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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 10

GENERAL

105-010-0000

Definitions Applicable Generally to Personnel Rules and Policies

The following definitions apply to the Personnel Rules and Policies:

(1) "Administrator": Administrator of the Human Resource Services Division of the Department of Administrative Services.

(2) "Agency": Any department, division, independent board, council, bureau, institution or commission; all the positions of which are under the same appointing authority; a distinct entity for which a separate budget limitation or agency number is maintained.

(3) "Agency Head": An elected or appointed officer who has authority and responsibility for management and operation of a state agency and accountability for appropriate outcomes.

(4) "Allocation": Assignment of a position to a classification.

(5) "Announcement": A written notice of a recruitment which includes a description of duties, salary, entrance requirements, rating process, recruitment period and other pertinent information.

(6) "Appointing Authority": An agency head and any employee designated by the agency head as having power to make appointments to positions in the state service and take other personnel actions.

(7) "Appointment": The hiring of a person into a position in state service.

(8) "Certificate of Eligibles or Certificate": A list of candidates certified to a position.

(9) "Classification": A group of positions sufficiently alike in duties, authorities, and responsibilities for which similar qualifications and schedules of pay can be applied.

(10) "Classified Service": All positions in state service which are not listed in ORS 240.200, 240.205, or 240.212.

(11) "Comparability of the Value of Work": The value of the work measured by the needs of the employer and the knowledge, composite skill, effort, responsibility, and working conditions required in the performance of the work.

(12) "Crossfill": The appointment of an employee to a position in a different classification in the same salary range number.

(13) "Custodian": The custodian of division public records.

(14) "DAS": The Department of Administrative Services

(15) "Delegate": Authorization for agencies to assume responsibility for designated division functions.

(16) "Demotion": The voluntary or involuntary movement of an employee (except temporary employees) from a position in one classification to a position in another classification having a lower salary range number.

(17) "Department": The Department of Administrative Services.

(18) "Direct Appointment": An alternate appointment of an applicant made by the criteria in OAR 105-040-0050.

(19) "Director": The Director of the Department of Administrative Services.

(20) "Disabled Veteran": As defined in ORS 408.225(2).

(21) “Disposition Code”: A standardized code assigned by an appointing authority or designee to an applicant on a Certificate. The code identifies the action taken and if their name is inactivated or removed from the List.

(22) “Division”: The Human Resource Services Division of the Department of Administrative Services.

(23) “Doublefill”: The filling of a position with two or more employees.

(24) “Executive Service”: Part of the exempt or unclassified service as specified in HRSD State Policy 30.000.01, Position Management.

(25) “Exempt Service”: Positions in state service which are listed in ORS 240.200.

(26) “Full-Time”: A work schedule of normally 40 hours during the workweek or any average of 40 hours per week over the course of a monthly pay period.

(27) “Hay Method”: The Hay Guide Chart-Profile Method of job evaluation.

(28) “HRSD”: The Human Resource Services Division.

(29) “Initial Appointment”: The initial appointment to a position in state service or the appointment of a former employee whose reemployment eligibility or layoff rights have expired.

(30) “Injured Worker”: an employee who incurred an injury, while employed in a state executive branch agency, determined to be compensable under ORS Chapter 656, who has not exercised or waived reinstatement and reemployment rights under ORS 659A.043 and 659A.046.

(31) “Job Sharing Position”: A full-time position identified as one that may be held by two or more employees working part time.

(32) “Layoff”: Reduction in force due to lack of work, curtailment of funds, reorganization or but not for reasons specified in ORS 240.555.

(33) “Limited Competitive Appointment: An appointment to a non-competitive classification made by limiting the competition for appointment to economically disadvantaged person who meet the criteria outlined in OAR 105-040-0060.

(34) “Management Service”: Positions in state service, not in the exempt or unclassified service, determined to be confidential, under ORS 243.650(6), or managerial, under 243.650(16), or supervisory, under ORS 243.650(23).

(35) “Minimum Qualifications”: Minimum experience, training, knowledge, and skills necessary for admission to a test or for successful entry and performance in a classification or position.

(36) “OAR”: Oregon Administrative Rule.

(37) “Official Representative”: Any person designated or authorized by an employee to act on behalf of the employee in employment relations matters.

(38) “Part-Time”: A work schedule less than full time.

(39) “Part-Time Employee”: An employee who works less than full time.

(40) “Permanent Position”: A full-time or part-time position that is normally expected to last indefinitely subject to availability of permanent funding.

(41) “PERS”: Public Employees Retirement System.

(42) “Position”: a group of duties, authorities, and responsibilities assigned to a position by an appointing authority.

(43) “Promotion”: The movement of an employee (except temporary) from a position in one classification to a position in another classification having a higher salary range number.

(44) “Protected Classes”: Those characteristics of people afforded protection under Title VII of the Civil Rights Act and other civil rights legislation.

(45) “Public Record”: Any record containing information relating to the conduct of the public’s business which is prepared, owned, used or retained by the Division or delegated agency.

(46) “Reclassification”: A position and/or employee classification change based on assignment of significantly different duties with continuation of the same general knowledge and skill requirements. The change in duties usually occurs gradually over a period of time.

(47) “Recognized Service Date”: The date reflecting an employee’s time in state service, with appropriate adjustments, which is used to determine the employee’s vacation accrual rate.

(48) “Recruitment”: A process to solicit a pool of qualified applicants to fill current position vacancies or potential position vacancies.

(49) “Reemployment”: the noncompetitive return of a former regular or trial service employee to state service, return from demotion, or return following downward reclassification. See OAR 105-040-0080.

(50) “Regular Status”: Status accorded a management service or classified unrepresented employee upon successful completion of a designated trial service period.

(51) “Related List”: A list for a comparable higher, lower, or equal classification containing names of applicants who have knowledge, skills, and abilities similar to those required for the vacant position and who have been tested in a manner that reasonably measures their ability to perform the duties of the vacant position.

(52) “Represented Position”: A position currently represented by a labor union or other official representative.

(53) “Salary Range”: A range of pay established for each classification, normally including a minimum rate, a maximum rate and intermediate rates.

(54) “Salary Range Number”: The number, along with any alphabetical suffix characters, which identifies salary relationship among classifications within a compensation plan.

(55) “Skill Code”: A code assigned to a special qualification for use in selective certification.

(56) “Substantial Disability”: As referenced in ORS 240.306(3)

(57) “Termination”: The involuntary separation of an employee from state service.

(58) “Test”: Any method of giving a rating to a job applicant or of selecting from among the applicants on a certificate of eligibles.

(59) “Transfer”: The lateral movement of an employee (except temporary) from one position to another position in the same classification or from a position in one classification to a position in another classification having the same salary range number.

(60) “Trial Service”: a working test period during which an employee is required to demonstrate, by conduct and actual performance of duties, the qualifications and fitness for the position.

(61) “Unclassified Service”: Positions in state service which are listed in ORS 240.205.

(62) “Underfill”: Employment of a person in a classification lower than the established classification level of the position.

(63) “Unrepresented Position”: A position eligible for official representation by a union or association, but for which representation has not been elected.

(64) “Veteran”: As defined in ORS 408.225(1).

(65) “Veteran Preference Points”: See ORS 408.230 and 408.235.

Stat. Auth.:

Stats. Implemented:

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 2-1989, f. & cert. ef. 12-1-89; PD 1-1992(Temp), f. & cert. ef. 2-14-92; PD 4-1992, f. & cert. ef. 8-12-92; HRSD 10-2003, f. 6-11-03, cert. ef. 6-20-03

105-010-0011

Human Resource Services Division Public Records

(1) It is the policy of the state to ensure every person has a right to inspect any public record except as otherwise expressly provided by ORS 192.501 to 192.505.

(2) Division Public Records Subject to or Exempt from Disclosure.

(a) The following division public records, falling within the disclosure exemptions under ORS 192.501 to 192.502, shall not be subject to inspection except by authorized division or agency personnel:

(A) Test questions, scoring keys, and other data used to administer the selection process, unless the public interest requires disclosure;

(B) A notice of disciplinary action and materials or documents supporting that action, unless the public interest requires disclosure;

(C) A communication within the division or between the division and another public body of an advisory nature to the extent that it covers other than purely factual materials and is preliminary to any final agency determination of policy or action. The division has the burden of showing that the public interest in encouraging frank communications between officials and employees of the division clearly outweighs the public interest in disclosure;

(D) Information of a personal nature, such as but not limited to that kept in a personal, medical or similar file, if the public disclosure thereof would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in a particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy;

(E) The home addresses, dates of birth, social security numbers and telephone numbers of state employees or volunteers in the agency's or division's personnel records. The exemption from disclosure of the addresses, dates of birth and telephone numbers of state employees and volunteers does not apply if the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance; and

(F) Information submitted to the division in confidence and not otherwise required by law to be submitted where such information is reasonably considered confidential, the division has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

(G) If requested by a public safety officer as defined in 181.610, the home address, home telephone number and electronic mail address of the public safety officer.

(b) A division public record pertaining to an individual applicant or employee may be inspected by that applicant or employee or other specifically designated party as follows:

(A) An applicant or employee may inspect a division public record contained in the applicant's or employee's file including a confidential report from a previous employer if the source-identifying information can be redacted.

(B) An applicant's or employee's official representatives, with the applicant's or employee's signed authorization, may inspect a division public record contained in that applicant's or employee's file including a confidential report from a previous employer, if the source-identifying information can be redacted.

(C) The following parties may inspect any division public record contained in an individual employee's file:

(i) An employee's immediate supervisor or higher level supervisor in direct line within the program area;

(ii) The personnel manager or authorized staff of the employing agency;

(iii) The head of the employing agency;

(iv) Human Resource Services Division staff;

(v) A representative of the Employment Relations Board with subpoena or signed authorization;

(vi) A legally authorized law enforcement agency; and

(vii) The Audits Division of the Office of Secretary of State when carrying out its statutory duties.

(D) An agency may inspect a division public record containing the name, home address, social security number, or employing agency of an employee when such data is to be used to enforce a claim due the state or to defend against a claim.

(E) An agency may inspect an application, examination, or certification record relating to a recruitment specifically for that agency or to a certificate received for a job vacancy.

(F) An investigating officer from the Bureau of Labor and Industries Civil Rights Division, Department of Justice or Equal Employment Opportunity Commission may inspect an application or examination record that is pertinent to an official investigation.

(c) A member of the public may inspect the following division public records pertaining to an applicant or employee:

(A) Information contained in an employment application;

(B) Sex identification;

(C) Grouping by age category;

(D) Ethnic identification;

(E) Performance evaluation;

(F) Date of initial hire to state service;

(G) Name, city and zip code;

(H) City and county of work station;

(I) Position number;

(J) Representation code;

(K) Benefit code;

(L) Position type;

(M) Employee's rate of pay;

(N) A confidential report from a previous employer, if the source-identifying information can be redacted.

(3) The State Personnel Records Officer is designated as the custodian of division public records. An alternate shall be designated to act in the absence of the Officer.

(4) A request for inspection of a division public record shall be made either in writing, or in person during normal working hours, to the State Personnel Records Officer, Salem, Oregon.

(5) Information which is exempt from disclosure, but contained within information open to disclosure, shall be blanked out. Upon request, the State Personnel Records Officer shall certify, on a cover sheet or the last page of the copy, that the copy has been compared with the original and that the copy is a true and exact copy of the original. The State Personnel Records Officer shall sign and date such certification.

(6) The State Personnel Records Officer, upon determining that requested records are open to inspection, shall make records, or copies thereof, available within a reasonable time. The division may establish fees reasonably calculated to reimburse it for actual cost to make such records available. Requesting parties shall be provided with estimates of costs to provide requested records.

Stat. Auth.: ORS 184.340 & 240.145(3)

Stats. Implemented: ORS 192.502

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 5-1988, f. & cert. ef. 6-28-88; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-010-0035; HRSD 1-1997, f. 9-30-97, cert. ef. 10-4-97; HRSD 1-1998, f. 6-29-98, cert. ef. 7-1-98; HRSD 2-2000, f. 7-12-00, cert. ef. 7-14-00; HRSD 6-2003, f. 5-15-03, cert. ef. 5-21-03; HRSD 3-2006, f. & cert. ef. 11-13-06

105-010-0016

Public Disclosure

(1) Each agency head shall provide for public access, upon request, the relevant employment history or financial information on any employee who worked for, or has a financial interest in, an organization he or she is regulating.

(2) Persons hired in positions to regulate persons or organization where there is, or may be perceived, a personal conflict of interest shall be informed that public disclosure of such potential conflict is required.

(3) Materials developed for recruitment of people to positions where they will be performing regulatory duties shall make clear that relevant employment and financial information may be disclosed to the public upon request.

(4) Regulating includes proposing rules, issuing orders, and/or making decisions or recommendations which benefit or impair the person or organization being regulated.

Stat. Auth.: ORS 184.340 & 240.145(3)

Stats. Implemented: Executive Order 78-10

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, Renumbered from 105-049-0000; HRSD 7-2003, f. 5-15-03, cert. ef. 5-21-03

DIVISION 20

CLASSIFICATION COMPENSATION

105-020-0001

Comparability of Work

(1) The Department of Administrative Services 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 within the State Executive Branch and the compensation and classification structure of the state system.

(2) This methodology measures the know-how, problem solving, accountability and working conditions required to perform the duties within a classification of work.

Stat. Auth.: ORS 184.340, 240.145, 240.240, 240.245 & 240.250

Stats. Implemented: ORS 240.190 & 240.235

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

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

DIVISION 40

FILLING POSITIONS

105-040-0001

Equal Employment Opportunity and Affirmative Action

(1) The State of Oregon 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 insure:

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

(B) Employment practices are consistent with the state's Affirmative Action Guidelines under ORS 659A.012-659A.015 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 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 hiring opportunities and each agency's progress toward achieving established affirmative action objectives as identified in the state wide automated system.

(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: hiring, promotion, demotion, transfer, termination, layoff, training, compensation, benefits, and 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, 243.305 & 559A.012 - 559A.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

105-040-0010

Recruitment and Selection Process

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. It is the policy of the State of Oregon to base hiring and promotion decisions on an applicant's relative knowledge, experience, and skills, determined by competition without regard to an individual's race, color, religion, sex, marital status, national origin, political affiliation, age, disability, sexual orientation or other non-job-related factors, with proper regard for an individual's privacy.

(1) An applicant shall follow the instructions to apply by submitting an official State of Oregon application within the designated time-period.

(2) Hiring agencies provide a minimum seven calendar days notice of employment opportunities when filling vacancies, other than agency promotions, by using the State's Jobs page on the internet. Accordingly:

(a) Job postings shall include job requirements, minimum qualifications from classification specifications, any special qualifications, salary, application screening process to be used, application deadline, and any supplemental questions or additional application requirements.

(b) Any recruitment and selection process shall be competitive, unbiased and of such content as to assist in determining an applicant's qualifications to perform the work.

(3) Hiring agencies have the authority to verify a statement contained in an application or a statement made in an interview and secure further information concerning the applicant's qualifications. An adjustment may be made to the applicant's rating if information obtained materially affects the applicant's rating of experience, education, training, or suitability.

(4) Applicants may:

(a) Obtain information regarding employment opportunities by accessing the State's Jobs page on the internet;

(b) Request a review of disqualification within 10 calendar days from the date of disqualification notice for not meeting minimum qualifications as stated in the job posting. The review shall be limited to the disqualification decision. Any changes due to a disqualification review shall not affect the previous selection decision(s) concerning other applicants;

(c) Reapply to a specific job posting if the job posting is still open for application, unless a hiring agency has determined a time period for reapplication. The most recent application submitted determines a qualified applicant's placement on the eligible list.

(5) Documentation retention requirements are outlined under State Human Resources Policy 40.010.01 Recruitment and Selection Records Retention.

Stat. Auth.: ORS 184.340 & 240.145(3)

Stats. Implemented: ORS 240.250, 240.306, 240.321 & 240.391

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 1-1999, f. & cert. ef. 9-1-99; HRSD 12-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 1-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 11-27-10; HRSD 3-2010, f. 11-24-10, cert. ef. 11-28-10

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

105-040-0020

Types and Order of Applicant Lists

Applicability: Classified unrepresented, management service, and classified positions, except, where in conflict with a collective bargaining agreement.

(1) The State of Oregon uses the following eligible lists (some of which have an established order of use) to facilitate the recruitment and selection process:

(a) Priority Lists: Priority lists shall be used in the order listed below or as prescribed by the applicable collective bargaining agreement. Priority lists shall be used when making any appointment, except for appointments made as part of workforce adjustments to prevent layoff.

(A) First priority: Injured Worker List. This list shall consist of employees with compensable work-related injuries or illnesses that occurred while employed in accordance with ORS 659A.052. The employee must not have waived reemployment rights in accordance with state workers’ compensation laws, an applicable collective bargaining agreement or, state HR policy.

(B) Second priority: Agency Layoff Lists. The use of this list shall follow the exhaustion of the first priority list. These lists shall consist of permanent (full or part-time) and seasonal employees who completed initial trial service with the State and separated from the service in good standing due to layoff or demotion in lieu of layoff.

(i) Agency Layoff Lists are established by individual agencies. Eligible employees are placed on the list by the classification at separation or demotion within the category of service specified in ORS 240.195. The term of eligibility on the list is two years from date of layoff or demotion. An individual shall be removed from the list upon the second refusal of a job offer unless an agency layoff plan allows for additional refusals or when the employee is returned to an equivalent position from which laid off (other than temporary or limited duration work).

(ii) Agency Layoff Lists shall be used when no qualified injured worker is available to fill the vacant position. An employee, on the agency layoff list of the same classification and category of service of the position to be filled, shall be appointed if the employee meets the special qualifications, if any, for the position. Appointments from the list shall be made consistent with the agency’s layoff plan.

(C) Third priority: Statewide Layoff List: The use of this list shall follow the exhaustion of first and second priority lists. An employee may request placement on the list via his or her agency’s human resource office for classifications for which qualified and are the same classification, or same, equal, or lower salary range number.

(i) The Statewide Layoff List shall consist of permanent (full or part-time) employees in either the management or classified unrepresented service who separated due to a layoff or unclassified executive ser-

vice employees terminated from state service due to reduction in force. Employees on the Statewide Layoff List must have completed initial trial service. The term of eligibility on the list is two years from the date of layoff. An individual shall be removed from the statewide layoff list upon the second refusal of a job offer or when a person accepts a position and is returned to work (other than temporary or limited duration).

(ii) A hiring agency shall consider and interview those employees who meet the special qualifications, if any, for the position. A hiring agency may supplement the candidate pool using other eligible lists in expanding order: Agency Transfer, Agency Promotion, Statewide Promotion, and Open Competitive.

(b) Other eligible lists may be used when making an appointment after fulfillment of the requirements in (1)(a):

(A) At their option, agencies may create and maintain an agency transfer list. Transfer Lists shall include eligible state employees who apply for and meet the qualifications of a position of the same classification, or same, equal, or lower salary range number. Employees may request placement on transfer lists via his or her agency’s human resources office. If an employee wishes to transfer to another agency, he or she must contact that agency’s human resources office to request placement on the list, if possible. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide transfer list.

(B) Agency Promotion Lists shall consist of agency employees who apply for and meet the qualifications of the position.

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the agency promotion list.

(C) Statewide Promotion Lists shall consist of eligible state employees who apply for and meet the qualifications of the position. Eligible state employees are current employees in an:

(i) Agency covered by ORS 240; or

(ii) Agency covered by an inter-agency agreement with HRSD that stipulates that the employees are eligible to apply to the statewide promotion list.

(D) Open Competitive Lists shall include persons seeking employment with the state who meet the qualifications of the position.

(2) Documentation retention requirements are outlined under State HR Policy 40.010.01 Recruitment and Selection Record Retention.

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

Stat. Auth.: ORS 184.340, 240.145 & 240.250

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

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRSD 1-2003(Temp), f. & cert. ef. 1-13-03 thru 7-12-03; HRSD 3-2003, f. & cert. ef. 4-30-03; HRSD 13-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 1-2007, f. 4-24-07, cert. ef. 5-1-07; HRSD 1-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 11-27-10; HRSD 2-2010(Temp), f. & cert. ef. 10-5-10 thru 11-27-10; HRSD 3-2010, f. 11-24-10, cert. ef. 11-28-10

105-040-0030

Use of Applicant Lists

Definitions:

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. Not applicable to represented positions where in conflict with a collective bargaining agreement.

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

(a) Inactivation Reason: An inactivation reason is a standardized code assigned by a hiring agency to indicate an applicant is no longer active on a list of eligibles or a referral list.

(b) Eligible List: A list of applicants who meet minimum and special qualifications.

(c) Referral List: A list of applicants referred from an eligible list.

(d) Special Qualifications: Qualifications added to minimum qualifications necessary at the time of appointment based on specific duties of the position to be filled. Special qualifications may include, but are not limited to bilingual skills or, licenses, permits and certifications required by law.

(2) The State of Oregon establishes and maintains lists of qualified applicants to facilitate selection processes based upon required knowledge, skills, training and, education.

(a) The order in which applicant lists are to be used shall be in accordance with Administrative Rule 105-040-0020, Types and Order of Applicant Lists, or as specified in collective bargaining agreements.

(b) An eligible list shall be established and maintained on the state's recruitment system.

(c) When a vacant position is to be filled, an agency, when appropriate, shall create an eligible list and a referral list prior to conducting interviews. The hiring agency must comply with OAR 105-040-0020, Types and Order of Applicant Lists.

(d) The referral list shall be one of the following, whichever is applicable:

(A) All applicants who meet the minimum qualifications for the position; or

(B) All applicants listed in order from the highest to lowest score based on selection criteria; or

(C) A limited number of applicants on the eligible list for the position selected in ranked order based on selection criteria.

(e) Selection of applicants for interview from the referral list formats listed in (2)(d)(A-C) shall include all qualified applicants unless the hiring agency develops and documents a valid screening process to select only the most qualified applicants.

(f) When a referral list contains tied rankings, all applicants with that ranking shall be offered an interview if any of the applicants with that score are offered an interview, unless the hiring agency develops and documents a valid screening process to select only the most qualified applicants for interview.

(g) Regardless of the selection process being used to evaluate applicants, veterans' preference shall be given in accordance with OAR 105-040-0015.

(h) After exhaustion of the priority lists specified in OAR 105-040-0020, a related eligible list of a classification having the same minimum and special qualifications and salary may be used.

(i) When an applicant is appointed to a position from a referral list, the applicant is inactivated from that referral or eligible list, except when an applicant retains rights to remain on specific priority lists such as the Injured Worker List and Agency Layoff List.

(j) Except for the expiration of the term of eligibility on an eligible list, any person whose name is removed from a list shall be promptly notified by the hiring agency. The hiring agency may remove an applicant from an eligible list for reasons including, but not limited to the following:

(A) Failure to respond within a reasonable time-period to any inquiry regarding availability for appointment;

(B) Expiration of the term of eligibility on the list;

(C) Willful violation of relevant rules, or policies, or provisions of the law;

(D) Falsifying statements on the application;

(E) Failure to pass required pre-employment checks or tests including but not limited to criminal record, drug test, or driving record checks;

(F) Cancellation of a list;

(G) Appointment made from a lay-off list to any classification

(k) An inactivation reason shall be reported for each candidate appearing on the referral list invited to interview and not appointed to a position.

Stat. Auth.: ORS 184.340 & 240.145

Stats. Implemented: ORS 240.010 & 240.306

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 1-2000, f. 1-28-00 cert. ef. 2-1-00; HRSD 14-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 21-2003(Temp), f. & cert. ef. 9-23-03 thru 12-19-03; HRSD 23-2003(Temp), f. 12-19-03, cert. ef. 12-20-03 thru 3-20-04; HRSD 1-2004, f. & cert. ef. 3-5-04; HRSD 1-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 11-27-10; HRSD 3-2010, f. 11-24-10, cert. ef. 11-28-10

105-040-0040

Types of Appointments

Applicability: Classified unrepresented and management service positions, initial appointment to all classified positions and temporary appointments.

(1) The State of Oregon has a variety of appointment types which are made in accordance with the type of position being filled and the individual needs of the agency. An agency head shall use one of the following methods to appoint persons to state service:

(a) Permanent Appointment: The appointment of a person to a permanent position;

(b) Seasonal Appointment: The appointment of a person to a position which occurs, terminates and recurs periodically or regularly;

(c) Temporary Appointment: The noncompetitive, non-status, appointment of a person for the purpose of meeting emergency, non-recurring or short-term workload needs of the agency. A temporary employee shall be exempt from all provisions of the State Personnel Relations Law, Administrative Rules and HRSD Policies unless otherwise specified in accordance with HRSD State Policy 40.025.01, Temporary Appointments;

(d) Limited Duration Appointment: The appointment of a person for a study, project, workload need or when position reduction is anticipated.

(A) An appointment made for a study or project shall be for a period not to exceed two years, except when the position is grant funded, but shall expire upon the completion of the study or project or when funding is exhausted.

(B) Appointments made when position reduction is anticipated shall not exceed the end of the current biennium or current season that ends prior to the end of the biennium.

(C) Appointments made for workload need shall be for a period not to exceed two years.

(D) An applicant/employee accepting a limited duration appointment shall be informed of the conditions of the appointment, including employee status at the termination of the appointment, and shall acknowledge in writing acceptance of the appointment under those conditions.

(E) The Limited Duration Agreement model serves as a guide to establish conditions of a limited duration appointment. The agreement will require modification to fit each employee's individual appointment circumstance.

(e) Academic Year Appointment: The appointment of a person to a position which generally conforms to the academic year of mid-September to mid-June. Appointing authorities may extend employment into the period between academic years;

(A) Employees appointed to positions designated as academic year shall be placed on leave without pay during the unextended period between academic years. The employee shall be returned to the position on termination of leave without pay status. Time spent on such leave shall constitute service for purposes of computing vacation accrual rates, recognized service dates and any other purpose where service time is computed except for the period of trial service;

(B) A person accepting an academic year appointment shall be informed of the conditions of the appointment and shall acknowledge in writing acceptance of the appointment under those conditions.

(2) Documentation retention requirements are outlined under HRSD State Policy 40.010.001, Recruitment and Selection Records Retention.

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

Stat. Auth.: ORS 240.145

Stats. Implemented: ORS 240.306, 240.309, 240.321 & 240.425

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 2-1985(Temp), f. & ef. 7-26-85; PD 1-1986, f. & ef. 1-23-86; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1992(Temp), f. & cert. ef. 2-21-92; PD 4-1992, f. & cert. ef. 8-12-92; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-043-0000; HRSD 2-2003(Temp), f. & cert. ef. 1-13-03 thru 7-12-03; HRSD 4-2003, f. & cert. ef. 4-30-03; HRSD 15-2003, f. 7-15-03, cert. ef. 7-21-03

105-040-0050

Direct Appointment

Applicability: Classified unrepresented and management service positions, and initial appointment to all classified positions. This rule provides state agencies an alternative method to the open competitive process when making appointments to positions in state service. Through this alternative method, as in the competitive process, agency heads shall take proactive steps to achieve a diverse workforce representative of the Oregon community as a means of fulfilling their Affirmative Action Plans.

(1) The agency head has the delegated authority and discretion to make direct appointments consistent with the criteria established in (a) and (b) below:

(a) Criteria for direct appointment:

(A) A recent open competitive recruitment results in no suitable candidates as determined, documented, and certified by the agency head. To be considered recent, an open competitive recruitment must have been completed within the previous six (6) months. When a recent statewide or agency promotion recruitment results in no suitable candidates, OAR 105-040-0020, Types and Order of Applicant Lists, requires an open competitive recruitment to be completed before a direct appointment can be made; or

(B) The appointment is made consistent with a court or administrative order, consent decree, court or administrative settlement, or negotiated tort claim settlement; or

(C) The position requires special or unique skills at the professional level. Special or unique skills at the professional level are those which require specialized knowledge typically acquired from college coursework at the bachelor degree level or beyond; or

(D) The position being filled has critical timing requirements affecting recruitment. Critical timing requirements affecting recruitment means that the position is critical to agency operations and there is a demonstrated need to fill the position quickly; and

(b) Minimum Qualifications:

(A) The individual to be direct appointed meets the minimum qualifications of the classification; or

(B) The individual is appointed as an underfill and will meet the minimum qualifications of the position within 12 months of the appointment.

(2) The agency head has the delegated authority and discretion to make direct appointments consistent with HRSD State Policy 30.005.01, Effect of Position Change on Incumbents.

(3) Each direct appointment shall be documented. The documentation shall be retained for a minimum of three (3) years. The documentation shall cite the applicable rule criteria, results of any open competitive recruitment, the qualifications of the individual selected, and the agency appointing authority authorization signature.

Stat. Auth.: ORS 240.306(5), 240.145(3) & 240.250

Stats. Implemented: ORS 240.145(3), 240.250, 240.306, 240.311 & 240.321(2)

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 4-1982, f. & ef. 7-1-82; PD 1-1985, f. & ef. 3-1-85; PD 1-1986, f. & ef. 1-23-86; PD 1-1989, f. & cert. ef. 2-10-89; PD 2-1989, f. & cert. ef. 12-1-89; Suspended by PD 1-1993(Temp), f. & cert. ef. 2-17-93; PD 2-1993(Temp), f. & cert. ef. 8-27-93; PD 1-1994, f. & cert. ef. 2-23-94; PD 2-1994, f. & cert. ef. 8-1-94; Renumbered from 105-043-0005; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 2-1997, f. & cert. ef. 11-5-97; HRSD 16-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 23-2003(Temp), f. & cert. ef. 11-25-03 thru 3-23-04; HRSD 2-2004, f. & cert. ef. 3-15-04

105-040-0060

Limited-Competitive and Noncompetitive Appointments

Applicability: Classified unrepresented and management service positions and initial appointment to all classified positions.

(1) It is the policy of the State of Oregon to facilitate the employment of persons who are disabled (as defined by ORS 174.107), economically disadvantaged or unskilled or semi-skilled through a limited-competitive or non-competitive appointment process:

(a) Recruitment for positions using employment programs serving people with disabilities administered by hiring agencies is not limited to the Limited-Competitive and Non-Competitive Classification list. A limited-competitive selection process through such employment programs administered by hiring agencies may be used to facilitate employment of persons with a disability;

(b) Recruitment for the economically disadvantaged and non-competitive appointments is limited to those classifications listed in this rule (Limited-Competitive and Non-Competitive Appointment Classifications List) unless otherwise authorized by the Division. When a hiring agency chooses to make an appointment using limited-competitive or non-competitive selection and appointment procedures, the hiring agency shall:

(A) Open a job listing with the field office of the Employment Department nearest the location of the vacancy when the recruitment is open to the public; and

(B) Make affirmative efforts to supplement referrals to create a diverse pool of candidates.

(c) A limited-competitive selection process may be used for economically disadvantaged persons who meet the following criteria:

(A) Clients of the Department of Human Services programs;

(B) Clients of the Juvenile Justice Division programs funded by the state.

(d) The Division shall use the following criteria when reviewing appointing authority or designee requests for additions to the Limited-Competitive and Non-competitive Appointment Classifications List:

(A) The classification requires minimal or no requisite knowledge or skills;

(B) It is impractical to develop an examination; and

(C) It is impractical to follow the normal recruiting process.

(2) A non-competitive appointment is made to designated classifications comprised of unskilled or semi-skilled positions for which there are minimal or no qualifying knowledge or skills, no screening and no

ranking. Where more than one candidate is referred, the hiring manager may use a limited-competitive process to select the most qualified.

(3) Limited-competitive appointment may also be used to limit the competition for appointment to non-competitive classes to those persons who meet the criteria outlined in (1)(a) – (d) above.

(4) Following is a list of Limited-Competitive and Non-competitive Appointment Classifications:

- (a) 0001, Supported Employment Worker;
- (b) 0100, Student Office Worker;
- (c) 0101, Office Assistant 1;
- (d) 0150, Student Professional/Technical Worker;
- (e) 0321, Public Service Representative 1;
- (f) 0405, Mail Services Assistant;
- (g) 1105, Traffic Survey Interviewer;
- (h) 3769, Experimental Biology Aide;
- (i) 4101, Custodian;
- (j) 4116 Laborer/Student Worker;
- (k) 4125, Litter Patrol Worker;
- (l) 4137, Liquor Distribution Worker 1;
- (m) 4403, Transporter;
- (n) 6605, Human Service Assistant 1;
- (o) 6701, Student Human Services Worker;
- (p) 6725, Habilitative Training Technician 1;
- (q) 6750, Group Life Coordinator 1;
- (r) 8125, Agricultural Worker;
- (s) 8201, Forest Nursery Worker 1;
- (t) 8202, Forest Nursery Worker 2;
- (u) 8235, Student/Professional Forester Worker;
- (v) 8253, Forest Lookout;
- (w) 8254, Wildland Fire Suppression Specialist Entry;
- (x) 8263 Wildland Fire Dispatcher Entry;
- (y) 8340 Fish & Wildlife Technician (Entry);
- (z) 9100, Food Service Worker 1.

Stat. Auth.: ORS 184.340, 240.145(3) & 240.250

Stats Implemented: ORS 240.306, 240.321 & 657.710

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; HRMD 2-1996, f. 3-28-96, cert. ef. 4-1-96; HRSD 17-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 1-2007, f. 4-24-07, cert. ef. 5-1-07; HRSD 1-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 11-27-10; HRSD 3-2010, f. 11-24-10, cert. ef. 11-28-10

105-040-0065

Management Service Trial Service Period

(1) Individuals appointed to a position in the Management Service as provided in ORS 240.195 and 240.212 are subject to a trial service period.

(2) A trial service period is the final phase of the hiring process to afford an employee the opportunity to demonstrate the ability to perform the work and provide state agencies the opportunity to confirm qualifications and fitness of an employee for a position.

(3) A state agency head has the authority to establish a trial service period for appointments to positions in the Management Service consistent with the following criteria:

(a) A trial service period is required upon initial appointment or promotion;

(b) A trial service period shall be no less than 6 months but may be up to 12 months based upon specific circumstances that affect the amount of time needed to demonstrate competency. Part-time employees shall serve a trial service period equivalent to that set by the agency for the specified classification on an hourly basis. For example, a 6-month trial service period is equivalent to 1040 hours for a part-time employee;

(c) A temporary appointment made pursuant to ORS 240.309 does not count as any portion of a trial service period upon subsequent appointment to a regular, limited duration, or seasonal status position in the management service;

(d) Upon successful completion of a trial service period, an employee shall gain regular status. A seasonal employee who does not complete trial service in a single seasonal period shall be credited with accumulated service if a break between service periods does not exceed two years.

(4) At the discretion of a state agency head or a state agency appointing authority, a trial service period, of 6 to 12 months, may be established when a regular status employee in any category of state service is appointed to a position in the Management Service by:

(a) Transfer to a different agency; or

(b) Transfer back to the same agency after an absence of more than one year; or

(c) Reemployment with a different agency; or

(d) Reemployment with the same agency after an absence of more than one year; or

(e) Voluntary demotion to a different classification series.

(5) A state agency head or a state agency appointing authority may extend the trial service period by the corresponding total number of days a period of leave with or without pay exceeds 15 calendar days.

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

Stats. Implemented: ORS 183.335, 183.341, 240.316, 240.410, 240.570(3)

Hist.: HRSD 2-2007, f. 4-24-07, cert. ef. 5-1-07

105-040-0070

Alternate Methods of Filling Positions

Applicability: All employees (where not in conflict with collective bargaining agreements). All positions shall normally be filled at the budgeted salary range level and classification. However, an appointing authority may use the following alternate methods of filling positions to provide for situations such as employee development, job sharing, and short-term transitioning.

(1) Underfill:

(a) A position may be underfilled with an individual in a lower salary range number and classification when there is a reasonable expectation that the employee will meet minimum qualifications of the allocated level of the position within twenty-four (24) months of appointment made from a certificate or within 12 months of a Direct Appointment. Appointment may be from a certificate or as a direct appointment consistent with Administrative Rule 105-040-0050, Direct Appointment. Upon meeting position qualification and performance requirements, the employee shall be changed to the allocated level of the position;

(b) An employee underfilling shall be advised of the requirements necessary to qualify for the position they are underfilling.

(2) Doublefill:

(a) An appointing authority may employ two or more employees in a position as a doublefill for the following purposes:

(A) To cover an employee on leave for any reason when a temporary appointment is not appropriate and a vacant position does not exist to address the workload need;

(B) Short-term transitioning of employees into impending vacant positions for purposes of training;

(C) The position establishment is pending the Position Inventory Control System (PICS) update;

(D) When approved and/or directed by Budget and Management Division to address budget issues, or

(E) Job share not exceeding 1.0 FTE.

(b) Employees doublefilling positions shall meet the minimum qualifications of those positions and be appointed in accordance with applicable recruitment and appointment rules, policies, or collective bargaining agreements;

(c) The doublefill method of filling positions shall not be used to permanently increase legislatively authorized staffing levels.

(3) Crossfill: A position may be crossfilled to a different classification with an equal salary range number providing the position establishment or modification is pending the PICS update.

Stat. Auth.: ORS 184.340 & 240.145

Stats. Implemented: ORS 240.145, 240.012, 240.013, 240.015 & 240.250

Hist.: PD 2-1994, f. & cert. ef. 8-1-94; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 3-1996, f. & cert. ef. 8-1-96; HRSD 18-2003, f. 7-15-03, cert. ef. 7-21-03

105-040-0080

Reemployment

Applicability: Classified unrepresented, management service and exempt service employees.

(1) This rule provides state agencies a non-competitive method of reemploying experienced former state employees who separated from state service in good standing.

(a) An appointing authority may non-competitively reemploy classified service unrepresented and management service employees who separate from state service in good standing, voluntarily demote, or are reclassified downward in any agency in the same, equal, or lower classification for which qualified within two years from the effective date of such action;

(b) An appointing authority may non-competitively reemploy an exempt service employee who has been employed full-time for at least 12 months consecutively in such service in a position for which qualified within two years from the date of separation from state service if such separation is in good standing;

(c) Reemployment of an exempt service employee shall occur only after any current collective bargaining unit member has exhausted any

right under an applicable collective bargaining agreement and after a current classified unrepresented or management service employee has exhausted layoff and reemployment eligibility under applicable Administrative Rules and HRSD State Policies.

(2) In the event of a subsequent appointment to a classification with a lower salary range, reemployment eligibility continues for the remainder of the two year period for the original classification from which separated.

Stat. Auth.: ORS 184.340, 240.145 & 240.250

Stats. Implemented: ORS 240.590

Hist.: PD 7-1981, f. & ef. 12-18-81; PD 3-1982, f. & ef. 3-1-82; PD 2-1985(Temp), f. & ef. 7-26-85; PD 1-1986, f. & ef. 1-23-86; PD 2-1989, f. & cert. ef. 12-1-89; PD 2-1994, f. & cert. ef. 8-1-94, Renumbered from 105-043-0010; HRSD 19-2003, f. 7-15-03, cert. ef. 7-21-03

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 effective January 1, 1995, the head of the Department of Transportation, Department of Fish and Wildlife and Department of Forestry and, effective January 1, 1996, other agency heads shall apply to management service and classified unrepresented employees required to have a Commercial Drivers License (CDL):

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

(b) National Highway Traffic Safety Administration rules stated in 49 CFR Part 40 which provide procedures for breath alcohol testing and urine specimen controlled substance testing.

(2) An agency head shall be subject to the Alcohol and Drug Testing Contract between the Department of Administrative Services 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 as provided by HRSD State Policy 70.000.01, Management Service Discipline or 70.005.01, Classified Unrepresented Discipline and Discharge.

(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.

(6) 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.: ORS 240.145(3), 240.250, Omnibus Transportation Employee Testing Act of 1991, 49 CFR Part 40 & Part 382

Stats. Implemented:
Hist.: PD 4-1994, f. 12-23-94, cert. ef. 1-1-95

105-050-0004**Drug Testing of Final Applicants for Certain State Classifications/Positions**

(1) It is the policy of the Executive Branch of Oregon state government to provide the public with a drug-free workplace. Accordingly:

(a) An appointing authority of an agency providing public safety and/or mental health services 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 after completion of all hiring tests and standards, including reference checks, prior to offering employment.

(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 under this rule 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 Division 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 Division.

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

(3) Mental health services are those provided at Mental Health and Developmental Disability Services Division institutions.

(4) Prohibited drugs are marijuana, cocaine, opiates, phencyclidine (PCP), amphetamines and substances 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.

(5) 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.

Stat. Auth.: ORS 183.340, 240.145(3) & 240.250

Stats. Implemented: ORS 240.135, 240.250 & 240.321(2)

Hist.: HRMD 1-1996, f. & cert. ef. 1-31-96; HRSD 9-2003, f. 5-15-03, cert. ef. 5-21-03

105-050-0006**Smoke-Free Workplace**

To protect public and employee health by restricting smoking in state-operated facilities:

(1) An agency head shall designate areas in the workplace where smoking is prohibited. The designation may declare the entire workplace "smoke-free."

(2) An agency head shall assure that work areas are controlled to provide a smoke-free atmosphere by using one or more of the following methods:

(a) Physical barriers that separate smoking from nonsmoking areas;

(b) Ventilate work place or rest area so that visible smoke is removed in no more than five minutes after such space has been used by smokers;

(c) Space separation;

(d) Other methods determined by an agency head to be appropriate.

(3) Unless the agency head has declared a smoke-free workplace, this rule shall not apply to enclosed office spaces occupied exclusively by smokers.

Stat. Auth.: ORS 184.340, 240.145, 240.250, 243.345 & 243.650

Stats. Implemented: ORS 243.345 & 243.350

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, Renumbered from 105-010-0060

105-050-0025**Injured Worker Preference for Light Duty Assignments Under ORS 659A.052**

Applicability: All Executive Branch Agencies except the Oregon University System pursuant to ORS 351.087.

(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 Human Resource Services Division 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) In addition to this rule, agencies that are subject to ORS 240 follow State Human Resource Policy 50.020.05, Early Return to Work of Injured Workers.

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

105-050-0030**Injured Worker Preference for Entry-Level Positions Under ORS 659A.052**

Applicability: All Executive Branch Agencies except the Oregon University System pursuant to ORS 351.087.

(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 in accordance with State Human Resource Policy 50.020.03 Reinstatement and Reemployment of Injured Workers, or an applicable collective bargaining agreement.

(c) The Human Resource Services Division 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) The Human Resource Services Division 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 for reemployment to suitable and entry-level positions.

(f) All executive branch agencies, when filling vacancies, subject to the restrictions of an applicable collective bargaining agreement, offer entry-level and suitable positions to injured workers who meet the minimum and special qualifications of the position and can perform the duties within permanent restrictions.

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