complaint with the agency's affirmative action representative within 365 calendar days of the alleged act or upon knowledge of the occurrence.

(2) Employment related decisions include, but are not limited to:

- (a) Hiring,
  - (b) Promotion,
  - (c) Demotion,
  - (d) Transfer,
  - (e) Termination,
  - (f) Layoff,
  - (g) Training,
  - (h) Compensation,
  - (i) Benefits, and
  - (j) Performance evaluations;
- (3) Diverse applicant pools are developed by using proactive outreach strategies.

(4) This rule does not preclude any person from filing a formal complaint in accordance with a collective bargaining agreement, or with appropriate state or federal agency under the applicable law.

Stat. Auth.: ORS 184.340, 240.145, 240.250

Stats. Implemented: ORS 240.306, 659A.012 - 659A.015

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 11-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 2-2008, f. & cert. ef. 11-4-08; CHRO 2-2016, f. 6-22-16, cert. ef. 7-1-16

#### **105-040-0015**

##### **Veteran's Preference in Employment**

Applicability: Recruitment and selection processes for all State of Oregon positions in agencies subject to ORS 240, State Personnel Relations Law, including but not limited to promotional opportunities.

(1) Definitions: (See also HRSD Rule 105-010-0000 Definitions Applicable Generally to Personnel Rules and Policies.)

(a) Initial Application Screening: An agency's process of determining whether an applicant meets the minimum and special qualifications for a position. An Initial Application Screening may also include an evaluation of skills or grading of supplemental test questions if required on the recruiting announcement.

(b) Application Examination: The selection process utilized by an agency after Initial Application Screening. This selection process includes, but is not limited to, formal testing or other assessments resulting in a score as well as un-scored examinations such as interviews and reference checks.

(c) Veteran and Disabled Veteran: As defined by ORS 408.225 and 408.235.

(2) Application of preference points upon Initial Application Screening: Qualifying Veterans and Disabled Veterans receive preference points as follows;

(a) Five Veteran's Preference points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215), or a letter from the US Department of Veteran's Affairs indicating the applicant receives a non-service connected pension with the State of Oregon Application; or

(b) Ten Disabled Veteran's points are added upon Initial Application Screening when an applicant submits as verification of eligibility a copy of the Certificate of Release or Discharge from Active Duty (DD Form 214 or 215) with the State of Oregon Application. Disabled Veterans must also submit a copy of their Veteran's disability preference letter from the US Department of

Veteran Affairs, unless the information is included in the DD Form 214 or 215.

(c) Veteran's and Disabled Veteran's preference points are not added when a Veteran or Disabled Veteran fails to meet the minimum or the special qualifications for a position.

(3) Following an Initial Application Screening the agency generates a list of qualified applicants to consider for Appointment. An Appointing Authority or designee may then:

(a) Determine whether or not to interview all applicants who meet the minimum and special qualifications of the position (including all Veterans and Disabled Veterans); or

(b) Select a group of Veteran and Disabled Veteran applicants who most closely match the agency's purposes in filling the position. This group of applicants may be considered along with non-veteran applicants who closely match the purposes of the agency in filling the position as determined by:

(A) Scored Application Examinations (including scored interviews): If an agency utilizes, after an Initial Application Screening, a scored Application Examination to determine whom to consider further for Appointment, the agency will add (based on a 100-point scale) five points to a Veteran's score or 10 points to a Disabled Veteran's score or;

(B) Un-scored Application Examinations: Un-scored Application Examinations done by sorting into levels (such as "unsatisfactory," "satisfactory," "excellent") based on desired attributes or other criteria for further consideration will be accomplished by:

(i) Advancing the application of a Veteran one level;

(ii) Advancing an application of a Disabled Veteran two levels.

(4) Preference in un-scored interviews: A Veteran or Disabled Veteran who, in the judgment of the Appointing Authority or designee, meets all or substantially all of the agency's purposes in filling the position will continue to be considered for Appointment.

(5) If a Veteran or Disabled Veteran has been determined to be equal to the top applicant or applicants for a position by the Appointing Authority or designee then the Veteran or Disabled Veteran is ranked more highly than non-veteran applicants and, a Disabled Veteran is ranked more highly than non-veteran and Veteran applicants.

(6) Preference described in Sections 2 through 5 of this rule is not a requirement to appoint a Veteran or Disabled Veteran to a position. An agency may base a decision not to appoint the Veteran or Disabled Veteran solely on the Veteran's or Disabled Veteran's merits or qualifications.

(7) A Veteran or a Disabled Veteran applicant not appointed to a position may request an explanation from the agency. The request must be in writing and be sent within 30 calendar days of the date the Veteran or Disabled Veteran was notified that they were not selected. The agency will respond in writing with the reasons for not appointing the Veteran or Disabled Veteran.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth: ORS 240.145(3) & 240.250

Stats. Implemented: ORS 408.225, 408.230 & 408.235

Hist.: HRSD 3-2007(Temp), f. & cert ef. 9-5-07 thru 3-3-08; HRSD 1-2008, f. 2-27-08, cert. ef. 3-1-08; HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10

## **DIVISION 50**

### **WORKFORCE MANAGEMENT**

[ED. NOTE: The Human Resource Services Division State Policies referred to or incorporated by reference in these rules are available from the Human Resource Services Division (HRSD).]

#### **105-050-0003**

##### **Alcohol and Controlled Substance Testing of Employees Having Commercial Drivers License**

(1) To promote public and employee health, safety and productivity, agency heads shall apply to management service and classified unrepresented employees required to have a Commercial Driver's License (CDL):

(a) Federal Motor Carrier Safety Administration rules stated in 49 CFR Part 382 requiring pre-employment, post-accident, random, reasonable suspicion, return-to-duty and follow-up testing for alcohol or controlled substances; and

(b) U.S. Department of Transportation rules stated in 49 CFR Part 40 which provide procedures for alcohol testing, controlled substance testing, split specimen testing and urine specimen testing.

(2) An agency head shall approve the Alcohol and Drug Testing Contract between the Department of Administrative Services (DAS) and the vendor for the performance of alcohol and controlled substance testing, Substance Abuse Professional Services, Medical Review Officer Services, record keeping and other related service.

(3) An agency head shall provide or contract for training and educational materials as required by 49 CFR Part 382.601, 382.603 and 382.605.

(4) Except as otherwise provided in 49 CFR Part 382.505 regarding alcohol test results of 0.02 to 0.039, an employee who violates alcohol misuse or controlled substance use rules may be terminated by an agency head or, if not terminated, shall be removed from duties requiring a CDL and shall be evaluated by a substance abuse professional to assess any need for rehabilitation or treatment and, as determined to be appropriate by the agency head, may be assigned to duties not requiring a CDL, granted leave with or without pay at employee request, or disciplined.

(5) Any employee rehabilitation or treatment shall be at employee expense except as it may be covered by insurance. Leave with or without pay may be granted at employee request during the period of treatment or rehabilitation as stated in 40 CFR 40.289.

(6) As stated in 49 CFR 40.305, except as otherwise provided in 49 CFR Part 382.505 regarding alcohol test results of 0.02 to 0.039, an agency head may return an employee, who violates alcohol misuse or controlled substance use rules, to the former duties requiring a CDL if the employee:

(a) Has been evaluated by a substance abuse professional;

(b) Has complied with the recommended treatment or rehabilitation;

(c) Has taken a return to duty alcohol or controlled substance test and has a negative result; and

(d) Is subject to unannounced follow-up alcohol or controlled substance tests.

(7) An employee having a CDL shall inform the appointing authority of any medial use of controlled substances.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: Omnibus Transportation Employee Testing Act of 1991; 49 CFR 392.4 and 392.5, ORS 184.340, 240.145, 240.250

Stats. Implemented: ORS 813.403, 813.404

Hist.: PD 4-1994, f. 12-23-94, cert. ef. 1-1-95; CHRO 2-2016, f. 6-22-16, cert. ef. 7-1-16

#### 105-050-0004

##### Drug Testing of Final Applicants for Certain State Classifications/Positions

(1) Oregon State Government provides the public with a drug-free workplace.

(a) An appointing authority of an agency providing public safety, mental health services or positions meeting the federal standards for drug testing, may institute a drug testing program for the final applicant for classifications and/or positions designated by the appointing authority. A final applicant is the employing agency's first choice, prior to an offer of employment, but after completion of all hiring tests and standards, including reference and criminal records checks, when applicable.

(b) Prior to implementing the drug testing program for the final applicant the appointing authority shall develop an agency drug testing policy which shall include:

(A) The designated classifications and/or positions for which the final applicant shall be tested for prohibited drugs;

(B) The prohibited drugs/controlled substances for which a final applicant shall be tested;

(C) Assurance that the drug testing shall be conducted by a laboratory which is licensed and operated in accordance with ORS 438.010 and OAR 333-024-0305 through 333-024-0350;

(D) A description of the drug testing protocol, i.e., how and when the drug testing shall be carried out.

(c) An appointing authority shall not select a final applicant who refuses to take or fails a test for prohibited drug use.

(d) An applicant disqualified for a current opening may reapply for subsequent openings for those positions designated for pre-employment drug testing:

(A) Upon presenting proof of successful completion of a drug rehabilitation program; or

(B) Passing any drug test required for the final applicant for subsequent openings.

(e) Drug tests for the final applicant shall be paid for by the hiring agency and conducted in accordance with the agency's drug testing policy.

(f) At the time of implementation, an appointing authority shall submit a copy of the agency drug testing policy for the final applicant to the agency's Human Resources Office for filing.

(g) All recruiting announcements for designated classifications/positions shall include the statement: "All applicants for, and employees in this classification/position, shall be subject to testing for the use of prohibited drugs."

(h) An appointing authority shall maintain records of drug testing, stating the number of applicants tested, the number of confirmed positive tests and the classifications/positions involved.

(i) An agency's administration of its drug testing policy and drug testing records for applicants shall be subject to audit by the Chief Human Resources Office.

(2) Failing a drug test means the confirmation test result indicates positive evidence of a prohibited drug.

(3) Prohibited drugs are specified in Schedules I through V of Section 202 of the Controlled Substances Act, 21 USC 811, 812 and as defined in 21 CFR 1300.11 through 1300.15 unless authorized by legal prescription or are exempt from federal or state law.

(4) For the purpose of this rule, public safety services are those performed by police officers, firefighters, public safety trainers, correctional officers, group life coordinators at juvenile corrections institutions, parole and probation officers, strike-prohibited employees at mental health institutions and services performed by other strike-prohibited employees.

(5) For purpose of this rule, positions within the agencies, subject to federal standards, may be subject to pre-employment drug testing.

Stat. Auth.: ORS 184.340, 240.145, 240.250

Stats. Implemented: ORS 240.135, 240.321

Hist.: HRMD 1-1996, f. & cert. ef. 1-31-96; HRSD 9-2003, f. 5-15-03, cert. ef. 5-21-03; CHRO 2-2016, f. 6-22-16, cert. ef. 7-1-16

#### 105-050-0025

##### Injured Worker Preference for Light Duty Assignments

(1) Definitions:

(a) Agency-at-injury: The state agency that employed the injured worker when the compensable injury occurred.

(b) Attending Physician: The physician primarily responsible for the injured worker's care related to the compensable condition in the workers' compensation claim.

(c) Independent and semi-independent agencies: State executive branch agencies not subject to all of ORS 240.

(d) Light duty assignment: A transitional assignment of an injured worker while the worker is recovering from job-related injuries or illnesses to duties within the worker's capacities and restrictions specified in writing by the worker's attending physician.

(2) If feasible, agencies-at-injury will make light duty assignments for injured workers after an attending physician authorizes a worker to return to work with temporary restrictions that preclude the worker from performing some or all of the worker's regular job duties.

(3) To identify light duty assignments, agencies-at-injury:

(a) Where feasible, temporarily modify a worker's regular job duties by removing or modifying those duties that conflict with physical restrictions specified by an injured worker's attending physician.

(b) If it is not feasible to remove or modify the worker's regular job duties to be consistent with the worker's restrictions, the agency-at-injury considers other work the agency may temporarily assign to the injured worker.

(c) If no light duty assignments are available within the agency-at-injury, the agency-at-injury may contact the Chief Human Resources Office (CHRO) or other executive branch agencies for assistance in locating light duty assignments.

(d) Agencies-at-injury monitor, adjust, or terminate temporary light duty assignments as appropriate.

(e) An injured worker temporarily assigned light duty work in another agency remains an employee of the agency-at-injury.

(f) CHRO may develop policies to implement this rule.

Stat. Auth.: ORS 240.145, 240.250, 659A.052

Stats. Implemented: ORS 240.306, 659A.043, 659A.046, 659A.052

Hist.: HRSD 1-2009(Temp), f. 6-25-09, cert. ef. 7-1-09 thru 12-27-09; HRSD 2-2009(Temp), f. & cert. ef. 11-2-09 thru 2-28-10; HRSD 3-2009, f. 12-30-09, cert. ef. 1-1-10; CHRO 2-2016, f. 6-22-16, cert. ef. 7-1-16

### **105-050-0030**

#### **Injured Worker Preference for Entry-Level Positions**

(1) Definitions:

(a) Agency-at-injury: The state agency that employed the injured worker when the compensable injury occurred.

(b) Attending Physician: The physician primarily responsible for the injured worker's care related to the compensable condition in the workers' compensation claim.

(c) Independent and semi-independent agencies: State executive branch agencies not subject to all of ORS 240.

(d) Entry-level position: All limited competitive and non-competitive appointment classifications listed in OAR 105-040-0060; all classifications defined as entry in their title; single-level classifications and the first level of a classification series.

(2) Injured workers who make a timely demand for reemployment to available, suitable employment in accordance with Oregon Administrative Rule 839-006-0135 may also request consideration for permanent appointment to entry-level positions.

(a) The injured worker, seeking such reemployment, submits a written request to the agency-at-injury noting the specific entry-level positions to which he or she seeks appointment along with an updated employment application form.

(b) An agency-at-injury, subject to ORS 240, after receiving an eligible injured worker's request for permanent reemployment in a suitable or entry-level position, places the injured worker on the injured worker list for suitable and entry-level positions.

(c) The Chief Human Resources Office provides relevant information to semi-independent and independent state agencies regarding the injured workers who are eligible for reemployment to available, suitable, and entry-level positions.

(d) Independent and semi-independent state agencies give priority consideration according to subsection (2)(f) of this rule, to injured workers from other executive branch agencies who make a timely demand for reemployment.

(e) CHRO places workers injured in an independent or semi-independent agency on the injured worker list for appropriate classifications following receipt of notice from an independent or semi-independent agency of the injured worker's timely demand