

## Employee Relations

## CHAPTER 43A

## DEPARTMENT OF EMPLOYEE RELATIONS

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**43A.01 POLICIES.**

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

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

179, in order to correct imbalances and eliminate the present effects of past discrimination.

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

**Subd. 3. Equitable compensation relationships.** It is the policy of this state to attempt to establish equitable compensation relationships between female-dominated, male-dominated, and balanced classes of employees in the executive branch. Compensation relationships are equitable within the meaning of this subdivision when the primary consideration in negotiating, establishing, recommending, and approving total compensation is comparability of the value of the work in relationship to other positions in the executive branch.

*History: 1981 c 210 s 1; 1982 c 634 s 1*

#### 43A.02 DEFINITIONS.

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

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

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

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

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

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

**Subd. 6a. Balanced class.** "Balanced class" means any class in which no more than 80 percent of the incumbents are male and no more than 70 percent of the incumbents are female.

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

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

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

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

**Subd. 11. Class.** "Class" means one or more positions sufficiently similar with respect to duties and responsibilities that the same descriptive title may be used with clarity to designate each position allocated to the class and that the same general qualifications are needed for performance of the duties of the class, that the same tests of fitness may be used to recruit employees, and that the same schedule of pay can be applied with equity to all positions in the class under the same or substantially the same employment conditions.

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

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

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

Subd. 14a. **Comparability of the value of the work.** "Comparability of the value of the work" means the value of the work measured by the composite of the skill, effort, responsibility, and working conditions normally required in the performance of the work.

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

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

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

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

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

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

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

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

Subd. 22a. **Female-dominated class.** "Female-dominated class" means any class in which more than 70 percent of the incumbents are female.

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

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

Subd. 25. **Judicial branch.** "Judicial branch" means all judges of the appellate courts, all employees of the appellate courts, including commissions, boards and committees established by the supreme court, the board of law examiners, the law library, the office of the public defender, all judges of all courts of law, district court referees, judicial officers, court reporters, law clerks, district administration employees under section 484.68, court administrator or employee of the court and guardian ad litem program employees in the eighth judicial district, and other agencies placed in the judicial branch by law. Judicial branch does not include district administration employees in

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the second and fourth judicial districts, court administrators or their staff under chapter 485, guardians ad litem, or other employees within the court system whose salaries are paid by the county, other than employees who remain on the county payroll under section 480.181, subdivision 2.

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

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

**Subd. 27a. Male-dominated class.** "Male-dominated class" means any class in which more than 80 percent of the incumbents are male.

**Subd. 28. Managerial.** "Managerial" means those positions designated pursuant to section 43A.18, subdivision 3 as being accountable for determining, securing, and allocating human, financial, and other resources needed to accomplish objectives. Positions in this category also are accountable for determining overall objectives, priorities, and policies within a program area. Higher level positions in this category handle significant and involved relationships with governmental leadership. Incumbents of these positions have the authority to exercise discretionary powers on a regular basis.

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

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

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

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

**Subd. 33. Protected groups.** "Protected groups" means females; handicapped persons; members of the following minorities: Black, Hispanic, Asian or Pacific Islander, American Indian or Alaskan native; and, until 1989, veterans who served in the military service of this country during the period from August 5, 1964 to May 7, 1975, and separated under honorable conditions from any branch of the armed forces of the United States after having served on active duty for 181 consecutive days or because of disability incurred while serving on active duty and who are permanent residents of the state of Minnesota.

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

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

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

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

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

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

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

**History:** 1981 c 210 s 2; 1982 c 560 s 8; 1982 c 634 s 2-5; 1983 c 247 s 19; 1989 c 335 art 3 s 2; 1990 c 594 art 2 s 1

#### 43A.03 DEPARTMENT OF EMPLOYEE RELATIONS.

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

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

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

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

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

**History:** 1981 c 210 s 3

#### 43A.04 GENERAL POWERS AND RESPONSIBILITIES OF COMMISSIONER.

Subdivision 1. **Statewide leadership.** (a) The commissioner is the chief personnel and labor relations manager of the civil service in the executive branch.

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

(b) The commissioner shall operate an information system from which personnel data, as defined in section 13.43, concerning employees and applicants for positions in the classified service can be retrieved.

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

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

(d) The commissioner has sole authority to settle state employee workers' compensation claims.

(e) The commissioner may assess all state entities for the costs of programs under sections 15.46 and 176.603.

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

Subd. 3. **Rules.** The commissioner shall adopt rules under the administrative procedure act to implement the provisions of this chapter that directly affect the rights of or processes available to the general public. The rules have the force and effect of law and may include but are not limited to:

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

(2) the process for effecting noncompetitive and qualifying appointments;

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

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

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

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

(7) examination procedures for candidates with disabilities as described in section 43A.10, subdivision 8; and

(8) procedures or policies that affect the operation of or participation in the public employees insurance program.

**Subd. 4. Administrative procedures.** The commissioner shall develop administrative procedures, which are not subject to the rulemaking provisions of the administrative procedure act, to effect provisions of chapter 43A which do not directly affect the rights of or processes available to the general public. The commissioner may also adopt administrative procedures, not subject to the administrative procedure act, which concern topics affecting the general public if those procedures concern only the internal management of the department or other agencies and if those elements of the topics which affect the general public are the subject of department rules.

Administrative procedures shall be reproduced and made available for comment to agencies, employees, and appropriate exclusive representatives certified pursuant to sections 179A.01 to 179A.25, for at least 15 days prior to implementation and shall include but are not limited to:

(a) Maintenance and administration of a plan of classification for all positions in the classified service and for comparisons of unclassified positions with positions in the classified service;

(b) Procedures for administration of collective bargaining agreements and plans established pursuant to section 43A.18 concerning total compensation and the terms and conditions of employment for employees;

(c) Procedures for effecting all personnel actions internal to the state service such as conduct of competitive promotional examinations, ranking and certification of employees for promotion, noncompetitive and qualifying appointments of employees and leaves of absence; and

(d) Maintenance and administration of employee performance appraisal, training and other programs.

**Subd. 5. Precedence of collective bargaining provisions.** A provision of an agreement entered into by the commissioner pursuant to section 179A.22, subdivision 4, shall supersede the provisions of any rule or administrative procedure or portion thereof which is inconsistent with the agreement unless the provision is found to violate existing law.

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

**Subd. 7. Reporting.** The commissioner shall issue a written report by February 1

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and August 1 of each year to the chair of the legislative commission on employee relations. The report must list the number of appointments made under each of the categories in section 43A.15, the number made to the classified service other than under section 43A.15, and the number made under section 43A.08, subdivision 2a, during the six-month periods ending June 30 and December 31, respectively.

**Subd. 8. Donation of time.** Notwithstanding any law to the contrary, the commissioner shall authorize the appointing authority to permit the donation of up to three hours of accumulated vacation time in each year by each employee who is a member of law enforcement unit number 1 to their union representative for the purpose of carrying out the duties of office.

**Subd. 9. Experimental or research projects.** The commissioner of employee relations may conduct experimental or research projects designed to improve recruitment, selection, referral, or appointment processes for the filling of state classified positions.

The commissioner shall meet and confer with the affected exclusive bargaining representative of state employees concerning the design and implementation of experimental and research projects under this subdivision.

Any provision in sections 43A.09 to 43A.15, associated personnel rules adopted under subdivision 3, or administrative procedures established under subdivision 4, is waived for the purposes of these projects. The number of appointments under this subdivision may not exceed five percent of the total number of appointments in the preceding fiscal year.

The commissioner shall report by September 1 to the legislative commission on employee relations the results of the experimental research projects conducted in the preceding fiscal year.

**Subd. 10. Equitable compensation compliance.** The commissioner may adopt rules under the administrative procedure act to assure compliance with sections 471.991 to 471.999.

**History:** 1981 c 210 s 4; 1981 c 311 s 39; 1982 c 545 s 24; 1982 c 560 s 9-11; 1983 c 293 s 61; 1984 c 462 s 27; 1984 c 654 art 3 s 48; 1985 c 11 s 3; 1Sp1985 c 13 s 164; 1986 c 444; 1988 c 667 s 4; 1990 c 571 s 6-8; 1991 c 128 s 2

## 43A.045 RESTRUCTURING.

It is the policy of the state of Minnesota that any restructuring of executive branch agencies be accomplished while ensuring that fair and equitable arrangements are carried out to protect the interests of executive branch employees, and while facilitating the best possible service to the public. The commissioner shall make an effort to train and retrain existing employees for a changing work environment. Where restructuring may involve a loss of existing positions and employment, the commissioner shall assist affected employees in finding suitable employment.

For employees whose positions will be eliminated by implementation of a restructuring plan, options presented to employees must include but not be limited to job and training opportunities necessary to qualify for another job in the same, an equal or a lower classification within their current department or a similar job in another state agency.

Implementation of this section, as well as procedures for notifying employees affected by restructuring plans, must be negotiated into collective bargaining agreements under chapter 179A. Nothing in this section shall be construed as diminishing any rights defined in collective bargaining agreements under this chapter or chapter 179A.

**History:** 1991 c 345 art 1 s 67

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

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

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

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

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

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

**Subd. 5. Comparability adjustments.** The commissioner shall compile, subject to availability of funds and personnel, and submit to the legislative commission on employee relations by January 1 of each odd-numbered year a list showing, by bargaining unit, and by plan for executive branch employees covered by a plan established pursuant to section 43A.18, those female-dominated classes and those male-dominated classes in state civil service for which a compensation inequity exists based on comparability of the value of the work. The commissioner shall also submit to the legislative commission on employee relations, along with the list, an estimate of the appropriation necessary for providing comparability adjustments for classes on the list. The commission shall review and approve, disapprove, or modify, the list and proposed appropriation. The commission's action shall be submitted to the full legislature in the same manner as provided in sections 3.855 and 43A.18 or 179A.22, subdivision 4, provided that the full legislature may approve, reject, or modify the commission's action. The commission shall show the distribution of the proposed appropriation among the bargaining units and among the plans established under 43A.18. Each bargaining unit and each plan shall be allocated that proportion of the total proposed appropriation which equals the cost of providing adjustments for the positions in the unit or plan approved by the commission for comparability adjustments divided by the total cost of providing adjustments for all positions on the list approved by the commission for comparability adjustments. Distribution of any appropriated funds within each bargaining unit or plan shall be determined by collective bargaining agreements or by plans.

**Subd. 6. Allocation.** The amount recommended by the legislative commission on employee relations pursuant to subdivision 5 to make comparability adjustments shall be submitted to the full legislature by March 1 of each odd-numbered year. The legislature may accept, reject, or modify the amount recommended. The commissioner of finance, in consultation with the commissioner of employee relations, shall allocate the amount appropriated by the legislature, on a pro rata basis, if necessary, to the proper accounts for distribution to incumbents of classes which have been approved for comparability adjustments.

Funds appropriated for purposes of comparability adjustments for state employees shall be drawn exclusively from and shall not be in addition to the funds appropriated for salary supplements or other employee compensation. Funds not used for purposes of comparability adjustments shall revert to the appropriate fund.

**Subd. 7. Human rights.** The commissioner of human rights or any state court may



use as evidence the results of any job evaluation system established under subdivision 5 and the reports compiled under subdivision 5 in any proceeding or action alleging discrimination.

**History:** 1981 c 210 s 5; 1982 c 560 s 12; 1982 c 634 s 6,8; 1983 c 301 s 100; 1984 c 462 s 27; 1989 c 223 s 1

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

Subdivision 1. **General.** The commissioner, through the labor relations bureau, shall perform the duties assigned to the commissioner by sections 3.855, 179A.01 to 179A.25 and this section.

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

Subd. 2. **Hearings.** The commissioner shall represent the state at hearings conducted by the commissioner of the bureau of mediation services.

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

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

Subd. 5. **Interpretation of collective bargaining agreements.** The commissioner shall be responsible for management interpretation of all collective bargaining agreements between the state and exclusive representatives and provide management personnel with training in the interpretation and application of these collective bargaining agreements.

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

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

Subd. 8. **Unfair labor practice charges.** The commissioner shall direct investigations and shall have authority to decide whether agencies in the executive branch shall settle unfair labor practice charges filed against the employer, appointing authorities or their agents pursuant to chapter 179.

**History:** 1981 c 210 s 6; 1984 c 462 s 27; 1987 c 186 s 15; 1992 c 582 s 2

#### 43A.07 CLASSIFIED SERVICE.

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

Subd. 2. **Job classes and titles.** An appointing authority shall notify the commissioner when a new position is to be established in the classified service. The commissioner shall allocate the position to an appropriate class in the classification plan or if the position cannot be allocated to an existing class, establish a new class. The commissioner shall assign an appropriate salary rate or range to the class. If the class is in a bargaining unit under the provisions of section 179A.10, and there is an applicable provision in the collective bargaining agreement the commissioner shall establish the salary rate or range pursuant to the agreement.

The commissioner may independently conduct classification studies or, upon request of a permanent employee, may investigate the duties of a classified position.

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If a request is denied, the employee must be given a written explanation. The commissioner shall investigate the duties of a classified position upon request of an appointing authority. The commissioner may reclassify the position, change the title of the position or establish a new class. The commissioner shall assign an appropriate salary rate or range to the class. If the class is in a collective bargaining unit under the provisions of section 179A.10, and there is an applicable provision in the collective bargaining agreement, the commissioner shall establish the salary rate or range pursuant to the agreement.

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

**Subd. 4. Effect of reclassification.** Except as provided in section 43A.17, subdivision 5, the incumbent of a position which has been reclassified shall continue in the position only if the employee is eligible for and is appointed to the position of the new class in accordance with the provisions of this chapter and the rules, administrative procedures or a collective bargaining agreement entered into under sections 179A.01 to 179A.25 governing reallocation or change in allocation of positions, promotion, transfer, and demotion. If the incumbent is ineligible to continue in the position and is not transferred, promoted or demoted, the layoff provisions of this chapter and plans pursuant to section 43A.18 or a collective bargaining agreement entered into under sections 179A.01 to 179A.25 shall apply. Personnel changes required by the reclassification of positions shall be completed within a reasonable period of time, as prescribed by the commissioner, following the reclassification notice to an appointing authority. Any employee with permanent or probationary status whose position is reallocated shall be considered eligible to compete in any examination held to fill the reallocation position, as provided in the rules or administrative procedures.

**Subd. 5. Leaves to accept unclassified appointments.** An employee who is granted a leave of absence from a position in the classified service to accept a position in the unclassified service shall retain an inactive classified service status. Upon request, during the unclassified appointment or within 60 days of the end of the unclassified appointment, the employee shall be reappointed in the agency from which the employee was granted the leave, to a classified position comparable to that held immediately prior to being appointed to the unclassified position.

**Subd. 6. Rights of incumbents of declassified positions.** Except for just cause, an employee with permanent status shall not be removed from a position which is declassified for a period of one year following the declassification. An appointing authority may remove an incumbent of a declassified position after one year with 30 days prior notice. At any time after the declassification, and prior to the end of the 30-day notice period, if so requested, the employee shall be appointed within the same agency to a classified position comparable to the position that was declassified or, if a comparable position is unavailable, to a position in that agency comparable to that held immediately prior to being appointed to the declassified position.

*History: 1981 c 210 s 7; 1984 c 462 s 27; 1Sp1985 c 13 s 165; 1986 c 444*

## **43A.071 SERVICE WORKER.**

The disability levels and types covered under the service worker category in the state civil service may include persons with physical disabilities, mental health disabilities, and mental retardation.

*History: 1987 c 232 s 1*

## **43A.08 UNCLASSIFIED SERVICE.**

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

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- (1) chosen by election or appointed to fill an elective office;
- (2) heads of agencies required by law to be appointed by the governor or other elective officers, and the executive or administrative heads of departments, bureaus, divisions, and institutions specifically established by law in the unclassified service;
- (3) deputy and assistant agency heads and one confidential secretary in the agencies listed in subdivision 1a and in the office of strategic and long-range planning;
- (4) the confidential secretary to each of the elective officers of this state and, for the secretary of state, state auditor, and state treasurer, an additional deputy, clerk, or employee;
- (5) intermittent help employed by the commissioner of public safety to assist in the issuance of vehicle licenses;
- (6) employees in the offices of the governor and of the lieutenant governor and one confidential employee for the governor in the office of the adjutant general;
- (7) employees of the Washington, D.C., office of the state of Minnesota;
- (8) employees of the legislature and of legislative committees or commissions; provided that employees of the legislative audit commission, except for the legislative auditor, the deputy legislative auditors, and their confidential secretaries, shall be employees in the classified service;
- (9) presidents, vice-presidents, deans, other managers and professionals in academic and academic support programs, administrative or service faculty, teachers, research assistants, and student employees eligible under terms of the federal economic opportunity act work study program in the school and resource center for the arts, state universities and community colleges, but not the custodial, clerical, or maintenance employees, or any professional or managerial employee performing duties in connection with the business administration of these institutions;
- (10) officers and enlisted persons in the national guard;
- (11) attorneys, legal assistants, and three confidential employees appointed by the attorney general or employed with the attorney general's authorization;
- (12) judges and all employees of the judicial branch, referees, receivers, jurors, and notaries public, except referees and adjusters employed by the department of labor and industry;
- (13) members of the state patrol; provided that selection and appointment of state patrol troopers must be made in accordance with applicable laws governing the classified service;
- (14) chaplains employed by the state;
- (15) examination monitors and intermittent training instructors employed by the departments of employee relations and commerce and by professional examining boards;
- (16) student workers;
- (17) executive directors or executive secretaries appointed by and reporting to any policy-making board or commission established by statute;
- (18) employees unclassified pursuant to other statutory authority;
- (19) intermittent help employed by the commissioner of agriculture to perform duties relating to pesticides, fertilizer, and seed regulation; and
- (20) the administrators and the deputy administrators at the state academies for the deaf and the blind.

Subd. 1a. **Additional unclassified positions.** Appointing authorities for the following agencies may designate additional unclassified positions according to this subdivision: the departments of administration; agriculture; commerce; corrections; jobs and training; education; employee relations; trade and economic development; finance; health; human rights; labor and industry; natural resources; office of administrative hearings; public safety; public service; human services; revenue; transportation; and veterans affairs; the housing finance and pollution control agencies; the state lottery

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board; the state board of investment; the office of waste management; the offices of the attorney general, secretary of state, state auditor, and state treasurer; the state board of technical colleges; the higher education coordinating board; the Minnesota center for arts education; and the Minnesota zoological board.

A position designated by an appointing authority according to this subdivision must meet the following standards and criteria:

(1) the designation of the position would not be contrary to other law relating specifically to that agency;

(2) the person occupying the position would report directly to the agency head or deputy agency head and would be designated as part of the agency head's management team;

(3) the duties of the position would involve significant discretion and substantial involvement in the development, interpretation, and implementation of agency policy;

(4) the duties of the position would not require primarily personnel, accounting, or other technical expertise where continuity in the position would be important;

(5) there would be a need for the person occupying the position to be accountable to, loyal to, and compatible with the governor and the agency head, the employing statutory board or commission, or the employing constitutional officer;

(6) the position would be at the level of division or bureau director or assistant to the agency head; and

(7) the commissioner has approved the designation as being consistent with the standards and criteria in this subdivision.

**Subd. 1b. Exception.** The provisions of Laws 1982, chapter 634 do not apply to the positions contained in Minnesota Statutes 1981 Supplement, section 43A.08, subdivision 1, clause (g).

**Subd. 2.** [Repealed, 1982 c 560 s 65]

**Subd. 2a. Temporary unclassified positions.** The commissioner, upon request of an appointing authority, may authorize the temporary designation of a position in the unclassified service. The commissioner may make this authorization only for professional, managerial or supervisory positions which are fully anticipated to be of limited duration.

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

The commissioner shall independently or upon request of an appointing authority or employee investigate the duties of a position unclassified under provisions of subdivision 1a or rule. If the commissioner determines the position is incorrectly placed in the unclassified service, the commissioner shall place the position in the classified service. If the commissioner determines the position is improperly compared or assigned to an inappropriate salary range, the commissioner shall recompare the position, change the title or establish a new title or reassign the position to a different salary rate or range.

If a new title is established for the position or if the position is reassigned to a different salary rate or range and the position will be covered by a bargaining unit under the provisions of section 179A.10, and if there is an applicable provision in a collective bargaining agreement, the commissioner shall establish the salary rate or range pursuant to the collective bargaining agreement.

**Subd. 4. Length of service for student workers.** A person may not be employed as a student worker in the unclassified service under subdivision 1 for more than 36 months. Employment at a school that a student attends is not counted for purposes of this 36-month limit.

**History:** 1981 c 37 s 2; 1981 c 210 s 8; 1982 c 560 s 13-16; 1982 c 634 s 9; 1983 c

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258 s 11; 1983 c 289 s 10; 1984 c 462 s 27; 1984 c 544 s 79; 1984 c 640 s 29; 1Sp1985 c 13 s 166; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 186 s 3; 1987 c 312 art 1 s 13; 1987 c 398 art 10 s 5,6; 1988 c 667 s 5; 1988 c 686 art 1 s 49; 1989 c 269 s 38; 1989 c 326 art 5 s 51; 1989 c 329 art 12 s 1; 1989 c 335 art 1 s 269; 1990 c 375 s 3; 1990 c 571 s 9; 1990 c 589 art 1 s 1; 1991 c 233 s 109; 1991 c 238 art 1 s 2-4; 1992 c 567 art 3 s 3,4

**43A.081** Subdivision 1. [Repealed, 1990 c 571 s 49]

Subd. 2. [Repealed, 1990 c 571 s 49]

Subd. 3. [Repealed, 1982 c 560 s 65]

Subd. 4. [Repealed, 1982 c 560 s 65]

Subd. 5. [Repealed, 1990 c 571 s 49]

**43A.082 JOB CLASS CREATED.**

The commissioner must establish a job class in the executive branch of the civil service entitled "chiropractor." Positions in this class must be in the classified service unless they meet the requirements of section 43A.08, subdivision 1a.

**History:** 1987 c 196 s 1

**43A.09 RECRUITMENT.**

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

**History:** 1981 c 210 s 9

**43A.10 EXAMINATIONS; ELIGIBILITY TO COMPETE.**

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

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

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

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

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

Subd. 6. **Eligibility for competitive promotional examinations.** Competitive promotional examinations shall be open only to employees of the civil service, the Minnesota state retirement system, the public employees retirement association, and the teacher's retirement association. The commissioner may require that competition be extended to all employees as defined above or may limit competition to employees of one or more agencies or organizational units thereof or to employees meeting specified employment conditions.

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

Subd. 8. **Eligibility for qualified disabled examinations.** The commissioner shall establish examination procedures for candidates whose disabilities are of such a severe nature that the candidates are unable to demonstrate their abilities in competitive examination processes. The examination procedures must consist of up to 700 hours on-the-job trial work experience which will be in lieu of a competitive examination and for which the disabled person has the option of being paid or unpaid. Up to three persons with severe disabilities and their job coach may be allowed to demonstrate their job competence as a unit through the on-the-job trial work experience examination procedure. This work experience must be limited to candidates for appointment, promotion, or transfer who have a physical or mental impairment for which there is no reasonable accommodation in the examination process. Implementation of provisions of this subdivision may not be deemed a violation of other provisions of Laws 1981, chapter 210 or 363.

**History:** 1981 c 210 s 10; 1983 c 39 s 1; 1984 c 544 s 80; 1984 c 642 s 1; 1985 c 11 s 4; 1Sp1985 c 13 s 167; 1986 c 444; 1987 c 232 s 2; 1990 c 571 s 10,11

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

Subdivision 1. **Creation.** Recognizing that training and experience in the military services of the government and loyalty and sacrifice for the government are qualifications of merit which cannot be readily assessed by examination, a veteran's preference shall be available pursuant to this section to a veteran as defined in section 197.447.

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

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

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

Subd. 5. **Disabled veteran; definitions.** For the purpose of the preference to be used in securing appointment from a competitive open examination, "disabled veteran" means a person who has a compensable service connected disability as adjudicated by the United States Veterans Administration, or by the retirement board of one of the several branches of the armed forces, which disability is existing at the time preference is claimed. For purposes of the preference to be used in securing appointment from a competitive promotional examination, "disabled veteran" means a person who, at the time of election to use a promotional preference, is entitled to disability compensation under laws administered by the veterans administration for a permanent service connected disability rated at 50 percent or more.

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

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

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

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

**History:** 1981 c 210 s 11; 1982 c 560 s 17-20; 1984 c 468 s 1; 1984 c 609 s 1; 1985 c 248 s 85; 1Sp1985 c 16 art 2 s 8; 1986 c 444

## 43A.12 RANKING OF ELIGIBLES.

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

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

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

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

Subd. 5. **Qualified disabled lists.** On qualified disabled lists eligibles must be ranked in alphabetical order.

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

**History:** 1981 c 210 s 12; 1990 c 571 s 12

## 43A.13 CERTIFICATION OF ELIGIBLES.

Subdivision 1. **General.** Upon request of an appointing authority the commissioner shall certify eligibles from an eligible list determined appropriate by the commissioner, or as provided in collective bargaining agreements, rules or section 43A.04, subdivision 4. The commissioner may limit certification to those eligibles who meet special qualifications documented by an appointing authority and approved by the commissioner as job-related and necessary for satisfactory performance of a specific vacant position. The commissioner shall certify qualified available eligibles as provided in this section. Where the vacancy to be filled is in a position covered by a collective bargaining agreement, the list of certified eligibles shall be made available upon request to the exclusive representative as defined in sections 179A.01 to 179A.25.

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

The commissioner, in accordance with collective bargaining agreements or plans established under section 43A.18, may also afford employees on permanent layoff from state service the opportunity to be tested for existing competitive open and promotional eligible lists for classes equal to or lower than those from which they are on layoff. Candidates tested under this procedure who obtain passing scores are eligible in accordance with the ranking and certification provisions of section 43A.12 and this section.

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**Subd. 3. Reemployment.** For positions to be filled by reemployment of a former employee, the commissioner may certify any eligible on the reemployment list for the class or approve direct reinstatement of a former classified employee within four years of separation.

**Subd. 4. Competitive open.** (a) For positions to be filled by competitive open examination, the commissioner shall certify the first 20 eligibles on the list plus those eligibles having the same score as the 20th eligible certified.

(b) When the position to be filled by competitive open examination is in a class for which the initially established eligible list contained the names of more than 200 eligibles and that list has existed for more than 12 months and been referred to more than ten vacancies, the commissioner shall certify the first 40 eligibles on the list plus those eligibles having the same score as the 40th eligible certified.

**Subd. 5. Competitive promotional.** For positions to be filled by competitive promotional examination limited to employees of one or more agencies or organizational units, the commissioner shall certify the first ten eligibles on the list plus those eligibles having the same score as the tenth eligible certified. For positions to be filled by competitive promotional examination extended to all employees of the civil service, the commissioner shall certify the first 20 eligibles on the list, plus those eligibles having the same score as the 20th eligible certified.

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

**Subd. 7. Expanded certification.** When the commissioner determines that a disparity as defined in rules exists between an agency's work force and its affirmative action plan approved in accordance with section 43A.19, the commissioner shall ensure to the extent possible that eligibles who are members of the protected groups for which the disparity exists are certified for appointment. When fewer than two eligibles of each protected group for which a disparity has been determined to exist would be certified under subdivisions 4 and 5, the commissioner shall certify two eligibles from each protected group for which a disparity exists or four from each group for which a disparity exists if the number of names referred has been increased under subdivision 4, paragraph (b). Implementation of this subdivision may not be deemed a violation of other provisions of Laws 1981, chapter 210 or 363.

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

When the commissioner refuses to certify an eligible, the commissioner shall, upon request of the eligible refused, furnish the eligible a statement of the reasons for the refusal. Upon receipt of relevant information, the commissioner shall reconsider the refusal and may certify the eligible.

**Subd. 9. Disabled former employees.** A former classified employee who is receiving disability benefits under a state retirement plan remains eligible for reemployment.

**History:** 1981 c 210 s 13; 1982 c 560 s 21-23; 1984 c 462 s 27; 1987 c 186 s 4,5; 1990 c 571 s 13-18; 1991 c 128 s 3

## 43A.14 APPOINTMENTS.

All appointments to the classified service shall be based upon merit and ability to perform the duties of the position and the needs of the employing agency, including the



need to achieve and maintain a representative work force. For employees in a bargaining unit as defined in section 179A.10 appointments shall be subject to applicable provisions of collective bargaining agreements.

*History: 1981 c 210 s 14; 1984 c 462 s 27*

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

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

**Subd. 2. Emergency appointments.** An appointing authority may make an emergency appointment for up to 30 working days. If necessary, the commissioner may grant an extension of the emergency appointment for 15 additional working days. No person may be employed in any one agency on an emergency basis for more than 45 working days in any 12-month period.

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

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

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

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

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

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

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

**Subd. 6. Appointments through transfer or demotion.** The commissioner may authorize the transfer or demotion of an employee in the classified service within an agency or between agencies. Prior to authorizing a transfer, the commissioner shall determine that the employee to be transferred is qualified for the new position. An authorized transfer may result in the movement of an employee between different positions in the same class or between positions in different classes provided that the compensation for the classes is similar.

The commissioner may enter into arrangements with public personnel agencies in other jurisdictions for the purpose of effecting transfers or voluntary demotions of employees between jurisdictions.

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

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

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

**Subd. 10. Routine service and entry clerical appointments.** The commissioner may authorize the administration of a qualifying selection process if a class is of a routine, service nature involving unskilled tasks, the performance of which cannot be directly related to qualifications beyond a minimum competency level. The commissioner may also authorize the administration of qualifying skill tests for entry level clerical positions as an alternative to certification from an eligible list as provided in section 43A.13.

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

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

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

**History:** 1981 c 210 s 15; 1982 c 560 s 24,25; 1Sp1985 c 13 s 168; 1988 c 667 s 6; 1990 c 571 s 19

#### **43A.16 PROBATIONARY PERIODS.**

**Subdivision 1. General.** All unlimited appointments to positions in the classified service except as provided in this subdivision shall be for a probationary period the duration of which shall be determined through collective bargaining agreements or plans established pursuant to section 43A.18 but which shall not be less than 30 days of full-time equivalent service nor more than two years of full-time equivalent service. An appointing authority may require a probationary period for transfers, reemployments, reinstatements, voluntary demotions, and appointments from layoff lists of former employees of a different appointing authority. For employees in a bargaining unit as defined in section 179A.10 the requirement of such a probationary period shall be subject to applicable provisions of collective bargaining agreements.

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

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

**History:** 1981 c 210 s 16; 1984 c 462 s 27

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

Subdivision 1. **Salary limits.** As used in subdivisions 1 to 9, "salary" means hourly, monthly, or annual rate of pay including any lump-sum payments and cost-of-living adjustment increases but excluding payments due to overtime worked, shift or equipment differentials, work out of class as required by collective bargaining agreements or plans established under section 43A.18, and back pay on reallocation or other payments related to the hours or conditions under which work is performed rather than to the salary range or rate to which a class is assigned.

The salary, as established in section 15A.081, of the head of a state agency in the executive branch is the upper limit of compensation in the agency. The salary of the commissioner of labor and industry is the upper limit of compensation of employees in the bureau of mediation services. However, if an agency head is assigned a salary that is lower than the current salary of another agency employee, the employee retains the salary, but may not receive an increase in salary as long as the salary is above that of the agency head. The commissioner may grant exemptions from these upper limits as provided in subdivisions 3 and 4.

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

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

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

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

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are specifically provided in collective bargaining agreements or plans pursuant to section 43A.18.

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

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

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

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

**Subd. 9. Political subdivision salary limit.** The salary of a person employed by a statutory or home rule charter city, county, town, school district, metropolitan or regional agency, or other political subdivision of this state, or employed under section 422A.03, may not exceed 95 percent of the salary of the governor as set under section 15A.082, except as provided in this subdivision. Deferred compensation and payroll allocations to purchase an individual annuity contract for an employee are included in determining the employee's salary. The salary of a medical doctor or doctor of osteopathy occupying a position that the governing body of the political subdivision has determined requires an M.D. or D.O. degree is excluded from the limitation in this subdivision. The commissioner may increase the limitation in this subdivision for a position that the commissioner has determined requires special expertise necessitating a higher salary to attract or retain a qualified person. The commissioner shall review each proposed increase giving due consideration to salary rates paid to other persons with similar responsibilities in the state. The commissioner may not increase the limitation until the commissioner has presented the proposed increase to the legislative commission on employee relations and received the commission's recommendation on it. The recommendation is advisory only. If the commission does not give its recommendation on a proposed increase within 30 days from its receipt of the proposal, the commission is deemed to have recommended approval.

**Subd. 10. Local elected officials; certain compensation prohibited.** The compensation plan for an elected official of a statutory or home rule charter city, county, town, or school district may not include a provision for vacation or sick leave. The salary of an official covered by this subdivision may not be diminished because of the official's absence from official duties because of vacation or sickness.

**History:** 1981 c 210 s 17; 1982 c 560 s 26; 1983 c 299 s 12-14; 1984 c 462 s 27; 1Sp1985 c 17 s 7; 1986 c 444; 1988 c 667 s 7,8; 1990 c 571 s 20,21; 1992 c 505 s 1; 1992 c 549 art 5 s 2

**NOTE:** This section does not apply to the salary of the actuary authorized under Laws 1991, chapter 325, article 7, section 7. See Laws 1992, chapter 540, article 2, section 21.

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

Subdivision 1. **Collective bargaining agreements.** Except as provided in section 43A.01 and to the extent they are covered by a collective bargaining agreement, the compensation, terms and conditions of employment for all employees represented by an exclusive representative certified pursuant to chapter 179 shall be governed solely by the collective bargaining agreement executed by the parties and approved by the legislature.

Subd. 2. **Commissioner's plan.** Except as provided in section 43A.01, the compensation, terms and conditions of employment for all classified and unclassified employees, except unclassified employees in the legislative and judicial branches, who are not covered by a collective bargaining agreement and not otherwise provided for in Laws 1981, chapter 210 or other law shall be governed solely by the commissioner's plan. The legislative commission on employee relations shall review the plan and submit it to the legislature along with any recommendations it deems appropriate. The plan need not be adopted in accordance with the rulemaking provisions of chapter 14.

The plan shall not take effect until approved by the legislature, provided that the legislative commission may give interim approval to effect the plan and subsequently submit it to the entire legislature for ratification in the same manner as provided for negotiated agreements and arbitration awards under section 179A.22, subdivision 4. If the legislature modifies or rejects the plan or adjourns without action during the following legislative session, any total compensation increases which were provided pursuant to interim approval by the commission and not ratified by the legislature shall not be affected but shall cease to be provided.

Subd. 3. **Managerial plan.** The commissioner shall identify individual positions or groups of positions in the classified and unclassified service, in the executive branch as being managerial. The list shall not include positions listed in subdivision 4. The commissioner shall annually submit the listing of positions to the chair of the legislative commission on employee relations for the commission's review and comment, and shall note on each listing the changes from the prior year.

(a) The commissioner shall periodically prepare a plan for total compensation and terms and conditions of employment for employees of those positions identified as being managerial and whose salaries and benefits are not otherwise provided for in law or other plans established under this chapter. Before becoming effective those portions of the plan establishing compensation and terms and conditions of employment shall be reviewed and approved or modified by the legislative commission on employee relations and the legislature in the same manner as provided for the commissioner's plan in subdivision 2.

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

(c) The management compensation plan shall provide methods and levels of compensation for managers that will be generally comparable to those applicable to managers in other public and private employment. Provisions of the plan shall ensure that compensation within assigned salary ranges is related to level of performance. The plan shall also provide a procedure for establishment of a salary rate for a newly created position and a new appointee to an existing position and for progression through assigned salary ranges. The employee benefits established under the provisions of the managerial plan may be extended to agency heads whose salaries are established in section 15A.081, subdivision 1, and to constitutional officers, judges of the workers' compensation court of appeals, and tax court judges.

Subd. 4. **Plans not established but approved by commissioner.** Notwithstanding any other law to the contrary, total compensation for employees listed in this subdivision must be set by appointing authorities within the limits of compensation plans that have been approved by the commissioner before becoming effective. Compensation plans established under paragraphs (b), (c), and (d) must be approved by the legislature and the legislative commission on employee relations under subdivision 2 before becoming effective.

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(a) Total compensation for employees who are not covered by a collective bargaining agreement in the offices of the governor, lieutenant governor, attorney general, secretary of state, state auditor, and state treasurer must be determined by the governor, lieutenant governor, attorney general, secretary of state, state auditor, and state treasurer, respectively.

(b) Total compensation for unclassified positions under section 43A.08, subdivision 1, clause (9), in the state universities and the community colleges not covered by a collective bargaining agreement must be determined by the state university board and the state board for community colleges, respectively.

(c) Total compensation for classified administrative law judges in the office of administrative hearings must be determined by the chief administrative law judge.

(d) Total compensation for unclassified positions not covered by a collective bargaining agreement in the higher education coordinating board and in the state board of technical colleges must be determined by the higher education coordinating board and the state board of technical colleges, respectively.

**Subd. 4a. Compensation reports.** On July 1 of each odd-numbered year the state agricultural society, the World Trade Center corporation board of directors, the Greater Minnesota Corporation board of directors, and the governing board of the Minnesota state high school league shall each submit a report to the legislative commission on employee relations on the total compensation plan for their employees.

**Subd. 5. Governor to recommend certain salaries.** (a) The governor shall, by July 1 of each odd-numbered year, submit to the legislative commission on employee relations recommendations for salaries within the salary range for the positions listed in section 15A.081, subdivisions 1 and 7. The governor may also propose additions or deletions of positions from those listed.

(b) Before submitting the recommendations, the governor shall consult with the commissioner of administration, the commissioner of finance, and the commissioner of employee relations concerning the recommendations.

(c) In making recommendations, the governor shall consider the criteria established in subdivision 8 and the performance of individual incumbents. The performance evaluation must include a review of an incumbent's progress toward attainment of affirmative action goals. The governor shall establish an objective system for quantifying knowledge, abilities, duties, responsibilities, and accountabilities and in determining recommendations rate each position by this system.

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

(e) The governor shall set the initial salary of a head of a new agency or a chair of a new metropolitan board or commission whose salary is not specifically prescribed by law after consultation with the commissioner, whose recommendation is advisory only. The amount of the new salary must be comparable to the salary of an agency head or commission chair having similar duties and responsibilities.

(f) The salary of a newly appointed head of an agency or chair of a metropolitan agency listed in section 15A.081, subdivision 1 or 7, may be increased or decreased by the governor from the salary previously set for that position within 30 days of the new appointment after consultation with the commissioner. If the governor increases a salary under this paragraph, the governor shall submit the new salary to the legislative commission on employee relations and the full legislature for approval, modification, or rejection in the manner provided in subdivision 2. If the legislature rejects an increased salary or adjourns without action during the following legislative session, the salary for the position reverts to the level in effect before the governor proposed the change.

Subd. 6. **Legislative and judicial branch compensation.** Total compensation plans for unclassified employees of the legislature and of legislative commissions shall be determined by the legislature consistent with chapter 3, provided that insurance benefits for these employees and for legislators shall be determined by the legislative coordinating commission, consistent with sections 43A.22 to 43A.30. Total compensation plans for unclassified employees of the judicial branch shall be determined by the appointing authority, unless other law provides a different method for establishing this compensation. Judicial branch compensation plans shall be consistent with sections 43A.22 to 43A.30.

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

Subd. 8. **Compensation relationships of positions.** In preparing management negotiating positions for compensation which is established pursuant to subdivision 1, and in establishing, recommending and approving total compensation for any position within the plans covered in subdivisions 2, 3 and 4, the commissioner shall assure that:

- (a) Compensation for positions in the classified and the unclassified service compare reasonably to one another;
- (b) Compensation for state positions bears reasonable relationship to compensation for similar positions outside state service;
- (c) Compensation for management positions bears reasonable relationship to compensation of represented employees managed;
- (d) Compensation for positions within the classified service bears reasonable relationships among related job classes and among various levels within the same occupation; and
- (e) Compensations bear reasonable relationships to one another within the meaning of this subdivision if compensation for positions which require comparable skill, effort, responsibility, and working conditions is comparable and if compensation for positions which require differing skill, effort, responsibility, and working conditions is proportional to the skill, effort, responsibility, and working conditions required.

**History:** 1981 c 210 s 18; 1982 c 424 s 130; 1982 c 560 s 27,28; 1982 c 634 s 7; 1983 c 216 art 1 s 12; 1983 c 258 s 12; 1983 c 299 s 15-17; 1984 c 462 s 27; 1984 c 640 s 32; 1Sp1985 c 10 s 48; 1Sp1985 c 13 s 170; 1986 c 444; 1987 c 186 s 6; 1988 c 667 s 9; 1990 c 375 s 3; 1990 c 571 s 22-24; 1991 c 238 art 1 s 5

#### **43A.181 UNREIMBURSED MEDICAL COSTS VACATION DONATION PROGRAM.**

Subdivision 1. **Donation of vacation time.** A state employee may donate up to 12 hours of accrued vacation time in any fiscal year to the account established by subdivision 2 for the benefit of another state employee. The employee must notify the employee's agency head of the amount of accrued vacation time the employee wishes to donate and the name of the other state employee who is to benefit from the donation. The agency head shall determine the monetary value of the donated time, using the gross salary of the employee making the donation. The agency head shall transfer that amount, less deductions for applicable taxes and retirement contributions, to the account established by subdivision 2. A donation of accrued vacation time is irrevocable once its monetary value has been transferred to the account.

Subd. 2. **Benefit account.** The vacation benefit account, consisting of money transferred under subdivision 1, is administered by the commissioner of employee relations. Money in the account is appropriated to the commissioner for purposes of this section.

Subd. 3. **Use of account assets.** Expenditures from the account established by subdivision 2 may be made only to pay unreimbursed medical expenses when the total of those expenses is at least \$10,000 and the expenses are incurred because of the illness of or injury to a state employee or the employee's spouse or dependent. Any money remaining after all of the unreimbursed medical expenses incurred by the employee

named to benefit from a donation have been paid may be transferred to a general pool. The commissioner may use the pool to pay unreimbursed medical expenses for another state employee named to benefit from donated vacation time but whose unreimbursed expenses exceed the monetary value of the donated time.

**History:** 1990 c 571 s 25; 1991 c 9 s 1

#### **43A.182 PAYMENT OF SALARY DIFFERENTIAL FOR RESERVE FORCES ON ACTIVE DUTY.**

Each agency head shall pay to each eligible member of the reserve components of the armed forces of the United States an amount equal to the difference between the member's basic active duty military salary and the salary the member would be paid as an active state employee, including any adjustments the member would have received if not on leave of absence. This payment may be made only to a person whose basic active duty military salary is less than the salary the person would be paid as an active state employee. Payments must be made at the intervals at which the member received pay as a state employee. Back pay authorized by this section may be paid in a lump sum. Such pay shall not extend beyond four years from the date the employee was called to active duty plus such additional time in each case as such employee may be required to serve pursuant to law.

An eligible member of the reserve components of the armed forces of the United States is a reservist or National Guard member who was an employee of the state of Minnesota at the time the member was called to active duty and who was or is called to active duty after August 1, 1990, because of Operation Desert Shield, Operation Desert Storm, or any other action taken by the armed forces relating to hostilities between the United States and the Republic of Iraq.

For the purposes of this section, an employee of the state is an employee of the executive, judicial, or legislative branches of state government or an employee of the Minnesota state retirement system, the public employee retirement association, or the teachers retirement association.

The commissioner of employee relations and the commissioner of finance shall adopt procedures required to implement this section. The procedures are exempt from chapter 14.

**History:** 1991 c 345 art 1 s 68

#### **43A.19 AFFIRMATIVE ACTION.**

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

- (1) objectives, goals, and policies;
- (2) procedures, standards, and assumptions to be used by agencies in the preparation of agency affirmative action plans, including methods by which goals and timetables are established; and
- (3) requirements for annual objectives and submission of affirmative action progress reports from heads of agencies.

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

- (1) the percentage of members of each protected class in the recruiting area population who have the necessary skills;
- (2) the availability for promotion or transfer of members of protected classes in the recruiting area population;
- (3) the extent of unemployment of members of protected classes in the recruiting area population;



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

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

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

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

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

**History:** 1981 c 210 s 19; 1982 c 560 s 29; 1Sp1985 c 13 s 171; 1988 c 667 s 10

#### 43A.191 AGENCY AFFIRMATIVE ACTION PROGRAMS.

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

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

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

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

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

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

(3) provisions for funding reasonable accommodations.

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

(d) The agency plan must identify, annually, any positions in the agency that can be used for supported employment as defined in section 268A.01, subdivision 13, of persons with severe disabilities. The agency shall report this information to the commissioner. An agency that hires more than one supported worker in the identified positions must receive recognition for each supported worker toward meeting the agency's affirmative action goals and objectives.

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

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

(b) By March 1 of each year, the commissioner shall submit a report on affirmative action progress of each agency and the state as a whole to the governor and to the finance committee of the senate, the appropriations committee of the house of repre-

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sentatives, the governmental operations committees of both houses of the legislature, and the legislative commission on employee relations. The report must include non-competitive appointments made under section 43A.08, subdivision 2a, or 43A.15, subdivisions 3 to 13, and cover each agency's rate of compliance with annual hiring goals. In addition, any agency that has not met its affirmative action hiring goals, that fails to make an affirmative action hire, or fails to justify its nonaffirmative action hire in 25 percent or more of the appointments made in the previous calendar year must be designated in the report as an agency not in compliance with affirmative action requirements.

(c) The commissioner shall study methods to improve the performance of agencies not in compliance with affirmative action requirements.

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

**History:** *1Sp1985 c 13 s 172; 1987 c 186 s 7; 1987 c 354 s 8; 1988 c 667 s 11; 1990 c 571 s 26,27; 1992 c 513 art 9 s 2*

**43A.192** [Repealed, 1990 c 426 art 1 s 12]

## **43A.20 PERFORMANCE APPRAISAL AND PAY.**

The commissioner shall design and maintain a performance appraisal system under which each employee in the civil service in the executive branch shall be evaluated and counseled on work performance at least once a year. Individual pay increases for all employees not represented by an exclusive representative certified pursuant to chapter 179 shall be based on the evaluation and other factors the commissioner includes in the plans developed pursuant to section 43A.18. Collective bargaining agreements entered into pursuant to chapter 179 may, and are encouraged to, provide for pay increases based on employee work performance.

**History:** *1981 c 210 s 20*

## **43A.21 TRAINING PROGRAMS.**

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

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

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

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

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

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

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

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

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

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

**History:** 1981 c 210 s 21; 1983 c 299 s 18; 1Sp1985 c 17 s 8; 1989 c 335 art 4 s 106

#### 43A.22 BENEFITS; INTENT.

It is the intent of the state to provide eligible employees and other eligible persons with life insurance and hospital, medical, and dental benefits coverage through provider organizations, hereafter referred to as "carriers," authorized to do business in the state.

**History:** 1981 c 210 s 22

#### 43A.23 CONTRACTING AUTHORITY.

Subdivision 1. **General.** The commissioner is authorized to request bids from carriers or to negotiate with carriers and to enter into contracts with carriers which in the judgment of the commissioner are best qualified to underwrite and service the benefit plans. Contracts entered into with carriers are not subject to the requirements of sections 16B.19 to 16B.22. The commissioner may negotiate premium rates and coverage provisions with all carriers licensed under chapters 62A, 62C, and 62D. The commissioner may also negotiate reasonable restrictions to be applied to all carriers under chapters 62A, 62C, and 62D. Contracts to underwrite the benefit plans must be bid or negotiated separately from contracts to service the benefit plans, which may be awarded only on the basis of competitive bids. The commissioner shall consider the cost of the plans, conversion options relating to the contracts, service capabilities, character, financial position, and reputation of the carriers, and any other factors which the commissioner deems appropriate. Each benefit contract must be for a uniform term of at least one year, but may be made automatically renewable from term to term in the absence of notice of termination by either party. The commissioner shall, to the extent feasible, make hospital and medical benefits available from at least one carrier licensed to do business pursuant to each of chapters 62A, 62C, and 62D. The commissioner

need not provide health maintenance organization services to an employee who resides in an area which is not served by a licensed health maintenance organization. The commissioner may refuse to allow a health maintenance organization to continue as a carrier. The commissioner may elect not to offer all three types of carriers if there are no bids or no acceptable bids by that type of carrier or if the offering of additional carriers would result in substantial additional administrative costs. A carrier licensed under chapter 62A is exempt from the tax imposed by section 60A.15 on premiums paid to it by the state.

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

**Subd. 3. Contract with insurance carriers.** The commissioner of employee relations may contract with carriers authorized to provide coverage under the state employees group insurance plan to extend coverage to eligible employees who incur medical expenses due to a personal injury which results from their state employment which is compensable under chapter 176.

**History:** 1981 c 210 s 23; 1983 c 290 s 1; 1983 c 301 s 101; 1984 c 544 s 81; 1984 c 642 s 2; 1988 c 667 s 12,13; 1990 c 571 s 28; 1991 c 199 art 2 s 1

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

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

**Subd. 2. Other eligible persons.** The following persons are eligible for state paid life insurance and hospital, medical, and dental benefits as determined in applicable collective bargaining agreements or by the commissioner or by plans pursuant to section 43A.18, subdivision 6, or by the board of regents for employees of the University of Minnesota not covered by collective bargaining agreements. Coverages made available, including optional coverages, are as contained in the plan established pursuant to section 43A.18, subdivision 2.

(a) a member of the state legislature, provided that changes in benefits resulting in increased costs to the state shall not be effective until expiration of the term of the members of the existing house of representatives. An eligible member of the state legislature may decline to be enrolled for state paid coverages by filing a written waiver with the commissioner. The waiver shall not prohibit the member from enrolling the member or dependents for optional coverages, without cost to the state, as provided for in section 43A.26. A member of the state legislature who returns from a leave of absence to a position previously occupied in the civil service shall be eligible to receive the life insurance and hospital, medical, and dental benefits to which the position is entitled;

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

(c) a judge of the appellate courts or an officer or employee of these courts; a judge of the district court, a judge of county court, a judge of county municipal court, or a judge of probate court; a district court referee, judicial officer, court reporter, or law clerk; a district administrator; an employee of the office of the district administrator that is not in the second or fourth judicial district; a court administrator or employee of the court administrator in the eighth judicial district, and a guardian ad litem program administrator in the eighth judicial district;

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

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

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

(g) an employee of the regents of the University of Minnesota;

(h) notwithstanding section 43A.27, subdivision 3, an employee of the state of Minnesota or the regents of the University of Minnesota who is at least 60 and not yet 65 years of age on July 1, 1982, who is otherwise eligible for employee and dependent insurance and benefits pursuant to section 43A.18 or other law, who has at least 20 years of service and retires, earlier than required, within 60 days of March 23, 1982; or an employee who is at least 60 and not yet 65 years of age on July 1, 1982, who has at least 20 years of state service and retires, earlier than required, from employment at Rochester state hospital after July 1, 1981; or an employee who is at least 55 and not yet 65 years of age on July 1, 1982, and is covered by the Minnesota state retirement system correctional employee retirement plan or the state patrol retirement fund, who has at least 20 years of state service and retires, earlier than required, within 60 days of March 23, 1982. For purposes of this clause, a person retires when the person terminates active employment in state or University of Minnesota service and applies for a retirement annuity. Eligibility shall cease when the retired employee attains the age of 65, or when the employee chooses not to receive the annuity that the employee has applied for. The retired employee shall be eligible for coverages to which the employee was entitled at the time of retirement, subject to any changes in coverage through collective bargaining or plans established pursuant to section 43A.18, for employees in positions equivalent to that from which retired, provided that the retired employee shall not be eligible for state-paid life insurance. Coverages shall be coordinated with relevant health insurance benefits provided through the federally sponsored Medicare program; and

(i) An employee of an agency of the state of Minnesota identified through the process provided in this paragraph who is eligible to retire prior to age 65. The commissioner and the exclusive representative of state employees shall enter into agreements under section 179A.22 to identify employees whose positions are in programs that are being permanently eliminated or reduced due to federal or state policies or practices. Failure to reach agreement identifying these employees is not subject to impasse procedures provided in chapter 179A. The commissioner must prepare a plan identifying eligible employees not covered by a collective bargaining agreement in accordance with the process outlined in section 43A.18, subdivisions 2 and 3. For purposes of this paragraph, a person retires when the person terminates active employment in state service and applies for a retirement annuity. Eligibility ends as provided in the agreement or plan, but must cease at the end of the month in which the retired employee chooses not to receive an annuity, or the employee is eligible for employer-paid health insurance from a new employer. The retired employees shall be eligible for coverages to which they were entitled at the time of retirement, subject to any changes in coverage through collective bargaining or plans established under section 43A.18 for employees in positions equivalent to that from which they retired, provided that the retired employees shall not be eligible for state-paid life insurance.

**Subd. 3. Report.** By January 1 of each odd-numbered year, the commissioner must submit a report to the legislative commission on employee relations showing the percentage of employees in each job classification that receive the full state contribution and the percentage that receive a partial state contribution for life insurance, hospital, medical, and dental benefits. The report must note which job classes are male-dominated, female-dominated, and balanced.

**History:** 1981 c 37 s 2; 1981 c 210 s 24; 1982 c 522 s 1; 1983 c 247 s 20; 1986 c 444; 1987 c 186 s 8; 1988 c 605 s 1; 1989 c 81 s 2,3; 1989 c 335 art 3 s 3; 1990 c 594 art 2 s 2

**43A.25** [Repealed, 1989 c 81 s 4]

**43A.26 OPTIONAL COVERAGES.**

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

**History:** 1981 c 210 s 26

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

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

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

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

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

(c) an officer or employee of the state agricultural society, state horticultural society, Sibley house association, Minnesota humanities commission, Minnesota international center, Minnesota academy of science, science museum of Minnesota, Minnesota safety council, state office of disabled American veterans, state office of the American Legion and its auxiliary, state office of veterans of foreign wars and its auxiliary, or state office of the Military Order of the Purple Heart;

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

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

**Subd. 3. Retired employees.** A retired employee of the state who receives an annuity under a state retirement program may elect to purchase at personal expense individual and dependent hospital, medical, and dental coverages that are actuarially equivalent to those made available through collective bargaining agreements or plans established pursuant to section 43A.18 to employees in positions equivalent to that from which retired. A spouse of a deceased retired employee who received an annuity under a state retirement program may purchase the coverage listed in this subdivision if the spouse was a dependent under the retired employee's coverage at the time of the employee's death. Coverages must be coordinated with relevant health insurance benefits provided through the federally sponsored Medicare program. Until the retired employee reaches age 65, the retired employee and dependents must be pooled in the same group as active employees for purposes of establishing premiums and coverage for hospital, medical, and dental insurance. Coverage for retired employees and their dependents may not discriminate on the basis of evidence of insurability or preexisting conditions unless identical conditions are imposed on active employees in the group that the employee left. Appointing authorities shall provide notice to employees no later than the effective date of their retirement of the right to exercise the option provided in this subdivision. The retired employee must notify the commissioner or designee of the commissioner within 30 days after the effective date of the retirement of intent to exercise this option.

**Subd. 4. Retired judges; former legislators.** (a) Retired judges or former legislators may elect to purchase coverage for themselves or their dependents at their own expense as provided in paragraphs (b) and (c).

(b) A retired judge of the state supreme court, the court of appeals, a district court, a county court, a county municipal court, or a probate court may elect to purchase coverage provided persons listed in section 43A.24, subdivision 2, clause (c). The commissioner shall notify judges no later than the effective date of their retirement of their right to exercise the option provided in this subdivision. A retired judge must notify the commissioner or designee of the commissioner within 30 days after the effective date of retirement if the judge intends to exercise the option.

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

**Subd. 5. Employees of exclusive representatives.** Upon request of an exclusive representative of state employees listed in section 179A.10, subdivision 2, those employees of exclusive representatives whose duties involve representing state employees for at least 75 percent of their time and their dependents may elect to enroll at their own expense in the appropriate life insurance, hospital, medical and dental benefits, and optional coverages at the time, in the manner, and under the conditions of eligibility the commissioner prescribes and otherwise approves.

**Subd. 6. Food service employees.** Employees of a contracted food service operation at a member institution of the state university system, if the food service was operated by the institution itself before it was turned over to a contractor and if the employer and the representative of employees, defined under section 179.01, subdivision 5, agree, may, before January 1, 1990, elect to enroll themselves and their dependents at their own or their employer's expense in the appropriate state plans for life insurance, hospital, medical, and dental benefits, and optional coverages at the time, in the manner, and under the conditions of eligibility the commissioner prescribes and otherwise approves.

**History:** 1981 c 210 s 27; 1982 c 424 s 5; 1982 c 560 s 30; 1983 c 247 s 21; 1984 c 654 art 2 s 69; 1985 c 32 s 1; 1986 c 444; 1987 c 384 art 2 s 1; 1987 c 394 s 2; 1988 c 667 s 14,15; 1989 c 282 art 2 s 2; 1990 c 571 s 29; 1992 c 488 s 1

#### 43A.28 ENROLLMENT.

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

**History:** 1981 c 210 s 28

#### 43A.29 CONTRIBUTIONS BY STATE.

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

**History:** 1981 c 210 s 29

#### 43A.30 PAYMENT OF PREMIUMS.

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

Each agency shall pay the amounts from accounts and funds from which the agency receives its revenues, including appropriations from the general fund and from any other fund, now or hereafter existing for the payment of salaries and in the same proportion as it pays therefrom the amounts of salaries. In order to enable the commissioner of finance to maintain proper records covering the appropriations pursuant to

this section, the commissioner of finance may require certifications in connection with payments as the commissioner of finance deems necessary from the Minnesota historical society, the University of Minnesota, or any agency whose employees receive benefits pursuant to Laws 1981, chapter 210. The accounts and funds from which agencies receive appropriations under the terms of this section are a source of revenue for the purposes of any other law or statutory enactment.

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

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

**Subd. 4. Employee insurance trust fund.** The commissioner of employee relations may direct that all or a part of the amounts paid for life insurance, hospital, medical, and dental benefits, and optional coverages authorized for eligible employees and other eligible persons be deposited by the state in an employee insurance trust fund in the state treasury, from which the approved claims of eligibles are to be paid. Investment income and investment losses attributable to the investment of the fund shall be credited to the fund. There is appropriated from the fund to the commissioner amounts needed to pay the approved claims of eligibles, related service charges, insurance premiums, and refunds. The commissioner shall not market or self-insure life insurance or optional coverages. Nothing in this subdivision precludes the commissioner from determining plan design, providing informational materials, or communicating with employees about coverages.

**Subd. 5. Administration.** The commissioner of employee relations may administer the employee insurance program. The commissioner may assess agencies the cost of these administrative services and include it in the amounts billed for life insurance, hospital, medical, and dental benefits, and optional coverages authorized. Receipts from the assessments must be deposited in the state treasury and credited to a special account in the employee insurance trust fund and are appropriated to the commissioner to pay these administrative costs.

**History:** 1981 c 210 s 30; 1984 c 654 art 2 s 68; 1Sp1985 c 13 s 174,175; 1986 c 444; 1987 c 186 s 9

#### **43A.31 ADMINISTRATION.**

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

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

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

**Subd. 4. Insurance advisory task force.** The commissioner may appoint and serve as chair of an insurance advisory task force consisting of 12 members. Three members shall be selected from names submitted by exclusive representatives of state employees. One member shall be selected from names submitted by exclusive representatives of employees of the University of Minnesota. One member shall be selected from names submitted by organizations representing retired state employees. One member shall be selected from names submitted by the regents of the University of Minnesota. The commissioners of administration, commerce, health and finance, and the deputy commis-



sioner for labor relations or their designees, shall serve as the other members. Except as provided in this section, the provisions of section 15.059 shall apply to the members of the task force. The task force shall advise the commissioner in matters relating to insurance, including the administration, design, and financing of insurance programs. Evidence of discussions, recommendations or decisions by the council shall not be submitted to any court or arbitrator in any matter involving state or University of Minnesota employees.

**History:** 1981 c 210 s 31; 1983 c 260 s 14; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444

#### 43A.316 PUBLIC EMPLOYEES INSURANCE PLAN.

Subdivision 1. **Intent.** The legislature finds that the creation of a statewide plan to provide public employees and other eligible persons with life insurance and hospital, medical, and dental benefit coverage through provider organizations would result in a greater utilization of government resources and would advance the health and welfare of the citizens of the state.

Subd. 2. **Definitions.** For the purpose of this section, the terms defined in this subdivision have the meaning given them.

(a) **Commissioner.** "Commissioner" means the commissioner of employee relations.

(b) **Employee.** "Employee" means:

(1) a person who is a public employee within the definition of section 179A.03, subdivision 14, who is insurance eligible and is employed by an eligible employer;

(2) an elected public official of an eligible employer who is insurance eligible; or

(3) a person employed by a labor organization or employee association certified as an exclusive representative of employees of an eligible employer or by another public employer approved by the commissioner, so long as the plan meets the requirements of a governmental plan under United States Code, title 29, section 1002(32).

(c) **Eligible employer.** "Eligible employer" means:

(1) a public employer within the definition of section 179A.03, subdivision 15, that is a town, county, city, school district as defined in section 120.02, educational cooperative service unit as defined in section 123.58, intermediate district as defined in section 136C.02, subdivision 7, cooperative center for vocational education as defined in section 123.351, regional management information center as defined in section 121.935, or an education unit organized under the joint powers action, section 471.59; or

(2) an exclusive representative of employees, as defined in paragraph (b); or

(3) another public employer approved by the commissioner.

(d) **Exclusive representative.** "Exclusive representative" means an exclusive representative as defined in section 179A.03, subdivision 8.

(e) **Labor-management committee.** "Labor-management committee" means the committee established by subdivision 4.

(f) **Plan.** "Plan" means the statewide public employees insurance plan created by subdivision 3.

Subd. 3. **Public employee insurance plan.** The commissioner shall be the administrator of the public employee insurance plan and may determine its funding arrangements. The commissioner shall model the plan after the plan established in section 43A.18, subdivision 2, but may modify that plan, in consultation with the labor-management committee.

Subd. 4. **Labor-management committee.** The labor-management committee consists of ten members appointed by the commissioner. The labor-management committee must comprise five members who represent employees, including at least one retired employee, and five members who represent eligible employers. Committee members are eligible for expense reimbursement in the same manner and amount as authorized

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by the commissioner's plan adopted under section 43A.18, subdivision 2. The commissioner shall consult with the labor-management committee in major decisions that affect the plan. The committee shall study issues relating to the insurance plan including, but not limited to, flexible benefits, utilization review, quality assessment, and cost efficiency.

**Subd. 5. Public employee participation.** (a) Participation in the plan is subject to the conditions in this subdivision.

(b) Each exclusive representative for an eligible employer determines whether the employees it represents will participate in the plan. The exclusive representative shall give the employer notice of intent to participate at least 90 days before the expiration date of the collective bargaining agreement preceding the collective bargaining agreement that covers the date of entry into the plan. The exclusive representative and the eligible employer shall give notice to the commissioner of the determination to participate in the plan at least 90 days before entry into the plan. Entry into the plan is governed by a schedule established by the commissioner.

(c) Employees not represented by exclusive representatives may become members of the plan upon a determination of an eligible employer to include these employees in the plan. Either all or none of the employer's unrepresented employees must participate. The eligible employer shall give at least 90 days' notice to the commissioner before entering the plan. Entry into the plan is governed by a schedule established by the commissioner.

(d) Participation in the plan is for a two-year term. Participation is automatically renewed for an additional two-year term unless the exclusive representative, or the employer for unrepresented employees, gives the commissioner notice of withdrawal at least 90 days before expiration of the participation period. A group that withdraws must wait two years before rejoining. An exclusive representative, or employer for unrepresented employees, may also withdraw if premiums increase 50 percent or more from one insurance year to the next.

(e) The exclusive representative shall give the employer notice of intent to withdraw to the commissioner at least 90 days before the expiration date of a collective bargaining agreement that includes the date on which the term of participation expires.

(f) Each participating eligible employer shall notify the commissioner of names of individuals who will be participating within two weeks of the commissioner receiving notice of the parties' intent to participate. The employer shall also submit other information as required by the commissioner for administration of the plan.

**Subd. 6. Coverage.** (a) By January 1, 1989, the commissioner shall announce the benefits of the plan. The plan shall include employee hospital, medical, dental, and life insurance for employees and hospital and medical benefits for dependents. Health maintenance organization options and other delivery system options may be provided if they are available, cost effective, and capable of servicing the number of people covered in the plan. Participation in optional coverages may be provided by collective bargaining agreements. For employees not represented by an exclusive representative, the employer may offer the optional coverages to eligible employees and their dependents provided in the plan.

(b) The commissioner, with the assistance of the labor-management committee, shall periodically assess whether it is financially feasible for the plan to offer or to continue an individual retiree program that has competitive premium rates and benefits. If the commissioner determines it to be feasible to offer an individual retiree program, the commissioner shall announce the applicable benefits, premium rates, and terms of participation. Eligibility to participate in the individual retiree program is governed by subdivision 8, but applies to retirees of eligible employers that do not participate in the plan and to those retirees' dependents and surviving spouses.

**Subd. 6a. Chiropractic services.** All benefits provided by the plan or a successor plan relating to expenses incurred for medical treatment or services of a physician must also include chiropractic treatment and services of a chiropractor to the extent that the chiropractic services and treatment are within the scope of chiropractic licensure.

This subdivision is intended to provide equal access to benefits for plan members who choose to obtain treatment for illness or injury from a doctor of chiropractic, as long as the treatment falls within the chiropractor's scope of practice. This subdivision is not intended to change or add to the benefits provided for in the plan.

**Subd. 7. Premiums.** The proportion of premium paid by the employer and employee is subject to collective bargaining or personnel policies. If, at the beginning of the coverage period, no collective bargaining agreement has been finalized, the increased dollar costs, if any, from the previous year is the sole responsibility of the individual participant until a collective bargaining agreement states otherwise. Premiums, including an administration fee, shall be established by the commissioner. Each employer shall pay monthly the amounts due for employee benefits including the amounts under subdivision 8 to the commissioner no later than the dates established by the commissioner. If an employer fails to make the payments as required, the commissioner may cancel plan benefits and pursue other civil remedies.

**Subd. 8. Continuation of coverage.** (a) A former employee of an employer participating in the plan who is receiving a public pension disability benefit or an annuity or has met the age and service requirements necessary to receive an annuity under chapter 353, 353C, 354, 354A, 356, 422A, 423, 423A, or 424, and the former employee's dependents, are eligible to participate in the plan. This participation is at the person's expense unless a collective bargaining agreement or personnel policy provides otherwise. Premiums for these participants must be established by the commissioner.

The commissioner may provide policy exclusions for preexisting conditions only when there is a break in coverage between a participant's coverage under the employment-based group insurance plan and the participant's coverage under this section. An employer shall notify an employee of the option to participate under this paragraph no later than the effective date of retirement. The retired employee or the employer of a participating group on behalf of a current or retired employee shall notify the commissioner within 30 days of the effective date of retirement of intent to participate in the plan according to the rules established by the commissioner.

(b) The spouse of a deceased employee or former employee may purchase the benefits provided at premiums established by the commissioner if the spouse was a dependent under the employee's or former employee's coverage under this section at the time of the death. The spouse remains eligible to participate in the plan as long as the group that included the deceased employee or former employee participates in the plan. Coverage under this clause must be coordinated with relevant insurance benefits provided through the federally sponsored Medicare program.

(c) The plan benefits must continue in the event of strike permitted by section 179A.18, if the exclusive representative chooses to have coverage continue and the employee pays the total monthly premiums when due.

(d) A participant who discontinues coverage may not reenroll.

Persons participating under these paragraphs shall make appropriate premium payments in the time and manner established by the commissioner.

**Subd. 9. Insurance trust fund.** The insurance trust fund in the state treasury consists of deposits of the premiums received from employers participating in the plan and transfers from the public employees insurance reserve holding account established by section 353.65, subdivision 7. All money in the fund is appropriated to the commissioner to pay insurance premiums, approved claims, refunds, administrative costs, and other related service costs. Premiums paid by employers to the fund are exempt from the tax imposed by sections 60A.15 and 60A.198. The commissioner shall reserve an amount of money to cover the estimated costs of claims incurred but unpaid. The state board of investment shall invest the money according to section 11A.24. Investment income and losses attributable to the fund must be credited to the fund.

**Subd. 10. Exemption.** The public employee insurance plan and, where applicable, the employers participating in it are exempt from chapters 60A, 62A, 62C, 62D, 62E, and 62H, section 471.617, subdivisions 2 and 3, and the bidding requirements of section 471.6161.

**History:** 1987 c 404 s 89; 1988 c 605 s 2; 1988 c 629 s 13; 1988 c 667 s 16-19; 1989

*c 90 s 1; 1989 c 319 art 6 s 1; 1990 c 571 s 30-36; 1990 c 589 art 2 s 1; 1991 c 128 s 4; 1991 c 291 art 9 s 1; 1992 c 488 s 2; 1992 c 491 s 1-4*

## INSURANCE REFORM: INDIVIDUAL MARKET AND MISCELLANEOUS

### 43A.317 PRIVATE EMPLOYERS INSURANCE PROGRAM.

Subdivision 1. **Intent.** The legislature finds that the creation of a statewide program to provide employers with the advantages of a large pool for insurance purchasing would advance the welfare of the citizens of the state.

Subd. 2. **Definitions.** (a) **Scope.** For the purposes of this section, the terms defined have the meaning given them.

(b) **Commissioner.** "Commissioner" means the commissioner of employee relations.

(c) **Eligible employee.** "Eligible employee" means an employee eligible to participate in the program under the terms described in subdivision 6.

(d) **Eligible employer.** "Eligible employer" means an employer eligible to participate in the program under the terms described in subdivision 5.

(e) **Eligible individual.** "Eligible individual" means a person eligible to participate in the program under the terms described in subdivision 6.

(f) **Employee.** "Employee" means a common law employee of an eligible employer.

(g) **Employer.** "Employer" means a private person, firm, corporation, partnership, association, unit of local government, or other entity actively engaged in business or public services. "Employer" includes both for-profit and nonprofit entities.

(h) **Program.** "Program" means the private employers insurance program created by this section.

Subd. 3. **Administration.** The commissioner shall, consistent with the provisions of this section, administer the program and determine its coverage options, funding and premium arrangements, contractual arrangements, and all other matters necessary to administer the program. The commissioner's contracting authority for the program, including authority for competitive bidding and negotiations, is governed by section 43A.23.

Subd. 4. **Advisory committee.** The commissioner shall establish a ten-member advisory committee that includes five members who represent eligible employers and five members who represent eligible individuals. The committee shall advise the commissioner on issues related to administration of the program. The committee is governed by sections 15.014 and 15.059, and continues to exist while the program remains in operation.

Subd. 5. **Employer eligibility.** (a) **Procedures.** All employers are eligible for coverage through the program subject to the terms of this subdivision. The commissioner shall establish procedures for an employer to apply for coverage through the program.

(b) **Term.** The initial term of an employer's coverage will be two years from the effective date of the employer's application. After that, coverage will be automatically renewed for additional two-year terms unless the employer gives notice of withdrawal from the program according to procedures established by the commissioner or the commissioner gives notice to the employer of the discontinuance of the program. The commissioner may establish conditions under which an employer may withdraw from the program prior to the expiration of a two-year term, including by reason of a midyear increase in health coverage premiums of 50 percent or more. An employer that withdraws from the program may not reapply for coverage for a period of two years from its date of withdrawal.

(c) **Minnesota work force.** An employer is not eligible for coverage through the program if five percent or more of its eligible employees work primarily outside Minnesota, except that an employer may apply to the program on behalf of only those employees who work primarily in Minnesota.

(d) **Employee participation; aggregation of groups.** An employer is not eligible for coverage through the program unless its application includes all eligible employees who work primarily in Minnesota, except employees who waive coverage as permitted by subdivision 6. Private entities that are eligible to file a combined tax return for purposes of state tax laws are considered a single employer, except as otherwise approved by the commissioner.

(e) **Private employer.** A private employer is not eligible for coverage unless it has two or more eligible employees in the state of Minnesota. If an employer has only two eligible employees, one employee must not be the spouse, child, sibling, parent, or grandparent of the other.

(f) **Minimum participation.** The commissioner must require as a condition of employer eligibility that at least 75 percent of its eligible employees who have not waived coverage participate in the program. The participation level of eligible employees must be determined at the initial offering of coverage and at the renewal date of coverage. For purposes of this section, waiver of coverage includes only waivers due to coverage under another group health benefit plan.

(g) **Employer contribution.** The commissioner must require as a condition of employer eligibility that the employer contribute at least 50 percent toward the cost of the premium of the employee and may require that the contribution toward the cost of coverage is structured in a way that promotes price competition among the coverage options available through the program.

(h) **Enrollment cap.** The commissioner may limit employer enrollment in the program if necessary to avoid exceeding the program's reserve capacity.

**Subd. 6. Individual eligibility.** (a) **Procedures.** The commissioner shall establish procedures for eligible employees and other eligible individuals to apply for coverage through the program.

(b) **Employees.** An employer shall determine when it applies to the program the criteria its employees must meet to be eligible for coverage under its plan. An employer may subsequently change the criteria annually or at other times with approval of the commissioner. The criteria must provide that new employees become eligible for coverage after a probationary period of at least 30 days, but no more than 90 days.

(c) **Other individuals.** An employer may elect to cover under its plan:

(1) the spouse, dependent children, and dependent grandchildren of a covered employee;

(2) a retiree who is eligible to receive a pension or annuity from the employer and a covered retiree's spouse, dependent children, and dependent grandchildren;

(3) the surviving spouse, dependent children, and dependent grandchildren of a deceased employee or retiree, if the spouse, children, or grandchildren were covered at the time of the death;

(4) a covered employee who becomes disabled, as provided in sections 62A.147 and 62A.148; or

(5) any other categories of individuals for whom group coverage is required by state or federal law.

An employer shall determine when it applies to the program the criteria individuals in these categories must meet to be eligible for coverage. An employer may subsequently change the criteria annually, or at other times with approval of the commissioner. The criteria for dependent children and dependent grandchildren may be no more inclusive than the criteria under section 43A.18, subdivision 2. This paragraph shall not be interpreted as relieving the program from compliance with any federal and state continuation of coverage requirements.

(d) **Waiver and late entrance.** An eligible individual may waive coverage at the time the employer joins the program or when coverage first becomes available. The commissioner may establish a preexisting condition exclusion of not more than 18 months for late entrants as defined in section 62L.02, subdivision 19.

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(e) **Continuation coverage.** The program shall provide all continuation coverage required by state and federal law.

Subd. 7. **Coverage.** Coverage is available through the program beginning on July 1, 1993. At least annually, the commissioner shall solicit bids from carriers regulated under chapters 62A, 62C, and 62D, to provide coverage of eligible individuals. The commissioner shall provide coverage through contracts with carriers, unless the commissioner receives no reasonable bids from carriers.

(a) **Health coverage.** Health coverage is available to all employers in the program. The commissioner shall attempt to establish health coverage options that have strong care management features to control costs and promote quality and shall attempt to make a choice of health coverage options available. Health coverage for a retiree who is eligible for the federal Medicare program must be administered as though the retiree is enrolled in Medicare parts A and B. To the extent feasible as determined by the commissioner and in the best interests of the program, the commissioner shall model coverage after the plan established in section 43A.18, subdivision 2. Health coverage must include at least the benefits required of a carrier regulated under chapter 62A, 62C, or 62D for comparable coverage. Coverage under this paragraph must not be provided as part of the health plans available to state employees.

(b) **Optional coverages.** In addition to offering health coverage, the commissioner may arrange to offer dental coverage through the program. Employers with health coverage may choose to offer dental coverage according to the terms established by the commissioner.

(c) **Open enrollment.** The program must meet all underwriting requirements of chapter 62L and must provide periodic open enrollments for eligible individuals for those coverages where a choice exists.

(d) **Technical assistance.** The commissioner may arrange for technical assistance and referrals for eligible employers in areas such as health promotion and wellness, employee benefits structure, tax planning, and health care analysis services as described in section 62J.33.

Subd. 8. **Premiums.** (a) **Payments.** Employers enrolled in the program shall pay premiums according to terms established by the commissioner. If an employer fails to make the required payments, the commissioner may cancel coverage and pursue other civil remedies.

(b) **Rating method.** The commissioner shall determine the premium rates and rating method for the program. The rating method for eligible small employers must meet or exceed the requirements of chapter 62L. The rating methods must recover in premiums all of the ongoing costs for state administration and for maintenance of a premium stability and claim fluctuation reserve. Premiums must be established so as to recover and repay within five years after July 1, 1993, any direct appropriations received to provide start-up administrative costs. Premiums must be established so as to recover and repay within five years after July 1, 1993, any direct appropriations received to establish initial reserves.

(c) **Taxes and assessments.** To the extent that the program operates as a self-insured group, the premiums paid to the program are not subject to the premium taxes imposed by sections 60A.15 and 60A.198, but the program is subject to a Minnesota comprehensive health association assessment under section 62E.11.

Subd. 9. **Private employers insurance trust fund.** (a) **Contents.** The private employer insurance trust fund in the state treasury consists of deposits received from eligible employers and individuals, contractual settlements or rebates relating to the program, investment income or losses, and direct appropriations.

(b) **Appropriation.** All money in the fund is appropriated to the commissioner to pay insurance premiums, approved claims, refunds, administrative costs, and other costs necessary to administer the program.

(c) **Reserves.** For any coverages for which the program does not contract to transfer full financial responsibility, the commissioner shall establish and maintain reserves:

(1) for claims in process, incomplete and unreported claims, premiums received but not yet earned, and all other accrued liabilities; and

(2) to ensure premium stability and the timely payment of claims in the event of adverse claims experience. The reserve for premium stability and claim fluctuations must be established according to the standards of section 62C.09, subdivision 3, except that the reserve may exceed the upper limit under this standard until July 1, 1997.

(d) **Investments.** The state board of investment shall invest the fund's assets according to section 11A.24. Investment income and losses attributable to the fund must be credited to the fund.

**Subd. 10. Program status.** The private employers insurance program is a state program to provide the advantages of a large pool to small employers for purchasing health coverage, other coverages, and related services from insurance companies, health maintenance organizations, and other organizations. The program is not an insurance company. Coverage under this program shall be considered a certificate of insurance or similar evidence of coverage and is subject to all applicable requirements of chapters 60A, 62A, 62C, 62E, 62H, 62L, and 72A, and is subject to regulation by the commissioner of commerce to the extent applicable. Coverage is subject to section 471.617, subdivisions 2 and 3, and the bidding requirements of section 471.6161.

**Subd. 11. Evaluation.** The commissioner shall report to the legislature on December 15, 1995. The report must provide a detailed summary of all direct and indirect administrative costs associated with the program, and must include an analysis of whether the program (1) is providing coverage to persons who would otherwise be unable to purchase coverage in the private sector; (2) will provide coverage at lower premium costs without ongoing state subsidy; (3) will provide coverage to persons in geographic areas of the state where coverage options would otherwise be limited; and (4) will fulfill the intent of the legislature.

**History:** 1992 c 549 art 3 s 1

**NOTE:** This section, as added by Laws 1992, chapter 549, article 3, section 1, is effective July 1, 1993, except that subdivision 9 is effective April 24, 1992. See Laws 1992, chapter 549, article 3, section 24.

#### 43A.32 POLITICAL ACTIVITIES.

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

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

(a) Take leave of absence upon assuming an elected federal office or an elected state office other than state legislative office or, if elected to state legislative office, during times that the legislature is in session;

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

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

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

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

**Subd. 3. Leave of absence.** No executive branch officer or employee in the unclassified service who is covered by a collective bargaining agreement, and no executive branch officer or employee in the classified service, may be required to take a leave of absence upon becoming a candidate, or during the course of candidacy, for any elected

public office. Said officers and employees shall take leave of absence upon assuming an elected federal office or an elected state office other than state legislative office or, if elected to state legislative office, during times that the legislature is in session.

**History:** 1981 c 210 s 32; 1986 c 444; 1987 c 281 s 1,2

### 43A.33 GRIEVANCES.

**Subdivision 1. Discharge, suspension, demotion for cause, salary decrease.** Managers and employees shall attempt to resolve disputes through informal means prior to the initiation of disciplinary action. No permanent employee in the classified service shall be reprimanded, discharged, suspended without pay, or demoted, except for just cause.

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

**Subd. 2a. Abuse.** In an arbitration or hearing proceeding involving discipline of an employee for allegedly abusing a resident of a state hospital or a state nursing home, "abuse" includes but is not limited to:

(1) Conduct which constitutes abuse under policies or procedures adopted by state hospitals or state nursing homes; or

(2) Any act which constitutes a violation under sections 609.221 to 609.235, 609.322, 609.342, 609.343, 609.344, or 609.345; or

(3) The intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress.

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

(a) For discharge, suspension without pay or demotion, no later than the effective date of such action, a permanent classified employee not covered by a collective bargaining agreement shall be given written notice by the appointing authority. The content of that notice as well as the employee's right to reply to the appointing authority shall be as prescribed in the grievance procedure contained in the applicable plan established pursuant to section 43A.18. The notice shall also include a statement that the employee may elect to appeal the action to the office of administrative hearings within 30 calendar days following the effective date of the disciplinary action. A copy of the notice and the employee's reply, if any, shall be filed by the appointing authority with the commissioner no later than ten calendar days following the effective date of the disciplinary action. The commissioner shall have final authority to decide whether the appointing authority shall settle the dispute prior to the hearing provided under subdivision 4.

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

(c) Any permanent employee who is covered by a collective bargaining agreement may elect to appeal to the chief administrative law judge within 30 days following the effective date of the discharge, suspension, or demotion if the collective bargaining agreement provides that option. In no event may an employee use both the procedure under this section and the grievance procedure available pursuant to sections 179A.01 to 179A.25.

**Subd. 4. Appeals; public hearings, findings.** Within ten days of receipt of the employee's written notice of appeal, the chief administrative law judge shall assign an administrative law judge to hear the appeal.



The hearing shall be conducted pursuant to the contested case provisions of chapter 14 and the procedural rules adopted by the chief administrative law judge. If the administrative law judge finds, based on the hearing record, that the action appealed was not taken by the appointing authority for just cause, the employee shall be reinstated to the position, or an equal position in another division within the same agency, without loss of pay. If the administrative law judge finds that there exists sufficient grounds for institution of the appointing authority's action but the hearing record establishes extenuating circumstances, the administrative law judge may reinstate the employee, with full, partial, or no pay, or may modify the appointing authority's action. The administrative law judge's order shall be the final decision, but it may be appealed according to the provisions of sections 14.63 to 14.68. Settlement of the entire dispute by mutual agreement is encouraged at any stage of the proceedings. Any settlement agreement shall be final and binding when signed by all parties and submitted to the chief administrative law judge of the office of administrative hearings. Except as provided in collective bargaining agreements the appointing authority shall bear the costs of the administrative law judge for hearings provided for in this section.

**History:** 1981 c 210 s 33; 1982 c 424 s 130; 1982 c 560 s 31-33; 1984 c 425 s 1; 1984 c 462 s 27; 1984 c 544 s 82,83; 1986 c 444; 1987 c 186 s 10

#### 43A.34 RETIREMENT.

**Subdivision 1. Mandatory retirement age.** Employees in the executive branch who are subject to the provisions of the Minnesota state retirement system or the teachers retirement association and who are serving as faculty members or administrators under a contract of unlimited terms or similar arrangement providing for unlimited tenure at an institution of higher education, as defined by United States Code, title 20, section 1141(a), as amended through December 31, 1986, must retire from employment by the state upon reaching the age of 70, except as provided in other law. Other employees in the executive branch who are subject to the provisions of the Minnesota state retirement system or the teachers retirement association, except as provided in subdivision 3 or 4, or as provided in section 354.44, subdivision 1a, are not subject to a mandatory retirement age provision.

Subd. 2. [Repealed, 1987 c 186 s 16; 1987 c 284 art 2 s 9 ]

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

A correctional employee occupying a position covered by provisions of section 352.91, desiring employment beyond the conditional mandatory retirement age shall, at least 30 days prior to the date of reaching the conditional mandatory retirement age of 55 years, and annually thereafter, request in writing to the employee's appointing authority authorization to continue in employment in the covered position. Upon receiving the request, the appointing authority shall have a medical examination made of the employee. If the results of the medical examination establish the mental and physical ability of the employee to continue the duties of employment, the employee shall be continued in employment for the following year. If the determination of the appointing authority based upon the results of the physical examination is adverse, the disposition of the matter shall be decided by the commissioner of corrections or, for employees of the Minnesota security hospital, the commissioner of human services. Based on the information provided, the decision of the applicable commissioner shall be made in writing and shall be final.

**Subd. 4. State patrol, conservation and crime bureau officers exempted.** Notwithstanding any provision to the contrary, (a) conservation officers and crime bureau officers who were first employed on or after July 1, 1973, and who are members of the state patrol retirement fund by reason of their employment, and members of the Minnesota state patrol and gambling enforcement divisions of the department of public safety who

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are members of the state patrol retirement association by reason of their employment, shall not continue employment after attaining the age of 60 years, except for a fractional portion of one year that will enable the employee to complete the employee's next full year of allowable service as defined pursuant to section 352B.01, subdivision 3; and (b) conservation officers and crime bureau officers who were first employed and are members of the state patrol retirement fund by reason of their employment before July 1, 1973, shall not continue employment after attaining the age of 70 years.

**History:** 1981 c 37 s 2; 1981 c 210 s 34; 1982 c 578 art 3 s 1; 1984 c 654 art 5 s 58; 1986 c 444; 1987 c 186 s 12,13; 1987 c 284 art 2 s 1,2; 1990 c 570 art 1 s 1

**NOTE:** Subdivision 1 was also amended by Laws 1987, chapter 186, section 11, to read as follows:

"Subdivision 1. **Mandatory retirement age.** Employees in the executive branch who are subject to the provisions of the Minnesota state retirement system or the teacher's retirement association and who are serving as faculty members or administrators under a contract of unlimited terms or similar arrangement providing for unlimited tenure at an institution of higher education, as defined in section 1201(a) of the federal Higher Education Act of 1965, as amended through January 1, 1987, must retire from employment by the state upon reaching the age of 70, except as provided in other law. Other employees in the executive branch who are subject to the provisions of the Minnesota state retirement system or the teacher's retirement association, except as provided in subdivision 3 or 4, or as provided in section 354.44, subdivision 1a, shall not be subject to a mandatory retirement age provision."

## 43A.35 DEATH BENEFIT FOR RETIRED EMPLOYEES.

Employees who retire from the civil service on or after July 1, 1977, and before July 1, 1981, shall be entitled to a \$500 cash death benefit payable to a beneficiary designated by the employee, if, at the time of the employee's death, the employee is entitled to an annuity under a state retirement program. A \$500 cash death benefit shall also be payable to the designated beneficiary of an employee who becomes totally and permanently disabled after July 1, 1979, and before July 1, 1981, and who at the time of death is receiving a state disability benefit and is eligible for a deferred annuity under a state retirement program.

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

**History:** 1981 c 210 s 35

## 43A.36 RELATIONSHIPS WITH OTHER AGENCIES AND JURISDICTIONS.

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

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

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

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

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

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

**History:** 1981 c 210 s 36

#### 43A.37 PAYROLLS.

Subdivision 1. **Certification.** Neither the commissioner of finance nor any other fiscal officer of this state may draw, sign, or issue, or authorize the drawing, signing, or issuing of any warrant on the treasurer or other disbursing officer of the state, nor may the treasurer or other disbursing officer of the state pay any salary or compensation to any person in the civil service, unless a payroll register for the salary or compensation containing the name of every person to be paid bears the certificate of the commissioner that the persons named in the payroll register have been appointed as required by law, rules, or administrative procedures and that the salary or compensation is within the compensation plan fixed by law. The appointing authority shall certify that all employees named in the payroll register are performing service as required by law. This provision does not apply to positions defined in section 43A.08, subdivision 1, clauses (8), (9), (10), and (12). Employees to whom this subdivision does not apply may be paid on the state's payroll system, and the appointing authority or fiscal officer submitting their payroll register is responsible for the accuracy and legality of the payments.

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

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

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

**History:** 1981 c 210 s 37; 1982 c 560 s 34; 1990 c 571 s 37; 1991 c 238 art 1 s 6

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

Subdivision 1. **Definitions.** For the purpose of this section the following definitions shall apply:

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

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

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

**Subd. 2. Acceptance of gifts; favors.** Employees in the executive branch in the course of or in relation to their official duties shall not directly or indirectly receive or agree to receive any payment of expense, compensation, gift, reward, gratuity, favor, service or promise of future employment or other future benefit from any source, except the state for any activity related to the duties of the employee unless otherwise provided by law. However, the acceptance of any of the following shall not be a violation of this subdivision:

(a) Gifts of nominal value or gifts or textbooks which may be accepted pursuant to section 15.43.

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

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

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

(e) Tips received by employees engaged in food service and room cleaning at restaurant and lodging facilities in Itasca State Park.

**Subd. 3. Use of confidential information.** An employee in the executive branch shall not use confidential information to further the employee's private interest, and shall not accept outside employment or involvement in a business or activity that will require the employee to disclose or use confidential information.

**Subd. 4. Use of state property.** An employee shall not use or allow the use of state time, supplies or state owned or leased property and equipment for the employee's private interests or any other use not in the interest of the state, except as provided by law.

**Subd. 5. Conflicts of interest.** The following actions by an employee in the executive branch shall be deemed a conflict of interest and subject to procedures regarding resolution of the conflicts, section 43A.39 or disciplinary action as appropriate:

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

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

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

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

**Subd. 6. Determination of conflicts of interest.** When an employee believes the

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

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

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

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

(d) the performance of an act in other than the employee's official capacity which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by the employee.

**Subd. 7. Resolution of conflict of interest.** If the employee, appointing authority or commissioner determine that a conflict of interest exists, the matter shall be assigned to another employee who does not have a conflict of interest. If it is not possible to assign the matter to an employee who does not have a conflict of interest, interested persons shall be notified of the conflict and the employee may proceed with the assignment.

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

**Subd. 9. Limits.** This section shall not be interpreted to apply to any activity which is protected by sections 179A.01 to 179A.25 and collective bargaining agreements and practices thereunder nor to prevent a current or former employee from accepting employment with a labor or employee organization representing employees.

**History:** 1981 c 210 s 38; 1982 c 560 s 35; 1984 c 462 s 27; 1Sp1985 c 17 s 9; 1987 c 128 s 1

### 43A.39 COMPLIANCE WITH LAW.

**Subdivision 1. Prohibited acts; penalties.** All employees shall comply with and aid in all proper ways the enforcement of the provisions of this chapter. No employee or any other person shall intentionally:

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

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

(c) Defeat, deceive or obstruct any person in rights to examination, eligibility, certification or appointment under this chapter, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to appointment, advancement or retention in the classified service;

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

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

**Subd. 2. Noncompliance.** Any employee who intentionally fails to comply with the provisions of chapter 43A shall be subject to disciplinary action and action pursuant to chapter 609. An appointing authority shall report in writing to the legislative auditor when there is probable cause to believe that a substantial violation has occurred. Any person convicted of a crime based on violations of this chapter shall be ineligible for appointment in the civil service for three years following conviction.

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

**History:** 1981 c 210 s 39; 1982 c 560 s 36

#### **43A.40 JOB SHARING; TEMPORARY.**

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

**History:** 1981 c 210 s 40,55; 1982 c 560 s 61; 1983 c 145 s 8

#### **43A.41 DEFINITIONS.**

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

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

Subd. 3. [Repealed, 1983 c 145 s 9]

Subd. 4. **Shared position.** "Shared position" means a position which has been converted from a full-time position into part-time positions which are in the same classification series and bargaining unit or plan for purposes of sections 43A.40 to 43A.46.

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

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

**History:** 1981 c 210 s 41,55; 1982 c 560 s 37,61; 1983 c 145 s 1-2,8

#### **43A.42 POSITIONS AFFECTED.**

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

**History:** 1981 c 210 s 42,55; 1982 c 560 s 38,61; 1983 c 145 s 3,8

#### **43A.421 SUPPORTED WORK PROGRAM.**

A total of 50 additional full-time positions within agencies of state government may be selected for inclusion for a supported work program for persons with severe disabilities. A full-time position may be shared by up to three persons with severe disabilities and their job coach. The job coach is not a state employee within the scope of section 43A.02, subdivision 21, or 179A.03, subdivision 14, unless the job coach holds another position within the scope of section 43A.02, subdivision 21, or 179A.03, subdivision 14.

**History:** 1987 c 232 s 3; 1988 c 667 s 20

#### **43A.43 PROGRAM MANAGEMENT.**

Subdivision 1. [Repealed, 1983 c 145 s 9]

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

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

(b) Coordinate the conversion of full time to shared positions in the affected agen-

cies and to assist in the design of the shared positions, with attention to employee and employer needs and to the potential for replicability of the program experience throughout state government;

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

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

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

**History:** 1981 c 210 s 43,55; 1982 c 560 s 61; 1983 c 145 s 4,8

#### 43A.44 TOTAL COMPENSATION.

Subdivision 1. **Salaries; class.** A position selected by the commissioner pursuant to section 43A.43 shall be divided into shared positions to be paid at the rate of the appropriate shared time percent of the otherwise appropriate salary.

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

(1) Membership in the Minnesota state retirement system, the teachers retirement association or the state patrol retirement fund, whichever is appropriate;

(2) Vacation and sick leave accruals shall be prorated in accordance with the pertinent collective bargaining agreement or plan covering the position;

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

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

(5) Employees in shared positions shall be entitled to the prorated holiday provisions of the applicable collective bargaining agreement or plan covering the position;

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

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

**History:** 1981 c 37 s 2; 1981 c 210 s 44,55; 1982 c 560 s 39,61; 1983 c 145 s 5,6,8; 1989 c 319 art 1 s 1

## **43A.45 ACCEPTANCE OF SHARED POSITIONS.**

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

**History:** 1981 c 210 s 45,55; 1982 c 560 s 61; 1983 c 145 s 7,8

## **43A.46 CONFLICTING LAWS.**

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

**History:** 1981 c 210 s 46,55; 1982 c 560 s 61; 1983 c 145 s 8

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

Any person who was employed in a shared position in the Minnesota demonstration job-sharing program pursuant to Minnesota Statutes 1980, sections 43.56 to 43.62 or sections 43A.40 to 43A.46, prior to March 23, 1982 shall have service credit for that service in the applicable retirement fund recalculated in accordance with the provisions of section 43A.44, subdivision 2, clause (a).

**History:** 1981 c 68 s 2; 1982 c 578 art 1 s 1

## **43A.47 TRANSITIONAL PROVISIONS.**

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

**History:** 1981 c 210 s 53

## **43A.48 PRETAX EXPENSE ACCOUNTS.**

The commissioner of employee relations may use FICA savings generated from the dependent care and medical and dental expense account programs to pay for the administrative costs of the programs and to pay for unfunded liabilities in the medical and dental expense account program. Forfeited balances from the programs may be used to pay for the administrative costs of the programs.

**History:** 1991 c 345 art 1 s 69; 1992 c 375 s 1