

## ADMINISTRATIVE SERVICES DEPARTMENT[11]

### Notice of Intended Action

**Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”**

**Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.**

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services (DAS) proposes to amend Chapter 4, “Public Records and Fair Information Practices,” Chapter 44, “Professional/Trade Dues Deductions,” Chapter 52, “Job Classification,” Chapter 53, “Pay,” Chapter 54, “Recruitment, Application and Examination,” Chapter 57, “Appointments,” Chapter 60, “Separations, Disciplinary Actions and Reduction in Force,” Chapter 63, “Leave,” and Chapter 64, “Benefits,” Iowa Administrative Code.

The Department of Administrative Services is continuing its effort to review its administrative rules in accordance with Executive Order 71 by amending certain human resources rules to eliminate conflict with statute, providing for preference for veterans in state employment, aligning rules for the phased retirement program with changes to the Iowa Code, making changes that were negotiated during collective bargaining, and making other revisions that reflect and clarify departmental practice.

The Department of Administrative Services does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Department’s general rules concerning waivers.

Interested persons may make written comments on the proposed amendments until 4:30 p.m. on July 1, 2014. Comments should be directed to Caleb Hunter, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by e-mail to [Caleb.Hunter@iowa.gov](mailto:Caleb.Hunter@iowa.gov).

A public hearing will be held on July 1, 2014, from 9 to 10 a.m. in Room 8, A Level, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise the Department of Administrative Services of specific needs by calling (515)281-3351.

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

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

The following amendments are proposed.

ITEM 1. Amend rule 11—4.14(8A,22) as follows:

**11—4.14(8A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the department by personal identifier in record systems as defined in rule 11—4.1(8A,22). Unless otherwise stated, the authority to maintain the record is provided by ~~2003~~ Iowa Code ~~Supplement~~ chapter 8A.

**4.14(1) to 4.14(3)** No change.

**4.14(4) Comparison with data from outside the department.** Personally identifiable information in systems of records maintained by the department is retrievable through the use of personal identifiers and may be compared with information from outside the department when specified by law. This comparison is allowed in situations including:

*a.* Determination of any offset of a debtor’s income tax refund or rebate for child support recovery or foster care recovery (~~2003~~ Iowa Code ~~Supplement~~ section 8A.504);

*b.* Calculation of any offset against an income tax refund or rebate for default on a guaranteed student loan (~~2003~~ Iowa Code ~~Supplement~~ section 8A.504);

c. Offset from any tax refund or rebate for any liability owed a state agency (2003 Iowa Code Supplement section 8A.504);

d. Offset for any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of district court as a criminal fine, civil penalty surcharge, or court costs (2003 Iowa Code Supplement section 8A.504).

4.14(5) No change.

4.14(6) *Record systems with personally identifiable retrieval.* The department maintains the systems or records that contain personally identifiable and confidential information as described in the following paragraphs. The legal authority for the collection of the information is listed with the description or the system.

a. *Personnel files.* Personnel files are maintained by the department and the employee's appointing authority. An employee may have several files depending on the purpose of the file and the records maintained within the file. Personnel files consist of records that concern individual state employees and their families, as well as applicants for state employment.

(1) Personnel files contain personal, private, and otherwise confidential records related to: a state employee's employment, performance and discipline and will be maintained as confidential in accordance with Iowa Code section 22.7(11) and any other applicable law.

1. Applicants:

- ~~Preemployment information, including information gathered during background screenings;~~
- ~~Test scores.~~

2. Benefits:

- ~~Employee assistance program participation;~~
- ~~Wellness program participation;~~
- ~~Pre-tax programs;~~
- ~~Health, dental, life, and long-term disability insurance;~~
- ~~Benefit elections and miscellaneous benefit documents;~~
- ~~Medical information on the employee or a member of the employee's immediate family;~~
- ~~Medical information to support the employee's sick leave usage and fitness for duty determinations;~~

- ~~Deferred compensation;~~

- ~~Workers' compensation.~~

3. Employee performance and discipline:

- ~~Investigations incident to the employee's employment;~~
- ~~Information related to disciplinary actions;~~
- ~~Complaints, grievances, and appeals;~~
- ~~Performance planning and evaluation;~~
- ~~Training; and~~
- ~~Other information incident to the employment of individuals.~~

(2) These records are collected in accordance with 2003 Iowa Code Supplement chapter 8A, and Iowa Code chapters 8A, 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A; and are confidential records under Iowa Code section 22.7(11) and other law, ~~because the information in the record is private and personal, the disclosure of which would likely result in an unwarranted invasion of the privacy of the subject of the record or the subject's family. It is unlikely that the personal and private information in these records can be separated from otherwise releasable information without identifying the subject or the subject's family.~~

b. *Employee payroll records.* The payroll records system consists of records that concern individual state employees and their families.

(1) This system contains the following information:

1. ~~Workers' compensation;~~
2. ~~Health, dental, life, and long-term disability insurance;~~
3. ~~Qualified domestic relations orders;~~
4. ~~Charitable contributions;~~

5. ~~Garnishments;~~
6. ~~Pay and benefits;~~
7. ~~Equal employment opportunity;~~
8. ~~Training;~~
9. ~~Deferred compensation; and~~
10. ~~Other information incident to the employment of individuals.~~

(2) (1) Records under the jurisdiction of the department are collected in accordance with 2003 Iowa Code Supplement chapter 8A, and Iowa Code chapters 8A, 19B, 20, 70A, 85, 85A, 85B, 91A, and 509A, and portions are confidential records ~~in part~~ under Iowa Code section 22.7 and other law.

(3) (2) These records contain names, social security numbers, and other identifying numbers; and are collected in the form of paper, microfilm, tape, and ~~computer~~ electronic records. ~~Computer~~ Electronic records permit the comparison of personally identifiable information in one record system with that in another system.

c. *Vehicle dispatcher files.* Vehicle assignments and credit card records may be accessed by personal identifier or by vehicle identification number. Other records which may contain personally identifiable information, but are not retrievable by it, are: mileage reports, auction information, automobile insurance premiums, pool car billings, departmental billing, motor fuel tax refund, and motor oil claims. Records are stored on paper, ~~computer~~ electronically, and on microfilm.

d. *Capitol complex parking files.* The general services enterprise maintains records concerning parking assignments, decals, gate cards, after-hours building passes, parking tickets, departmental parking coordinators, and hearings and appeals. All records except those related to hearings and appeals may be retrieved by personal identifier data. Records related to hearings and appeals are filed by date of hearing only. Records are stored on paper and ~~computer~~ electronically. Records relating to hearings and appeals are also stored on audio tapes.

e. *Annual bid bonds.* The printing division maintains a file of annual bid bonds for vendors eligible to bid on printing contracts. The file is alphabetical by vendor name and contains only those papers necessary for execution of the bond. This record is stored on paper only.

f. *Telephone directory of state employees.* The information technology enterprise maintains a telephone directory of state employees. The directory contains names, department names, business addresses and telephone numbers. The publication also includes private industry information and advertising containing business names, addresses and telephone numbers. This record is stored on both paper and ~~computer~~ electronically.

g. *Contracts.* These are records pertaining to training, consultants, and other services. These records are collected in accordance with 2003 Iowa Code Supplement chapter 8A and Iowa Code ~~chapter~~ chapters 8A and 19B, and portions are confidential records ~~in part~~ under Iowa Code section 22.7. These records contain names, social security numbers, and other identifying numbers; and are collected in the form of paper, microfilm, tape, and ~~computer~~ electronic records. ~~Computer~~ Electronic records permit the comparison of personally identifiable information in one record system with that in another system.

h. *Vendor files.* The department maintains files of vendors eligible to do business with the state of Iowa. Files may contain applications, vendor information booklets, vendor codes, commodity codes, minority-owned vendor identification information, and mailing lists. Records are stored on paper and ~~computer~~ electronically.

**4.14(7) *Releasable information on state employees.*** The following information that is maintained in the state payroll system or a personnel file shall be released to the public without the consent of the employee because the information is not considered to be confidential information:

- a. No change.
- b. The ~~date~~ dates on which the state employee was employed by state government.
- c. and d. No change.

ITEM 2. Amend subrule 4.18(4) as follows:

**4.18(4)** The director shall prescribe the forms to be used for collecting and recording information on employees and applicants for employment, as well as the procedures for the completion, processing, ~~retention~~, and release of those forms and records, as well as the information contained on them.

ITEM 3. Amend ~~11—Chapter 4~~, implementation sentence, as follows:

These rules are intended to implement ~~2003 Iowa Code Supplement chapter 8A and Iowa Code chapter chapters 8A and 22~~.

ITEM 4. Amend rule 11—44.2(70A) as follows:

**11—44.2(70A) Qualifications.** To qualify to receive dues deductions, an association must have and may be required to maintain 100 members or more who are state officers or employees participating in either the centralized payroll system or the department of transportation payroll system. For purposes of meeting the minimum requirements, the association cannot count the enrollment of state officers or employees participating in similar programs that have been authorized by existing Iowa Code sections, by collective bargaining contracts, or by the appropriate governing authority. An association seeking to be qualified must supply officials in charge of each affected payroll system with an alphabetized, certified list of the state employees and their social security numbers for whom dues deductions are being requested. The type of dues being requested and the amount and frequency of the deduction must also be noted.

ITEM 5. Amend rule 11—44.11(70A) as follows:

**11—44.11(70A) Annual review of participating employees.** During September of each year, each participating association must, if requested by the department, supply officials in charge of each affected payroll system with a certified list of all state employees who have a professional/trade association dues deduction. The list must contain the same information required in rule 11—44.2(70A), as ~~it~~ the list will be used by the state to determine if the association continues to have 100 or more employees participating in the program.

If the minimum qualification is not being maintained, written notification ~~will~~ may be provided to the association giving ~~them~~ it 90 days to meet the minimum qualification. If, at the end of the 90-day period, the minimum qualification has not been attained, the dues deduction for all participating employees for that association ~~will~~ may be terminated.

ITEM 6. Amend subrule 52.4(2) as follows:

**52.4(2)** Position classification decisions shall be based on documented evidence of the performance of a kind and level of work that is permanently assigned and performed ~~over~~ 50 percent or more of the time and that is attributable to a particular job classification.

ITEM 7. 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. Corrections shall be made on the first day of a pay period.

*a.* No change.

*b. Overpayment and underpayment.* If an error results in an employee's being overpaid for wages, except for FICA, state and federal income taxes and IPERS contributions shall be collected. Also, premiums for health, dental and life insurance benefits that have been underpaid shall be subject to collection. An employee may choose to repay the amount from wages in the pay period following discovery of the error, or have the overpayment deducted from succeeding pay periods not to exceed the number of pay periods during which the overpayment occurred, or the employee or appointing authority may submit an alternate repayment plan to the director. The repayment plan shall identify the details of the overpayment, the reasons why the department's recouping the amount of overpayment in the same number of pay periods as those during which the overpayment occurred presents a hardship to the employee, and the terms of the alternate repayment plan. The director shall notify the appointing

authority of the decision on the alternate repayment plan. ~~The appointing authority shall submit the repayment plan on forms prescribed by the department beginning with the document correcting the employee's pay.~~ If the employee ~~terminates~~ separates from employment, the amount remaining shall be deducted from wages, vacation payout, applicable sick leave payout and any wage correction payback from IPERS. The collection of overpaid wages shall not result in reducing the employee's pay below relevant state and federal minimum wage statutes for each hour actually worked during the pay period in which the collection of overpaid wages occurs.

ITEM 8. Rescind and reserve subrule **53.6(12)**.

ITEM 9. Rescind and reserve rule **11—53.10(8A)**.

ITEM 10. Amend subrule 53.11(6) as follows:

**53.11(6) *Holiday hours.*** Holiday hours that have already been paid at a premium rate shall not be counted in calculating overtime, except as specifically provided for in a collective bargaining agreement.

ITEM 11. Amend **11—Chapter 53**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ sections ~~8A.401, 8A.402, 8A.411, 8A.413, 8A.417, 8A.418, 8A.439, 8A.455, 8A.456 and 8A.458~~ chapter 8A, subchapter IV.

ITEM 12. Amend subrule 54.2(4) as follows:

**54.2(4) *Application for eligible lists.*** Persons may apply to be on eligible lists as follows:

*a. Promotional lists.* Promotional applicants shall meet the minimum qualifications. Promotional applicants may be subject to keyboard examinations, background checks, psychological examinations, and other examinations used for further screening. The following persons may apply to be on promotional eligible lists:

(1) Permanent employees, including permanent employees of the board of regents and community-based corrections;

(2) Persons enrolled in work experience programs who have successfully completed at least 90 calendar days in the program; ~~and~~

(3) Persons who have been formally enrolled in the department's intern development program for a period of at least 90 calendar days; ~~and~~

(4) Disabled veterans who are enrolled in a job training program in accordance with the provisions of rule 11—57.9(8A) and have worked a minimum of 160 hours up to a maximum of 780 hours.

*b. No change.*

ITEM 13. Amend subrule 54.2(7) as follows:

**54.2(7) *Qualifications.*** Applicants must meet the qualifications for the class as well as any selective requirements associated with a particular class or position as indicated in the class description. The director shall determine whether or not an applicant meets such qualifications and requirements.

Applicants and employees may, as a condition of the job, be required to have a current license, certificate, or other evidence of eligibility or qualification. Employees who fail to meet and maintain this requirement shall be subject to discharge in accordance with rule ~~11—57.9(8A)~~ 11—57.10(8A) or 11—subrule 60.2(4).

Any fees associated with obtaining or renewing a license, certificate, or other evidence of eligibility or qualification shall be the responsibility of the applicant or employee unless otherwise provided by statute.

ITEM 14. Amend **11—Chapter 54**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ sections ~~8A.401, 8A.402, 8A.412 to 8A.414, 8A.416, 8A.452, 8A.453, 8A.456 and 8A.458~~ chapter 8A, subchapter IV.

ITEM 15. 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 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.~~ A former employee who has participated in 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 16. Amend rule 11—57.4(8A) as follows:

**11—57.4(8A) Temporary appointment.** Persons may be appointed with temporary status to any class. They may be paid at any rate of pay within the range for the class to which appointed.

Temporary appointments may be made to temporary positions or to permanent positions, or on an overlap basis to unauthorized positions, and may be made to any class and at any rate of pay within the range for the class to which appointed.

A temporary appointment shall not exceed 780 work hours in a fiscal year.

A temporary employee shall have no rights to appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits, unless the temporary employee becomes covered by a collective bargaining agreement, in which case the temporary employee may have rights under the collective bargaining agreement.

A person appointed with temporary status shall only be given another temporary type of appointment to the extent that the total number of hours worked in all temporary and seasonal appointments in any agency in a fiscal year does not exceed 780 hours.

ITEM 17. Amend rule 11—57.7(8A) as follows:

**11—57.7(8A) Seasonal appointment.** The director may authorize appointing authorities to make seasonal appointments to positions. Seasonal appointments may be made to any class and at any rate of pay within the range for the class to which appointed. Seasonal appointments may, however, be made only during the seasonal period approved by the director for the agency requesting to make the appointment; and must be concluded by the end of that period. To be eligible to make seasonal appointments, the appointing authority must first submit a proposed seasonal period to the director for approval. Such period shall not exceed six months in a fiscal year; however, the appointment may start as early as the beginning of the pay period that includes the first day of the seasonal period and may end as late as the last day of the pay period that includes the last day of the seasonal period.

Persons appointed with seasonal status shall have no rights ~~of~~ to appeal, transfer, promotion, demotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits, unless the temporary employee becomes covered by a collective bargaining agreement, in which case the temporary employee may have rights under the collective bargaining agreement.

A person appointed with seasonal status ~~to a classification covered by a collective bargaining agreement shall not work in excess of 780 hours in that status in such a class or classes, nor shall that person accumulate more than 780 hours worked in any combination of temporary statuses in any agency or any combination of agencies during a fiscal year~~ shall only be given another temporary or seasonal appointment to the extent that the total number of hours worked in all temporary and seasonal appointments in any agency in a fiscal year does not exceed 780 hours.

ITEM 18. Renumber rule **11—57.9(8A)** as **11—57.10(8A)**.

ITEM 19. Adopt the following new rule 11—57.9(8A):

**11—57.9(8A) Noncompetitive appointments for disabled veterans.** A disabled veteran who satisfactorily completes a federally funded job training program approved by the United States Department of Veterans Affairs in a state agency may be appointed noncompetitively into a vacant position in the job classification in which the veteran has been trained. A person who satisfactorily

completes the program is eligible for a noncompetitive appointment with that agency for a period of one year. The appointment will be made in accordance with 11—subparagraph 54.2(4) “a”(4).

ITEM 20. Amend **11—Chapter 57**, implementation sentence, as follows:

These rules are intended to implement Iowa Code Supplement sections ~~8A.401, 8A.402, 8A.411 to 8A.413, 8A.416 to 8A.418, 8A.453, 8A.456 and 8A.458~~ chapter 8A, subchapter IV.

ITEM 21. Rescind and reserve paragraph **60.1(1)“b.”**

ITEM 22. Amend subrule 60.3(2) as follows:

**60.3(2)** The agency’s reduction in force shall conform to the following provisions:

*a.* and *b.* No change.

~~*c.*—An agency shall not implement a reduction in force until it has first terminated all temporary employees in the same class in the reduction in force unit, as well as those who have probationary status in the same class.~~

*d.* *c.* 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.

~~*e.* *d.*~~ *e.* *d.* The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee’s rights under these rules. A copy of the employee’s retention points computation worksheet shall be furnished to the employee. The official notifications to affected employees shall be made at least 20 workdays prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency’s reduction in force plan has been approved by the director, unless otherwise authorized by the director.

~~*f.* *e.*~~ *f.* *e.* The appointing authority shall notify the affected employee(s), in writing, of any options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days following the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

ITEM 23. Amend **11—Chapter 60**, implementation sentence, as follows:

These rules are intended to implement 2003 Iowa Code Supplement section 8A.413.

ITEM 24. Amend subrule 63.3(11) as follows:

**63.3(11)** Employees may also use accrued sick leave, not to exceed a total of 40 hours per fiscal year, for the following purposes:

*a.* When a death occurs in the immediate family;

*b.* For the temporary care of, or necessary attention to, members of the immediate family.

For purposes of this subrule, “immediate family” means the employee’s spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee’s spouse and other persons who are members of the employee’s household.

This leave shall be granted at the convenience of the employee whenever possible and consistent with the staffing needs of the appointing authority.

ITEM 25. Amend subrule 64.6(5) as follows:

**64.6(5)** *Absolute safeguards of the employer, trustee, their employees, and agents.*

*a.* *Questions of fact.* The trustee and the plan administrator are authorized to resolve any questions of fact necessary to decide the participating employee’s rights under the plan. An appeal of a decision

of the plan administrator shall be made to the trustee, or the trustee's designee, who shall render a final decision on behalf of the plan.

*b. Plan construction.* The trustee and the plan administrator are authorized to construe the plan and to resolve any ambiguity in the plan and to apply reasonable and fair procedures for the administration of the plan. An appeal of a decision of the plan administrator shall be made to the trustee, ~~who~~ or the trustee's designee, within 30 days of the plan administrator's decision. The trustee, or the trustee's designee, shall render a final decision on behalf of the plan.

*c. to e.* No change.

ITEM 26. Amend subrule 64.6(8) as follows:

**64.6(8) *Disposition of funds while employed.***

*a. Unforeseeable emergency.* A participating employee may request that the plan administrator allow the withdrawal of some or all of the funds held in the participating employee's account based on an unforeseeable emergency. Forms must be completed and returned to the plan administrator for review in order to consider a withdrawal request. The plan administrator shall determine whether the participating employee's request meets the definition of an unforeseeable emergency as provided for in federal regulations. In addition to being extraordinary and unforeseeable, an unforeseeable emergency must not be reimbursable:

- (1) By insurance or otherwise;
- (2) By liquidation of the participating employee's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- (3) By cessation of deferrals under the plan.

Upon the plan administrator's approval of an unforeseeable emergency distribution, the participating employee will be required to stop current deferrals for a period of no less than six months.

A participating employee who disagrees with the initial denial of a request to withdraw funds on the basis of an unforeseeable emergency may request that the trustee or the trustee's designee reconsider the request by submitting additional written evidence of qualification or reasons why the request for withdrawal of funds from the plan should be approved. All such requests must be in writing and be received by the trustee, or the trustee's designee, within 30 calendar days of the date of the initial denial. Requests received after 30 days will be rejected as untimely, and the initial denial shall become final agency action.

*b. and c.* No change.