



CIVIL SERVICE REVIEW COMMISSION

**REPORT TO THE OHIO GENERAL
ASSEMBLY**

DECEMBER 31, 2001



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PREFACE

The Civil Service Review Commission, created by Substitute Senate Bill 210, was passed during the 123rd Ohio General Assembly to review the current public employment statutes. The commission's duties included conducting comprehensive public hearings, both in Columbus and across the state, about the current civil service laws in order to create recommendations to the Ohio General Assembly about possible changes to the law. Small working groups met, concentrating on the state's practices in hiring and promotion, classification and compensation, layoffs and discipline, and appeals and due process. Interested parties and commission members discussed ways to better clarify current laws and practices to create more efficient government practices.

Representative Stephen Buehrer and Senator Lynn Wachtmann co-chaired this commission that includes 15 members: three Ohio Senate members, three Ohio House members, two members representing the counties, two representing the municipalities, two representing the public, two representing unions, and the Director of the Ohio Department of Administrative Services. The commission also heard from some of the most experienced professionals in the state concerning civil service laws in order to assess areas for recommendations. Upon that identification, these same professionals have created solutions to these very real problems.

Ultimately it is the hope of the Civil Service Review Commission that revisions to the current civil service system, one that dates largely unchanged from at least the 1930s, can be made to better reflect current employment practices in both the public and private sector. By making these changes, the citizens of Ohio would be rewarded with more efficient government at a lower cost.

The Civil Service Review Commission presents these recommendations to the General Assembly for legislative debate. This commission believes that the civil service statute, as set forth in the Ohio Revised Code Chapter 124, deserves considerable legislative change. Civil service professionals will be available for input to guide the legislature while making appropriate decisions to reform Ohio's civil service laws.



LAYOFF AND DISCIPLINE

Notification

Current Law

A laid-off employee has the right to displace the employee with the fewest retention points in the classification from which the employee was laid off, or in a lower classification within the series, or same or similar classifications, or classifications in which they were certified within the past five years. Laid-off employees are given at least fourteen days notice. If they wish to exercise their displacement rights, they must notify the appointing authority within five days after receiving the notice of layoff. If they choose to displace, the next group of employees goes through the same process until all affected employees are either displaced or laid off. (Sec. 124.324(A) and (C).)

Recommendation

The commission recommends that all employees who possibly could be affected by a displacement to be notified at the same time. All individuals then would have five days to notify the agency if they wish to exercise their displacement rights. All displacements and layoffs would occur on the same day.

Background

A layoff causes distress and confusion to employees, whether or not they are affected by the action. The recommendations would help minimize the disruption. Also, the recommended notification method is similar to the method used to conduct paper layoffs for some bargaining unit employees.

Employee Categories

Current Law

An individual not hired from a civil service eligible list has the status of a provisional employee. Once the individual has passed an examination or served in the same classification series for two years without the test being given for his/her classification, his status becomes certified. (Secs. 124.271 and 124.30.)

There are 16 layoff categories that outline the order in which employees may displace by appointment category and status. (Sec. 124.323(B).) The appointing authority must notify the Director of Administrative Services of a position to be filled, and the appointing authority must fill the position by appointment of one of the ten persons certified by the Director. (Sec. 124.27(B).)

Positions in the classified service may be filled without competition as follows (Sec. 124.30(A).):

(1) Whenever there are urgent reasons for filling a vacancy in any position in the classified service and the Director of Administrative Services is unable to certify to the appointing authority, upon requisition by the appointing authority, a list of persons eligible for appointment to the position after a competitive examination, the appointing authority may nominate a person to the Director for noncompetitive examination, and if the nominee is certified by the Director as qualified after the noncompetitive examination, the nominee may be appointed provisionally to fill the vacancy until a selection and appointment can be made after competitive examination.

(2) In case of a vacancy in a position in the classified service where peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character are required, and upon satisfactory evidence that for specified reasons competition in the special case is impracticable and that the position can best be filled by a selection of some designated person of high and recognized attainments in the qualities, the Director may suspend the requirements for competition and allow the appointment of the designated person.

(3) Where the services to be rendered by an appointee are for a temporary period, not to exceed six months, and the need of the service is important and urgent, the appointing authority may select for temporary service any person on the proper list of those eligible for permanent appointment.

Recommendation

The commission recommends eliminating the status of provisional and certified for classified employees. All employees, whether or not hired from an eligible list, would be hired as probationary and become permanent upon completion of their probationary period. With the removal of the distinction for employees with the status of provisional or certified, the commission also suggests reducing the layoff categories to four, probationary and permanent with sub categories of full time and part time within each.

Background

A provisional employee is appointed without an examination pursuant to Revised Code 124.30. Although the employee is "untested," the employee is still in the classified civil service. A provisional employee has the right to retain his position after successfully completing the probationary period until removed for cause under provisions of Revised Code 124.34 or displaced by a regular appointee certified from an eligible list or until the job is abolished. And, a provisional employee can become a permanent appointee after two years of continuous service in the same classification or classification series, if no exam is given. By removing the outdated concept of provisional and certified, an entire body of laws can be eliminated, which will increase efficiency and simplify appointments.

Displacement Privileges

Current Law

A laid-off employee has the right to displace the employee with the fewest retention points in the following order: (1) within the laid-off employee's classification, (2) within the laid-off employee's classification series, and (3) within a classification that has the same or similar duties as the laid-off employee's classification as determined by rules adopted by the Director of Administrative Services (Sec. 124.324(A).)

Additionally, a laid-off employee has the right to displace an employee with the fewest retention points in the classification that the laid-off employee held immediately prior to holding the classification from which the employee was laid off. The laid-off employee, however, may not displace another employee in the other classification if the laid-off employee held the classification from which the employee was laid off more than five years prior to the date on which the employee was laid off. (Sec. 124.324(A).)

Recommendation

The commission recommends eliminating displacement privileges for the same or similar lists. The commission recommends mandating that displacement must occur within the employee's current classification series because displacement privileges are used to identify carrying of certification and classifications in which the employee was certified within the last five years. This also is necessary because there will no longer be a provisional or certified designation.

Background

The current system could force employees to employ skill sets they do not have or force them to serve in a new classification. Skill sets for many classifications change so dramatically that the employees may no longer be qualified to perform the duties of the position.

Employer Justifications for Layoff

Current Law

Employees may be laid off because of (1) a lack of funds, (2) a lack of work, or (3) the abolishment of positions. For those appointing authorities that employ persons whose salary or wage is paid by warrant of the Auditor of State, the Director of Budget and Management is responsible for determining whether a lack of funds exists, and the Director of Administrative Services is responsible for determining whether a lack of work exists. (Sec. 124.321(A) through (D).)

Recommendation

The commission suggests clarifying the reasons a layoff may occur and developing stricter guidelines on the implementation of a layoff. The commission recommends expanding the "lack of funding" rationale and allowing the Office of Budget and Management to no longer mandate the movement of funds if the shortage is in a program area funded through special revenue and proprietary accounts, such as is currently done for shortages in federal funds.

Background

The current rationales for conducting a layoff are vague and do not necessarily describe situations that are causing hardship to the agency. The members believe that the “lack of funding” rationale should be available if funds for non-conventionally funded programs or funds in rotary accounts are inadequate. If funding for specific services is decreased, the total savings from the salaries of the individuals providing those services may count as another reason to conduct a layoff.

Furlough

Current Law

Whenever it becomes necessary for an appointing authority to reduce its work force, the appointing authority must lay off employees or abolish their positions (Sec. 124.321(A).)

Recommendation

The commission recommends allowing employers to institute furloughs to last no longer than ten weeks because of lack of funds or when only a short-term fiscal solution is needed. The commission also recommends that employees who are furloughed be deemed eligible for unemployment compensation benefits under Revised Code 4141.

Background

The federal government successfully has used furloughs in place of layoffs for a number of years. Furloughs can be a useful tool for state and local governments.

Part-Time Status

Current Law

Whenever it becomes necessary for an appointing authority to reduce its work force, the appointing authority must lay off employees or abolish their positions (Sec. 124.321(A).)

Recommendation

The commission suggests that the state, counties, cities and elected officials should be able to designate employees in part-time status to last no longer than ten weeks, in order to avoid a layoff.

Background

As stated in the previous suggestion, certain minor economic downturns do not warrant such a drastic measure as a layoff.

Recall List

Current Law

Employees must be laid off within the primary appointment categories of (1) part-time, (2) seasonal, (3) full-time, and (4) any other appointment categories established by the Director of Administrative Services (Sec. 124.323(A).)

An employee who is laid off or has been displaced to a lower classification in the employee's classification series retains reinstatement rights in the agency from which the employee was laid off or displaced. Additionally, each laid-off or displaced employee has the right to reemployment with other agencies within the layoff jurisdiction if the employee is qualified to perform the duties of the position, but only in the same classification from which the employee was initially laid off. (Sec. 124.327(A) through (C).)

If an employee declines reinstatement to a classification that is lower in the classification series than the classification from which the employee was laid off or displaced, the laid-off employee is entitled to only reinstatement to a classification higher, up to and including the classification from which the employee was laid off or displaced, in the classification series than the classification that was declined (Sec. 124.327(G).)

Recommendation

The committee recommends adjusting how the reinstatement/reemployment lists are created and executed. First, one list should be used, instead of the current practice of creating department and jurisdictional lists. A permanent employee would be at the top of the list, followed by probationary employees. They would be eligible for both full-time and part-time employment. Second, an employee should be removed from the classification from which he refused employment and any classifications lower than the one he refused, unless he refused part-time employment and was laid off as a full-time employee.

Background

After a layoff is completed and as employees are called back to work, workers are able to reject first, second or more offers for rehire. Because of the inherent flaws in the system, those employees know that they possibly could receive more lucrative positions if they wait. By gaming the system in that manner, employees are forced to gamble with their careers and employers are unable to fill positions.

Recall Qualifications

Current Law

The Revised Code does not refer to "Position Specific Minimum Qualifications" (PSMQs). The only reference to a recalled employee meeting certain "qualifications" is that when an employee is reemployed with another agency, the employee must be qualified to perform the duties of the position. (Sec. 124.327(C).)

Recommendation

The committee recommends that Position Specific Minimum Qualifications (PSMQ) must be developed.

Background

Because of the specializations involved with many jobs, recalled employees should be subject to specific qualifications. Currently, no mechanism exists to mandate that recalled employees must carry certain qualifications. If this suggestion is implemented, the committee recognizes that the process to develop PSMQs would need to be streamlined and simplified.

Recall Jurisdictions

Current Law

The layoff jurisdictions are as follows (Sec. 124.326(B).):

(1) District layoff jurisdiction: The order of layoff is to be followed on a district-wide basis within each state agency, board, commission, or independent institution. The Director of Administrative Services must establish layoff districts for state agencies, boards, and commissions.

(2) County jurisdiction: The order of layoff is to be followed within each county appointing authority.

(3) University and college jurisdiction: Each state-supported college and university is a separate, indivisible layoff jurisdiction throughout which the order of layoff is to be followed. However, a branch campus outside the layoff district of its main campus is to be considered a separate layoff jurisdiction.

Recommendation

The committee recommends specifying that a recall for non-bargaining unit employees be subject to the jurisdictions outlined in the Revised Code only, and future collective bargaining agreements, to the extent applicable to non-bargaining unit employees, should define those employees' jurisdictional recall rights in accordance with the Revised Code.

Background

The Revised Code and a collective bargaining contract can govern a single recall for an exempt employee. This clarification will minimize the confusion surrounding the procedures used during a recall.

Last Chance Agreement

Current Law

If an employee is removed, he has the right to appeal the removal to the State Personnel Board of Review (SPBR). The Board may affirm, disaffirm, or modify the judgment of the appointing authority. (Sec. 124.34.)

Recommendation

The commission recommends eliminating SPBR's review of an employee's dismissal if a last chance agreement had governed the removal. If SPBR does retain jurisdiction over the case, then the board should be required to assess only whether an infraction of the agreement occurred. If an infraction did occur, then SPBR would not have the authority to overturn the dismissal.

Background

The use of last chance agreements between employee and employer give both parties a reasonable, convenient tool to handle future disciplinary problems. However, many state agencies feel that legally signed last chance agreements are not honored by SPBR. In fact, an employee's termination for breaking the agreement may be overturned because the last rule infraction is not heinous enough to warrant separation.

Suspension

Current Law

The federal Fair Labor Standards Act governs the procedures for affecting salary within disciplinary proceedings for overtime exempt employees, specifically mandating that suspensions without pay must be in five-day increments and within the same workweek. However, if the infraction does not rise to the level to justify a five day suspension, the appointing authority may reduce the employee's vacation leave balance for a shorter time period. In any case of reduction or suspension of three working days, the employee has the right to appeal to the State Personnel Board of Review. The Board may affirm, disaffirm, or modify the judgment of the appointing authority. (Sec. 124.34.)

Recommendation

The commission recommends eliminating the ability of overtime exempt employees to appeal leave reductions of less than five-day increments to SPBR. Also, the commission suggests changing the measurement of suspensions from work days to hours.

Background

The current law hampers SPBR from assigning suspensions for less than five days, which hurts employees who have not committed infractions that warrant such punishment. Also, because certain jobs do not follow the five-day, forty-hour work week, suspensions based on work days are unfair to those employees with unconventional schedules.

Backup Rights

Current Law

When a state employee, who holds a certified position in the classified service, accepts an appointment into the unclassified service, they retain the right to return to their former classified position or one substantially equal to it in classification and pay and all

rights, status, and benefits accruing to that position, rather than be removed. There are no allowances for removal for performance or disciplinary issues. (Sec. 124.11(D).)

Recommendation

The commission recommends deleting Revised Code 124.11 (D), which is the general language giving back up rights to employees paid by warrant of the Auditor of State who enter the unclassified service from the classified services, if they were certified. If this recommendation is not implemented, then the commission recommends that backup rights be eliminated for previously certified classified employees who are disciplined for performance or disciplinary problems. Also, procedures should be crafted to allow for employers to remove these employees.

Background

Concerns were raised regarding removing the backup rights for those who went into unclassified status and relied on that language. The attorney general's office is drafting language that either grandfathers the employees so they retain backup rights or gives a window of opportunity for them to exercise their backup rights. If they do not use that window, they remain unclassified with no backup rights.

Finally, when an employee has been promoted to the unclassified service, he should not be rewarded with backup rights if he commits a work infraction. And, because he previously worked in the classified service, the current procedures for removing him are unclear.

Whistleblower

Current Law

A state employee who reports violations of state or federal statutes, rules, or regulations or the misuse of public resources may not have disciplinary action taken against them for reporting such unless he purposely, knowingly or recklessly reports false information. If disciplinary action is taken, the employee may appeal it to the State Personnel Board of Review. The courts have determined that the section of the statute that covers state employees for whistleblower protection does not apply to county employees. The section that is available for county employees is not as clearly defined as to how it operates. (Secs. 124.341 and 4113.52.)

Recommendation

The commission suggests extending the same protection and procedures that apply to state employees to all civil servants.

Background

Bringing all employees into this section of law will eliminate the confusion surrounding the jurisdiction and protections in local government whistleblower cases.

Other Forms of Discipline

Current Law

As a form of discipline, an appointing authority may reduce, suspend, or remove the employee. (Sec. 124.34.)

Recommendation

The commission suggests allowing for other forms of reduction for disciplinary reasons, such as decreasing or eliminating the employee's longevity.

Background

An employer needs more flexibility to discipline its employee, including punishments that are equal to the seriousness of the infraction committed by the employee. An employee's action might not be severe enough to warrant involuntary demotion, which is normally how a reduction of pay is accomplished.

Leave During Investigations

Current Law

An appointing authority may place an employee on administrative leave with pay in circumstances where the health or safety of an employee or of any person or property entrusted to the employee's care could be adversely affected. (Sec. 124.388.)

Recommendation

The commission recommends allowing employees, who have been charged with or are being investigated for felony crimes or possible theft in office charges, to be placed on unpaid administrative leave. The unpaid leave would not last longer than two months while the investigation is being conducted. If the employee is not charged with a crime or is found not guilty, he would be paid at his current salary, plus interest, for the time he was out of the office.

Background

During a lengthy investigation of a serious offense, an employee placed on paid administrative leave can be an enormous expense for the employer.



CLASSIFICATION AND COMPENSATION

Jobs Included in the Unclassified Service

Current Law

The unclassified service includes the members of all boards and commissions, and heads of principal departments, boards, and commissions appointed by the Governor or by and with the Governor's consent; and the members of all boards and commissions and all heads of departments appointed by the mayor, or, if there is no mayor, such other similar chief appointing authority of any city or city school district. Chapter 124. of the Revised Code, however, does not exempt the chiefs of police departments and chiefs of fire departments of cities or civil service townships from the competitive classified service except for fire chiefs and chiefs of police in civil service townships appointed by boards of township trustees and volunteer firefighters who are paid on a fee-for-service basis in either the classified or the unclassified civil service by a municipal or civil service township civil service commission. (Sec. 124.11(A)(3).)

The unclassified service includes four clerical and administrative support employees for each of the elective state officers and three clerical and administrative support employees for other elective officers and each of the principal appointive executive officers, boards, or commissions, except for civil service commissions, that are authorized to appoint such clerical and administrative support employees. (Sec. 124.11(A)(8).)

Under the control and direction of the board of county commissioners, the county director of job and family services has full charge of the county department of job and family services. Each county director of job and family services appointed after a specified date is in the unclassified civil service and serves at the pleasure of the board of county commissioners. Except for up to five administrators in a department serving a county with a population exceeding one million, the assistants and other employees of the county department of job and family services are in the classified civil service, and may not be placed in or removed to the unclassified service. (Sec. 329.02.)

Recommendation

The commission recommends including the heads of departments appointed by a board of county commissioners in the unclassified service. Further, the commission recommends expanding the number of clerical and support personnel each elected official may appoint to the unclassified service from the current three to four positions. The position of director of the county department of job and

family services (CDJFS) is currently in the unclassified service. Finally, the commission recommends that Revised Code 329.02 be amended to place up to five additional CDJFS administrative positions in the unclassified service with consideration given to population and organizational complexity.

Background

Elected officials need to have the ability and discretion to appoint individuals who are competent, experienced and trustworthy to head the various departments the officials oversee.

Notification of Serving in the Unclassified Service

Current Law

No provision exists in law. The requirement is a rule promulgated by the Department of Administrative Services.

Recommendation

The commission recommends extending the filing deadline from 60 to 90 days for designating exemptions in the unclassified service. Additionally, an affected employee must be given written information regarding the standards and procedures concerning the conditions of employment in the unclassified service within 30 days of appointment. The commission also recommends that the Department of Administrative Services prepare a summary of the principle elements of employment in the unclassified service to be distributed to each appointing authority required to comply with the above referenced section of the Ohio Administrative Code. This document should be included in employee handbooks. This information is considered to be an informational advisory and the failure to provide it to an employee does not confer additional rights to the employee.

Background

Because serving in the classified service brings many advantages to an employee, it is in the employee's best interest to be fully aware of the distinguishing characteristics of the unclassified service as it relates to matters of selection, promotion, retention and discipline. The employer also benefits from being able to decide which classifications will serve as clerical and administrative support during a term of office.

Definition of Unclassified Service

Current Law

The unclassified service includes the following: (1) for all elective officers other than elective state officers, three clerical and administrative support employees, (2) those persons employed by and directly responsible to elected county officials or a county administrator and who hold a fiduciary or administrative relationship to the elected county official or county administrator, and (3) those employees of these county officials

whose fitness would be impracticable to determine by competitive examination. (Sec. 124.11(A)(8) and (9).)

The Director of Administrative Services must prepare, continue, and keep a complete roster of all persons in the classified service (Sec. 124.09(C).) (The Revised Code does not specifically require that persons included in the unclassified service be reported to the Department. This requirement is addressed in the Department's rules located in the Ohio Administrative Code.)

The unclassified service includes the members of county or district licensing boards or commissions and boards of revision, and deputy county auditors. (Sec. 124.11(A)(4).)

The board of county commissioners must appoint a superintendent of the county home. The superintendent may not be removed by the board except for good and sufficient cause. (Sec. 5155.03.)

The State Personnel Board of Review hears appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the Director of Administrative Services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the Director to reassign the employee to another classification or to reclassify the employee's position with or without a job audit. (Sec. 124.03(A).) (The Revised Code does not specify what evidence the Board must consider in hearing appeals. Proof of unclassified status is addressed in the Board's rules located in the Ohio Administrative Code.)

When a state employee who holds a certified position in the classified service accepts an appointment into the unclassified service, they retain the right to return to their former classified position or one substantially equal to it in classification and pay and all rights, status, and benefits accruing to that position rather than be removed. There are no allowances for removal for performance or disciplinary issues. (Sec. 124.11(D).)

Recommendation

Because of the varied nature of the unclassified service, the commission recommends adopting six standards.

1. Give county commissioners a total number of seven personal exemptions.

This suggestion allows the commissioners as a group appointing authority to have four for the commission, the same as other appointing authorities. It also allows each commissioner to have one personal exemption who reports directly to that commissioner.

2. Allow “good faith reporting” of unclassified personal designations.

If there are no records of filing in DAS or if the designation is received in DAS after 90 days, but the agency can demonstrate it was filed and timely, the unclassified status designation would be recognized by SPBR upon appeal.

3. Designate that there can be up to five deputy county auditor unclassified positions under Section 124.11 (A)(4).

The courts have established high requirements to qualify for unclassified status, and they are almost impossible to meet. Also, one county auditor has no unclassified

positions at the present time, as they are too hard to defend. As a side note, the County Auditor's Association supports this recommendation.

4. Clarify language identifying that county home superintendents are in the unclassified service.

The current language means to designate these positions as such, but it is confusing.

5a. Review actual duties as well as inherent duties of the classification in which an individual serves when determining the accuracy of an unclassified designation before SPBR.

5b. Place a time limit of two years that an employee may have ceased performing unclassified duties, but during which the designation would still be recognized.

Presently, when an employee appears before SPBR to argue he should not have been unclassified when the agency tried to remove him, the agency and employee go through his duties in order for SPBR to determine status. Even if those duties were not being performed by the employee, he had the right to hold that position in unclassified status and receive pay for the classification, which is usually at a higher level than the duties he was performing. This is the same concept as the one used for political discrimination. Also, if a review of inherent duties is performed, then it removes the need to look at the actual duties performed and the situation where the employer states one set of job duties and the employee states another.

Currently, SPBR examines duties for the past year. This recommendation codifies the estoppel to two years. Also, courts have said that the one year rule is “upholdable” or “reasonable.”

Disability Leave, Separation and Retirement

Current Law

The approval for disability leave must be made by the Director of Administrative Services. If a request for disability leave is denied based on a medical determination, the Director must obtain a medical opinion from a third party. The decision of the third party is binding. (Sec. 124.385(E) and (F).)

Any person holding an office or position in the classified service who has been separated from the service due to injury or physical disability must be reinstated to the same office or similar position held at the time of separation within thirty days after written application for reinstatement and after passing a physical examination. The application for reinstatement, however, must be filed within three years from the date of separation. (Sec. 124.32(B).)

Recommendation

The commission recommends that a neutral physician could be appointed to examine an employee in situations where there is question as to the employee's disability. The neutral physician could be appointed by the employee's physician and a representative of the appointing authority. Also, reinstatement rights for disability separation should be reduced to two years rather than three years.

Finally, the commission intends to ask PERS to review its policy of allowing an employee to exercise reinstatement rights up to 5 years after he has left on disability retirement.

Background

The current process that employees and employers follow for disability leave, separation and retirement is very convoluted and time-consuming.

Alternative Leave/Holiday Schedules

Current Law

Any appointing authority of a county office, department, commission, board, or body may, upon notification to the board of county commissioners, establish alternative schedules of sick leave, vacation leave, and holidays for employees of the appointing authority for whom the state employment relations board has not established an appropriate bargaining unit pursuant to section 4117.06 of the Revised Code, provided that the alternative schedules are not inconsistent with the provisions of a collective bargaining agreement covering other employees of that appointing authority. (Secs. 124.38(C) and 325.19(F).)

Recommendation

Appointing authorities should be allowed to establish leave policies and holiday schedules for non-union employees that vary from the state model. However, the establishment and structure of alternative leave systems along with how benefits may or may not be affected when employees transfer from one appointing authority to another should be further reviewed. In addition, the Ohio Council of County Officials is urged to continue its efforts in reviewing this matter relative to counties and forward a recommendation to legislative leadership. In the meantime, Sections 124.38 and 325.19 of the Revised Code should be changed to allow appointing authorities within a county to develop alternative schedules that vary from the state model but are not inconsistent with the provisions of at least one collective bargaining agreement covering county employees. If no bargaining unit exists in the county, then a county may establish an alternative schedule for leave policies, if such policies do not diminish the benefit level currently provided in law.

Background

The current design is overly rigid and provides little flexibility for public employers to create universal leave programs to promote better service and efficiency in the 21st Century. County governments are restricted in how they can structure their leave schedules, while the state and cities have very different plans based on local needs.

Classification Plan

Current Law

The Director of Administrative Services must establish and may modify or repeal by rule a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state. (Sec. 124.14(A)(1).)

Recommendation

The commission recommends removing the classification plan from the administrative rules and establishing it by policy.

Background

The current law requires that any additions, modifications or deletions to the classification plan must be made by rule in accordance with the provisions of Chapter 119 of the Revised Code, which includes giving notice, holding a public hearing, and waiting at least 75 days before the changes can become effective. This requirement has been interpreted to apply to any change to the classification plan, including correction of typographical errors, changing the names of agencies due to legislated mergers or transfers of functions between agencies, and compliance with decisions rendered by SPBR. The Chapter 119 process results in a time delay in implementing changes. Eliminating the requirement to comply with the Chapter 119 process will allow for more efficient and timely changes to the classification plan.

Administrative Staff

Current Law

The Director of Administrative Services must establish, and may modify or repeal, by rule, a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state. (Sec. 124.14(A)(1).) However, certain persons, positions, offices, and employments are not included in the job classification plan. (Sec. 124.14(B).) For certain persons, positions, offices and employments not included in a job classification plan, the rate and method of compensation is established by the Director of Administrative Services. (Sec. 124.14(H) and (I).)

Recommendation

The commission recommends establishing a policy for compensating unclassified administrative staff to include a method of negotiating salary and benefit packages that may differ from those currently provided by law.

Background

Due to restrictions in negotiating salary and benefits packages, the state has encountered difficulty recruiting top candidates for administrative staff positions, as defined by Revised Code 124.14(B)(2). Allowing appointing authorities the flexibility to negotiate salary and additional benefits for high level unclassified positions will increase the ability to attract and hire top candidates.



HIRING AND PROMOTION

Appointments

Current Law

The unclassified service includes employees who receive external interim, intermittent, or temporary appointments. (Sec. 124.11(A)(29).) Persons who receive external interim, temporary, or intermittent appointments are in the unclassified civil service and serve at the pleasure of their appointing authority. (Sec. 124.30(B).) In case of an emergency, an appointment may be made without regard to the civil service rules of sections 124.01 to 124.64 of the Revised Code, but in no case to continue longer than thirty days, and in no case can successive appointments be made. (Sec. 124.30(A)(1).)

Recommendation

The commission suggests eliminating the administrative rules that limit temporary, intermittent and external interim appointments. Employees should be categorized as part-time seasonal, full-time seasonal, part-time permanent and full-time permanent. Also, to keep disruptions to a minimum, the commission suggests allowing emergency appointments to extend to 120 days.

Background

Employees serving in temporary, intermittent or external interim appointments are unclassified and are no longer included in the layoff procedure. The effectiveness of these appointments and the length of these actions have been troublesome for years. A 30-day appointment, with no allowance for successive appointments, essentially is useless to an agency during the recruitment process. One longer emergency appointment allows sufficient time to deal with the hiring procedure.

Selection Procedures

Current Law

All applicants for positions and places in the classified service are subject to examination, except for applicants for positions as professional or certified service and paraprofessional employees of county boards of mental retardation and developmental disabilities. Examinations must consist of one or more tests in any combination. Tests may be written, oral, physical, demonstration of skill, or an evaluation of training and

experiences and must be designed to fairly test the relative capacity of the persons examined to discharge the particular duties of the position for which appointment is sought. (Sec. 124.23(A) and (B).)

Recommendation

The commission recommends giving employers the option of using a variety of selection procedures. The requirement of Revised Code 124.45 (Promotion of Firefighters) that all examinations be in writing should be eliminated. Also, public employers should determine the length of time an eligible list would last for purposes of continuous recruitment. This length of time should be announced at the time of the posting.

Additionally, the commission recommends giving DAS the ability to make rules concerning the length of any certification list up to a maximum of two years, with additions to the list through continuous recruitment. An individual's name will be removed from the list six months from the date of the test, unless the individual gives notice of intention to remain on the list and the individual is notified at the time of the passage of the exam or at the time they are to come off the list that their name will be removed.

Background

A written examination may not accurately measure a job applicant for the various qualities and skills he would need to successfully fulfill his duties. Examples of other selection procedures that the commission envisions includes, but is not limited to, the following: written examination, computerized examination, video-based examination, structured interview, oral review board panel, resume screen, training/experience evaluation, skills inventory, criminal background check, pre-employment drug screen, driver's license verification, assessment center, simulated work exercise and typing/data entry examination, general aptitude examination, personality examination, physical ability examination and honesty-type examination. Any test or selection procedure which has an adverse impact on the members of a protected class will be considered discriminatory and inconsistent with the Equal Employment Opportunity Commission's Uniform Guidelines on Employer Selection Procedures, unless the procedure has been validated in accordance with the Guidelines.

Test Announcements

Current Law

The Director of Administrative Services must give reasonable notice of the time, place, and general scope of every competitive examination for appointment to a position in the civil service. The Director must send written, printed, or electronic notices of every examination of the state classified service to each agency of the type the Director of Job and Family Services specifies and, in the case of a county in which no such agency is located, to the clerk of the court of common pleas of that county and to the clerk of each city of that county. The notices, promptly upon receipt, must be posted in conspicuous public places in the designated agencies and the courthouse, and city hall of the cities, of the counties in which no such agency is located. The notices must be posted

in a conspicuous place in the office of the Director of Administrative Services for at least two weeks before any examination. (Sec. 124.23(A).)

Recommendation

The commission suggests that an examination notice must be posted for a minimum of five calendar days, exclusive of Saturdays, Sundays and holidays, with an identical electronic posting if the employer has electronic capabilities.

Background

Public employers know that taxpayers expect efficient use of their money and excellent customer service. To keep employers competitive in the labor market, they must have the ability to hire essential employees within a reasonable time period. However, filling the vacancy must be done in a thorough, responsible manner with the best applicant available.

Veterans' Preference

Current Law

Any soldier, sailor, marine, coast guarder, member of the auxiliary corps as established by Congress, member of the Army Nurse Corps or Navy Nurse Corps, or Red Cross nurse who has served in the Army, Navy, or hospital service of the United States, and such other military service as is designated by Congress, including World War I, World War II, or during the period beginning May 1, 1949, and lasting so long as the armed forces of the United States are engaged in armed conflict or occupation duty, or the selective service or similar conscriptive acts are in effect in the United States, whichever is the later date, who has been honorably discharged therefrom or transferred to the reserve with evidence of satisfactory service, and is a resident of Ohio, may file with the Director of Administrative Services a certificate of service or honorable discharge, whereupon the person must receive additional credit of twenty percent of the person's total grade given in the regular examination in which the person receives a passing grade (Sec. 124.23(A).)

Recommendation

The commission recommends the following definitions from the federal law, the Uniformed Services Employment and Reemployment Rights Act of 1994, be incorporated into state law: "Veteran" is a person who was separated with an honorable discharge or under honorable conditions from active duty in the armed forces; "Uniformed services" is the Army, Navy, Marine Corps, Air Force, Coast Guard, Army National Guard, Air National Guard, the Commissioned Corps of the Public Health Service and also includes the Reserves of the Army, Navy, Marine Corps, Air Force, and Coast Guard, as well as any other category of persons designated by the President in time of war or emergency; "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis, including active duty, active duty for training, initial active duty training, inactive duty training, and full-time National Guard duty; "Active duty" means full-time with military pay and allowances in the armed forces, except for training or for

determining physical fitness and except for service in the Reserves or National Guard; and “Separated under honorable conditions” means either an honorable or a general discharge from the armed forces. The U.S. Department of Defense is responsible for administering and defining military discharges.

The commission also recommends allowing counties and municipalities the opportunity to establish their own veterans’ preference policy in lieu of the state policy based on community interest as collected in the public hearing process.

Testing

Current Law

Vacancies in positions in the classified service must be filled insofar as practicable by promotions. The Director of Administrative Services must provide in the Director's rules for keeping a record of efficiency for each employee in the classified service, and for making promotions in the classified service on the basis of merit, to be ascertained as far as practicable by promotional examinations, by conduct and capacity in office, and by seniority in service, and must provide that vacancies are to be filled by promotion in all cases where, in the judgment of the Director, it is for the best interest of the service. (Sec. 124.31(A).)

After a promotional examination has been held and prior to the grading of the examination papers, each participant in the promotional examination has a period of five days, exclusive of Saturdays, Sundays, and holidays, to inspect the questions, the rating keys or answers to the examination and to file any protest the participant may deem advisable. These protests must be in writing and remain anonymous to the commission. All protests with respect to rating keys or answers must be determined by the commission within a period of not more than five days, exclusive of Saturdays, Sundays, and holidays, and its decision is final. If the commission finds an error in the rating key or answer, it must publish a revised rating key within five days of its finding of such error or errors. The revised rating key or answer must then be available to participants for a period of five days, exclusive of Saturdays, Sundays, and holidays, subsequent to such determination of error or errors. (Sec. 124.45.)

Vacancies in positions above the rank of regular fireman in a fire department shall be filled by competitive promotional examinations, and promotions must be by successive ranks. No person is eligible to take the examination for the rank immediately above the rank of regular fireman unless the person has served twenty-four months in the rank of regular firemen. However, in those cases where there are less than two persons in the rank of regular firemen who have served twenty-four months in that rank and are willing to take the examination, the twenty-four month service requirement does not apply. (Sec. 124.45.)

Recommendation

The commission suggests several separate recommendations regarding testing procedures. First, exclusive eligible lists should be eliminated from the promotion process. Second, firefighter candidates should not have the ability to review examination questions to the promotional examination during the examination protest period except for those questions the candidate has answered

incorrectly. The commission recommends that Revised Code 124.45 *Promotion of Firemen* be amended accordingly. Third, a municipal civil service commission should be given authority to require a period of service longer than one year to be eligible for promotion to the rank immediately above the rank of patrolman in the police department.

Also, the commission recommends amending Revised Code 124.45 to require that when a vacancy occurs in a promoted rank immediately above the rank of regular fireman, no person shall be eligible to take the examination unless he has served forty-eight months, not including the probation period, in the rank of regular firemen in the jurisdiction where the vacancy exists. In those cases where there are less than two persons in the rank of regular firemen who have served forty-eight months and are willing to take the examination, the forty-eight month requirement would not apply.

Background

Promotions should be based on merit and fitness principles only. Separately, in order to protect the mutual interests of all public agencies and officials, and to prevent someone from gaining an unfair advantage, testing material should be handled properly, and candidates should not be permitted to review the answer keys. Applicants should be able to review only the items they wrongly answered and should be allowed to challenge a particular item by providing written documentation to support their answer.

A municipal civil service commission should have the flexibility to set minimum service requirements for promotional examinations subject to a minimum twelve-month service requirement for the promoted ranks of a police department. The judgment of how much time is adequate to prepare for command-level appointment should be made at the local level.

The fire service has become increasingly complex and diverse with respect to areas of responsibility, e.g. fire suppression, hazardous materials, emergency medical service, fire prevention. The commission recognizes that promotional candidates, to be better prepared for command level appointment, should have more time to become knowledgeable of the procedures and methods used in their jurisdiction.

Selection of a Chief of Police or Chief of Fire in a Municipality

Current Law

Vacancies in positions above the rank of patrolman (which includes the chief of police) in a police department must be filled by promotion from among persons holding positions in a rank lower than the position to be filled. No position above the rank of patrolman in a police department shall be filled by any person unless the person has first passed a competitive promotional examination. The police department appointing authority must appoint the person with the highest rating on the examination. (Sec. 124.44.)

Vacancies in positions above the rank of regular fireman (which includes the fire chief) in a fire department must be filled by competitive promotional examinations. (Sec. 124.45.) The names of the examinees in the fire department promotional examination must be placed on the eligible list in accordance with their grades; the one receiving the

highest grade must be placed first on the list and be appointed to fill the vacancy. (Sec. 124.46.)

Recommendation

The commission recommends allowing municipalities the option of creating an alternative method of selecting a chief of police and/or a chief of fire. The alternative method would require passage by the legislative authority of the municipal corporation and would be subject to referendum. Also, citizens could initiate an alternative proposal.

Background

The chief of police and the chief of fire are high profile and important municipal positions, having primary responsibility for public safety. The current law mandates a “rule of one” for appointment; the highest scoring candidate must be appointed. However, many other promotion standards use the “rule of three.”

The alternative method may include any factors considered to be appropriate and reliable, including, but not limited to, written examinations, education, years of service in the police or fire service, results of assessment centers, certifications from recognized professional organizations, and any other factors that contribute to a determination of merit and fitness. An alternative method could authorize the appointment of a police chief or fire chief from outside the ranks of the municipal department using the above criteria.

Disability

Current Law

"Physical or mental impairment" does not include psychoactive substance use disorders resulting from current illegal use of a controlled substance. "Controlled substance" means a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V. (Secs. 4112.01(A)(16)(b)(iv) and 3719.01(C).)

Recommendation

The commission suggests that Ohio mirror the federal statute and clarify that current drug and alcohol abusers are not disabled and cannot claim protection under state disability statutes. The federal law protects former abusers.

Background

Workers who abuse drugs and alcohol are a danger to themselves and to others in the workplace. Federal law currently excludes drug and alcohol abusers from being classified as disabled because of their abuse.

Qualifications

Current Law

The Director of Administrative Services must establish, and may modify or repeal, by rule, a job classification plan for all positions, offices, and employments, the

salaries of which are paid in whole or in part by the state. The Director must describe the duties and responsibilities of the class and establish the qualifications for being employed in that position. (Sec. 124.14(A)(1).)

Recommendation

The commission recommends giving employers the ability to determine which education and experience levels would meet the minimum qualifications for a job. Employers also should be able to establish their preferred minimum qualifications, including educational degrees, without completing the entire job analysis process.

Background

Similar to the need for flexibility within the selection process, employers also must have the ability to tailor necessary qualifications for a specific job.

Applicant List

Current Law

Separate examinations must be given and separate eligibility lists maintained by municipal and civil service township civil service commissions for original appointments to and promotions in fire and police departments in cities and civil service townships. (Sec. 124.43.)

The municipal and civil service township civil service commissions must prescribe, amend, and enforce rules consistent with Chapter 124 for original appointment and promotional examinations. (Sec. 124.40(A) and (B).)

If a position is to be filled, the head of a police or fire department must notify the relevant municipal or civil service township civil service commission of that fact. The commission must then certify to the appointing officer the names and addresses of the ten candidates standing highest on the eligible list for the class or grade to which the position belongs. (Sec. 124.27.)

No position above the rank of patrolman in the police department or regular fireman in a fire department can be filled by original appointment. Whenever a vacancy occurs in the position above the rank of patrolman in a police department or regular fireman in a fire department, and there is no eligible list for the rank, the municipal or civil service township civil service commission must, within sixty days of the vacancy, hold a competitive promotional examination. After the examination has been held and an eligible list established, the commission must certify to the appointing officer the name of the person receiving the highest rating, and the appointing officer must appoint that person. (Secs. 124.44, 124.45, and 124.48.)

Recommendation

The commission suggests that police and firefighter applicant lists for original appointments should be created, but the applicants should not be ranked. Employers should be able to choose from a complete list of qualified candidates, subject to compliance with any federal law or any rules adopted pursuant to federal law concerning discrimination in employment. Promotions in the promoted ranks

of a police and fire department should be from an eligible list containing the names of the three persons having the highest rating as provided for in Revised Code 124.31 (B).

Background

Too often, the best person for the police or firefighter job is not ranked at the top of the applicant lists for many reasons, such as she is not a proficient test taker or she did not receive veterans' preference points. Each agency should be able to pick the applicant who is most suited for the job.

Residency Rules and Preference Points

Current Law

Any person appointed to a position in the classified service, except for persons appointed to temporary and exceptional appointments, must either be or become forthwith an Ohio resident. The Director of Administrative Services may prescribe, amend, and enforce administrative rules for the purpose of carrying out the functions, powers, and duties vested in and imposed upon the Director by Chapter 124. of the Revised Code. (Secs. 124.09(A) and 124.27(C).)

The Director of Administrative Services must waive any residency requirement for the civil service established by a rule adopted under division (A) of section 124.09 of the Revised Code if the Director of Job and Family Services provides the Director of Administrative Services certification under section 5101.051 of the Revised Code that a position with the Department of Job and Family Services can best be filled if the residency requirement is waived. The Director of Administrative Services may limit access to civil service examinations on the basis of residency. (Secs. 124.23(A) and 124.301.)

Recommendation

The commission recommends that each testing authority be allowed to determine residency requirements used in its divisions and whether preference points are given to applicants.

Background

The opinions regarding residency requirements and preference points based on residency are very unique to the location of each testing authority. Testing authorities in border counties are more willing to oppose such requirements, while testing authorities who are more centrally located may be more ambivalent to them.

Supervisory Training Program

Current Law

No provision exists in law.

Recommendation

The commission recommends that DAS develop and offer statewide basic supervisory training programs and best practices plans for local employers to use.

Background

While the focus of the commission has been on more local control and increased flexibility, the members recognize that DAS employs experts with vast knowledge and understanding of the civil service system. Since many smaller employers do not have the same “in-house” expertise, the commission believes that DAS should be able to help fulfill this role.

Performance Evaluation System

Current Law

The Director of Administrative Services must provide in the Director's rules for keeping a record of efficiency for each employee in the classified service, and for making promotions in the classified service on the basis of merit, to be ascertained as far as practicable by promotional examinations, by conduct and capacity in office, and by seniority in service, and must provide that vacancies will be filled by promotion in all cases where, in the judgment of the Director, it is for the best interest of the service. (Sec. 124.31(A).)

Recommendation

The commission recommends giving counties and municipalities the ability to develop an agency-specific evaluation system. Counties and municipalities should be able to administer this evaluation in a manner that they devise.

Background

Counties and municipalities are the best entities to determine whether an employee is competent and successful in his job.

Model Merit Hiring in conjunction with Recruiting and Training

Current Law

The Revised Code does not currently refer to "model merit hiring processes," nor does it refer to cooperation between DAS and higher education facilities to assist public employers in recruiting and training.

Appointments and promotions in the civil service of the state, the several counties, and cities, must be made according to merit and fitness, to be ascertained, as far as practicable, by competitive examinations (Const. Art. XV, § 10).

Recommendation

The commission believes that DAS should assist employers in developing merit hiring processes. Also, DAS and our state universities and colleges should be able to aid employers in the recruiting and training of qualified employees. Finally, DAS should offer testing on a local or regional basis.

Background

As stated previously, the commission believes promotion should be based on merit and fitness because the best qualified person should be rewarded. DAS has the expertise to develop merit hiring practices and can be a great asset to small employers who do not have such “in-house” expertise.

Job Audits

Current Law

When the Director of Administrative Services proposes to reclassify any employee so that the employee is adversely affected, the Director must give to the employee affected and to the employee's appointing authority a written notice setting forth the proposed new classification, pay range, and salary. Upon the request of any classified employee who is not serving in a probationary period, the Director must perform a job audit to review the classification of the employee's position to determine whether the position is properly classified. The Director must give to the employee affected and to the employee's appointing authority a written notice of the Director's determination whether or not to reclassify the position or to reassign the employee to another classification. An employee or appointing authority desiring a hearing must file a written request for the hearing with the State Personnel Board of Review within thirty days after receiving the notice. The Board must set the matter for a hearing and notify the employee and appointing authority of the time and place of the hearing. The employee, appointing authority, or any authorized representative of the employee who wishes to submit facts for the consideration of the Board must be afforded reasonable opportunity to do so. After the hearing, the Board must consider anew the reclassification and may order the reclassification of the employee and require the Director to assign the employee to such appropriate classification as the facts and evidence warrant. (Sec. 124.14(A)(2).)

Recommendation

The commission recommends giving SPBR the authority to issue a cease and desist order to an employer who avoids engaging in a competitive process for promotions.

Background

In order to avoid a fair, competitive process, an employer can assign higher level duties to an employee, which almost always results in that employee's reclassification into a higher class.

Appeals

Current Law

In case of a reduction, suspension of more than three working days, fine in excess of three days' pay, or removal, except for the reduction or removal of a probationary

employee, the appointing authority shall serve the employee with a copy of the order of reduction, fine, suspension, or removal, which order shall state the reasons for the action. The order shall be filed with the Director of Administrative Services and State Personnel Board of Review, or the commission, as may be appropriate. In cases of removal or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the State Personnel Board of Review or the municipal civil service commission to the court of common pleas of the county in which the employee resides. (Sec. 124.34(B).)

Recommendation

The commission recommends excluding one-time pay supplement and any bonus from reductions in pay appeals.

Background

Reductions in pay should not include changes in pay for performance plans, bonus payments, incentive systems or goal sharing payments. Public employers are interested in developing merit pay systems, skill-based pay and other award systems to attract and retain good quality employees, but an award one year should not provide employees a right to appeal to the SPBR for failure to receive the award in successive years.

Definition of Active Pay Status

Current Law

An employer must pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the "Fair Labor Standards Act of 1938," 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended. The number of hours worked by a county employee in any one workweek include, in addition to hours actually worked, all periods in an active pay status. (Sec. 4111.03(A) and (B).)

Recommendation

The commission suggests repealing 4111.03 (B) and allowing appointing authorities to define active pay status. No specific design should be state-mandated. Absent a local definition, the state's definition would apply.

Background

Additional costs are incurred if an employer is required to make overtime payments when an employee has not yet worked 40 hours. Many public agencies want the ability to consolidate paid leave into one annual leave type program, which would eliminate paid sick leave.

Local Flexibility with Local Option

Current Law

With respect to officers and employees of state-supported colleges and universities and except for the powers and duties of the State Personnel Board of Review set forth in section 124.03 of the Revised Code, the powers, duties, and functions of the Department of Administrative Services and of the Director of Administrative Services specified in Chapter 124. of the Revised Code are vested in and assigned to the boards of trustees of those colleges and universities, or those officers to whom the boards of trustees have delegated these powers, duties, and functions, subject to a periodic audit and review by the Director (Sec. 124.14(F).)

Each board of county commissioners may, by a resolution adopted by a majority of its members, designate the county personnel department of the county to exercise the powers, duties, and functions of the Department of Administrative Services and the Director of Administrative Services specified in sections 124.01 to 124.64 and Chapter 325. of the Revised Code (Sec. 124.14(G)(2).)

The mayor or other chief appointing authority of each city in the state must appoint three persons who constitute the municipal civil service commission of such city and of the city school district and city health district in which such city is located. The municipal civil service commission must prescribe, amend, and enforce rules not inconsistent with Chapter 124. of the Revised Code for the classification of positions in the civil service of the city and city school district, and all the positions in the city health district; for examinations and resignations therefore; for appointments, promotions, removals, transfers, layoffs, suspensions, reductions, and reinstatements; and for standardizing positions and maintaining efficiency. The municipal civil service commission must exercise all other powers and perform all other duties with respect to the civil service of the city, city school district, and city health district, as prescribed in Chapter 124. of the Revised Code and conferred upon the Director of Administrative Services and the State Personnel Board of Review with respect to the civil service of the state. All authority granted to the Director and the Board with respect to the service under their jurisdiction must, except as otherwise provided by Chapter 124. of the Revised Code, be held to grant the same authority to the municipal civil service commission with respect to the service under its jurisdiction. (Sec. 124.40(A).)

Recommendation

The commission recommends that the General Assembly initiate a study regarding the possibility of allowing subdivisions of the state the ability to establish a local option civil service district. The commission further recommends that the General Assembly permit four-year colleges and universities to establish local civil service districts. The Ohio Constitution and general civil service law provisions, as provided for municipality civil service commissions, would apply to local civil service districts.

Background

In order to create more efficiency within government, employers need more authority to create and execute systems and programs that fit their unique circumstances.

Currently, certain entities have the ability to establish a local option civil service district through collective bargaining.



APPEAL AND DUE PROCESS

Jurisdiction of Appeals

Current Law

Any party adversely affected by any order of an agency issued pursuant to an adjudication denying an applicant admission to an examination, or denying the issuance or renewal of a license or registration of a licensee, or revoking or suspending a license, or allowing the payment of a forfeiture, may appeal from the order of the agency to the court of common pleas of the county in which the place of business of the licensee is located or the county in which the licensee is a resident, except that appeals from the Liquor Control Commission, the State Medical, State Chiropractic Board, and Board of Nursing shall be to the court of common pleas of Franklin County. If a party is not a resident of and has no place of business in this state, the party may appeal to the court of common pleas of Franklin County. Any party adversely affected by any order of an agency issued pursuant to any other adjudication may appeal to the court of common pleas of Franklin County. (Sec. 119.12.)

In cases of removal or reduction in pay for disciplinary reasons, either the appointing authority or the officer or employee may appeal from the decision of the State Personnel Board of Review or the municipal civil service commission to the court of common pleas of the county in which the employee resides in accordance with the procedure provided by section 119.12 of the Revised Code. (Sec. 124.34.)

Recommendation

The commission recommends specifying that appeals must be filed in the home county of the employer and that the conflict regarding jurisdiction between Revised Code 119.12, 124.34 and 2505 must be solved.

Background

The appeals process is confusing and inconvenient to employees and employers. Taking employees, witnesses and supervisors out of the workplace to travel to Columbus for the entire day results in loss of work product, and possibly, an overturned appeal in the court because of the lack of clarity describing jurisdiction.

Right to Counsel at a Hearing

Current Law

Except for proceedings before a grand jury, any person appearing as a witness before any public official, department, board, bureau, commission, agency, or representative thereof, in any administrative or executive proceeding or investigation, public or private, if the witness so requests, must be permitted to be accompanied, represented, and advised by an attorney. The attorney's participation in the hearing is limited to the protection of the rights of the witness, the attorney may not examine or cross-examine witnesses, and the witness must be advised of right to counsel before interrogation. (Sec. 9.84.)

Recommendation

The commission recommends that employees involved in employment interviews, investigations and proceedings should be exempt from the application of Revised Code 9.84.

Background

Various decisions of the U.S. Supreme Court have established protections for government employees from arbitrary or capricious employment decisions by their employers. Although these employees may be permitted to seek legal representation at a hearing held prior to employment deprivation, no corresponding right has been found for employees or individuals who are merely witnesses at such a hearing.

Appeals Process

Current Law

No provision in existing law.

Recommendation

The commission recommends eliminating the requirement that an employer must notify DAS and SPBR of a disciplinary action. Also, employees should have further clarification in their employee handbooks outlining their appeal rights and the standard operating procedures they must follow. Finally, the commission recommends that DAS and SPBR conduct public hearings to further identify other appeals processes that are unnecessary but emphasize the need to treat employees fairly and perform a neutral review of their conduct.

Background

The current appeals process is riddled with inconsistencies and redundancies, resulting in unnecessary work on the parts of the employee and the employer. The employer's requirement to notify DAS and SPBR of a disciplinary action does not benefit the employer or employee. Many employees do not know the steps they must take to appeal an employer's decision and feel that they cannot rely on their employer to give them the correct information.

Alternative Dispute Resolution

Current Law

Current law does not specifically allow for alternative (or "alternate") dispute resolution with regard to local civil service commissions and appeals to the State Personnel Board of Review.

Recommendation

The commission recommends that an ad hoc committee be formed to further review the question of the possible application of an alternate dispute resolution (ADR) procedure for application in local civil service commissions (cities) and for appeals to the State Personnel Board of Review.

The goal of this informal group is to review, study, and make greater awareness of the potential for alternate dispute resolution for disputes in the public sector. This ADR concept has consistently been and would continue to be suggested to be available on a voluntary basis.

Background

This resolution supports the efforts of concerned practitioners and professionals to meet and research the application of possible alternative dispute resolution procedures to local civil service disputes as an alternative to the statutory methods.

It is recommended that the ad hoc group meet a minimum of three times and that meetings be structured as follows:

- First meeting to identify issues, raise questions, distribute educational components, identify parties interested in this process, invite speakers and invite public input.
- Second meeting would be an open meeting for the discussion of “dispute resolution systems design” and solicit input from professionals in the dispute system design including the Ohio Commission on Dispute Resolution, and university participants (Ohio State University, Capital University, and others interested). This second meeting would also invite input from the public including employee groups, civil service review commissions, city and county groups, and plaintiff employment representatives.
- Final meeting would be scheduled to design and draft a recommendation to the legislature.

The suggested participants for inclusion and participation in this ad hoc group review would be as follows:

1. Union representatives (2)
2. Counties
3. Cities
4. State Personnel Board of Review
5. State Employment Relations Board
6. Ohio State University (2 professors)
7. Capital University (2 professors)

8. Department of Administrative Services/Office of Collective Bargaining
9. Ohio Commission on Dispute Resolution
10. American Arbitration Association or Federal Mediation Conciliation Services
11. Professional arbitrator with experience in public sector disputes
12. Plaintiff's employment lawyer with experience in civil service disputes



GENERAL STATEMENT OF INTENT

The Civil Service Review Commission recognizes that the realm of civil service law is a deeply complicated area of the law that could lend itself to infinite review. Given that the commission was allocated only one year to complete its review, many ideas could not be adequately developed so as to allow them to be included in the final report. Additionally, many areas could not be addressed at all. Recognizing these limitations of the final report, yet with the sincere belief that certain topics must be studied and made more efficient if true civil service reform is to be completed, the commission makes the following recommendations and statements of intent to help guide future actions of the Ohio General Assembly:

- ❖ Central to a successful civil service system is a fair and logical classification and compensation system. Although these topics individually constitute complex discussions, they cannot be separated. Very often the classification system is abused to impact compensation, while ultimately the classification system determines pay in the public sector. Given this symbiotic relationship, the commission strongly believes that additional study and reform is necessary in both areas.

The current classification system is slow and rigid which detrimentally affects the civil service recruitment system. Likewise, the current pay system creates pay gaps between the public and private sectors and, at times, when coupled with the associated benefits, has little relationship to the marketplace for comparable skills. A less complicated system must be developed which offers control and opportunities for supervisors and employees and which is internally and externally equitable with the conditions defined in a comparable labor market.

Given the flaws that exist in the current system, the commission recommends that the General Assembly take action to promote reform in the areas of classification and compensation. To aid in this reform, the commission recommends that the Department of Administrative Service facilitate, with all appropriate stakeholder groups, further discussion and study of these critical issues. The commission recommends that DAS report to the General Assembly within six months and at other intervals as deemed appropriate regarding the plans for and implementation of reform efforts. Despite the good intention of human resources professionals both past and present, efforts at reform have stalled. The General Assembly is urged in the strongest possible terms to monitor and, if necessary, drive these critical reforms.

- ❖ Pursuant to a recommendation later in this report, the commission recommends that an ad hoc work group continue to meet to develop an alternative dispute resolution system. If a system can be agreed to by the interested parties, the commission recommends that this system be considered for inclusion in the legislation, which may be drafted as a result of this report.
- ❖ The commission recommends that the provisions of any mutually negotiated collective bargaining agreement now in effect supercede the proposed recommendations set forth in the commission report.
- ❖ The structure and location of civil service statutes in the Revised Code should be more user-friendly. The Revised Code should be rewritten and reordered so that it is clear which sections apply to the state, to the counties or to other units of government.
- ❖ In an effort to make the Ohio Department of Administrative Services (DAS) more customer-friendly and accessible, the commission believes that DAS should portray itself as more of a consultant than a regulator.
- ❖ State law should be modified to allow elected officials, who are being investigated or have been charged with a felony or theft in office offense, to be placed on unpaid leave. The unpaid leave would not last longer than two months while the investigation is conducted. If the elected official is not charged with a crime or is found not guilty, he would be paid at his current salary, plus interest, for the time he was out of the office.