

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services (DAS) amends Chapter 50, "Human Resources Definitions," Chapter 51, "Coverage and Exclusions," Chapter 52, "Job Classification," Chapter 53, "Pay," Chapter 54, "Recruitment, Application and Examination," Chapter 56, "Filling Vacancies," Chapter 57, "Appointments," Chapter 58, "Probationary Period," Chapter 59, "Promotion, Transfer, Temporary Assignment, Reassignment and Voluntary Demotion," Chapter 60, "Separations, Disciplinary Actions and Reduction in Force," Chapter 61, "Grievances and Appeals," and Chapter 63, "Leave," Iowa Administrative Code.

The Department of Administrative Services is undertaking a comprehensive review of all existing DAS rules. This filing is the first installment related to this review and encompasses amendments related to the Human Resources Enterprise (HRE) within DAS. The HRE rules relating to benefits were previously reviewed and updated in 2009. DAS intends to adopt additional amendments relating to Information Technology Enterprise (ITE) operations as well as the operations of the General Services Enterprise and the State Accounting Enterprise.

These amendments make several necessary improvements to existing rules including but not limited to the following: amending certain definitions to reflect existing statutes, eliminate unnecessary terms, and make various technical and grammatical changes.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 27, 2012, as **ARC 0180C**. No public comment was received.

The Notice of Intended Action included several items related to the Information Technology Enterprise. As a result of further discussion between the Chief Information Officer and members of the Department of Administrative Services, the Department intends to revisit the ITE rules at a later date; consequently Items 1 to 11 as published under Notice of Intended Action were not adopted, and the subsequent items were renumbered accordingly.

Two other adjustments were made to the amendments to reflect comments from the Administrative Rules Review Committee. In the introductory paragraph of rule 11—57.5(8A), the qualifier "unless otherwise permitted by law" was added to a new provision pertaining to former employees. In addition, the words "within the last 12 months" as they related to the most recent performance review were deleted from the third sentence of the introductory paragraph of subrule 60.3(3) and from the last sentence of paragraph 60.3(5)"b."

After analysis and review of this rule making, no impact on private sector jobs has been found.

These amendments are intended to implement Iowa Code chapter 8A, subchapter IV.

These amendments will become effective November 21, 2012.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **11—50.1(8A)**:

"Agency" means a department, independent agency, or statutory office ~~provided for in the Iowa Code section 7E.2.~~

"Certification" means the referral of ~~available~~ qualified names from an eligible list to an agency for the purpose of making a selection in accordance with these rules.

"Class" or "job classification" or "job class" means one or more positions so similar in duties, responsibilities, and qualifications that each may be assigned to the same job title and pay plan.

"Classification plan" means the ~~printed~~ published list of job classifications and the related elements assigned to each. The classification plan is published annually by the department and revised as necessary.

"Grievance" means ~~an expressed difference, dispute, or controversy between an employee and the appointing authority, with respect to circumstances or conditions of employment~~ a written complaint alleging a specific violation of these rules or of Iowa Code chapter 8A, subchapter IV.

~~“Merit system” means those positions or employees in the state personnel system determined by the director to be covered by the provisions of 2003~~ the system of human resource administration based on merit principles and scientific methods to govern the appointment, compensation, promotion, welfare, development, transfer, layoff, removal, and discipline of its civil employees and other instances of state employment established pursuant to Iowa Code Supplement chapter 8A as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings.

~~“Minimum qualifications” means the minimum education, experience, or other background required to be considered eligible to apply for, or otherwise perform the duties of a particular job classification. Minimum qualifications are published in classification descriptions, and pertain only to positions covered by merit system provisions.~~

~~“Overtime” means those hours that exceed 40 in a workweek for which an eligible employee is entitled to be compensated unless otherwise specified in a collective bargaining agreement.~~

~~“Pay increase” means a periodic step or percentage an increase in pay within the pay range for the class based on time spent, performance, or both.~~

~~“Permanent employee” means any executive branch employee (except board of regents employees) who has completed at least six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in 2003 Iowa Code Supplement section 8A.411, it “permanent employee” further means those employees who have completed the period of probationary status provided for in 2003 Iowa Code Supplement section 8A.413. For peace officers employed by the department of public safety, “permanent employee” means a peace officer who has completed a 12-month probationary period after appointment.~~

~~“Premium overtime rate of compensation” means compensation equal to one and one-half hours for each hour of overtime.~~

~~“Probationary employee” means any executive branch employee (except board of regents employees) who has completed less than six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in 2003 Iowa Code Supplement section 8A.411, it “probationary employee” further means those employees who have not completed the period of probationary status provided for in 2003 Iowa Code Supplement section 8A.413. For peace officers employed by the department of public safety, “probationary employee” means a peace officer who has completed less than 12 months of continuous nontemporary employment following appointment to a peace officer classification.~~

~~“Reassignment” means the movement of an employee and the position the employee occupies within the same organizational unit or to another organizational unit at the discretion of the appointing authority. A reassignment may include a change in duties, work location, days of work or hours of work, and may be temporary or permanent. A reassignment may result in a change ~~from~~ from the employee’s previous job classification.~~

~~“Same pay grade” means those pay grades in the various pay plans having the same pay grade number as well as those pay grades using a three-step pay range where those steps correspond to the top three steps of a six-step range. A three-step pay grade shall be considered the same as the corresponding six-step pay grade in determining whether an action is a promotion, demotion, or transfer.~~

~~“Standby” means those times when eligible employees are required by the appointing authority to restrict their activities during off-duty hours so as to be immediately available for duty when required by the appointing authority, and is other than simply the requirement to leave word of their whereabouts in case of the need to be contacted.~~

ITEM 2. Rescind the definitions of “Fee-for-services contractor,” “Immediate family” and “Job classification” in rule **11—50.1(8A)**.

ITEM 3. Amend rule 11—51.2(8A) as follows:

11—51.2(8A) Merit system. The merit system shall include and apply to those positions in the state personnel system which have been determined by the director to be covered by ~~the provisions of 2003 Iowa Code Supplement section 8A.411~~ as it pertains to qualifications, examinations, probation, and just

cause discipline and discharge hearings, ~~hereafter~~ hereinafter referred to as merit system provisions. Whenever the director determines that a position should be covered by or not covered by merit system provisions, the director shall notify the appointing authority in writing of the decision and the effective date.

51.2(1) *Exclusion of division administrators and policy-making positions.* The appointing authority of each agency shall submit to the director for approval the position number and title of each position referred to in 2003 Iowa Code Supplement section 8A.412; and proposed for exclusion from coverage by the merit system provisions referred to in 2003 Iowa Code Supplement section 8A.411(4). Subsequent changes in the number or duties of these positions shall be submitted to the director for exclusion approval.

51.2(2) No change.

51.2(3) *Other exclusions.* For further information regarding exclusions from merit system coverage, refer to 2003 Iowa Code Supplement section 8A.412.

ITEM 4. Amend **11—Chapter 51**, implementation sentence, as follows:

These rules are intended to implement 2003 Iowa Code Supplement section 8A.413 and Iowa Code chapters 19B and 70A.

ITEM 5. Amend subrule 52.4(5) as follows:

52.4(5) The maximum time periods in the position classification review process may be extended when mutually agreed to in writing ~~and signed~~ by the parties.

ITEM 6. Amend subrule 52.5(1) as follows:

52.5(1) If, following a position classification review request, a decision notice is not issued within the time limit provided for in these rules, or the appointing authority or the incumbent does not agree with the department's final position classification review decision, the appointing authority or the incumbent may request a classification appeal committee hearing. The request shall be in writing and shall be ~~mailed~~ submitted to: Classification Appeal Committee Chair, Department of Administrative Services—Human Resources Enterprise, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0150. The classification appeal hearing process is a contested case as defined by Iowa Code chapter 17A.

ITEM 7. Amend paragraph **52.5(4)“a”** as follows:

a. The classification appeal committee shall schedule a hearing ~~within 30 calendar days following receipt of the request for a hearing unless otherwise mutually agreed to in writing and signed by the parties pursuant to Iowa Code section 17A.12.~~

ITEM 8. Amend subrule 52.6(1) as follows:

52.6(1) Position classification changes shall not be retroactive and shall become effective only after approval by the director. Position classification changes approved by the director that are not made effective by the appointing authority within 90 calendar days following the date approved shall be void. Position classification changes that will have a budgetary impact shall not become effective until approved by the department of management. If the appointing authority decides not to implement the change or the department of management does not approve funding for the change, duties commensurate with the current job classification shall be restored by the appointing authority within three pay periods following the date of that decision.

ITEM 9. Amend **11—Chapter 52**, implementation sentence, as follows:

These rules are intended to implement 2003 Iowa Code Supplement section 8A.413 and Iowa Code chapters 19B and 70A.

ITEM 10. Amend rule 11—53.2(8A) as follows:

11—53.2(8A) Pay plan content. Pay plans shall have numbered pay grades showing minimum and maximum salaries ~~and intermediate salary steps, if applicable.~~

ITEM 11. Amend subrule 53.4(1) as follows:

53.4(1) *Employees.* The director shall assign classes to pay plans and grades and shall assign employees to classes. Employees shall be paid ~~either at one of the established steps or~~ at a rate between the minimum and maximum of the pay grade of the class to which the employee is assigned. Pay decisions shall be at the discretion of the appointing authority; unless otherwise provided for in this chapter or by the director.

ITEM 12. Amend subrule 53.4(6) as follows:

53.4(6) *General pay increases.* The director shall administer general pay increases for employees that have been authorized by the legislature and approved by the governor. An employee in a ~~noncontract class position~~ whose pay has been red-circled above the maximum pay rate of the class to which the employee is assigned shall not receive a general pay increase; unless specifically authorized by the Acts of the general assembly or otherwise provided for in these rules.

ITEM 13. Amend subrule 53.4(7) as follows:

53.4(7) *Pay corrections.* An employee's pay shall be corrected if it is found to be in violation of these rules or a collective bargaining agreement. ~~If the correction is the result of an error or omission, the pay may be corrected within 12 pay periods following the date the employee's pay was incorrectly set or the transaction that should have occurred was omitted.~~ Corrections shall be made on the first day of a pay period.

a. Retroactive pay. An employee may receive retroactive pay ~~for a period of up to 90 calendar days preceding the date the error was corrected or the omission occurred~~ in the same fiscal year for which the pay should have been paid. A request for retroactive pay must be received and processed no later than August 31 following the close of the fiscal year for which the request is made. Requests for retroactive pay ~~beyond 90 calendar days or which extend into a previous fiscal year~~ are not made in a timely fashion must be submitted to the state appeal board.

b. No change.

ITEM 14. Amend subrule 53.5(1) as follows:

53.5(1) *Individual advanced appointment rate.* For new hires, reinstatements, or promotions ~~and upward reclassifications~~ of employees in contract classes, the appointing authority may ~~grant steps or request pay rates~~ in excess of the minimum based on education and experience directly related to duties that exceed the minimum qualifications of the class. The appointing authority shall maintain a written record of the justification for the advanced appointment rate. The record shall be a part of the official employee file. All employees possessing equivalent qualifications in the same class and with the same appointing authority may be adjusted to the advanced rate. Individual advanced appointment rates are subject to prior approval by the department.

ITEM 15. Amend subrule 53.5(5) as follows:

53.5(5) *Temporary, seasonal, and internship.* When an appointment is made to a class on a temporary, seasonal, or internship basis, the employee may be paid at any rate within the pay grade to which the class is assigned. Such employees may be given authorized, noncontract salary, across-the-board adjustments within the minimum and maximum rates of the pay grade. Temporary, seasonal and internship employees are not eligible for within-grade increases based on performance or time in service.

ITEM 16. Amend subrule 53.6(4) as follows:

53.6(4) *Pay plan changes.* If a transaction results in an employee's being paid from a different pay plan without steps, the employee shall be paid at the employee's current pay rate, except as provided in subrules 53.6(1) and 53.6(2). ~~When the transaction results in an employee's being paid from a pay plan with steps, the employee shall be paid at a step in the pay plan that is closest to but not less than the employee's current pay rate, except that for~~ For demotions, the employee's pay shall be at the discretion of the appointing authority so long as if the employee's pay is not greater than it was prior to the demotion. For setting eligibility dates, see subrule 53.7(5).

ITEM 17. Amend paragraph **53.6(6)“b”** as follows:

b. Contract classes. If an employee is promoted to a contract-covered class ~~without steps~~, the employee shall receive a 5 percent pay increase. ~~If promoted to a contract-covered class with steps, the employee shall receive a one-step pay increase~~, except as provided in subrules 53.5(1), 53.6(1), 53.6(2), and 53.6(4).

ITEM 18. Amend subrule 53.6(7) as follows:

53.6(7) Demotion. If an employee demotes voluntarily or is disciplinarily demoted, the employee may be paid at any ~~step or~~ pay rate that does not exceed the employee’s pay at the time of demotion, except as provided in subrules 53.6(1), 53.6(2) and 53.6(4). For setting eligibility dates, see subrule 53.7(5).

ITEM 19. Amend subrule 53.6(10) as follows:

53.6(10) Return from leave. If an employee returns from an authorized leave, the employee shall be paid at the same ~~step or~~ pay rate as prior to the leave, including any pay grade, pay plan, class or general salary increases for which the employee would have been eligible if not on leave, except as provided for in subrules 53.6(1) and 53.6(2). For setting eligibility dates, see subrule 53.7(5).

ITEM 20. Amend subrule 53.6(12) as follows:

53.6(12) Reinstatement. When an employee is reinstated, the employee may be paid at any ~~step or~~ pay rate for the class to which the employee is reinstated.

ITEM 21. Amend subrule 53.7(1) as follows:

53.7(1) General. An employee, upon completion of a minimum pay increase eligibility period, may receive a periodic ~~step or percentage~~ increase in base pay that is within the pay grade and pay plan of the class to which the employee is assigned upon completion of a minimum pay increase eligibility period.

a. Pay increase eligibility periods. The minimum pay increase eligibility period for employees ~~paid from pay plans without steps~~ shall be 52 weeks, except that it shall be 26 weeks for new hires and employees who receive an increase in base pay as a result of a promotion, reclassification or pay grade change. ~~Minimum pay increase eligibility periods for employees paid from pay plans with steps shall be the number of weeks in the pay plan that corresponds to the employee’s step.~~

b. Noncreditable periods. Except for required educational and military leave, periods of leave without pay exceeding 30 calendar days shall not count toward an employee’s pay increase eligibility period.

c. Reduction of time periods. The director may authorize a reduction in the pay increase eligibility periods for classes a position where there are is an unusual recruitment and retention ~~circumstances~~ circumstance.

ITEM 22. Amend subrule 53.7(5) as follows:

53.7(5) Eligibility dates. An employee’s pay increase eligibility date shall be set at the time of hire, and if the employee starts on the first working day of the pay period, it shall be the first day of the pay period following completion of the employee’s minimum pay increase eligibility period. Otherwise, it shall be the first day of the pay period following the date the employee starts work.

a. General. A new eligibility date shall be set when an employee receives an increase in base pay, except when transferring in the same pay grade to a different pay plan. ~~The following pay increase eligibility periods shall be used to set these dates.~~

~~(1) Fifty-two~~ Such date will be set at 52 weeks for employees paid from pay plans without steps, except that for new hires and employees who receive a pay increase as a result of a promotion, reclassification or pay grade change. The date for such employees it shall be 26 weeks following the effective date of the action.

~~(2) For employees paid from pay plans with steps, it shall be the number of weeks in the pay plan that corresponds to the employee’s pay step after the pay increase.~~

b. to d. No change.

~~*e.*—*Prior service credit.* If a transfer or demotion results in an employee's having a longer pay increase eligibility period, credit shall be given for the time served toward completion of the employee's new pay increase eligibility period.~~

f. e. *Administrative changes.* The director may change eligibility dates when economic or other pay adjustments are made to the classification plan or pay plans.

ITEM 23. Amend subrule 53.8(1) as follows:

53.8(1) *Leadworker.* An employee who is temporarily assigned lead work duties, as defined in rule 11—50.1(8A), may be given additional pay of up to 15 percent unless otherwise provided in an applicable collective bargaining agreement.

ITEM 24. Amend subrule 53.9(4) as follows:

53.9(4) *Discretionary payments.* A lump sum payment for exceptional job performance may be given to an employee ~~whenever the appointing authority deems it appropriate.~~ A written explanation setting forth the reasons shall first be submitted to the director for approval.

ITEM 25. Amend subrule 54.2(6) as follows:

54.2(6) *Disqualification or removal of applicants.* The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

a. to g. No change.

h. Has resigned in lieu of discharge for cause.

~~*i.*~~ *i.* Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.

~~*j.*~~ *j.* Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.

~~*k.*~~ *k.* Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed in accordance with rule 11—61.3(8A). Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

ITEM 26. Amend subrule 54.3(3) as follows:

54.3(3) *Background checks.* Background checks and investigations, including, but not limited to, checks of arrest or conviction records, fingerprint records, driving records, financial or credit records, and child or dependent adult abuse records, constitute an examination or test within the meaning of this subrule, and Iowa Code chapter 19A 8A and 161—subrule 8.1(1). Confidential documents provided to the director by other agencies in conjunction with the administration of this rule shall continue to be maintained in ~~their~~ the documents' confidential status. The director is subject to the same policies and penalties regarding the confidentiality of the documents as any employee of the agency providing the documents.

Background checks shall be conducted only after receiving approval from the director concerning the areas to be checked and the standards to be applied in evaluating the information gathered. Background checks are subject to the following limitations and requirements:

a. and b. No change.

c. The director appointing authority shall provide a statement that shall be presented by the appointing authority to each applicant that who is to be investigated under this subrule. This statement shall inform the applicant that the applicant is subject to a background check as a condition of employment and the topics to be covered in the background check. It shall also inform the applicant that all information gathered will be treated as confidential within the meaning of Iowa Code section 22.7, but that all such information gathered shall be available to the applicant upon request through the agency authorized to release such information, unless otherwise specifically provided by law. The

statement shall be signed and dated by the applicant and shall include authorization from the applicant for the appointing authority to conduct the background check as part of the application and selection process and to share the information gathered with the director.

~~d.—Information obtained from a background check is not necessarily a bar to an applicant’s employment.~~

~~e.—Appointing authorities shall send information periodically to the director on forms prescribed by the director. This information shall include the following:~~

~~(1) The total number of applicants for each position who were eligible for a background check.~~

~~(2) A list of all applicants for whom background checks were conducted, by organizational unit, name, social security number, type of background check, and result (pass or fail).~~

~~(3) Documentation of specific business necessity and job relatedness when any inequitable rejection rate is identified by the director.~~

ITEM 27. Amend subrule 54.4(2) as follows:

54.4(2) Examination administration. The director or appointing authority shall arrange for suitable locations and conditions to conduct examinations. Locations in various areas of the state and out of state may be used. Examinations may be postponed, canceled, or rescheduled.

a. Examination of persons with disabilities. Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies for accommodations established by the department. ~~Persons in the certified disability program or any other formal waiver program established by the department may be exempt from examinations.~~

~~*b.—Special admittance.* Requests for special admittance after the closing date for application shall be submitted in writing to the director or the appointing authority. The request shall explain why the applicant seeks special admittance.~~

~~*e. b. Retaking examinations.* Applicants may not retake aptitude, psychological, video-based or other examinations for 60 calendar days following the last date the examination was taken except as provided for in rule 11—54.6(8A). Violation of the waiting period for an examination shall result in the voiding of the current examination score being voided and the imposition of an additional 60-calendar-day waiting period being imposed.~~

Keyboard examinations, such as typing, may be retaken at any time without a waiting period, if equipment is available.

The most recent examination score shall determine the applicant’s qualification for the corresponding eligible lists.

Applicants who are required to take examinations covered by the rules or procedures of other agencies are subject to applicable rules or procedures on retakes for such examinations of that agency.

ITEM 28. Amend rule 11—54.6(8A) as follows:

11—54.6(8A) Review of written examination questions. Applicants may request to review their incorrectly answered questions on department-administered written examinations except that aptitude, psychological, and video-based examinations are not subject to review. An applicant who reviews written examination questions may not retake that examination or an examination with the same or similar content for 60 calendar days following the review ~~and then only if the class is open for recruitment~~. Violation of this waiting period shall result in the voiding of the current examination score being voided and the imposition of an additional 60-calendar-day waiting period being imposed.

ITEM 29. Amend rule 11—56.6(8A) as follows:

11—56.6(8A) Incomplete lists. If the number of names available on a nonpromotional list is less than six, the appointing authority will be granted provisional appointment authority.

ITEM 30. Amend rule 11—57.1(8A) as follows:

11—57.1(8A) Filling vacancies. Unless otherwise provided for in these rules or the Iowa Code, the filling of all vacancies shall be subject to the provisions of these rules. No vacant position in the executive

branch shall be filled until the position has been classified in accordance with Iowa Code Supplement chapter 8A and these rules.

An employee who has participated in the phased retirement program shall not be eligible for permanent employment for hours in excess of those worked at the time of retirement. ~~An~~ A former employee who has participated in the any early retirement or early termination program shall not be eligible for any state employment, except as provided for in the applicable program.

A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

ITEM 31. Amend rule 11—57.5(8A), introductory paragraph, as follows:

11—57.5(8A) Reinstatement. A permanent employee who left employment for other than just cause may be reinstated with permanent or probationary status to any class for which qualified at the discretion of an appointing authority. Reinstatement shall not require appointment from a list of eligibles. Former employees who retired and applied for retirement benefits under an eligible state retirement system or program are not eligible for reinstatement unless otherwise permitted by law.

ITEM 32. Amend rule 11—58.1(8A), introductory paragraph, as follows:

11—58.1(8A) Duration. All original full-time or part-time appointments to permanent positions shall require a six-month period of probationary status. Appointments to peace officer positions at the department of public safety require a 12-month probationary period following appointment. Employees with probationary status shall not be eligible for promotion, reinstatement following separation, or other rights to positions unless provided for in this chapter, nor have reduction in force, recall, or appeal rights.

ITEM 33. Amend rule 11—58.4(8A) as follows:

11—58.4(8A) Promotion during the period of probationary status. A probationary employee who is promoted during the period of probationary status to a position covered by merit system provisions shall be hired in accordance with 11—subrule 56.3(2)(3). The total required probationary period shall include the probationary service in the class from which the employee is promoted. The rate of pay shall be set in accordance with 11—subrule 53.6(6).

ITEM 34. Amend rule 11—59.1(8A) as follows:

11—59.1(8A) Promotion.

~~59.1(1)~~ An appointing authority may promote an employee with permanent status if the employee meets the minimum qualifications and other promotional screening requirements for the position. The employee must be on the list of eligibles for the position and available under the conditions stated on the list request.

~~59.1(2)~~ Agencies shall collect and forward to the director data on the characteristics of applicants considered for promotion in accordance with the director's requirements and these rules.

ITEM 35. Amend rule 11—59.2(8A) as follows:

11—59.2(8A) Reassignment. An appointing authority may reassign an employee. Reassignments may be intra-agency or interagency. Interagency reassignments require the approval of both the sending and the receiving appointing authorities.

An employee who refuses a reassignment may be discharged in accordance with rule 11—60.2(8A), except as provided for in the ~~second unnumbered paragraph~~ of this rule.

If the reassignment of an employee would result in the loss of merit system coverage, an appointing authority may not reassign that employee without the employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

ITEM 36. Amend paragraph **60.1(1)“a”** as follows:

a. To resign or retire in good standing, an employee must give the appointing authority at least 14 calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the director by the appointing authority at the same time. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from certification or appointment to that agency for a period of up to two years. Resignation or retirement shall not be subject to appeal under 11—Chapter 61 unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive workdays without proper authorization from the appointing authority may be considered to have voluntarily terminated employment. The appointing authority shall notify the employee ~~by registered letter (return receipt requested) that they must return to work within two workdays following receipt of the notification or be removed from the payroll. If the appointing authority receives notice from the U.S. post office that the letter was undeliverable, the employee may be removed from the payroll five days following receipt of that notice.~~ of the authority's decision to remove the employee from the payroll. Notification shall be sent to the employee's last-known address, with delivery confirmation required. The appointing authority shall consider requests to review circumstances.

ITEM 37. Rescind subrule 60.1(3) and adopt the following **new** subrule in lieu thereof:

60.1(3) Early retirement incentive program—1992. This early retirement incentive program is provided for in 1992 Iowa Acts, chapter 1220. Employees who participated in this program are not eligible to accept any further employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 38. Rescind subrule 60.1(4) and adopt the following **new** subrule in lieu thereof:

60.1(4) Sick leave and vacation incentive program—2002. This termination incentive program is provided for in 2001 Iowa Acts, Second Extraordinary Session, chapter 5. An employee who elected participation in this program is not eligible to accept any further permanent employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 39. Rescind subrule 60.1(5) and adopt the following **new** subrule in lieu thereof:

60.1(5) Sick leave and vacation incentive program—Fiscal Year 2003. This termination incentive program is provided for in 2002 Iowa Acts, Second Extraordinary Session, chapter 1001. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 40. Rescind subrule 60.1(6) and adopt the following **new** subrule in lieu thereof:

60.1(6) Sick leave and vacation incentive program—Fiscal Year 2005. This termination incentive program is provided for in 2004 Iowa Acts, chapter 1035. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 41. Amend rule 11—60.2(8A), introductory paragraph, as follows:

11—60.2(8A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated

substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

ITEM 42. Amend subrule 60.2(2) as follows:

60.2(2) Reduction of pay within the same pay grade. An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower ~~step or~~ rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

ITEM 43. Amend paragraph **60.3(2)“d”** as follows:

d. The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if the unit(s) is smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in hours, the cutoff date for length of service and performance credits to be utilized in determining retention points, and any other information requested by the director. ~~The appointing authority shall post each approved reduction in force plan for 60 calendar days in conspicuous places throughout the reduction in force unit. The posting shall include the names of all permanent merit system covered employees for each affected job class in the reduction in force unit by retention point order.~~

ITEM 44. Amend subrule 60.3(3), introductory paragraph, as follows:

60.3(3) Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and points for performance record. The director, at the request of the appointing authority, may approve specific exemptions from reduction in force where special skills or abilities are required and have been previously documented in the records of the department as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. Length of service and performance credits shall be calculated as follows:

ITEM 45. Amend subrule 60.3(4), introductory paragraph, as follows:

60.3(4) Order of reduction in force. Permanent merit system covered employees in the approved reduction in force unit shall be placed on a list in descending order by class beginning with the employee having the highest total retention points in the class in the layoff unit. Reduction in force selections shall be made from the list in inverse order regardless of full-time or part-time status, except as provided in subrule 60.3(3). If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

ITEM 46. Amend paragraphs **60.3(5)“b”** and **“c”** as follows:

b. Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of

the reduction in force. Bumping shall be limited to positions covered by merit system provisions and positions covered by a collective bargaining agreement.

The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required and have been previously documented in the records of the department of administrative services as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director.

c. When bumping as set forth in paragraph ~~60.3(5)“b.”~~ of this subrule, the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification, the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

Bumping to another noncontract class in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points except as provided for in this subrule. If bumping occurs, the employee with the fewest total retention points in the class shall then be subject to reduction in force.

Pay upon bumping shall be in accordance with 11—subrule 53.6(11).

ITEM 47. Amend paragraph **60.3(6)“g”** as follows:

g. Notice of recall shall be sent ~~by certified mail, restricted delivery~~ with delivery confirmation. Employees must respond to an offer of recall within five calendar days following the date the notice was received. A notice that is undeliverable to the most recent address of record will be considered a declination of recall. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

ITEM 48. Amend rule 11—61.1(8A) as follows:

11—61.1(8A) Grievances. The grievance procedure is an informal process. It is not a contested case.

All employees shall have the right to file grievances. The right to file a grievance and the grievance procedure provided for in these rules shall be made known and available to employees throughout the agency by the appointing authority through well-publicized means. Employees covered by a collective bargaining agreement may use this grievance procedure for issues that are not covered by their respective collective bargaining agreements.

Grievances shall state the issues involved, the relief sought, the date the incident or violation took place and any rules involved, and shall be filed on forms prescribed by the director. Grievances involving suspension, reduction in pay within the same pay grade, disciplinary demotion, or discharge shall be filed as appeals in accordance with subrule 61.2(6) and commence with Step 3 of the grievance procedure described in subrule 61.1(1).

~~Employees covered by collective bargaining agreements shall be governed by the terms of their contract grievance procedures for those provisions contained in the contract. Otherwise, the provisions of this rule shall apply.~~

61.1(1) to 61.1(5) No change.

ITEM 49. Rescind paragraph **61.2(1)“d.”**

ITEM 50. Amend subrule 61.2(5) as follows:

61.2(5) Appeal of grievance decisions. An employee who has alleged a violation of 2003 Iowa Code Supplement sections 8A.401 to 8A.458 or the rules adopted to implement 2003 Iowa Code Supplement sections 8A.401 to 8A.458 may, within 30 calendar days after the date the director’s response at the third step of the grievance procedure was issued or should have been issued, file an appeal with the

public employment relations board. A nontemporary, noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, may, if not satisfied with the decision of the director, request an appeal hearing before the public employment relations board within 30 calendar days after the date the director's decision was issued or should have been issued. However, when the grievance concerns allegations of discrimination within the meaning of Iowa Code chapter 216, the Iowa civil rights commission procedures shall be the exclusive remedy for appeal and shall, in such instances, constitute final agency action. In all other instances, decisions by the public employment relations board constitute final agency action.

ITEM 51. Amend subrule 63.3(12) as follows:

63.3(12) If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave ~~except that employees. Employees~~ shall, upon request, be paid accrued ~~vacation and~~ compensatory leave in a lump sum ~~to prevent delay of long-term disability benefits.~~ When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4). ~~Leave without pay for temporary disabilities for medically related reasons shall be in accordance with rule 11—63.5(8A), prior to termination.~~

ITEM 52. Amend subrule 63.4(1), introductory paragraph, as follows:

63.4(1) It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph "a" or "c" below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous ~~six~~ 12 months. Leave may be for one or more of the following reasons:

ITEM 53. Amend subrule 63.5(4), introductory paragraph, as follows:

63.5(4) When requested in writing and verified by the employee's physician or other licensed practitioner, an employee shall be granted sick leave, either paid, unpaid or a combination of the two at the discretion of the employee, for at least an eight-week period when the purpose is to provide recovery from a medically related disability ~~except that leave without pay shall not be granted unless accrued sick leave has been exhausted. If the employee's accrued sick leave is exhausted prior to completion of the eight-week period, the employee shall be granted additional leave, paid or unpaid, for the remainder of the period, in accordance with these rules.~~ The appointing authority may grant leave in excess of the eight-week period. Paid leave shall not be granted in excess of that accrued. At any time during the period of leave, the appointing authority may require that the employee submit written verification of continuing disability from the employee's physician or other licensed practitioner. In addition to the reason listed, subrule 63.5(2) shall also apply under the following circumstances:

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