

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services hereby amends Chapter 4, “Public Records and Fair Information Practices,” Chapter 53, “Pay,” Chapter 54, “Recruitment, Application and Examination,” Chapter 59, “Promotion, Transfer, Temporary Assignment, Reassignment and Voluntary Demotion,” Chapter 60, “Separations, Disciplinary Actions and Reduction in Force,” Chapter 61, “Grievances and Appeals,” Chapter 62, “Performance Review,” Chapter 63, “Leave,” and Chapter 64, “Benefits,” and rescinds Chapter 70, “Employee Organization Dues,” Iowa Administrative Code.

This rule making addresses human resources procedures. These amendments extend the application of these rules to ensure equal treatment of all employees covered by these rules. These amendments further clarify existing rules to align the rules with current procedures. The rescission of Chapter 70 is a result of changes to Iowa Code section 70A.19 as amended by 2017 Iowa Acts, House File 291, prohibiting the State from deducting dues for employee organizations from employee wages or salaries.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 3072C** on May 24, 2017. A public hearing was held on June 14, 2017.

Two people spoke at the hearing. Connie Brooks, who identified herself as a state employee, thanked the Department for recognizing employee rights under the merit system. Ms. Brooks also outlined three areas she said she is concerned about in the proposed amendments including the increase in discretionary compensation, the continued refusal of the Department to implement the Iowa Code with regard to transfers, and the continued abuse of Fair Labor Standards Act exemptions.

Danny Homan, who identified himself as the president of AFSCME Council 61, also spoke at the hearing. Mr. Homan highlighted his concerns about the following proposed amendments: Item 4 – 53.6(5), Item 5 – 53.7(2)“b,” 53.7(3), and 53.7(4), Item 6 – 53.8(1), Item 7 – 53.9(2), Item 8 – 53.11(2), Item 9 – 54.2(4)“a” and 54.2(4)“b,” and Item 16 – 61.1(4)“b.” The topics identified by Mr. Homan include pay grade changes, performance reviews, leadworker pay, special pay as it pertains to call back pay, overtime, promotional lists, and grievance meetings.

The Department received written comments after the hearing from Morgan Miller, who identified herself as the political and legislative director of AFSCME Council 61. She submitted AFSCME’s concerns about the following proposed amendments: Item 4 – 53.6(5), Item 5 – 53.7(2)“b,” 53.7(3), and 53.7(4), Item 6 – 53.8(1), Item 7 – 53.9(2), Item 8 – 53.11(2), Item 9 – 54.2(4)“a” and 54.2(4)“b,” Item 15 – 61.1(1), and Item 16 – 61.1(4)“b.” The topics identified in Ms. Miller’s submitted written comments after the public hearing include pay grade changes, performance reviews, leadworker pay, special pay as it pertains to call back pay, overtime, promotional lists, grievance procedure, and grievance meeting.

The Department also received a written submission through e-mail from Chris Vitek citing 53.11(2) as a topic for comment. The Department also received a written submission through e-mail from Steven Bowman citing Item 2 and 53.7(2) as a topic for comment.

These amendments are identical to those published under Notice of Intended Action on May 24, 2017.

Pursuant to Iowa Code section 17A.5(2)“b”(1)(b), the Department of Administrative Services finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective July 1, 2017, because the amendments confer a benefit upon the public in operating human resources functions of State government pursuant to changes as a result of 2017 Iowa Acts, House File 291.

The Department of Administrative Services will not grant waivers under the provisions of these rules, other than as may be allowed under Chapter 9 of the Department’s rules concerning waivers.

The Department of Administrative Services adopted these amendments on June 28, 2017.

After analysis and review of these amendments, there is no expected impact to private sector job or employment opportunities. As such, these amendments will not impact private sector job categories, the number of jobs, or potential job opportunities in any regions of the State.

These amendments are intended to implement Iowa Code section 8A.413.

These amendments became effective July 1, 2017.

The following amendments are adopted.

ITEM 1. Adopt the following **new** paragraphs **4.14(7)“e”** and **“f”**:

*e.* The fact that the state employee resigned in lieu of termination, was discharged, or was demoted as the result of disciplinary action and the documented reasons and rationale for the resignation in lieu of termination, the discharge, or the demotion.

*f.* Personnel settlement agreements between the state employee and the state employee’s employer.

ITEM 2. Amend subrule 53.5(1) as follows:

**53.5(1) Individual advanced appointment rate.** For new hires, and reinstatements, ~~or promotions of employees in contract classes~~, the appointing authority may request pay 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 3. Amend subrule 53.6(3) as follows:

**53.6(3) Red-circling.** If the pay of an employee ~~in a noncontract class~~ exceeds the maximum pay for the class to which the employee is assigned, the employee’s pay may be maintained (red-circled) above the maximum for up to one year. Requests to change the time period or the red-circled rate must first be submitted to the director for approval. If a request is approved, the appointing authority shall notify the employee in writing of any changes in the time period and the pay. If an employee’s classification or agency changes, a request to rescind the red-circling may be submitted by the appointing authority to the director for approval. The director may also require red-circling in certain instances.

ITEM 4. Amend subrules 53.6(5) to 53.6(7) as follows:

**53.6(5) Pay grade changes.** If a transaction results in an employee ~~in a noncontract class~~ being paid in a higher pay grade, the employee’s pay may be increased by up to 5 percent for each grade above the employee’s current pay grade, except as provided in subrules 53.6(1) and 53.6(2). The implementation of pay grade changes for employees in contract classes ~~shall~~ may be negotiated with the applicable collective bargaining representative to the extent required. For setting eligibility dates, see subrule 53.7(5).

**53.6(6) Promotion.** For setting eligibility dates, see subrule 53.7(5).

*a. Noncontract classes.* If an employee is promoted ~~to a noncontract class~~, the employee may be paid at any rate in the pay grade of the pay plan to which the employee’s new class is assigned, except as provided in subrules 53.6(1) and 53.6(2).

*b. Contract classes.* ~~If an employee is promoted to a contract-covered class, the employee shall receive a 5 percent pay increase, except as provided in subrules 53.5(1), 53.6(1), 53.6(2), and 53.6(4).~~

*c. Leadworker.* If an employee who is receiving additional pay for leadworker duties is promoted, the pay increase shall be calculated using the employee’s new base pay ~~plus the leadworker pay~~.

**53.6(7) Demotion.** If an employee demotes voluntarily or is disciplinarily demoted, the employee may be paid at any pay rate within the pay grade of the pay plan to which the employee’s new class is assigned 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 5. Amend rule 11—53.7(8A) as follows:

**11—53.7(8A) Within grade increases.**

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

- a. No change.
- b. *Noncreditable periods.* Except for ~~required FMLA~~, workers' compensation, 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. No change.

**53.7(2) *Noncontract classes. Employee pay increases.*** An eligible employee ~~in a noncontract class~~ may be given any amount of within grade pay increase up to the maximum pay rate for the employee's class. The pay increase shall be at the beginning of the pay period following completion of the employee's prescribed minimum pay increase eligibility period and shall not be retroactive, except as provided for in subrule 53.4(7).

a. *Performance.* Within grade pay increases shall be based on performance, are not automatic, and may be delayed beyond completion of the employee's minimum pay increase eligibility period. The amount of a within grade pay increase shall be determined by policies established by the appointing authority. To be eligible, a within grade pay increase must be accompanied by a current performance evaluation on which the employee received a an overall rating of at least "meets job expectations." Time spent on ~~required FMLA~~, workers' compensation, educational, or military leave shall be considered to "meet job expectations."

b. No change.

**53.7(3) *Contract classes.*** ~~Within grade pay increases for employees in contract classes shall be in accordance with the terms of their collective bargaining agreement.~~

**53.7(4) *Certified teachers.*** Within grade pay increases for employees who are required to possess a current valid teaching certificate with appropriate endorsements and approvals by the Iowa department of education shall be based on ~~length of service~~, performance and credentials.

**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. and b. No change.

c. *No adjustment for FMLA, workers' compensation, educational, or military leave.* An employee who returns to work from ~~required FMLA~~, workers' compensation, educational, or military leave shall have the employee's eligibility date restored without adjusting for the period of absence.

d. and e. No change.

**53.7(6) *Suspension.*** If within grade pay increases are suspended by an Act of the general assembly, the rules that provide for such increases shall also be suspended.

ITEM 6. Amend subrules 53.8(1) and 53.8(3) 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~~ of the employee's base pay.

**53.8(3) *Extraordinary duty.*** An employee or class of employees who is are temporarily assigned higher level duties, including supervisory duties, may be given additional pay ~~in step or percent increments.~~ The amount of pay must be approved by the director.

ITEM 7. Amend rule 11—53.9(8A) as follows:

### **11—53.9(8A) Special pay.**

**53.9(1) *Shift differential.*** If an overtime eligible employee ~~in a noncontract class~~ works for an appointing authority whose operations require other than a day shift, the employee shall receive a shift differential if scheduled to work four or more hours between 6 p.m. and 6 a.m. for two or more consecutive workweeks, or is regularly assigned to rotate shifts. The amount of the shift differential shall be determined by the director and paid in cents per hour. There shall be one rate for the 6 p.m. to midnight time period and another higher rate for the midnight to 6 a.m. time period. Employees who work in both time periods shall be paid at the rate applicable to the period in which the majority of

their hours are worked. Employees who work equal amounts in both time periods shall be paid at the higher rate. The differential shall be in addition to the employee's regular base pay and shall be paid for all hours in pay status.

Employees in overtime exempt ~~noncontract~~ classes may receive a shift differential if a request is first submitted in writing and approved by the director. ~~Shift differential for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.~~

**53.9(2) Call back.** If an overtime eligible employee in a ~~noncontract~~ class is directed to report to work during unscheduled hours that are not contiguous to the beginning or the end of the employee's assigned shift, the employee shall be paid a minimum of three hours. These hours ~~shall be considered as hours worked for purposes of determining overtime,~~ but shall not count as standby hours if the employee is in standby status. Employees in overtime exempt ~~noncontract~~ classes may be eligible for call back pay, if a request is first submitted in writing and approved by the director.

~~Call back for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.~~

**53.9(3) Standby.** If an employee in an overtime eligible ~~noncontract~~ class is directed to be on standby after the end of the employee's shift, the employee shall be paid 10 percent of the employee's hourly pay rate for each hour in a standby status. If required to be on standby, an employee shall receive at least one hour of standby pay. Time spent working while on standby shall not count in determining standby pay, nor shall standby hours count for purposes of determining overtime. Employees in overtime exempt classes may be eligible for standby pay if a request is first submitted in writing and approved by the director. ~~Standby for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.~~

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

**53.9(5) Recruitment or retention payments.** A payment to a job applicant or an employee may be made for recruitment or retention reasons. A written explanation shall first be submitted in writing to the director.

As a condition of receiving recruitment or retention pay, the recipient must sign an agreement to continue employment with the appointing authority for a period of time following receipt of the payment that is deemed by the appointing authority to be commensurate with the amount of the payment. If the recipient is terminated for cause or voluntarily leaves state employment, the recipient will be required to repay the appointing authority for the proportionate amount of the payment for the time remaining, and it will be recouped from the final paycheck. When the recipient changes employment to another state agency, then a repayment schedule must be approved by the director. Recoupment will be coordinated with the department of administrative services, state accounting enterprise, to ensure a proper reporting of taxes.

**53.9(6) Pay for increased credentials.** An employee in a ~~noncontract classification~~ who successfully completes a course of study, a certificate program, or any educational program directly related to the employee's current employment is eligible to receive an increase in base pay at the discretion of the appointing authority. Granting an increase pursuant to this subrule will not affect an employee's pay increase eligibility date and may not exceed the maximum pay for the assigned job classification pursuant to subrule 53.6(2).

ITEM 8. Amend rule 11—53.11(8A) as follows:

**11—53.11(8A) Overtime.**

**53.11(1) Administration.** Job classes shall be designated by the director as overtime eligible or overtime exempt.

**53.11(2) Eligible job classes.** An employee in a job class designated as overtime eligible shall be paid at a premium rate (one and one-half hours) ~~for every hour in pay status over 40 hours in a workweek~~ in accordance with the federal Fair Labor Standards Act.

**53.11(3) Exempt job classes.** An employee in an overtime exempt job class shall not be paid for hours worked or in pay status over 40 hours in a workweek, ~~except as specifically provided for in a collective bargaining agreement.~~

**53.11(4) Method of payment.** Payment of overtime for employees ~~in nonecontract classes~~ shall be in cash or compensatory time. The decision shall rest with the employee, except that the appointing authority may require overtime to be paid in cash. Employees ~~in nonecontract classes~~ may elect compensatory time for call back, standby, holiday hours and for working on a holiday. ~~Payment of overtime for employees in contract classes shall be in accordance with the terms of the applicable collective bargaining agreement.~~

**53.11(5) Compensatory time.** An overtime eligible employee ~~in a nonecontract class~~ may accrue up to 80 hours of compensatory time before it must be paid off. Compensatory time may be paid off at any time, but it shall be paid off if the employee separates, transfers to a different agency, or moves to a class with a different overtime eligibility designation. ~~The paying off of compensatory time for employees in classes covered by a collective bargaining agreement shall be in accordance with the terms of the applicable agreement.~~

**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 9. 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) Persons who have attained permanent employee status, including permanent employees of the board of regents ~~and community-based corrections;~~

(2) to (4) No change.

(5) ~~Nonecontract employees~~ Employees who have been laid off are eligible to apply for promotional vacancies for a period of one year from the date of layoff.

*b. All-applicant lists.* The following persons may apply to be on all-applicant lists:

(1) to (4) No change.

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

(6) No change.

(7) Nonpermanent employees of the board of regents ~~and community-based corrections;~~ and

(8) No change.

ITEM 10. Amend rule 11—59.1(8A) as follows:

**11—59.1(8A) Promotion.** 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. Vacancies must be filled in accordance with 11—Chapter 56.

ITEM 11. Amend rules 11—59.4(8A) and 11—59.5(8A) as follows:

**11—59.4(8A) Voluntary demotion.** An appointing authority may grant an employee's written request for a demotion to a lower class. If the voluntary demotion involves movement from a position covered by merit system provisions to one that is not, the request must clearly indicate the employee's knowledge of the change in merit system coverage. If the employee objects to the change in coverage, the demotion shall not take effect. Also, no demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being qualified. A copy of the voluntary demotion request shall be sent by the appointing authority to the director at the time of the demotion.

Voluntary demotion may be either intra-agency or interagency, and shall not be subject to appeal under these rules. Vacancies must be filled in accordance with 11—Chapter 56.

**11—59.5(8A) Transfer.** Transfers are restricted to the movement of an employee to a vacant position of the same or different job class in the same pay grade. Transfers may be interagency or intra-agency. To be eligible to transfer, the employee must meet any minimum qualifications and selective requirements for the position. Vacancies must be filled in accordance with 11—Chapter 56.

An employee may request a voluntary transfer. The decision to grant or deny ~~the~~ a request for voluntary transfer is made by the receiving appointing authority's authority.

An appointing authority may involuntarily transfer an employee. To do so, any applicable collective bargaining agreement provisions regarding transfer must first be exhausted. ~~Transfers may be interagency or intra-agency.~~ Involuntary interagency transfers require the approval of both the sending and the receiving appointing authorities.

~~To be eligible to transfer, the employee must meet any minimum qualifications and selective requirements for the position.~~

If the transfer of an employee would result in the loss of merit system coverage, the transfer shall not take place without the affected employee's written consent to 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 12. Amend rule 11—60.2(8A) 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, if any. 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.

**60.2(1) Suspension.**

*a. Suspension pending investigation.* An appointing authority may suspend an employee for up to 21 calendar days with pay pending an investigation. A suspension pending investigation may be extended with approval from the director. If, upon investigation, it is determined that a suspension without pay was warranted as provided in subparagraph 60.2(1)“b”(1) below for an employee covered by the premium overtime provisions of the Fair Labor Standards Act, the appointing authority shall recover the pay received by the employee for the imposed period of suspension without pay.

*b. No change.*

**60.2(2) to 60.2(6) No change.**

ITEM 13. Amend subparagraph **60.3(3)“b”(2)** as follows:

(2) A performance evaluation period rated overall as “competent” or better, or “meets or exceeds expectations” or for which the “overall sum of ratings” is 3.00 or greater shall receive one retention point for each month of such rated service.

All employees shall be evaluated for performance in accordance with 11—subrule 62.2(2). If the period covered on the evaluation exceeds 12 months, the rating shall apply only to the most recent 12 months of the period. If the period covered by the evaluation exceeds 12 months and the employee's overall rating mandates the receipt of no credit pursuant to subparagraph 60.3(3)“b”(1), then that overall rating shall apply only to the first 12 months of the period and the remaining months shall be

rated as competent. Time spent on ~~approved FMLA, workers' compensation, military leave, workers' compensation leave,~~ or educational leave with or without pay that is required by the appointing authority shall be counted as competent performance.

ITEM 14. Amend paragraph **60.3(5)“c”** as follows:

c. When bumping as set forth in paragraph 60.3(5)“b,” 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~~ a merit-covered position 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 15. Amend subrule 61.1(1) as follows:

**61.1(1) Grievance procedure.**

a. Step 1. The grievant shall initiate the grievance by submitting it in writing to the immediate supervisor, or to a supervisor designated by the appointing authority, within 14 calendar days following the day the grievant first became aware of, or should have through the exercise of reasonable diligence become aware of, the grievance issue. The immediate supervisor shall, within ~~seven~~ 14 calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules and give a decision in writing to the grievant with a copy to the director.

b. Step 2. If the grievant is not satisfied with the decision obtained at the first step, the grievant may, within ~~seven~~ 7 calendar days after the day the written decision at the first step is received or should have been received, file the grievance in writing with the appointing authority. The appointing authority shall, within ~~seven~~ 14 calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules, by affirming, modifying, or reversing the decision made at the first step, or otherwise grant appropriate relief. The decision shall be given to the grievant in writing with a copy to the director.

c. Step 3. If the grievant is not satisfied with the decision obtained at the second step, the grievant may, within 7 calendar days after the day the written decision at the second step was received, or should have been received, file the grievance in writing with the director. The director shall, within 30 calendar days after the day the grievance is received, attempt to resolve the grievance and send a decision in writing to the grievant with a copy to the appointing authority. The director may affirm, modify, or reverse the decision made at the second step or otherwise grant appropriate relief. If the relief sought by the grievant is not granted, the director's response shall inform the grievant of the appeal rights in subrule 61.2(5).

d. If the grievant is not satisfied with the decision obtained from the third step, the grievant may file an appeal in accordance with subrule 61.2(5).

ITEM 16. Amend subrule 61.1(4) as follows:

**61.1(4) Grievance meetings.**

a. No change.

b. The grievant may be ~~represented~~ assisted at a grievance meeting by an employee with the same bargaining status as the grievant. This peer employee may be of the grievant's choosing except where that would constitute a conflict of interest or unreasonably impact the operational efficiency of an appointing authority as determined by the director. ~~A grievant who wishes to be represented and whose class is covered by a collective bargaining agreement may only be represented by an appointed~~

~~or elected union representative from the same employee organization as the grievant. A grievant who wishes to be represented and whose class is not covered by a collective bargaining agreement may only be represented by an employee with the same bargaining status as the grievant.~~

c. The grievant, an employee who is the grievant's representative peer, and employees authorized to attend the grievance meeting by the appointing authority or the director shall be in paid status for that time spent at and traveling to and from the grievance meeting during their regularly scheduled hours of work. In addition, employees shall, if eligible for overtime compensation, be in paid status for that time spent at and traveling to and from the grievance meeting outside of their regularly scheduled hours of work. In the case of a group grievance, only one of the grievants shall be in paid status. A grievant's peer shall not process or prepare for a grievance during work time except for meal and rest periods.

d. The appointing authority shall not authorize mileage, or the use of a state vehicle for employees to attend or participate in a grievance meeting, except for those employees who are required to attend or participate in the meeting by the appointing authority or the director. ~~In the case of group grievances, only one of the grievants shall be in paid status.~~

ITEM 17. Amend subrules 61.2(5) and 61.2(6) as follows:

**61.2(5) Appeal of grievance decisions.** An employee who has alleged a violation of Iowa Code sections 8A.401 to 8A.458 or the rules adopted to implement Iowa Code 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.

**61.2(6) Appeal of disciplinary actions.** Any 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 bypass steps one and two of the grievance procedure provided for in rule 11—61.1(8A) and may file an appeal in writing to the director for a review of the action within 7 calendar days after the effective date of the action. The appeal shall be on the forms prescribed by the director. The director shall affirm, modify or reverse the action and shall give a written decision to the employee within 30 calendar days after the receipt of the appeal. The time may be extended by mutual agreement of the parties. If not satisfied with the decision of the director, the employee may request an appeal hearing before the public employment relations board as provided in subrule 61.2(5).

ITEM 18. Amend rule 11—61.3(8A) as follows:

**11—61.3(8A) Informal settlement.** The director or an appellant may request that an informal conference be held to determine if a dispute can be resolved in a manner agreeable to all parties prior to a contested case hearing. If the director and the appellant agree to negotiate a settlement, the various points of the proposed settlement shall be included in a written statement of facts. Negotiations for a settlement shall be completed at least five workdays prior to the date of the contested case hearing, unless additional time is agreed to by the director, the appellant and the public employment relations board, the department of inspections and appeals, or the classification appeal committee, as applicable. The settlement shall not be binding when until approved ~~and signed by both the director and the appellant~~ in accordance with the procedures set forth in 2017 Iowa Acts, House File 291, section 51.



ITEM 19. Amend subrule 62.2(2) as follows:

**62.2(2) Performance evaluation.** A performance evaluation shall be prepared for each employee at least every 12 months. Additional evaluations may be prepared at the discretion of the supervisor. Ratings on the evaluation form are to be accompanied by descriptive comments supporting the ratings. The evaluation may also include job-related comments concerning achievements or areas of strength, areas for improvement, and training/development plans. The supervisor or team shall discuss the evaluation with the employee, and the employee shall be given the opportunity to attach written comments. Periods of service during FMLA, workers' compensation, military, or educational leave required by the appointing authority, or military leave, shall be considered as meeting job expectations.

Exit performance reviews shall be completed by the former supervisor on or before the last day before the movement of an employee to employment in another section, bureau, division or agency of state government. This review shall be for the period between the previous review up to the movement to the other position. A copy shall be forwarded to the new supervisor of the employee.

ITEM 20. Amend paragraph **63.2(2)“o”** as follows:

*o.* If on June 1 an employee has a balance of 160 or more hours of accrued leave, the employer may, with the approval of the employee, pay the employee for up to 40 hours of the accrued annual leave. This amount will be paid ~~on a separate warrant~~ on the payday which represents the last pay period of the fiscal year. Decisions regarding these payments will be made by each department director and are not subject to the grievance procedure provided for in these rules. ~~This paragraph applies only to employees not covered by a collective bargaining agreement.~~

ITEM 21. Amend subrule 63.4(8) as follows:

**63.4(8)** The appointing authority may request periodic reports concerning the employee's medical status, and the date the employee may return to work. Requests for periodic reports will be made no more often than necessary depending on the facts and circumstances of each case and shall not exceed one request every 30 days absent extenuating circumstances.

The appointing authority shall require written certification from the health care provider that the employee is able to resume work before allowing an employee with a serious health condition to return from FMLA leave. Upon return from FMLA leave, the employee shall be placed in a position in the same class held prior to the leave, or a class in the same pay grade for which the employee qualifies, with the same pay, benefits, terms and conditions of employment, and geographical proximate location, except that:

~~*a.* If if a reduction in force occurs while the employee is on leave, the employee's right to a position shall be established in accordance with 11—Chapter 60.~~

~~*b.* The employee's pay increase eligibility date shall be adjusted for absences of more than 30 calendar days.~~

ITEM 22. Amend subrule 63.4(14) as follows:

**63.4(14)** Retention of vacation leave. Notwithstanding subrule 63.4(3), ~~non-contract-covered~~ employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, using forms prescribed by the department, to retain vacation by submitting the form to the employer no later than seven calendar days from the date it is determined that the employee's leave is covered by FMLA. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased; however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

~~For employees covered by a collective bargaining agreement, the retention of vacation leave will be governed by the collective bargaining agreement.~~

ITEM 23. Amend subrule 63.5(3) as follows:

**63.5(3)** Employees who do not supplement workers' compensation with sick leave, vacation or compensatory leave, and who are kept on the payroll in a nonpay status for more than 30 calendar days, shall be placed on leave without pay for purposes of probationary periods, ~~pay increase eligibility~~, and

other benefits. A written statement to this effect shall be sent to the employee within three days following the action by the appointing authority.

ITEM 24. Amend rule 11—64.1(8A) as follows:

**11—64.1(8A) Health benefits.** The director is authorized by the executive council of Iowa to administer health benefit programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A. The executive council of Iowa shall determine the amount of the state's contribution toward each individual ~~non-contract-covered~~ employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in applicable collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

ITEM 25. Amend subrule 64.13(1) as follows:

**64.13(1) Employee eligibility.** All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the health flexible spending account plan. Temporary employees are not eligible to participate in this plan. ~~Employees subject to a collective bargaining agreement shall have their eligibility determined by the collective bargaining agreement.~~

ITEM 26. Amend rule 11—64.16(8A), introductory paragraph, as follows:

**11—64.16(8A) Sick leave insurance program.** The director is authorized to establish a sick leave insurance program (program) for employees ~~not covered by a collective bargaining agreement~~. The program shall allow eligible employees to convert a portion of their sick leave balance at retirement into a sick leave bank with which the state will pay the state's share of retiree health insurance. Employees of the department of natural resources or department of public safety who are classified as peace officers and are not covered by a collective bargaining agreement shall receive benefits at retirement consistent with the provisions of the negotiated collective bargaining agreement with the State Police Officers Council. The benefits for sick leave banks earned by all department of public safety peace officer employees shall be administered by the department of public safety.

ITEM 27. Rescind and reserve **11—Chapter 70**.

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