

1 STATE AND POLITICAL SUBDIVISION EMPLOYMENT

2 AMENDMENTS

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 Chief Sponsor: Daniel McCay

6 Senate Sponsor: _____

7

8 LONG TITLE

9 General Description:

10 This bill prohibits a state or political subdivision from considering seniority as ~~H→~~ [a
11 primary] the sole ~~←H~~ factor when determining whether to terminate an employee while
11a conducting a
12 reduction in force.

13 Highlighted Provisions:

14 This bill:

15 ► prohibits the following from considering or establishing a policy requiring
16 consideration of seniority as ~~H→~~ [a-primary] the sole ~~←H~~ factor when determining whether to
17 terminate an employee while conducting a reduction in force:

- 18 • a civil service commission;
- 19 • a municipality;
- 20 • a County Fire Civil Service System;
- 21 • a sheriff or merit system commission;
- 22 • a county personnel director or county legislative body;
- 23 • a local district or special service district;
- 24 • a president or board of trustees of an institution of higher education;
- 25 • a campus board of directors or the Utah College of Applied Technology Board
- 26 of Trustees; or
- 27 • an office, agency, or department of the executive branch, judicial branch, or



28 legislative branch;

- 29 ▶ amends state personnel management provisions;
- 30 ▶ amends employment provisions of the Office of the Attorney General; and
- 31 ▶ makes technical corrections.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **10-3-1105**, as last amended by Laws of Utah 2004, Chapter 260
- 39 **17-28-2.6**, as last amended by Laws of Utah 2001, Chapter 73
- 40 **17-30-2**, as last amended by Laws of Utah 1993, Chapter 227
- 41 **17-30-16**, as enacted by Statewide Initiative A, Nov. 8, 1960
- 42 **17-33-5**, as last amended by Laws of Utah 2009, Chapter 128
- 43 **17B-1-803**, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 44 **53B-2-106**, as last amended by Laws of Utah 2009, Chapter 370
- 45 **53B-2a-110**, as last amended by Laws of Utah 2009, Chapter 346
- 46 **67-5-12**, as last amended by Laws of Utah 2007, Chapter 166
- 47 **67-19-18**, as last amended by Laws of Utah 2010, Chapter 249

48 ENACTS:

- 49 **10-3-1014**, Utah Code Annotated 1953
- 50 **67-19-18.5**, Utah Code Annotated 1953



52 *Be it enacted by the Legislature of the state of Utah:*

53 Section 1. Section **10-3-1014** is enacted to read:

54 **10-3-1014. Seniority as** ~~H~~→ [primary] sole ←~~H~~ factor prohibited when conducting
54a **reductions in**
55 **force.**

56 A civil service commission may not make a rule or regulation requiring that a
57 department head conducting a reduction in force consider seniority as ~~H~~→ [**a primary**] the sole ←~~H~~
57a factor when
58 determining whether to terminate an employee.

59 Section 2. Section **10-3-1105** is amended to read:

60 **10-3-1105. Municipal employees -- Duration and termination of employment --**

61 **Exceptions.**

62 (1) Except as provided in Subsection (2), each employee of a municipality shall hold
63 employment without limitation of time, being subject to discharge, suspension of over two days
64 without pay, or involuntary transfer to a position with less remuneration only as provided in
65 Section 10-3-1106.

66 (2) Subsection (1) does not apply to:

67 (a) an officer appointed by the mayor or other person or body exercising executive
68 power in the municipality;

69 (b) a member of the municipality's police department or fire department who is a
70 member of the classified civil service in a first or second class city;

71 (c) a police chief of the municipality;

72 (d) a deputy police chief of the municipality;

73 (e) a fire chief of the municipality;

74 (f) a deputy or assistant fire chief of the municipality;

75 (g) a head of a municipal department;

76 (h) a deputy of a head of a municipal department;

77 (i) a superintendent;

78 (j) a probationary employee of the municipality;

79 (k) a part-time employee of the municipality; or

80 (l) a seasonal employee of the municipality.

81 (3) ~~Nothing~~ (a) Except as provided in Subsection (3)(b), nothing in this section or
82 Section 10-3-1106 may be construed to limit a municipality's ability to define cause for an
83 employee termination or reduction in force.

84 (b) While conducting a reduction in force, a municipality may not consider seniority as

85 ~~H~~→ [a primary] the sole ←~~H~~ factor when determining whether to terminate an employee.

86 Section 3. Section **17-28-2.6** is amended to read:

87 **17-28-2.6. Merit principles.**

88 The County Fire Civil Service System shall be established and administered in a
89 manner that will provide for the effective implementation of the following merit principles:

90 (1) recruiting, selecting, and advancing employees on the basis of their relative ability,
91 knowledge, and skills, including open consideration of qualified applicants for initial
92 appointment;

93 (2) provision of equitable and adequate job classification and compensation systems,
94 including pay and benefits programs;

95 (3) training of employees as needed to assure high-quality performance;

96 (4) retention of employees on the basis of the adequacy of their performance and
97 separation of employees whose inadequate performance cannot be corrected;

98 (5) fair treatment of applicants and employees in all aspects of personal administration
99 without regard to race, color, religion, sex, national origin, political affiliation, age, or
100 disability, and with proper regard for their privacy and constitutional rights as citizens;

101 (6) provision of information to employees regarding their political rights and
102 prohibited practices under the Hatch Act; ~~and~~

103 (7) provision of a formal procedure for processing the appeals and grievances of
104 employees without discrimination, coercion, restraint, or reprisal[-]; and

105 (8) provision of a reduction in force policy that does not consider seniority as ~~H~~→ [~~a~~
105a **primary**] the sole ←~~H~~
106 factor when determining whether to terminate an employee.

107 Section 4. Section 17-30-2 is amended to read:

108 **17-30-2. Subordinate officers in sheriff's office to be appointed from list --**
109 **Officers serving on effective date considered qualified.**

110 (1) From and after the effective date of this [~~act~~] chapter the sheriff of each county with
111 a population of 20,000 people or more which shall regularly employ one or more peace officers
112 shall, by and with the advice and consent of the county legislative body, and subject to the rules
113 and regulations of the merit service commission, appoint from the classified merit service list
114 furnished by the merit service commission, all subordinate peace officers in his department and
115 in like manner fill all vacancies in the same and shall further promote, transfer, demote,
116 suspend or remove peace officers in accordance with the provisions of this [~~act~~] chapter.

117 (2) Every peace officer who is serving as such upon the effective date of this [~~act~~]
118 chapter shall be [~~deemed~~] considered fully qualified for such position without examination or
119 test and [~~deemed~~] considered to have been appointed and to hold his position and classification
120 pursuant to the provisions of this [~~act~~] chapter.

121 (3) ~~[Counties]~~ (a) A county with a population of less than 20,000 people may
 122 implement a deputy sheriff's merit system if approved by the county legislative body or the
 123 people of the county through referendum or initiative.

124 (b) A county that implements a merit system approved by the county legislative body
 125 as described in Subsection (3)(a) is subject to the provisions of Subsection 17-30-16(2).

126 Section 5. Section **17-30-16** is amended to read:

127 **17-30-16. Reductions in force -- Seniority may not be ~~H~~→ [primary] sole ~~←H~~ factor --**
 128 **Reemployment register.**

129 (1) When necessary because of lack of funds or work [an officer may], the appointing
 130 authority, with the approval of the commission, [be] may temporarily [laid] lay off an officer.
 131 [Such layoff shall be made according to the lowest rating of the officers of the class of position
 132 affected, calculated upon seniority under a method prescribed by the commission.]

133 (2) While conducting a reduction in force, an appointing authority or the merit system
 134 commission may not consider seniority as ~~H~~→ [a primary] the sole ~~←H~~ factor when determining
 134a whether to
 135 terminate an officer.

136 (3) A person serving under temporary or emergency appointment shall be laid off
 137 before any merit system officer.

138 (4) A merit system officer who is laid off shall be placed upon a reemployment register
 139 to be reemployed in the inverse order in which he is laid off, which register shall take
 140 precedence over all eligible registers.

141 Section 6. Section **17-33-5** is amended to read:

142 **17-33-5. Office of personnel management -- Director -- Appointment and**
 143 **responsibilities -- Personnel rules.**

144 (1) (a) (i) Each county executive shall:

145 (A) create an office of personnel management, administered by a director of personnel
 146 management; and

147 (B) ensure that the director is a person with proven experience in personnel
 148 management.

149 (ii) Except as provided in Subsection (1)(b), the position of director of personnel
 150 management shall be:

151 (A) a merit position; and

- 152 (B) filled as provided in Subsection (1)(a)(iii).
- 153 (iii) Except as provided in Subsection (1)(b), the career service council shall:
- 154 (A) advertise and recruit for the director position in the same manner as for merit
- 155 positions;
- 156 (B) select three names from a register; and
- 157 (C) submit those names as recommendations to the county legislative body.
- 158 (iv) Except as provided in Subsection (1)(b), the county legislative body shall select a
- 159 person to serve as director of the office of personnel management from the names submitted to
- 160 it by the career service council.
- 161 (b) (i) Effective for appointments made after May 1, 2006, and as an alternative to the
- 162 procedure under Subsections (1)(a)(ii), (iii), and (iv) and at the county executive's discretion,
- 163 the county executive may appoint a director of personnel management with the advice and
- 164 consent of the county legislative body.
- 165 (ii) The position of each director of personnel management appointed under this
- 166 Subsection (1)(b) shall be a merit exempt position.
- 167 (iii) A director of personnel management appointed under this Subsection (1)(b) may
- 168 be terminated by the county executive with the consent of the county legislative body.
- 169 (2) The director of personnel management shall:
- 170 (a) encourage and exercise leadership in the development of expertise in personnel
- 171 administration within the several departments, offices, and agencies in the county service and
- 172 make available the facilities of the office of personnel management to this end;
- 173 (b) advise the county legislative and executive bodies on the use of human resources;
- 174 (c) develop and implement programs for the improvement of employee effectiveness,
- 175 such as training, safety, health, counseling, and welfare;
- 176 (d) investigate periodically the operation and effect of this law and of the policies made
- 177 under it and report findings and recommendations to the county legislative body;
- 178 (e) establish and maintain records of all employees in the county service, setting forth
- 179 as to each employee class, title, pay or status, and other relevant data;
- 180 (f) make an annual report to the county legislative body and county executive regarding
- 181 the work of the department; and
- 182 (g) apply and carry out this law and the policies under it and perform any other lawful

183 acts that are necessary to carry out the provisions of this law.

184 (3) (a) (i) The director shall recommend personnel rules for the county.

185 (ii) The county legislative body may:

186 (A) recommend personnel rules for the county; and

187 (B) approve, amend, or reject personnel rules before they are adopted.

188 (b) The rules shall provide for:

189 (i) recruiting efforts to be planned and carried out in a manner that assures open
190 competition, with special emphasis to be placed on recruiting efforts to attract minorities,
191 women, persons with a disability as defined by and covered under the Americans with
192 Disabilities Act of 1990, 42 U.S.C. 12102, or other groups that are substantially
193 underrepresented in the county work force to help assure they will be among the candidates
194 from whom appointments are made;

195 (ii) the establishment of job related minimum requirements wherever practical, that all
196 successful candidates shall be required to meet in order to be eligible for consideration for
197 appointment or promotion;

198 (iii) selection procedures that include consideration of the relative merit of each
199 applicant for employment, a job related method of determining the eligibility or ineligibility of
200 each applicant, and a valid, reliable, and objective system of ranking eligible applicants
201 according to their qualifications and merit;

202 (iv) certification procedures that insure equitable consideration of an appropriate
203 number of the most qualified eligible applicants based on the ranking system;

204 (v) appointments to positions in the career service by selection from the most qualified
205 eligible applicants certified on eligible lists established in accordance with Subsections
206 (3)(b)(iii) and (iv);

207 (vi) noncompetitive appointments in the occasional instance where there is evidence
208 that open or limited competition is not practical, such as for unskilled positions that have no
209 minimum job requirements;

210 (vii) limitation of competitions at the discretion of the director for appropriate positions
211 to facilitate employment of qualified applicants with a substantial physical or mental
212 impairment, or other groups protected by Title VII of the Civil Rights Act;

213 (viii) permanent appointment for entry to the career service that shall be contingent

214 upon satisfactory performance by the employee during a period of six months, with the
215 probationary period extendable for a period not to exceed six months for good cause, but with
216 the condition that the probationary employee may appeal directly to the council any undue
217 prolongation of the period designed to thwart merit principles;

218 (ix) temporary, provisional, or other noncareer service appointments, which may not be
219 used as a way of defeating the purpose of the career service and may not exceed 270 days;

220 (x) lists of eligible applicants normally to be used, if available, for filling temporary
221 positions, and short term emergency appointments to be made without regard to the other
222 provisions of law to provide for maintenance of essential services in an emergency situation
223 where normal procedures are not practical, these emergency appointments not to exceed 270
224 days;

225 (xi) promotion and career ladder advancement of employees to higher level positions
226 and assurance that all persons promoted are qualified for the position;

227 (xii) recognition of the equivalency of other merit processes by waiving, at the
228 discretion of the director, the open competitive examination for placement in the career service
229 positions of those who were originally selected through a competitive examination process in
230 another governmental entity, the individual in those cases, to serve a probationary period;

231 (xiii) preparation, maintenance, and revision of a position classification plan for all
232 positions in the career service, based upon similarity of duties performed and responsibilities
233 assumed, so that the same qualifications may reasonably be required for, and the same schedule
234 of pay may be equitably applied to, all positions in the same class, the compensation plan, in
235 order to maintain a high quality public work force, to take into account the responsibility and
236 difficulty of the work, the comparative pay and benefits needed to compete in the labor market
237 and to stay in proper alignment with other similar governmental units, and other factors;

238 (xiv) keeping records of performance on all employees in the career service and
239 requiring consideration of performance records in determining salary increases, any benefits for
240 meritorious service, promotions, the order of layoffs and reinstatements, demotions, discharges,
241 and transfers;

242 (xv) establishment of a plan governing layoffs [~~resulting from lack of funds or work~~]
243 for a reduction in force, abolition of positions, or material changes in duties or organization,
244 and governing reemployment of persons so laid off, taking into account with regard to layoffs

245 and reemployment the relative ability, ~~[seniority, and]~~ merit of ~~[each employee]~~, and, subject to
 246 Subsection (3)(c), seniority of each employee;

247 (xvi) establishment of a plan for resolving employee grievances and complaints with
 248 final and binding decisions;

249 (xvii) establishment of disciplinary measures such as suspension, demotion in rank or
 250 grade, or discharge, measures to provide for presentation of charges, hearing rights, and appeals
 251 for all permanent employees in the career service to the career service council;

252 (xviii) establishment of a procedure for employee development and improvement of
 253 poor performance;

254 (xix) establishment of hours of work, holidays, and attendance requirements in various
 255 classes of positions in the career service;

256 (xx) establishment and publicizing of fringe benefits such as insurance, retirement, and
 257 leave programs; and

258 (xxi) any other requirements not inconsistent with this law that are proper for its
 259 enforcement.

260 (c) A county conducting a reduction in force may not consider seniority as ~~H~~→ **[a primary]**
 260a **the sole** ←~~H~~
 261 factor when determining whether to terminate an employee.

262 Section 7. Section **17B-1-803** is amended to read:

263 **17B-1-803. Merit principles.**

264 (1) A local district may establish a personnel system administered in a manner that will
 265 provide for the effective implementation of merit principles that provide for:

266 ~~[(1)]~~ (a) recruiting, selecting, and advancing employees on the basis of their relative
 267 ability, knowledge, and skills, including open consideration of qualified applicants for initial
 268 appointment;

269 ~~[(2)]~~ (b) providing equitable and adequate compensation;

270 ~~[(3)]~~ (c) training employees as needed to assure high-quality performance;

271 ~~[(4)]~~ (d) retaining employees on the basis of the adequacy of their performance, and
 272 separation of employees whose inadequate performance cannot be corrected;

273 ~~[(5)]~~ (e) fair treatment of applicants and employees in all aspects of personnel
 274 administration without regard to race, color, religion, sex, national origin, political affiliation,
 275 age, or disability, and with proper regard for their privacy and constitutional rights as citizens;

276 ~~[(6)]~~ (f) providing information to employees regarding their political rights and
 277 prohibited practices under the Hatch Political Activities Act, 5 U.S.C. Sec. 1501 through 1508
 278 et seq.; and

279 ~~[(7)]~~ (g) providing a formal procedure for processing the appeals and grievances of
 280 employees without discrimination, coercion, restraint, or reprisal.

281 (2) Except as provided in Section 17B-2a-813, a local district conducting a reduction in
 282 force may not consider seniority as ~~H→~~ **[a-primary]** the sole ~~←H~~ factor when determining
 282a whether to terminate an
 283 employee.

284 Section 8. Section **53B-2-106** is amended to read:

285 **53B-2-106. Duties and responsibilities of the president of each institution --**
 286 **Approval by board of trustees.**

287 (1) (a) The president of each institution may exercise grants of power and authority as
 288 delegated by the board, as well as the necessary and proper exercise of powers and authority
 289 not specifically denied to the institution, its administration, faculty, or students by the board or
 290 by law, to assure the effective and efficient administration and operation of the institution
 291 consistent with the statewide master plan for higher education.

292 (b) The president of each institution may, after consultation with the institution's board
 293 of trustees, exercise powers relating to the institution's employees, including faculty and
 294 persons under contract with the institution, by implementing any of the following:

295 (i) furloughs;

296 (ii) subject to Subsection (1)(c), reductions in force;

297 (iii) benefit adjustments;

298 (iv) program reductions or discontinuance;

299 (v) early retirement incentives that provide cost savings to the institution; and

300 (vi) other measures that provide cost savings to the institution.

301 (c) An institution president or board of trustees may not establish a policy that requires
 302 an institution conducting a reduction in force to consider seniority as ~~H→~~ **[a-primary]** the sole ~~←H~~
 302a factor when
 303 determining whether to terminate an employee.

304 (2) Except as provided by the board, the president of each institution, with the approval
 305 of the institution's board of trustees may:

306 (a) (i) appoint a secretary, a treasurer, administrative officers, deans, faculty members,

307 and other professional personnel, prescribe their duties, and determine their salaries;

308 (ii) appoint support personnel, prescribe their duties, and determine their salaries from
309 the institution's position classification plan, which may:

310 (A) be based upon similarity of duties and responsibilities within the institution; and
311 (B) as funds permit, provide salary and benefits comparable with private enterprise;

312 (iii) adopt policies for:

313 (A) employee sick leave use and accrual; and
314 (B) service recognition for employees with more than 15 years of employment with the
315 institution; and

316 (iv) subject to the authority of, policy established by, and the approval of the board of
317 regents, and recognizing the status of the institutions within the state system of higher
318 education as bodies politic and corporate, appoint attorneys to provide legal advice to the
319 institution's administration and to coordinate legal affairs within the institution. The board of
320 regents shall coordinate activities of attorneys at the institutions of higher education. The
321 institutions shall provide an annual report to the board of regents on the activities of appointed
322 attorneys. These appointed attorneys may not conduct litigation, settle claims covered by the
323 State Risk Management Fund, or issue formal legal opinions but shall, in all respects,
324 cooperate with the Office of the Attorney General in providing legal representation to the
325 institution;

326 (b) provide for the constitution, government, and organization of the faculty and
327 administration, and enact implementing rules, including the establishment of a prescribed
328 system of tenure;

329 (c) authorize the faculty to determine the general initiation and direction of instruction
330 and of the examination, admission, and classification of students. In recognition of the diverse
331 nature and traditions of the various institutions governed by the board, the systems of faculty
332 government need not be identical but should be designed to further faculty identification with
333 and involvement in the institution's pursuit of achievement and excellence and in fulfillment of
334 the institution's role as established in the statewide master plan for higher education; and

335 (d) enact rules for administration and operation of the institution which are consistent
336 with the prescribed role established by the board, rules enacted by the board, or the laws of the
337 state. The rules may provide for administrative, faculty, student, and joint committees with

338 jurisdiction over specified institutional matters, for student government and student affairs
339 organization, for the establishment of institutional standards in furtherance of the ideals of
340 higher education fostered and subscribed to by the institution, its administration, faculty, and
341 students, and for the holding of classes on legal holidays, other than Sunday.

342 (3) Compensation costs and related office expenses for appointed attorneys shall be
343 funded within existing budgets.

344 (4) The State Board of Regents shall establish guidelines relating to the roles and
345 relationships between institutional presidents and boards of trustees, including those matters
346 which must be approved by a board of trustees before implementation by the president.

347 (5) This section does not apply to the Utah College of Applied Technology.

348 Section 9. Section **53B-2a-110** is amended to read:

349 **53B-2a-110. Campus board of directors -- Powers and duties.**

350 (1) A campus board of directors shall:

351 (a) assist the campus president in preparing a budget request for its annual operations
352 to the Utah College of Applied Technology Board of Trustees;

353 (b) after consulting with the Utah College of Applied Technology, other higher
354 education institutions, school districts, and charter schools within its region, prepare a
355 comprehensive strategic plan for delivering career and technical education within its region;

356 (c) consult with business, industry, the Department of Workforce Services, the
357 Governor's Office of Economic Development, and the Governor's Office of Planning and
358 Budget on an ongoing basis to determine what workers and skills are needed for employment
359 in Utah businesses and industries;

360 (d) develop programs based upon the information gathered in accordance with
361 Subsection (1)(c), including expedited program approval and termination procedures to meet
362 market needs;

363 (e) adopt an annual budget and fund balances;

364 (f) develop policies for the operation of career and technical education facilities under
365 its jurisdiction;

366 (g) subject to Subsection (2), establish human resources and compensation policies for
367 all employees in accordance with policies of the Utah College of Applied Technology Board of
368 Trustees;

369 (h) approve credentials for employees and assign employees to duties in accordance
 370 with the Utah College of Applied Technology Board of Trustees policies and accreditation
 371 guidelines;

372 (i) conduct annual program evaluations;

373 (j) appoint program advisory committees and other advisory groups to provide counsel,
 374 support, and recommendations for updating and improving the effectiveness of training
 375 programs and services;

376 (k) approve regulations, both regular and emergency, to be issued and executed by the
 377 campus president;

378 (l) coordinate with local school boards, school districts, and charter schools to meet the
 379 career and technical education needs of secondary students; and

380 (m) develop policies and procedures for the admission, classification, instruction, and
 381 examination of students in accordance with the policies and accreditation guidelines of the
 382 Utah College of Applied Technology and the State Board of Education.

383 (2) (a) Subsection (1)(g) does not apply to a campus president.

384 (b) The campus board of directors or the Utah College of Applied Technology Board
 385 of Trustees may not establish a policy that requires an institution conducting a reduction in
 386 force to consider seniority as ~~H~~→ [a-primary] the sole ←~~H~~ factor when determining
 386a whether to terminate an
 387 employee.

388 (3) A campus board of directors may not exercise any jurisdiction over career and
 389 technical education provided by a school district or charter school or provided by a higher
 390 education institution independently of a college campus.

391 (4) If a program advisory committee or other advisory group submits a printed
 392 recommendation to the campus board of directors, the campus board of directors shall
 393 acknowledge the recommendation with a printed response that explains the campus board of
 394 directors' action regarding the recommendation and the reasons for the action.

395 Section 10. Section **67-5-12** is amended to read:

396 **67-5-12. Dismissal of career status employees -- Causes -- Procedure -- Retention**
 397 **roster -- Reappointment register.**

398 (1) (a) Employees in a career status may be dismissed only:

399 (i) to advance the good of public service;

- 400 (ii) where funds have expired or work no longer exists; or
- 401 (iii) for any of the following causes or reasons:
 - 402 (A) noncompliance with provisions in the Office of Attorney General policy manual, or
 - 403 division policies, and, for attorneys, noncompliance with the Rules of Professional Conduct;
 - 404 (B) work performance that is inefficient or incompetent;
 - 405 (C) failure to maintain skills and adequate performance levels;
 - 406 (D) insubordination or disloyalty to the orders of a superior;
 - 407 (E) misfeasance, malfeasance, or nonfeasance;
 - 408 (F) failure to advance the good of the public service, including conduct on or off duty
 - 409 which demeans or harms the effectiveness or ability of the office to fulfill its mission or legal
 - 410 obligations;
 - 411 (G) conduct on or off duty which creates a conflict of interest with the employee's
 - 412 public responsibilities or impact that employee's ability to perform his or her job assignments;
 - 413 (H) any incident involving intimidation, physical harm, threats of physical harm
 - 414 against coworkers, management, or the public;
 - 415 (I) failure to meet the requirements of the position;
 - 416 (J) dishonesty; or
 - 417 (K) misconduct.
- 418 (b) Employees in career status may not be dismissed for reasons of race, national
- 419 origin, religion, or political affiliation.
- 420 (2) Except in aggravated cases of misconduct, an employee in a career status may not
- 421 be suspended, demoted, or dismissed without the following procedures:
 - 422 (a) The attorney general or a designated representative shall notify the employee of the
 - 423 reasons for suspension, demotion, or dismissal.
 - 424 (b) The employee shall have an opportunity to reply and have the reply considered by
 - 425 the attorney general or a designated representative.
 - 426 (c) The employee shall have an opportunity to be heard by the attorney general or a
 - 427 designated representative.
 - 428 (d) Following a hearing, an employee may be suspended, demoted, or dismissed if the
 - 429 attorney general or a designated representative finds adequate reason.
 - 430 (e) If the attorney general or a designated representative finds that retention of an

431 employee would endanger the peace and safety of others or pose a grave threat to the public
 432 interest, the employee may be summarily suspended pending administrative hearings and a
 433 review by the Career Service Review Board.

434 (3) (a) An employee in a career status who is aggrieved by a decision of the attorney
 435 general or a designated representative to suspend, demote, or dismiss the employee may appeal
 436 the decision to the Career Service Review Board or its hearing officers by following the
 437 procedures in Title 67, Chapter 19a, Grievance [~~and Appeal~~] Procedures.

438 (b) Matters other than dismissal or demotion may be appealed to and reviewed by the
 439 attorney general or a designated representative whose decision is final with no right of appeal
 440 to the Career Service Review Board or its hearing officers.

441 (4) Disciplinary actions shall be supported by credible evidence, but the normal rules
 442 of evidence in courts of law do not apply in hearings before the attorney general or a designated
 443 representative or the Career Service Review Board or its hearing officers.

444 (5) (a) Reductions in force required by reinstatement of an employee under Section
 445 67-5-11, inadequate funds, change of workload, or lack of work shall be governed by a
 446 retention roster to be maintained by the Office of the Attorney General and the requirements of
 447 this Subsection (5).

448 [~~(b) Except attorney general executive or administrative appointees, employees not in a
 449 career status shall be separated before any employee in a career status.]~~

450 [~~(c) Retention points for each employee in a career status shall be based on the
 451 employee's seniority in service within each employee category in the Office of the Attorney
 452 General, including any military service fulfilled subsequent to the employee's original
 453 appointment.]~~

454 [~~(d) Employees in career status shall be separated in the order of their retention points,
 455 the]~~

456 (b) The Office of the Attorney General shall:

457 (i) subject to Section 67-19-18.5, establish a retention point system; and

458 (ii) discharge an employee with the lowest retention points [to be discharged] first.

459 [~~(e)~~] (c) Those employees who are serving in other positions under Section 67-5-11
 460 shall:

461 (i) have retention points determined as if they were working for the office; and

462 (ii) be separated in the order of the retention points as if they were working in the
463 Office of the Attorney General.

464 ~~[(f)]~~ (d) An employee ~~[in a career status]~~ who is separated by reason of a reduction in
465 force shall be:

466 (i) placed on a reappointment register kept by the Office of the Attorney General for
467 one year; and

468 (ii) offered reappointment to a position in the same category in the Office of the
469 Attorney General ~~[before any employee not having a career status is appointed]~~.

470 Section 11. Section **67-19-18** is amended to read:

471 **67-19-18. Dismissals and demotions -- Grounds -- Disciplinary action --**
472 **Procedure -- Reductions in force.**

473 (1) A career service employee may be dismissed or demoted:

474 (a) to advance the good of the public service; or

475 (b) for just causes, including inefficiency, incompetency, failure to maintain skills or
476 adequate performance levels, insubordination, disloyalty to the orders of a superior,
477 misfeasance, malfeasance, or nonfeasance in office.

478 (2) An employee may not be dismissed because of race, sex, age, disability, national
479 origin, religion, political affiliation, or other nonmerit factor including the exercise of rights
480 under this chapter.

481 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
482 executive director shall establish rules governing the procedural and documentary requirements
483 of disciplinary dismissals and demotions.

484 (4) If an agency head finds that a career service employee is charged with aggravated
485 misconduct or that retention of a career service employee would endanger the peace and safety
486 of others or pose a grave threat to the public interest, the employee may be suspended pending
487 the administrative appeal to the department head as provided in Subsection (5).

488 (5) (a) A career service employee may not be demoted or dismissed unless the
489 department head or designated representative has complied with this subsection.

490 (b) The department head or designated representative notifies the employee in writing
491 of the reasons for the dismissal or demotion.

492 (c) The employee has no less than five working days to reply and have the reply

493 considered by the department head.

494 (d) The employee has an opportunity to be heard by the department head or designated
495 representative.

496 (e) Following the hearing, the employee may be dismissed or demoted if the
497 department head finds adequate cause or reason.

498 (6) (a) Reductions in force required by inadequate funds, change of workload, or lack
499 of work are governed by retention points established by the executive director.

500 (b) Under [~~those~~] circumstances described in Subsection (6)(a):

501 (i) the agency head shall designate the category of work to be eliminated, subject to
502 review by the executive director[-];

503 (ii) temporary and probationary employees shall be separated before any career service
504 employee[-]; and

505 (iii) (A) when more than one career service employee is affected, the employees shall
506 be separated in the order of their retention points, the employee with the lowest points to be
507 discharged first[-]; and

508 (B) retention points for each career service employee shall be computed according to
509 rules established by the executive director, allowing appropriate consideration for proficiency
510 and, subject to Section 67-19-18.5, seniority in state government, including any active duty
511 military service fulfilled subsequent to original state appointment.

512 (c) (i) A career service employee who is separated in a reduction in force under this
513 section shall be given preferential consideration when applying for a career service position.

514 (ii) Preferential consideration under Subsection (6)(c)(i) applies only until the former
515 career service employee accepts a career service position.

516 (iii) The executive director shall make rules in accordance with Title 63G, Chapter 3,
517 Utah Administrative Rulemaking Act, concerning the manner of granting preferential
518 consideration under Subsection (6)(c)(i).

519 (d) (i) An employee separated due to a reduction in force may appeal to the department
520 head for an administrative review.

521 (ii) The notice of appeal must be submitted within 20 working days after the
522 employee's receipt of written notification of separation.

523 (iii) The employee may appeal the decision of the department head according to the

524 grievance and appeals procedure of this chapter and Chapter 19a, Grievance Procedures.

525 Section 12. Section **67-19-18.5** is enacted to read:

526 **67-19-18.5. Reductions in force -- Seniority may not be ~~H~~→ [primary] sole ←~~H~~ factor.**

527 (1) As used in this section:

528 (a) (i) "Employee" means an individual who is:

529 (A) an employee within the meaning of Chapter 24 of the Internal Revenue Code of
530 1986; and

531 (B) employed by the executive branch, judicial branch, or legislative branch.

532 (ii) "Employee" does not include:

533 (A) the governor, members of the Legislature, or all other elected state officers; or

534 (B) an appointive position under schedule A as described in Section 67-19-15.

535 (b) "Employer" means an office, agency, or department of the executive branch,
536 judicial branch, or legislative branch.

537 (2) Notwithstanding any other provision of law, an employer conducting a reduction in

538 force may not consider seniority as ~~H~~→ [a primary] the sole ←~~H~~ factor when determining

538a whether to terminate an

539 employee.

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