

**FINAL RULES (EXEMPT RULEMAKING)**

**Effective: April 13, 2013**

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## SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES

### ARTICLE 1. GENERAL

#### **R2-5A-101. Definitions**

In this subchapter, the following words and phrases have the defined meanings unless otherwise clearly indicated by the context:

“Agency head” means the chief executive officer of a state agency, or designee.

“Appeal” means a covered employee's request for a review of a disciplinary action by the State Personnel Board under A.R.S. § 41-782 or the Law Enforcement Merit System Council under A.R.S. § 41-1830.16, as applicable.

“Applicant” means a person who seeks appointment to a position in state employment.

*"Appointing authority" means the person or group of persons authorized by law or delegated authority to make appointments to fill positions. A.R.S. § 41-741(1)*

“Appointment” means the offer to and the acceptance by a candidate of a position in a state agency.

*"At will" means an employment relationship where either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason. A.R.S. § 41-741(2)*

“Base salary” means an employee’s salary excluding supplemental pay provided by R2-5A-403, overtime pay or other pay allowance provided by law.

*"Break in service" means a separation from state employment, regardless of the reason for separation. A.R.S. § 41-741(3)*

“Business day” means the hours between 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding observed state holidays.

“Candidate” means a person whose education, experience, competencies and other qualifications meet the requirements of a position and who may be considered for employment.

“Cause” means any of the reasons for disciplinary action provided by A.R.S. § 41-773 or these rules.

*"Change in assignment" means movement of an employee to a different position in the same state agency or another state agency. A.R.S. § 41-741(4)*

“Child” means, for purposes of R2-5A-B603, pertaining to sick leave, and R2-5A-B605 pertaining to bereavement leave, a natural child, adopted child, foster child, or stepchild.

“Class” means a group of positions with the same title and grade because each position in the group has similar duties, scope of discretion and responsibility, required qualifications, or other job-related characteristics.

“Class series” means a group of related classes as listed by the Arizona Department of Administration, Human Resources Division.

“Class specification” means a description of the type and level of duties and responsibilities of the positions assigned to a class.

“Competencies” means knowledge, skills, abilities, behaviors and other characteristics that contribute to successful job performance and the achievement of organizational results.

“Covered employee” means an employee who:

- (a) *Before September 29, 2012, is in the state service, is not uncovered pursuant to section 41-742, subsection A, and has remained in covered status without a break in service since that date.*
- (b) *Before September 29, 2012, is in the state service, is employed as a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and has remained in covered status without a break in service since that date.*
- (c) *Before September 29, 2012, is in the state service, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and has remained in that status without a break in service since that date.*
- (d) *On or after September 29, 2012, is a Correctional Officer I, Correctional Officer II, Correctional Officer III or Community Corrections Officer and is appointed to a position in the covered service, but does not include a position in any other class in the correctional officer class series or the community correctional officer class series or in any other correctional class series.*
- (e) *On or after September 29, 2012, is a full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board and is appointed to a position that requires such a certification in the covered service. A.R.S. § 41-741(5)*

“Covered position” means a position in the covered service.

“Covered service” is defined in A.R.S. § 41-741 and means that employment status conferring rights of appeal as prescribed in A.R.S. §§ 41-782 and 41-783 or A.R.S. § 41-1830.16, as applicable.

“Days” means calendar days, unless otherwise stated.

“Demotion” means a change in the assignment of an employee from a position in one class to a position in another class that has a lower grade.

“Department” means the Arizona Department of Administration.

“Director” means the Director of the Arizona Department of Administration, or the Director’s designee, who is responsible for administering the state personnel system pursuant to applicable state and federal laws. A.R.S. § 41-741(7)

*"Employee" means all officers and employees of this state, whether in covered service or uncovered service, unless otherwise prescribed. A.R.S § 41-741(8)*

"Employing agency" means the agency where the employee is employed or, if an applicant, the agency to which the person has applied.

"Essential job function" means a fundamental job duty of a position that an applicant or employee must be able to perform, with or without a reasonable accommodation.

"FLSA" means the federal Fair Labor Standards Act.

"FLSA exempt" means a position that is not entitled to overtime compensation under the FLSA.

"FLSA non-exempt" means a position that is entitled to overtime compensation under the FLSA.

"FMLA" means the federal Family and Medical Leave Act.

*"Full authority peace officer" means a peace officer whose authority to enforce the laws of this state is not limited by the rules adopted by the Arizona Peace Officer Standards and Training Board.*  
A.R.S. § 41-741(9)

"Grade" means the numeric identifier associated with one or more pay ranges, used to determine the internal worth of a class relative to other classes.

"Manifest error" means an act or failure to act that is, or clearly has caused, a mistake.

"Parent" means, for purposes of R2-5A-B602, pertaining to annual leave, R2-5A-B603, pertaining to sick leave, and R2-5A-B605, pertaining to bereavement leave, a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or anyone who can be considered "in loco parentis."

"Part-time" means employment scheduled for less than 40 hours per week.

"3/4 time" means employment regularly scheduled for at least 30 hours but fewer than 40 hours per week.

"1/2 time" means employment regularly scheduled for at least 20 hours but fewer than 30 hours per week.

"1/4 time" means employment regularly scheduled for at least 10 hours but fewer than 20 hours per week.

"Pay status" means an employee is receiving pay for work or for a compensated absence.

"Premium/contribution" means the amount paid in exchange for insurance coverage. Depending on the type of coverage, the premium/contribution is paid by the employee, the state, or a combination of both.

"Promotion" means a change in assignment of an employee from a position in one class to a position in another class that has a higher grade.



“Reallocation” means changing the allocation of a position to a different class if a material and permanent change in duties or responsibilities occurs.

“Reversion” means the return of a covered employee on promotional probation to a position in the class in which the employee held permanent status immediately before the promotion or to a similar position in another class at the same grade as the class the employee held permanent status if the employee possesses the qualifications for that position.

“Rules” means the rules adopted by the Department of Administration, Human Resources Division. A.R.S. § 41-741(13)

“Special assignment” means the temporary assignment, for up to six months, of the duties and responsibilities of another position to an employee in the same agency.

*“State agency” means a department, board, office, authority, commission or other governmental budget unit of this state and includes an agency assigned to a department for administrative purposes. State agency does not include the legislative and judicial branches, the Arizona Board of Regents, state universities, the Arizona State Schools for the Deaf and the Blind, the Department of Public Safety, the Arizona Peace Officer Standards and Training Board, the Cotton Research and Protection Council or public corporations. A.R.S. § 41-741(14)*

"State Personnel Board" is defined in A.R.S. § 41-741 and means the board established by A.R.S. Title 41, Chapter 4, Article 6.

"State Personnel System" is defined in A.R.S. § 41-741 and means all state agencies and employees of those agencies that are not exempted by the provisions of A.R.S. Title 41, Chapter 4, Article 4.

“State service” is defined in A.R.S. § 41-741 and means all offices and positions of employment in state government that, before September 29, 2012, were subject to the provisions of A.R.S. Title 41, Chapter 4, Articles 5 and 6 that were in effect before September 29, 2012.

*“Supervisor” means a state employee who has one or more other state employees reporting directly to the person and, for those state employees, typically has the authority to:*

- (a) Approve sick or annual leave.*
- (b) Recommend hiring, discipline or dismissal.*
- (c) Assign or schedule daily work.*
- (d) Complete a performance evaluation. A.R.S. § 41-741(18)*

“Temporary appointment” means an appointment made for a maximum of 1,500 hours worked in any agency in each calendar year.

“Transfer” means the movement of an employee from one position to another position in the same or an equivalent grade.

*“Uncovered employee” means an employee in uncovered service. A.R.S. § 41-741(19)*

*"Uncovered service" means employment at will and includes all state employees except those in covered service. A.R.S. § 41-741(20)*

"Working day" or "working hours" means a day or the hours an employee is regularly scheduled to work.

**R2-5A-102. General Provisions**

**A. Authority of Director.**

1. The Director may approve, modify or deny a request, plan or proposal submitted by a state agency for review or when the Director's approval is required by rule.
2. The Director may audit an agency's personnel policies and procedures at any time. If the Director determines that the agency's policies or procedures are inconsistent with these rules or are inconsistent with the procedures or guidelines issued by the Director, the Director may direct the agency head to modify them to achieve consistency or to discontinue them.

**B. Delegation of authority.**

1. The Director may, in writing, delegate authority to an agency head as consistent with legal requirements.
2. The Director may review or audit delegated authority to determine compliance with laws, rules, and policies.
3. Unless otherwise stated by law, or in these rules, an agency head may delegate authority granted to the agency head in these rules.

**C. Availability of funds.** The granting of any compensation under these rules is contingent upon the availability of funds, as determined by an agency head and the Director.

**D. Service of notice.** If a notice or document is to be given to a person or agency, the notice or document may be served personally or mailed to the last known residence or current business address of the person or agency. Unless otherwise provided by law or these rules, service is complete upon personal delivery or mailing.

**E. Employee handbook.** The Director may publish an employee handbook outlining pertinent rules and regulations and make the handbook available to all employees. If published, the employee handbook shall serve as the official handbook for all employees in the State Personnel System. An agency head may supplement the employee handbook with agency specific policies and directives.

**F. Employment contracts.** Unless otherwise provided by law, an appointing authority shall not execute an employment contract with any state employee.

**G. Correction of errors.** Only the Director, or designee, has authority to determine whether a manifest error exists and to correct the manifest error.

**R2-5A-103. Applicability**

- A. General.** Except as provided in A.R.S., Title 41, Chapter 4, Article 4 and Article 5, or otherwise stated in rule, the rules in this subchapter are applicable to covered and uncovered positions, applicants for covered and uncovered positions and covered and uncovered employees in the State Personnel System. An employee who violates or fails to comply with these rules may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.
- B. Temporary procedures.** The Director may:
1. Unless otherwise prescribed by statute, waive any rule and implement temporary procedures if the Director determines that essential public services are being hampered or it is in the best interest of the state.
  2. Implement a temporary pilot project to improve efficiency, productivity, or accountability in the State Personnel System. The project may include an activity or procedure that is not in accordance with these rules and shall not exceed two years in duration.

**R2-5A-104. Prohibition Against Discrimination, Harassment and Retaliation**

- A. General.** Agencies shall comply with all federal and state anti-discrimination laws. Agencies shall not unlawfully discriminate against any individual with regard to the terms and conditions of employment, including hiring, pay, leave, insurance benefits, retention, and rehiring. The information provided in this rule is intended to serve as a summary of agencies' and employees' obligations with regard to compliance with applicable federal and state laws, rules and regulations. Nothing in these rules shall be construed as providing rights in excess of, or in addition to those authorized under federal laws and Arizona Revised Statutes.
- B. Equal Employment Opportunity.** Each agency shall provide equal employment opportunity for all individuals regardless of race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation. It is the policy of this state that all individuals are treated in a fair and non-discriminatory manner throughout the application and employment process.
- C. Harassment Prohibited.** Harassment of a sexual nature or harassment based on race, color, national origin, religion, age, disability, genetic information, sex, pregnancy, military or veteran status, or any other status protected by federal law, state law, or regulation is prohibited. An agency shall prohibit the unlawful harassment of any employee in the course of the employee's work by supervisors, coworkers, or third parties, such as vendors or customers. Any employee who engages in unlawful harassment may be subject to disciplinary action, up to and including termination of employment.

**D. Protection from Retaliation.** The state prohibits retaliation against anyone for raising a concern about, assisting in an investigation of, or filing a complaint concerning unlawful discrimination or unlawful harassment.

**E. Complaints.**

1. An applicant for state employment who has a complaint alleging discrimination or harassment may file a complaint under the procedures in R2-5A-308.
2. It is every employee's responsibility to promptly bring any allegation of discrimination, harassment or retaliation to the attention of the employing agency. Such complaints shall be filed under the procedures established under Article 9.

**R2-5A-105. Records**

**A. Definitions.** For the purposes of this Section, "record" generally refers to a paper document; however, a document may be maintained electronically.

**B. Application Materials.**

1. An agency head shall maintain and keep confidential all resumés, applications, tests, test results, records, correspondence, and other documents used to seek state employment. The agency head shall not release any materials that the agency head determines would compromise the application process for future applicants and shall restrict the review of the applicant's application materials to:
  - a. The applicant,
  - b. An individual who has written authorization from the applicant,
  - c. State officials in the normal line of duty, or,
  - d. Officials acting in response to court orders or subpoenas.
2. The Director, or designee, shall ensure that when a person makes a public records request under A.R.S. Title 39, Chapter 1, Article 2 for applicant information:
  - a. Information shall only be provided if the position under recruitment is a high-level position and the public has a legitimate interest in the names of persons being seriously considered for the position, as determined by the Director; and
  - b. Only the names and resumés of the final candidates for the position as determined by the Director shall be released.

**C. Official Personnel File.**

1. An employee's official personnel file is the official record and documentation of the employee's employment.
2. An agency head shall, for each agency employee, maintain an official personnel file that contains:

- a. A copy of the job application for the employee's current position;
  - b. A copy of all performance appraisals completed as required by Article 7;
  - c. Personnel action forms that authorize changes in employment status, position, classification, pay, or leave status;
  - d. Letters of commendation as established by agency policy; and
  - e. Correspondence consisting of:
    - i. Letters of reprimand, suspension, demotion or dismissal;
    - ii. Acknowledgments of receipt of letters of reprimand or other disciplinary communications; and
    - iii. Employee objections or responses to correspondence described in subsection (C)(2)(e)(i) that are not filed as complaints under Article 9 or grievances under Subchapter B, Article 4, if the objection or response is received within 30 calendar days of the date of the disciplinary action or letter of reprimand.
3. For the purpose of this subsection, an official is an individual who provides identification verifying that the individual is exercising powers and duties on behalf of the chief administrative head of a public body. An agency head shall limit access to an employee's official personnel file to:
- a. The employee;
  - b. The employee's attorney or an individual who has written authorization from the employee to review the personnel file;
  - c. Agency personnel designated by the agency head as having a need for the information;
  - d. A Department official in the normal line of duty;
  - e. An official acting in response to a court order or subpoena;
  - f. An official of an agency to which the employee has applied; and
  - g. An official of an agency of the federal government, state government, or political subdivision, if the agency head of the employing agency deems access to the file to be appropriate.
4. When an employee moves from one state agency to another, the gaining agency shall request that the losing agency forward the employee's official personnel file to the gaining agency. The losing agency shall forward the file within 20 business days of the receipt of the request.
5. When a former employee returns to state employment within five years of the former employee's separation to an agency other than the agency in which the employee was last employed, the gaining agency shall request that the last agency forward the employee's official personnel file. The last agency shall forward the file within 20 business days of the receipt of the request.

**D. Disclosure of information.**

1. Definitions. For the purposes of this subsection:
  - a. “Disciplinary actions” means letters of reprimand, suspension, demotion or dismissal.
  - b. “Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee’s disciplinary actions” means the correspondence listed in subsection (D)(1)(a) and includes an official notice of charges of misconduct as applicable to covered employees, the final disciplinary letter, and any responses related to complaints, grievances or appeals upholding, amending, or overturning the discipline.
  - c. “Employee responses” means any written documents, submitted and signed by the employee, either:
    - i. In response to an official notice of charges of misconduct;
    - ii. As a formal complaint filed under the provisions of Article 9 or a formal grievance under Subchapter B, Article 4, of these rules pertaining to a specific disciplinary action; or
    - iii. As an objection to a specific disciplinary action and contained in the employee’s official personnel file under subsection (C)(2)(e)(iii).
2. Personnel records are confidential and an agency head shall ensure that except as provided in subsection (C)(3), only the following information about a current or former employee is provided to any person making a public records request under A.R.S. Title 39, Chapter 1, Article 2.
  - a. Name of employee;
  - b. Date of employment;
  - c. Current and previous class titles and dates of appointment to the class;
  - d. Current and previous agencies to which the employee has been assigned and the location of the main office for each agency;
  - e. Current and previous salaries and dates of each change;
  - f. Name of employee’s current or last known supervisor; and
  - g. Records that are reasonably necessary or appropriate to maintain an accurate knowledge of the employee’s disciplinary actions, including the employee responses to all disciplinary actions, unless providing this information is contrary to law.

**E. Insurance and medical records. An agency head:**

1. May maintain group insurance enrollment forms in an employee’s official personnel file for an employee hired prior to September 29, 2012.
2. Shall maintain in a separate file that is not part of the employee's official personnel file:
  - a. Medical records, and
  - b. Group insurance enrollment forms for an employee hired on or after September 29, 2012.

- F.** Employment eligibility records. An agency head shall retain I-9 forms and other documents required by law to prove employment eligibility in a separate file that is not part of the employee's official personnel file.
- G.** Employee access to files. An employee has the right to review only the employee's official personnel file.
- H.** Recordkeeping Requirements. An agency head shall ensure that agency recruitment and employee records are maintained in accordance with the General Records Retention Schedule for Human Resources/Personnel Records published by and on file with the Secretary of State, Arizona State Library, Archives and Public Records.

## **ARTICLE 2. CLASSIFICATION SYSTEM**

### **R2-5A-201. Classification Plan**

- A.** General. The Director shall group positions into classes based on similarities of duties and responsibilities. All positions are assigned a class specification with a specific title. An agency head may not appoint, transfer, promote, or demote an employee, or make any change in salary for any position until the position is allocated to a class.
- B.** Class title. An agency head shall use the class title of a position to designate the position in all budget estimates, payrolls, vouchers, and communications in connection with personnel processes.
- C.** Class specification. A class specification indicates the kinds of positions to be allocated to the class, as determined by the duties and responsibilities described for that class. Each class specification shall contain a statement of the minimum education, experience, competencies, and other qualifications required to perform the work. Required postsecondary education shall be attained in an institution that meets the standards established by an accrediting agency recognized by the U.S. Department of Education.
- D.** Position description. An agency head shall ensure that every position in the agency has a completed position description describing the current duties, responsibilities, and essential job functions specific to the position.
- E.** Allocation. The Director shall place every position in a class based on its duties and responsibilities.
- F.** Reallocation. Upon completion of a review of a position, the Director may determine that the position should be placed in a different class.
- G.** Regrade. Upon completion of a review of a classification, the Director may determine that the class should be placed in a different grade.

**R2-5A-202. Change in Classification**

- A. Change in classification plan. The Director may establish new classes and divide, combine, alter, or abolish existing classes, grades, or both, in consultation with affected agency heads.
- B. Change in job duties.
  - 1. An employee in a position or the agency head may file a written request with the Director for review of the classification of the position. The request shall contain an updated position description, a specific explanation of how and when the position's duties and responsibilities have changed and the reasons why the current classification does not match these job duties.
  - 2. If a material and permanent change takes place in the duties and responsibilities of a position, the agency head shall report this change to the Director in an updated position description. The Director may order a reallocation of the position. The employee in the position at the time of reallocation shall continue to serve in the position.
- C. Effective date. The effective date of a change in classification shall be the first day of the pay period immediately following the Director's determination, unless the Director authorizes an exception.

**R2-5A-203. Second Level Review**

An employee in a position or the agency head may submit a written request for a second level review of a classification decision within 30 days of the initial determination. The request shall contain a concise and specific statement as to why the original decision was inappropriate. The Director may assign a different analyst to review the request and evaluate the proper classification of the position. The second level review shall be the final step in the classification review process.

**ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT**

**R2-5A-301. General**

An agency head shall follow the requirements outlined in this Article to identify and appoint qualified candidates to fill vacancies. The Director shall establish and maintain a centralized employment system that includes a job board for announcing vacancies in state employment, applicant tracking and candidate identification. The Director shall establish procedures for state agencies to request approval for transportation or other travel expenses or moving expenses provided by A.R.S. § 35-196.01 for out of state candidates.



## **R2-5A-302. Recruitment**

### **A. Job posting.**

1. Unless exempted by A.R.S. Title 41, Chapter 4, Article 4, an appointing authority shall post an open position to the state's centralized job board. This includes recruitments open to only employees currently employed by the agency, to state employees currently employed in any state agency, or the general public. An agency head may authorize an exception to the job posting requirement for a position in an individual case. Any exceptions shall be documented by the agency head and subject to audit by the Director.
2. In addition to posting to the state's centralized job board, an appointing authority may post an open position in a publication or to a commercial job posting board or both, in compliance with applicable procurement rules.

### **B. Application form.**

1. A candidate for a position shall complete the standardized application form developed by the Director.
2. In addition to the standardized application form, an agency head may develop supplemental application procedures and forms specific to the agency or to a certain class or classes within the agency.

### **C. Preferences.**

1. The state will provide preference to qualified veterans and disabled veterans seeking employment with the state.
2. For positions in the covered service, preference points authorized by A.R.S. § 38-492 shall be added to an applicant's grade on any assessment or evaluation that results in a numeric grade after the final grade is determined, if a passing grade is earned without the addition of preference points. Preference points shall not be applied to promotional examinations. If an evaluation does not result in a numeric grade, preference shall be given by granting applicable preference codes to qualified applicants.

## **R2-5A-303. Reference and Background Checks**

A candidate may be required to furnish, at the candidate's own expense, evidence of education or other qualification. The appointing authority is responsible for verifying education, work experience, applicable license or licenses and references provided by candidates on the application form and in interviews. An appointing authority shall not conduct a criminal background check or a credit check on a candidate unless the agency has statutory or executive order authority to conduct such a check.

**R2-5A-304. Qualifications of Selected Candidate**

An agency head shall ensure that any candidate selected for hire meets the established qualifications for the position filled.

**R2-5A-305. Employment of Relatives**

- A. Relationship to supervisors. An individual shall not be employed in a position if the immediate supervisor of the individual is related within the third degree of affinity (marriage) or consanguinity (blood), or by adoption.
- B. Relationship to other employees. An individual shall not be employed in a position if the individual is related within the third degree to an employee who currently occupies a position under the same immediate supervisor.
- C. Exceptions. The Director may grant an exception to the prohibitions in subsections (A) and (B) if there is no other qualified person for the position at the location.
- D. Relationship to subordinate employees. A supervisor or manager at any level shall not make an employment decision specifically benefitting any individual who is related within the third degree, unless an exception under subsection (C) has been granted.
- E. Relationship to interviewer or interview panel members. An employee shall not interview or serve on an interview panel of any job candidate if the candidate is related within the third degree.
- F. Definition. For the purpose of this Section, persons related within the third degree include a spouse, child, parent, grandchild, grandparent, sister, brother, great grandchild, great grandparent, aunt, uncle, niece, nephew or first cousin.

**R2-5A-306. Hiring Requirements**

Agencies shall comply with federal and state law, including the verification of employment eligibility pursuant to A.R.S. § 23-214. An agency head shall ensure the completion of the Form I-9 and the employment eligibility verification process for all new hires.

**R2-5A-307. Appointment**

- A. General. Except as provided in A.R.S. Title 41, Chapter 4, Articles 4 and 5, all appointments shall be at will uncovered. An agency head may appoint a current state employee who accepts a change in assignment or an external candidate in accordance with these rules and the procedures established by the Director.
- B. Types of Appointment.
  - 1. A regular appointment may be:

- a. Full-time employment;
  - b. Part-time employment;
  - c. Subject to funding availability, such as federal or grant funding; or
  - d. To a trainee position.
2. A temporary appointment may be made for a recurring period of time up to a maximum of 1500 hours in any one position per agency each calendar year. A temporary appointment employee may work full time for a portion of the year, intermittently, on a seasonal basis, or on an as needed basis. An employee in a pool classification is considered a temporary appointment.
  3. An agency head may place an employee on special assignment within the agency. A special assignment may be made non-competitively and for up to 6 months with the concurrence of the agency head of the employing agency and the Director. A special assignment shall not exceed 6 months unless extended by the Director. An agency head shall not make successive special assignments of the same person to the same class.

**R2-5A-308. Applicant Complaint**

An applicant who has a complaint alleging discrimination or harassment relating to the procedures used in the selection or evaluation process shall submit the applicant complaint to the agency human resources representative within 90 days of the action giving rise to the complaint. The agency human resources representative shall evaluate the complaint and notify the applicant of the final action to be taken.

**ARTICLE 4. COMPENSATION SYSTEM**

**R2-5A-401. Salary Plans**

- A. General. The Director shall establish a salary plan. The salary plan shall allow for the following:
  1. Minimum and maximum rates of pay for classes outlined in the classification plan.
  2. Salary adjustments, including adjustments to base salary and pay supplements and incentives, including add-ons to base salary.
- B. Alternative salary plan. The Director may establish a special salary plan or pay practice determined to be the prevailing practice in the labor market and in the best interest of the state.

**R2-5A-402. Salary Administration**

- A. General. The Director shall develop procedures for salary administration for use by all agencies when setting the salary of an employee. In setting an employee's salary, an agency head shall consider such factors as the employee's education, experience, skills, performance, and current or former salary, as

well as the current salaries of employees in the same class in the agency and the relative experience and performance of those employees.

- B. Classes.** The Director shall assign each class to a salary range and to a grade.
- C. Salary.** The base salary of an employee shall be not less than the minimum nor more than the maximum of the salary range of the class to which the employee's position is allocated, except as provided by these rules.
- D. Salary adjustment.** The salary used to compute a salary adjustment is the employee's base salary. Following an adjustment to the base salary, an agency shall add to the new rate of pay any special pay supplement still valid.
- E. New hire starting rate.** An agency head may offer a salary to a new hire within the salary range of the class to which the employee is being appointed in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
- F. Promotion.** An employee who has a change in assignment from a position in one class to a position in another class having a higher grade shall receive a salary increase as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
- G. Demotion.**
  - 1. An employee who has a change in assignment from a position in one class to a position in another class having a lower grade, whether voluntary or involuntary, shall receive a salary decrease as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
  - 2. A demoted employee shall not be eligible for an increase to base salary for six months after the effective date of the demotion to the new position, other than a salary increase that is legislatively mandated. After six months, the employee may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.
- H. Lateral transfer.** An employee who has a change in assignment from a position in one class to a position in another class having the same grade shall receive no increase in salary, unless an exception is approved by the Director. The Director may approve a salary increase based upon documentation of recruitment difficulties to fill the position, specific needs identified by the agency, or the employee's qualifications. Transferred employees are not eligible for increases to base salary during their first six months in the new job unless approved by the Director. An employee who transfers to another agency may become eligible for a salary increase only after a performance

evaluation in the new position for which the employee received an overall rating of “meets expectations” or higher.

**I.** Reversion of covered employee. A covered employee who is reverted under the rules in Subchapter B shall be paid the same salary as that paid prior to the promotion, plus the percentage or dollar amount of increase of an intervening general salary adjustment for which the employee was eligible.

**J.** Job reallocation.

1. The base salary of an employee in a position that is reallocated to a class in a higher pay range may receive a salary increase in accordance with the procedures and guidelines published by the Director. If increasing the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
2. The base salary of an employee in a position that is reallocated to a class with the same or lower pay range shall remain the same provided that the employee's salary is within the pay range of the position. If the employee's salary is less than the minimum of the salary range or greater than the maximum salary of the new pay range, the employee's salary shall be the minimum salary or the maximum salary of the new pay range, respectively.

**K.** Job regrade.

1. The base salary of an employee in a class that is reassigned to a higher grade shall be adjusted by the amount determined by the Director. If adjusting the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
2. The base salary of an employee in a class that is reassigned to a lower grade shall remain the same provided that the employee's salary is at or above the minimum salary of the new pay range of the class, and may be greater than the maximum salary of the pay range. If the employee's salary is greater than the maximum, the employee is not eligible for an increase to base pay until the employee's salary is less than the maximum salary of the new pay range.

**L.** Merit increases.

1. The Director shall establish guidelines for merit increases to base pay.
2. Merit increases shall be available:
  - a. To uncovered employees.
  - b. To covered employees only if such increases are legislatively appropriated.
3. Subject to the guidelines established by the Director:
  - a. Merit increases may be implemented at the discretion of the agency head.

- b. Merit increases are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.
  - 4. An agency head shall report to the Director on the utilization of merit increases pursuant to the reporting requirements in the guidelines established by the Director.
- M.** Legislatively-appropriated salary adjustments. Subject to legislative appropriation, the Director shall determine employee eligibility and criteria for salary adjustments.

**R2-5A-403. Supplemental Pay**

- A.** General. Supplemental pay is in addition to an employee's base pay. The salary of an employee may exceed the maximum salary of the pay range for the employee's class if the excess amount is due to the receipt of supplemental pay.
- B.** Shift differential. The Director may authorize a shift differential to be paid to an employee on other than a day shift. The Director shall establish a competitive shift differential rate periodically based on an annual survey of the market place. Employees in the same class in the same agency who work on the same shift shall receive the same shift differential pay.
- C.** Special assignment. An employee on a special assignment shall remain in the employee's current position with no change to base salary. If the classification to which the employee is on a special assignment is a higher grade, the employee shall be provided a conditional pay supplement in an amount that, when added to the employee's base salary, would be within the range of the higher classification. If the classification to which the employee is on a special assignment is the same or a lower grade, the employee shall not be eligible for a conditional pay supplement while on special assignment. Any conditional pay supplement received by the employee for the special assignment shall be discontinued at the conclusion of the special assignment.
- D.** Conditional pay supplements. The Director may establish conditional pay supplements. A conditional pay supplement provides additional compensation to an eligible employee and shall be discontinued when the qualifying conditions no longer apply. An employee may be awarded multiple conditional pay supplements. A conditional pay supplement does not:
  - 1. Change base salary;
  - 2. Provide a basis for the computation of a salary increase; or
  - 3. Provide a basis for the computation of pay upon an employee's promotion, demotion or transfer.
- E.** Variable pay.
  - 1. The Director may establish variable pay strategies determined to be the prevailing practices in the market and in the best interest of the state.

2. If the Director establishes variable pay strategies, the Director shall establish guidelines for the administration of variable pay.
3. Variable pay shall be available only to uncovered employees, except for employees in covered positions classified as Correctional Officers I, II, or III, or Community Corrections Officers, as specified in the guidelines established by the Director.
4. Subject to the guidelines established by the Director:
  - a. Variable pay strategies may be implemented at the discretion of the agency head.
  - b. Variable pay strategies are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.
5. An agency head shall report to the Director on the utilization of variable pay strategies pursuant to the reporting requirements in the guidelines established by the Director.

**R2-5A-404. Overtime**

- A.** Approval of overtime work. An agency head may require that an employee work overtime and:
  1. Shall approve in advance all work in excess of 40 hours per workweek or in excess of a work period as defined by the Fair Labor Standards Act (FLSA). FLSA Regulations 29 CFR 553 and 778 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments; and
  2. May assign an employee who volunteers for overtime before mandatory overtime is required.
- B.** Exemptions. The Director shall determine exemptions from minimum wage and maximum hour requirements in accordance with the Fair Labor Standards Act, 29 U.S.C. 213, January 2004, incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.
- C.** Non-exempt employees.
  1. An agency shall compensate an employee in a non-exempt position who works in excess of 40 hours per workweek or in excess of a work period as defined by the FLSA by either:
    - a. Additional pay at the rate of 1 1/2 times the employee's regular rate for each excess hour worked, or
    - b. Compensatory leave at the rate of 1 1/2 hours for each excess hour worked.
  2. An employee shall select either overtime pay or compensatory leave for overtime compensation. If the employee selects both overtime pay and compensatory leave, the agency head shall

determine which applies. If an employee's compensatory leave balance reaches the maximum allowed in subsection (E), the agency head shall compensate the employee by overtime pay.

**D. Exempt employees.**

1. Unless otherwise provided by statute or as specified in subsection (D)(2), an employee who is in a position that is exempt from the FLSA is excluded from receiving either overtime pay or compensatory leave.
2. An employee who is in a position that is exempt from the FLSA who works in excess of 40 hours per workweek or in excess of an established work period shall receive for each hour of overtime worked, either one hour of additional pay or earn one hour of compensatory leave, at the option of the agency head, if the employee is either:
  - a. Engaged in law enforcement activities;
  - b. Engaged in firefighting activities; or
  - c. A full authority peace officer as certified by the Arizona Peace Officer Standards and Training Board, is in a position that requires such certification, and is in the covered service.
3. An exempt employee may earn compensatory leave as provided by subsection (D)(2) until the employee's compensatory leave balance reaches the maximum allowed in subsection (E). When the maximum balance is reached, an agency head shall compensate the employee by overtime pay for excess hours worked.
4. For the purposes of this subsection, "engaged in law enforcement activities" has the same meaning as defined in A.R.S. Title 23, Chapter 2, Article 9.

**E. Maximum accumulation.** The maximum number of hours of accumulated compensatory leave is:

1. 480 hours for an employee who works in a public safety activity or an emergency response activity, or
2. 240 hours for an employee who works in any other activity.

**R2-5A-405. Tuition Reimbursement for Education**

**A. General.** A state agency may assist an employee in the pursuit of educational goals by providing tuition reimbursement.

**B. Procedures.** Prior to granting tuition reimbursement, an agency shall establish a policy which shall include the following conditions:

1. The educational program will provide a benefit to the state.
2. The employee shall successfully complete the required course work or the educational requirements of the program in order to receive reimbursement.



3. Education assistance may not exceed \$5,250 per employee in any one calendar year unless approved in advance by the Director.
4. An employee who receives education assistance may be required to return all or a portion of the amount received if the employee does not remain employed with the agency for a defined period of time, as specified in the agency's policy.

**R2-5A-406. Reimbursement for Relocation**

An agency head may reimburse reasonable relocation expenses to a current employee for a management initiated geographical transfer of more than 50 miles from the employee's current work site in accordance with the procedures established by the Director.

**ARTICLE 5. CONDITIONS OF EMPLOYMENT**

**R2-5A-501. Standards of Conduct**

**A.** Required conduct. A state employee shall at all times:

1. Comply with federal and state laws and rules, statewide policies and employee handbook, and agency policies and directives;
2. Maintain high standards of honesty, integrity, and impartiality, free from personal considerations, or favoritism;
3. Be courteous, considerate, and prompt in interactions with and serving the public and other employees; and
4. Conduct himself or herself in a manner that will not bring discredit or embarrassment to the state.

**B.** Prohibited conduct. A state employee shall not:

1. Use his or her official position for personal gain, or attempt to use, or use, confidential information for personal advantage;
2. Permit himself or herself to be placed under any kind of personal obligation that could lead a person to expect official favors;
3. Perform an act in a private capacity that may be construed to be an official act;
4. Accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan that is, or may appear to be, designed to influence the employee's official conduct. This provision shall not prohibit acceptance by an employee of food, refreshments, or unsolicited advertising or promotional material of nominal value;

5. Directly or indirectly use or allow the use of state equipment or property of any kind, including equipment and property leased to the state, for other than official activities unless authorized by written agency policy or as otherwise allowed by these rules;
  6. Inhibit a state employee from joining or refraining from joining an employee organization; or
  7. Take disciplinary or punitive action against another employee that impedes or interferes with that employee's exercise of any right granted under the law or these rules.
- C.** Consequences of non-compliance. An employee who violates the standards of conduct requirements listed in subsection (A) or (B) may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.

**R2-5A-502. Hours of Work**

- A.** State work week. The state work week is the period of seven consecutive days starting Saturday at 12:00 a.m. and ending Friday at 11:59 p.m. An agency head may apply to the Director for an exception from the work week period for all or part of an agency workforce. The Director may grant an exception from the work week period to promote efficiency in the State Personnel System.
- B.** Hours of employment.
1. An agency head shall determine the hours of employment in the work week for each agency employee.
  2. An agency head may provide for breaks during the work period consistent with carrying out the duties of the agency.
  3. An agency head may require an employee to work overtime.
- C.** Flexible work options. An agency head may offer a flexible 40-hour work week option to an employee if the agency head determines the agency's services can be maintained.
- D.** Attendance standards. An agency head may establish a standard of attendance.

**R2-5A-503. Outside Employment**

- A.** General. A state employee may seek employment and engage in a variety of activities outside of the employee's work for the state; however, the employee shall not engage in other employment or other activity that is not compatible with the full and proper discharge of the duties and responsibilities of state employment, or that tends to impair the employee's capacity to perform the employee's duties and responsibilities in an acceptable manner.
- B.** Definitions. For the purposes of this Section:
1. "Other employment" includes, but is not limited to:

- a. Working as an employee for any employer, including another state agency;
  - b. Owning a business;
  - c. Contracting to provide services for a fee; or
  - d. Serving as a consultant for a fee or being self-employed;
  - e. Holding any elected or appointed public office, whether federal, state, or local; or
  - f. Holding a position in a political party or organization.
2. "Primary agency" means the agency in which the employee is employed at the time of the employee's request to obtain outside employment with another agency.
  3. "Secondary agency" means the agency in which the employee is requesting to be employed while remaining employed with the primary agency.
- C.** Notice requirement. An employee who desires to engage in other employment shall notify the employee's supervisor and abide by the policies of the employing agency. An employee engaged in outside employment, including consultant relationships, shall inform the supervisor of the nature of the employment and corresponding work hours. An employee shall also disclose actual or potential conflicts of interest related to outside employment activities as soon as the employee becomes aware of the conflict. The determination as to whether a conflict or potential conflict exists shall be made by the agency head.
- D.** Outside employment with another state agency. An employee who seeks outside employment with another state agency must request approval from both the employee's primary agency and prospective secondary agency before commencing employment with the secondary agency. The primary and secondary agencies must ensure that the request complies with state and federal guidelines. Such request, if approved shall be in writing and on file with both agencies. Employment records are to be maintained in accordance with the provisions of R2-5A-105.
- E.** Outside employment as a paid public official or in a political party or organization. All employees shall comply with A.R.S. § 41-752 pertaining to political activities.
- F.** Termination of outside employment. If an agency head determines that an employee's outside employment interferes with the employee's performance or creates a conflict of interest, the employee will be required to terminate the outside employment.
- G.** Consequences of non-compliance. An employee who fails to make required disclosures or to take action to resolve any conflict of interest may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.

**R2-5A-504. Alcohol and Drug-free Workplace**

State agencies shall prohibit the manufacture, distribution, dispensation, possession or use of alcohol, illegal drugs, unauthorized drugs, inhalants, or other unauthorized controlled substances during an employee's working hours or while on state premises or worksites, including state vehicles and property leased to the state. A state employee shall not be impaired by alcohol or drugs while on duty.

## **ARTICLE 6. LEAVE**

### **PART A. GENERAL**

#### **R2-5A-A601. Leave Administration**

- A.** Leave plans. The Director shall adopt leave plans. Agency heads are responsible for administering leave for agency employees in accordance with the leave plans in this Article.
- B.** Eligibility for leave. All state employees, except temporary employees, are eligible for any type of leave with pay from the date of appointment. Temporary employees are eligible only for holidays subject to the provisions of R2-5A-B601, administrative leave, civic duty leave for the purpose of voting, living donor leave and military leave.
- C.** Amount of leave. Leave amounts are based on full-time employment and shall be pro-rated for part-time employees, even if not specified in an individual rule.
- D.** Family and Medical Leave Act (FMLA) leave. FMLA Regulations, 29 CFR 825.100 through 29 CFR 825.800 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 N. Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments. An employee who meets FMLA eligibility requirements and uses leave for any of the situations covered by the FMLA shall be subject to the following:
  - 1. Counting FMLA leave. Periods of paid leave and periods of leave without pay shall count towards the employee's available FMLA leave.
  - 2. Use of accrued paid leave. An employee shall use available paid leave for all or part of the employee's FMLA leave under the conditions in:
    - a. R2-5A-D602 for an employee on industrial leave,
    - b. R2-5A-D601 for an employee on FMLA leave for any other reason.
- E.** Insurance benefits continuation. An employee remains eligible for continued participation in the employee insurance plans while on leave pursuant to this Article.
- F.** Requests for leave. Except in an emergency, an employee shall obtain approval in advance and in writing before taking any leave.

## **PART B. PAID LEAVE**

### **R2-5A-B601. Holidays**

#### **A. State holidays.**

1. January 1, "New Year's Day."
2. Third Monday in January, "Martin Luther King, Jr./Civil Rights Day."
3. Third Monday in February, "Lincoln/Washington Presidents' Day."
4. Last Monday in May, "Memorial Day."
5. July 4, "Independence Day."
6. First Monday in September, "Labor Day."
7. Second Monday in October, "Columbus Day."
8. November 11, "Veterans Day."
9. Fourth Thursday in November, "Thanksgiving Day."
10. December 25, "Christmas Day."

#### **B. Employees scheduled to work. Unless required to work to maintain essential state services, an employee who is regularly scheduled to work on a day on which one of the holidays listed in subsection (A) is observed is entitled to be absent with pay for the number of hours regularly scheduled to work, not to exceed eight hours, provided the employee is not on leave without pay on the employee's work days immediately preceding or following the day on which the holiday is observed.**

1. Part-time employees who work 1/4 time, 1/2 time, or 3/4 time are entitled to a proportional amount of holiday pay. Part-time employees who work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time are entitled to holiday pay at the next lower rate. An employee who works less than 1/4 time is not entitled to holiday pay.
2. Temporary employees shall receive holiday pay provided they are in pay status the day before and the day after the holiday.

#### **C. Employees not scheduled to work. An employee, excluding part-time and temporary employees, who is not scheduled to work on a day on which one of the holidays listed in subsection (A) above is observed shall receive holiday compensation for the number of hours normally worked per day, not to exceed eight, provided the employee is not on leave without pay on the employee's work days immediately preceding or following the day on which the holiday is observed.**

#### **D. Employees required to work. An employee who is required to work on a day on which a holiday listed in subsection (A) is observed shall receive:**

1. Both holiday compensation and one hour of pay at the employee’s current salary rate for each hour worked if the employee is in a position that is either:
  - a. FLSA non-exempt; or
  - b. Exempt from the FLSA, but meets the conditions in R2-5A-404(D)(2).
2. No additional compensation if the employee is in a position that is exempt from the FLSA and is employed in any other capacity.

**E. Holiday compensation.**

1. Except as modified by subsection (E)(2), an employee who is eligible for holiday compensation pursuant to subsection (C) or (D) shall receive for each hour of holiday compensation authorized, at the option of the agency head, either:
  - a. One hour of additional pay at the current salary rate; or
  - b. One hour of annual leave; or
  - c. One hour time off with pay on an alternate work day specified by the agency head after the holiday and during the pay period in which the holiday is observed, or the succeeding pay period.
2. Temporary employees do not accrue annual leave and shall receive either additional pay or time off as in subsection (E)(1)(c) above.
3. An employee may not receive more than eight hours of holiday compensation for any holiday.

**R2-5A-B602. Annual Leave**

**A. Definitions.** For the purposes of this Section:

1. “Annual leave” means a period of approved absence with pay that is not chargeable to another category of leave.
2. “Hire date” means the employee’s first day of work upon hire or, if the employee has a break in service, rehire.

**B. Accrual.**

1. All employees, except temporary and part-time employees shall accrue annual leave as follows:
  - a. Covered employees shall accrue annual leave in accordance with the following schedule:

Credited Service	Hours Bi-weekly
Fewer than 3 years	3.70
3 years but fewer than 7 years	4.62
7 years but fewer than 15 years	5.54
15 years or more	6.47

- b. Except as provided in subsection (B)(1)(c), uncovered employees shall accrue leave based on the following schedule:

Credited Service	Hours Bi-weekly
Fewer than 3 years	4.00
3 years but fewer than 9 years	5.54
9 years or more	6.47

- c. An uncovered employee shall accrue annual leave at the rate of 6.47 hours bi-weekly if:
- i. The employee's hire date is prior to September 29, 2012, the employee has remained employed without a break in service since that date, and the employee either was uncovered prior to September 29, 2012 or became uncovered in accordance with A.R.S. Title 41, Chapter 4, Article 4; or
  - ii. The employee is in a position listed in A.R.S. § 41-742(F).
2. Temporary employees shall not accrue annual leave.
  3. Part-time employees who:
    - a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of annual leave;
    - b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time shall accrue annual leave at the next lower rate;
    - c. Work less than 1/4 time shall not accrue annual leave.
  4. Except as provided by R2-5A-D602 for an employee on industrial leave, an eligible employee accrues annual leave each bi-weekly pay period if the employee is in pay status for at least one-half of the employee's scheduled work hours in that pay period.
  5. An annual leave accrual is credited on the last day of the bi-weekly pay period in which the accrual is earned and is available for use on the first day of the following pay period.
    - a. Annual leave accrued during the last pay period that begins in a calendar year is not subject to forfeiture under subsection (D).
    - b. An employee who is separating from state employment is compensated in accordance with subsection (I) for annual leave accrued through the employee's last date of employment.
  6. The effective date for change in the accrual rate is the first day of the pay period immediately following the attainment of the required credited service.
- C. Credited service.**
1. Credited service shall be calculated from the first day of the first complete pay period worked.
  2. Credited service shall include:

- a. A period of service as an employee of a state budget unit before a break in service of less than two years;
- b. A period of leave without pay of 240 hours or less;
- c. Family and Medical Leave Act (FMLA) leave;
- d. Military leave taken under A.R.S. §§ 26-168, 26-171, or 38-610; and
- e. Active military service of an employee who is restored to state employment under A.R.S. § 38-298.

**D. Accumulation.**

- 1. Except as provided in subsections (D)(2) and (3), an employee shall forfeit annual leave in excess of the accumulation limit as of the last day of the last pay period that begins in a calendar year. The accumulation limit is:
  - a. 240 hours for a covered employee.
  - b. 320 hours for an uncovered employee.
- 2. An agency head may request an exception to the accumulation limit contained in subsection (D)(1) for an employee in an individual case.
  - a. An agency head seeking an exception shall submit a written request to the Director that contains a plan to use the excess hours during the following calendar year, pay the employee for the excess hours, or a combination of both.
  - b. The Director may approve, modify, or deny the request.
- 3. Annual leave earned for working on a day on which a state holiday is observed is not included in the accumulation limit specified in subsection (D)(1) and shall not be forfeited.

**E. Use of annual leave.**

- 1. An employee may take annual leave at any time approved by the agency head.
- 2. An agency head shall not advance annual leave to an employee.

**F. Donation of annual leave.**

- 1. Definitions. For the purposes of this subsection:
  - a. *“Immediate family” means the recipient employee’s parent, spouse, or child, whether natural, adopted, foster, or step. A.R.S. § 41-748(B)(1)*
  - b. *“Family” means spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, or niece. A.R.S. § 41-748(B)(2)*
  - c. *“Disability that is caused by pregnancy or childbirth” means, as certified by a licensed health care practitioner:*



- i. An employee is unable to work due to the employee's pregnancy, childbirth, or medical care associated with the pregnancy or childbirth; or
    - ii. A member of the employee's immediate family requires assistance to perform regular daily activities due to the immediate family member's pregnancy, childbirth, or medical care associated with the pregnancy or childbirth.
  - d. "Extended" means a period of at least three consecutive weeks.
  - e. "Seriously incapacitating" means a licensed health care practitioner certifies that an illness, injury, or disability that is caused by pregnancy or childbirth:
    - i. Involves in-patient care, or
    - ii. Involves continuing treatment.
2. Eligibility to receive donation of annual leave. An employee who has exhausted all available leave balances is eligible to receive donations of annual leave if, as certified by a licensed health care practitioner:
  - a. The employee is unable to work due to:
    - i. A seriously incapacitating and extended illness or injury, or
    - ii. A seriously incapacitating and extended disability that is caused by pregnancy or childbirth, or
  - b. The employee needs to care for a member of the employee's immediate family who has:
    - i. A seriously incapacitating and extended illness or injury, or
    - ii. A seriously incapacitating and extended disability that is caused by pregnancy or childbirth.
3. Eligibility to donate annual leave. An employee may donate annual leave to another employee who has exhausted all available leave balances if:
  - a. The recipient employee is employed in the same state agency as the donating employee, or
  - b. The recipient employee is a family member of the donating employee and employed in another state agency.
4. Exhaustion of available leave. Before using donated annual leave, a recipient employee:
  - a. Who has a qualifying illness, injury, or disability caused by pregnancy or childbirth shall exhaust all available sick leave, compensatory leave, annual leave earned for working on a day on which a state holiday is observed and accrued annual leave; or
  - b. Whose immediate family member has a qualifying illness, injury, or disability caused by pregnancy or childbirth shall exhaust sick leave granted in accordance with R2-5A-B603(A)(4), if available, and all available compensatory leave, annual leave earned for working on a day on which a state holiday is observed and accrued annual leave.

5. Calculation of hours donated. An agency head shall adjust the number of hours of annual leave donated in proportion to the hourly rate of pay of the donating employee and the recipient employee. To calculate the number of hours of donated annual leave:
  - a. Multiply the actual number of hours donated by the donating employee's hourly rate of pay, and
  - b. Divide the result by the recipient employee's hourly rate of pay.
6. Maximum duration. A recipient employee is limited to using donated annual leave to allow the employee to be absent from work for a maximum of six consecutive months, or if the leave is intermittent, 1040 hours (the employee's available leave plus leave donated to the employee) for each qualifying occurrence. If the recipient employee has a seriously incapacitating and extended illness or injury, or a seriously incapacitating and extended disability that is caused by pregnancy or childbirth and the employee applies for Long-term Disability (LTD) by the end of the fifth month of the employee's leave, the recipient employee may continue to use donated annual leave for up to 60 additional days or until LTD benefit payments begin, whichever is sooner.
7. Unused donated leave. If the recipient employee separates from state employment, recovers before using all donated leave, attains the maximum donation of annual leave as permitted under subsection (F)(6), or the need for the donated annual leave is otherwise abated, the agency head shall return unused donated leave to employees who donated leave on a pro-rata basis.

**G. Payment of annual leave. Subject to funding availability:**

1. An agency head may pay an employee at any time at the employee's current rate of pay for all or any portion of the employee's annual leave that was earned as the result of working on a day on which a state holiday is observed.
2. An agency head may approve pay to a non-separating employee for all or any portion of the employee's accumulated and unused annual leave at the employee's current rate of pay subject to the following:
  - a. Agency procedures. Before paying an employee under this subsection, an agency head shall develop written standards and procedures that provide for equal consideration of all employees similarly situated. The agency head shall submit proposed standards and procedures and any subsequent changes to the Director for approval. The agency's procedures shall include at minimum:
    - i. Request and approval procedures;
    - ii. Documentation required to support the request for payment;
    - iii. Any limitations, as applicable, including, but not limited to: the maximum number of times an employee may receive payment under this subsection; the maximum number of

hours an employee may be paid per occurrence; the minimum number of hours of annual leave an employee must have used in the previous 12 months; and the minimum balance an employee is required to maintain after payout, if any.

- b. Restrictions. The agency head shall obtain the employee's concurrence if the payment would reduce the employee's annual leave balance to fewer than:
  - i. 240 hours for a covered employee;
  - ii. 320 hours for an uncovered employee.

**H. Movement.**

- 1. To another state agency. If an employee moves from one agency to another state agency, the employee's accumulated and unused annual leave shall be transferred to the employee's annual leave account in the new state agency, unless:
  - a. The provisions of subsection (H)(2) apply; or
  - b. The employee's leave exceeds the accumulation limit contained in subsection (D)(1). An agency head may pay an employee who transfers to another state agency for all excess annual leave at the time of the transfer. An agency head may transfer part or all of the employee's excess annual leave accumulated by the employee who transfers to another agency with the gaining agency's concurrence. If the gaining agency does not concur, the losing agency shall pay all of the unused excess annual leave that the gaining agency will not accept.
- 2. To an employment status ineligible for leave accrual. If an employee becomes ineligible for accrual of annual leave under R2-5A-A601(B), the agency head or the agency head of the losing agency if the employee moves to another state agency, shall pay the employee for all unused and unforfeited annual leave at the employee's current rate of pay immediately before the change in status.

**I. Separation.** An agency head shall pay an employee who separates from state employment for all unused and unforfeited annual leave at the employee's current rate of pay.

**R2-5A-B603. Sick Leave**

- A. Definition.** "Sick leave" is any approved period of paid absence granted an employee due to:
- 1. Illness or injury that renders the employee unable to perform the duties of the employee's position.
  - 2. Disability of the employee that is caused by pregnancy, childbirth, miscarriage, or abortion.
  - 3. Examination or treatment of the employee by a licensed health care practitioner.
  - 4. Illness, injury, disability caused by pregnancy or childbirth, or examination or treatment by a licensed health care practitioner of an employee's spouse, dependent child, or parent. Sick leave

granted for this purpose shall be charged to the employee's sick leave account and shall not exceed 40 hours per calendar year. For the purposes of this Section:

- a. The term "dependent child" means a natural child, an adopted child, a foster child, or a stepchild, more than one-half of whose support is received from the employee.
- b. The term "parent" means a birth parent, adoptive parent, stepparent, foster parent, grandparent, parent-in-law, or an individual who stood "in loco parentis."

**B. Accrual.**

1. All state employees, except temporary and part-time employees, shall accrue sick leave at the rate of 3.70 hours bi-weekly
2. Temporary employees shall not accrue sick leave
3. Part-time employees who:
  - a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of sick leave;
  - b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time will accrue sick leave at the next lower rate;
  - c. Work less than 1/4 time shall not accrue sick leave.
4. Except as provided by R2-5A-D602 for an employee on industrial leave, an eligible employee accrues sick leave each bi-weekly pay period if the employee has been in a pay status for at least one-half of the employee's scheduled work hours in that pay period or month.
5. A sick leave accrual is credited on the last day of the bi-weekly pay period or month in which the accrual is earned and is available for use on the first day of the following pay period or month. An employee who is separating from state employment accrues leave through the employee's last date of employment for the purpose of determining the employee's accumulated sick leave at the time of the employee's separation pursuant to subsection (F).

**C. Accumulation. Sick leave accumulates without limit.**

**D. Use of sick leave.**

1. Sick leave may be taken when approved by the agency head.
2. The agency head may require submission of evidence substantiating the need for sick leave. If the agency head determines the evidence is inadequate, the absence shall be charged to another category of leave or considered absence without leave.
3. An agency head may require an employee to be examined by a licensed health care practitioner designated by the agency head.
  - a. If the licensed health care practitioner determines that the employee should not work due to illness or injury, the agency head may place the employee on sick leave or, if the employee's sick leave is exhausted, charge the absence to another category of leave or leave without pay.

- b. The agency head may require the employee to obtain approval from the licensed health care practitioner before returning to work.
  - c. The agency shall pay for all examinations required pursuant to this subsection. The employee shall not be charged any leave while participating in or traveling to or from any examination required pursuant to this subsection.
- E.** Movement to another state agency. An employee who moves to another state agency shall transfer all accumulated and unused sick leave to the employee's sick leave account in the new state agency.
- F.** Separation. All sick leave credits are forfeited upon separation from state employment except as provided in A.R.S. § 38-615 or otherwise provided by law. However, an employee who returns to state employment within two years after separation shall be credited with all unused sick leave accumulated at the time of separation if the employee was not paid for accumulated sick leave pursuant to A.R.S. § 38-615.

**R2-5A-B604. Administrative Leave**

- A.** General. An agency head may authorize an employee to be absent with pay on administrative leave during a state of emergency declared by the Governor or:
- 1. In other emergency situations such as extreme weather conditions, fire, flood, or malfunction of publicly-owned or controlled machinery or equipment.
  - 2. To relieve an employee of duties temporarily during the investigation of alleged wrongdoing by the employee or during a disciplinary or dismissal process, subject to the requirements outlined in subsections (B) and (C).
- B.** Reporting administrative leave. If an employee's administrative leave totals 80 consecutive hours, the agency head shall submit a report to the Director and for each week thereafter, until the employee's administrative leave is terminated. The report shall include:
- 1. The name of the agency,
  - 2. The employee identification number (EIN) of the employee,
  - 3. The name of the employee,
  - 4. The employment status of the employee,
  - 5. The date the employee was placed on administrative leave,
  - 6. The number of hours the employee has been on administrative leave as of the date of the report, and
  - 7. A brief description as to why the employee is on administrative leave.
- C.** Approval of Director. If an employee's administrative leave is anticipated to exceed 240 consecutive working hours, the agency head shall obtain the approval of the Director.

1. An agency head requesting approval to continue an employee's administrative leave for more than 240 working hours shall submit a request to the Director for approval at least five business days before the employee's administrative leave will total 240 working hours. If circumstances beyond the agency's control do not permit at least five business days' notice, the agency head shall submit the request as soon as the agency head is aware of the necessity for the request. The request shall include all of the information listed in subsection (B), the reason the administrative leave will extend beyond 240 working hours and the anticipated date the administrative leave will be terminated.
2. The Director shall review the request and approve, modify or deny the request within three business days of receipt.

**R2-5A-B605. Bereavement Leave**

- A. General. An employee may be absent with pay due to the death or funeral of a spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, an individual who stood "in loco parentis," grandparent, grandchild, brother, sister, brother-in-law, sister-in-law, mother-in-law, father-in-law, son-in-law, or daughter-in-law.
- B. Amount of bereavement leave.
  1. A full-time employee may be absent with pay for up to 24 regularly scheduled work hours. An agency head may extend the bereavement leave for up to 16 additional work hours if the employee travels out-of-state for the funeral.
  2. A part-time employee who works 1/4 time, 1/2 time, or 3/4 time may be absent with pay for a proportional amount of bereavement leave. A part-time employee who works a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time may be absent with pay at the next lower rate. An employee who works less than 1/4 time is not entitled to bereavement leave.

**R2-5A-B606. Civic Duty Leave**

- A. General. Upon substantiated application, an employee shall receive absence with pay as civic duty leave while serving as a juror, complying with a subpoena, voting, or serving as a member of a governmental board, commission, or similarly constituted governmental body, subject to the conditions set forth in this rule and the limitations in R2-5A-A601(B).
- B. Use of civic duty leave. Except for voting pursuant to A.R.S. § 16-401 (primary elections) or A.R.S. § 16-402 (general elections), an employee granted civic duty leave shall report for duty with the employing agency whenever the employee's presence is not required for the civic duty, unless:
  1. The distance to the work location would preclude timely reporting for the civic duty, or

2. The employee cannot return to work at least one hour before the end of the work shift.
- C. Appearance as a witness. An employee who is subpoenaed as a witness by any court or administrative, executive, or judicial body in this state may be absent with pay unless the testimony or evidence to be given relates to the employee's commercial, business, or personal matters.
- D. Jury and witness fees. Employees who are granted civic duty leave when called for jury duty or subpoenaed as a witness shall remit any fees to the employing agency, except for mileage allowance.
- E. Membership on a public service body. An employee serving as a member of a governmental board, commission, or similarly constituted governmental body may be absent with pay while performing official duties with the body.

**R2-5A-B607. Compensatory Leave**

- A. General. Compensatory leave is leave that has been earned by an employee under the provisions of R2-5A-404.
- B. Use of compensatory leave. An agency head:
  1. Shall approve an employee's request for earned compensatory time off within a reasonable time after the employee makes the request if the use of such time off would not unduly disrupt agency operations.
  2. May require an employee to use the employee's available compensatory leave during a period specified by the agency head.
- C. Payment. Subject to funding availability, an agency head may pay an employee at any time for all or any portion of the employee's earned compensatory leave balance at the employee's regular rate of pay.
- D. Movement.
  1. To another state agency. An agency head may pay an employee who transfers to another state agency for all unused compensatory leave at the time of the transfer. An agency head may transfer part or all of the compensatory leave earned by an employee who transfers to another agency with the gaining agency's concurrence. If the gaining agency does not concur, the losing agency shall pay all of the unused compensatory leave that the gaining agency will not accept.
  2. To an employment status or a position ineligible for compensatory leave. If an employee has a change in employment status or position that results in the employee being ineligible to earn compensatory leave, the agency head or the agency head of the losing agency if the employee moves to another state agency, shall pay the employee for all unused compensatory leave at the employee's regular rate of pay immediately before the employee's change in status or position.
- E. Separation. An agency head shall pay an employee who separates from state employment for all

unused compensatory leave at a rate of compensation not less than the higher of:

1. The average regular rate received by such employee during the last three years of the employee's employment, or
2. The final regular rate received by such employee.

**R2-5A-B608. Educational Leave**

- A. General.** An employee may be sent with pay to participate in a formal educational or training course of study at a college, university, or technical school with the approval of the agency head and the Director, based on the determination that the leave is in the best interest of the state.
- B. Application.** The approved application shall be accompanied by a written agreement signed by the agency head and the employee containing the following provisions at a minimum:
1. A statement of the payments, if any, to be provided to the employee and the manner of their payment.
  2. An agreement by the employee to return to or continue in state employment upon the completion of the educational or training course of study for a period of time specified by the agency head.
  3. A statement by the employee that failure to successfully complete the course, to complete the specified state employment, or to fulfill all of the terms of the agreement, shall result in the employee's being required to repay all or a proportionate part of the salary and other payments received, if any.

**R2-5A-B609. Living Donor Leave**

An employee who requests absence with pay for living donor leave under A.R.S. § 41-706 shall submit written verification that the employee is to serve as a donor. An employee may be absent with pay for the time specified for the following purposes:

1. Up to 40 working hours to serve as a bone marrow donor.
2. Up to 240 working hours to serve as an organ donor.

**R2-5A-B610. Leave for National Disaster Medical System (NDMS) Training**

An employee who requests absence with pay on national disaster medical system leave under A.R.S. § 38-610 is entitled to be absent with pay for the number of hours regularly scheduled to work on all days the employee is on training duty.

**R2-5A-B611. Meritorious Service Leave**

- A.** The Director shall establish guidelines for meritorious service leave.



- B.** Except for employees in covered positions classified as Correctional Officers I, II, or III, or Community Corrections Officers, meritorious service leave is only available to uncovered employees.
- C.** The guidelines established by the Director shall include at a minimum:
  - 1. The maximum number of hours of meritorious service leave that may be awarded to an employee per calendar year;
  - 2. The maximum percentage of agency employees eligible for meritorious service leave;
  - 3. A requirement that an employee shall use meritorious service leave within 12 months of receipt of the leave;
  - 4. A requirement that if the employee does not use the meritorious service leave within 12 months of receipt, that the leave is forfeited; and
  - 5. A statement that unused meritorious service leave is forfeited upon separation from state employment.
- D.** Subject to the guidelines established by the Director, a meritorious service leave program may be implemented at the discretion of the agency head.
- E.** An agency head shall report to the Director on the utilization of meritorious service leave pursuant to the reporting requirements in the guidelines established by the Director.

## **PART C. UNPAID LEAVE**

### **R2-5A-C601. Furlough**

- A.** Definition. A furlough is the involuntary placement of an employee on leave of absence without pay for budgetary reasons.
- B.** Types of furloughs. A furlough may be authorized by legislative action. In addition, the Director may approve:
  - 1. A reduction of funding furlough that allows an agency head to place employees on furlough for any combination of consecutive or non-consecutive days. There is no maximum number of days an employee may be placed on furlough, but consecutive furlough days shall not exceed five consecutive days or more than one-half the employee's regularly scheduled hours in a pay period, whichever is less; and
  - 2. A suspension of funding furlough that allows an agency head to place employees on furlough indefinitely until funding is restored.
- C.** General.
  - 1. The total number of days an employee is placed on furlough may vary based on the amount of the reduction or length of suspension of funding.

2. A furlough day equals eight hours for full-time employees and is pro-rated for part-time employees. Furlough hours for part-time employees are calculated by multiplying the number of hours the employee is scheduled to work in a week by 0.2. If the calculation results in a fraction, the furlough hours shall be rounded to the nearest whole hour, as follows:
  - a. 0.5 or above is rounded up, and
  - b. Less than 0.5 is rounded down.
3. A furlough is unpaid.
4. Unless a work emergency occurs under subsection (D)(5)(d), while on furlough, an employee shall not conduct state work or volunteer to conduct state work, either with or without compensation.
5. Paid leave shall not be substituted for furlough days.
6. All state employees within the scope of the furlough shall be subject to the furlough in the same manner. Exceptions may be granted when an agency head determines certain employees within the scope of the furlough have unique knowledge or skills or are considered mission critical and need to be excluded from the furlough.
7. Unless the employee is in a physician or attorney position, an employee who is in a position that has been determined to be exempt from the provisions of the Fair Labor Standards Act (FLSA) will lose the exemption for any work week in which the employee is furloughed for less than the full work week.
8. A furlough shall not adversely affect an employee's service anniversary date or create a break in service.
9. Upon conclusion of the furlough period, an agency head shall return an employee to the employee's status and position held prior to the furlough, unless a personnel action taken in accordance with State Personnel System rules authorizes a change to the employee's record.
10. An employee's failure or inability to return to work upon conclusion of the furlough period may, in accordance with applicable State Personnel System rules:
  - a. Result in the employee being placed on leave,
  - b. Be considered a resignation,
  - c. Result in separation without prejudice, or
  - d. Be cause for dismissal of a covered employee.

**D. Reduction of funding furlough.**

1. An agency head shall submit to the Director a furlough plan for approval if the agency head determines a furlough is necessary due to a reduction of funding. An agency head is not required to implement or exhaust other cost-savings measures prior to initiating a furlough plan.

2. The agency head shall submit the furlough plan for approval at least 30 business days prior to the proposed implementation date of the furlough. If circumstances beyond the agency head's control do not permit at least 30 business days' notice, the agency head shall submit the furlough plan as soon as the agency head is aware of the necessity for the furlough and provide a written explanation of why the 30 business day requirement was not met.
3. An agency head shall include all of the following in the furlough plan:
  - a. The proposed scope of the furlough plan, which shall be either agency-wide or limited to:
    - i. Agency operations in one or more geographic areas,
    - ii. One or more organizational units of the agency,
    - iii. One or more funding sources,
    - iv. One or more job classes,
    - v. One or more class series, or
    - vi. Any combination of the above.
  - b. If the furlough will not be conducted on an agency-wide basis, each affected:
    - i. Geographic location,
    - ii. Organizational unit,
    - iii. Funding source,
    - iv. Job class, and
    - v. Class series.
  - c. For each affected geographical location, organizational unit, funding source, job class, and class series specified in the furlough plan, the total number of employees scheduled for furlough;
  - d. If requesting any exceptions within the scope of the furlough under subsection (C)(6), the total number of employees within the scope of the furlough, the number of employees for whom an exception is requested, and the reason for the request;
  - e. The number of days and date ranges for the furlough;
  - f. The anticipated cost savings due to the furlough;
  - g. The agency's procedures for scheduling furloughs; and
  - h. The procedures for notifying employees of the furlough.
4. The Director shall review and provide written notification of approval, modification, or denial of an agency's furlough plan within 20 business days of receipt.
5. Upon approval of the Director to conduct a reduction of funding furlough, an agency head:
  - a. May place an employee on furlough for any combination of consecutive or non-consecutive days, subject to the limits in subsection (B)(1);

- b. Shall determine the scheduling of furloughs that provide for the continuation of any agency operations required by law;
- c. May cancel or rescind any approved paid or unpaid leave in progress or scheduled for an employee who is designated for furlough and shall notify the affected employee in writing of the cancellation of the approved leave for the duration of the furlough. If the previously approved leave was scheduled to extend beyond the furlough, the employee may return to paid leave status, if available, following the furlough period. If the agency head cancels an employee's paid leave and:
  - i. The employee is on leave pursuant to the provisions of the federal Family and Medical Leave Act (FMLA) during a scheduled furlough day, the furlough day shall not count against the employee's FMLA entitlement and the employee's leave balance shall not be charged for the furlough day; or
  - ii. The employee is on military leave during a scheduled furlough day, the furlough day shall not count against the employee's military leave and the employee's leave balance shall not be charged for the furlough day; and
- d. Shall prohibit an employee from working during the period of the furlough, unless a work emergency arises. In the event of a work emergency, an agency head may revoke the furlough for an employee in an individual case. An employee whose furlough is revoked due to an emergency shall be paid for time required to work and shall be required to take the furlough on another day, unless otherwise exempted.

**E. Suspension of funding furlough - agency head request.**

- 1. An agency head shall submit to the Director for approval a furlough plan if the agency head determines a furlough is required due to a suspension of funding to pay employees.
- 2. The agency head shall submit the furlough plan for approval at least 15 business days prior to the proposed implementation date of the furlough. If circumstances beyond the agency head's control do not permit at least 15 business days' notice, the agency head shall submit the furlough plan as soon as the agency head is aware of the necessity for the furlough and provide a written explanation of why the 15 business day requirement was not met.
- 3. An agency head shall include all of the following in the furlough plan:
  - a. The proposed scope of the furlough plan, which shall be either agency-wide or limited to:
    - i. Agency operations in one or more geographic areas,
    - ii. One or more organizational units of the agency,
    - iii. One or more funding sources,
    - iv. One or more job classes,

- v. One or more class series, or
  - vi. Any combination of the above.
- b. If the furlough will not be conducted on an agency-wide basis, each affected:
    - i. Geographic location,
    - ii. Organizational unit,
    - iii. Funding source,
    - iv. Job class, and
    - v. Class series.
  - c. For each affected geographical location, organizational unit, funding source, job class, and class series specified in the furlough plan, the total number of employees scheduled for furlough;
  - d. If requesting any exceptions within the scope of the furlough under subsection (C)(6), the total number of employees within the scope of the furlough, the number of employees for whom an exception is requested, and the reason for the request;
  - e. The procedures for notifying employees of the furlough; and
  - f. The procedures for notifying employees of restoration of funding and when to return to work.
4. The Director shall review and provide written notification of approval, modification, or denial of an agency's furlough plan within 10 business days of receipt.
  5. Upon approval of the Director to conduct a suspension of funding furlough, an agency head:
    - a. Shall freeze all personnel actions except for those actions that would accomplish, or assist in accomplishing the purpose of the furlough;
    - b. May place employees on furlough indefinitely until the reason for the furlough is abated;
    - c. Shall notify affected employees of the furlough and that while on furlough, an employee:
      - i. Shall not report to work or work from any location until notified to return to work; and
      - ii. Will not receive pay for any unused and unforfeited annual leave, should the employee resign or be terminated, until funding is restored;
    - d. May cancel or rescind any approved paid or unpaid leave in progress or scheduled for an employee who is designated for furlough and shall notify the affected employee in writing of the cancellation of the approved leave for the duration of the furlough. If the previously approved leave was scheduled to extend beyond the furlough, the employee may return to paid leave status, if available, following the furlough period; and
    - e. Shall notify employees upon restoration of funding and when to return to work.

**F. Suspension of funding furlough - failure to pass state budget.**

If the state fails to pass a budget and funds are not appropriated for the following fiscal year, the Director may authorize an agency head to implement a suspension of funding furlough. Upon such notification by the Director, an agency head:

1. Shall freeze all personnel actions except for those actions that would accomplish, or assist in accomplishing the purpose of the furlough;
2. Unless an exception has been authorized as provided in subsection (F)(4), shall place all employees on furlough indefinitely until the reason for the furlough is abated;
3. Shall require all employees to be subject to the furlough in the same manner;
4. May establish exceptions when only a portion of the employees in a particular class are necessary to perform mission critical services;
5. Shall notify affected employees of the furlough and that while on furlough, an employee:
  - a. Shall not report to work or work from any location until notified to return to work; and
  - b. Will not receive pay for any unused and unforfeited annual leave, should the employee resign or be terminated, until funding is restored;
6. Shall cancel or rescind any approved paid or unpaid leave in progress or scheduled for an employee who is designated for furlough and shall notify the affected employee in writing of the cancellation of the approved leave for the duration of the furlough. If the previously approved leave was scheduled to extend beyond the furlough, the employee may return to paid leave status, if available, following the furlough period; and
7. Shall notify employees upon restoration of funding and when to return to work.

**G. Employee request for review.**

1. An employee may submit a request for review of the employee's placement on furlough. The employee shall make the request for review in writing to the agency head no later than three business days after the employee's receipt of a furlough notice. The employee shall limit the request for review to the determination resulting in the employee's furlough and include a proposed resolution.
2. The agency head shall provide a written response to the employee with a final decision within:
  - a. Five business days after receipt of the request if a reduction of funding furlough, or
  - b. Fifteen business days after the employee returns to work if a suspension of funding furlough.
3. A request for review shall not delay implementation of the furlough.

**R2-5A-C602. Leave Without Pay**

- A. Approval. All leave without pay requires a written request by an employee in advance, including the reason for the employee's request, and approval by the agency head.
- B. Use of leave. Except for military leave, an agency head shall not grant leave without pay in excess of 80 consecutive hours until all annual leave earned for working on a day on which a state holiday is observed, all accrued annual leave and, if the leave without pay is for medical reasons, sick leave are exhausted.
- C. Return to work.
  - 1. An employee who returns to work after an authorized period of leave without pay of 80 consecutive hours or less shall return to the same position occupied at the start of the leave without pay.
  - 2. Except as provided in subsection (C)(4), an employee who returns to work after a period of leave without pay in excess of 80 consecutive hours may return to a position in the class held at the start of the leave without pay, if a position is available and funded, and if the leave without pay is terminated in one of the following ways:
    - a. Expiration of its term and the employee's return to work;
    - b. Rescission of the leave without pay by the agency head before its scheduled expiration due to an unforeseen need that results in an insufficient number of employees available to provide service and for which:
      - i. The agency head provides written notice of the rescission to the employee's last known address at least 15 days before the date the employee is directed to return to work; or
      - ii. If circumstances beyond the agency's control do not permit at least a 15-day notice, the agency head provides notice as soon as possible after becoming aware of the need for the employee to return to work; or
    - c. Curtailment of the leave without pay before its scheduled expiration date upon request of the employee and with approval of the agency head.
  - 3. An agency head may consider the failure or inability of an employee to return to work on the first work day after an approved leave without pay as a resignation.
  - 4. An employee returning to work from leave without pay granted:
    - a. For industrial illness or injury for up to six months shall return to the position occupied at the start of the leave without pay. If this position or a position in the same class is not available and funded, the agency head shall conduct a layoff or, if the employee is covered, a reduction in force in accordance with Subchapter B.

- b. As military leave is subject to the provisions of the USERRA regulations incorporated by reference in R2-5A-D603.
  - c. As FMLA leave is subject to the provisions of the FMLA regulations incorporated by reference in R2-5A-D601.
- D. Insurance benefits continuation.** An employee who is on leave without pay may continue to participate in the employee insurance plans as follows:
- 1. Health benefit plan participation.
    - a. An employee who is on FMLA leave is eligible to continue to participate in the health benefit plan for the duration of the FMLA leave by paying the employee premium/contribution. An agency head may recover the state's portion of premium/contributions paid to maintain health coverage for an employee if the employee fails to return from FMLA leave under certain circumstances, in accordance with FMLA regulations incorporated by reference in R2-5A-D601.
    - b. An employee who is on leave without pay for a health-related reason that is not an industrial illness or injury and who either does not meet FMLA eligibility requirements or has exhausted FMLA leave and remains absent from work may continue to participate in the health benefit plan by paying both the state and employee premium/contribution. Authority to continue participation in the health benefit plan shall terminate on the earliest of:
      - i. Receipt of long-term disability benefits for which there is eligibility to continue health benefit plan participation under a state-sponsored retirement plan,
      - ii. A determination of eligibility for Medicare coverage, or
      - iii. 30 months after the incapacity began.
    - c. An employee who is on leave without pay for reasons other than those outlined in subsection (D)(1)(a), (b), or R2-5A-D602 pertaining to industrial leave, may continue to participate in the health benefit plan for a maximum of six months by paying both the state and employee premiums/contributions.
  - 2. Life insurance plan participation.
    - a. An employee who is on FMLA leave continues to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan and may continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium/contribution.
    - b. An employee who is on leave without pay for a health-related reason that is not an industrial illness or injury and who either does not meet FMLA eligibility requirements or has exhausted FMLA leave and remains absent from work may continue to participate in the



- basic life insurance plan by paying the state premium/contribution. An employee who elects to continue to participate in the basic plan may also continue any supplemental or dependent life coverage that is in force at the beginning of the leave without pay by continuing to pay the premium/contribution. Authority to continue in the life insurance plan shall terminate in accordance with the time limits specified in subsection (D)(1)(b).
- c. An employee who is on leave without pay for reasons other than those outlined in subsection (D)(1)(a), (b), or R2-5A-D602 pertaining to industrial leave, may continue to participate in the basic life insurance plan by paying the state premium/contribution. An employee who elects to continue to participate in the basic plan may also continue any supplemental or dependent life coverage that is in force at the beginning of the leave without pay by continuing to pay the premium/contribution. Authority to continue in the life insurance plan shall be available for a maximum of six months.
3. Termination of insurance. The insurance coverage of an individual on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

#### **PART D. LEAVE THAT COULD BE EITHER PAID OR UNPAID**

##### **R2-5A-D601. Family and Medical Leave Act (FMLA) Leave**

- A. General. All state agencies are responsible for complying with the federal Family and Medical Leave Act (FMLA) of 1993 and all applicable revisions. FMLA Regulations, 29 CFR 825.100 through 29 CFR 825.800 (July 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments. Any interference with, restraint of, or denial of an employee's rights provided by the FMLA is strictly prohibited.
- B. Eligible employee.
  1. An eligible employee for the purposes of the FMLA is an employee who:
    - a. Is an employee of the state of Arizona;
    - b. Has been employed by the state of Arizona for at least 12 months; and
    - c. Worked for at least 1,250 hours of service during the 12 months immediately preceding commencement of the leave.
  2. An agency head shall not extend FMLA benefits to an ineligible employee.

**C.** Situations covered by the FMLA. A state agency shall grant an eligible employee FMLA leave when the employee takes leave for one or more of the following reasons:

1. The birth of a child or placement of a child with the employee for adoption or foster care, provided the leave concludes within 12 months of the birth or placement.
2. To care for the employee's spouse, child or parent with a serious health condition.
3. The employee is unable to work because of the employee's own serious health condition.
4. Any qualifying exigency arising out of the fact that the employee's spouse, child or parent is a covered military member on active duty or call to active duty status in support of a contingency operation.
5. To care for a covered servicemember with a serious injury or illness when the covered servicemember is the employee's spouse, child, parent or next of kin.

**D.** Amount of FMLA leave.

1. An employee who takes FMLA leave for any of the situations described in subsections (C)(1), (2), (3) or (4) may take a maximum of 12 workweeks of leave during any rolling 12-month period, measured backward from the first day of each approved period of FMLA leave.
2. An employee who takes FMLA leave for the situation described in subsection (C)(5) may take up to 26 workweeks of leave in a single 12-month period.
3. During a 12-month period, an eligible employee is able to take no more than 12 workweeks of leave for any of the situations described in subsections (C)(1), (2), (3) or (4) and a combined total of 26 workweeks of leave if the leave includes the situation described in subsection (C)(5).
4. If a husband and wife are both state employees, the husband and wife are limited in the amount of FMLA leave taken to a combined total of:
  - a. 12 workweeks of leave for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.
  - b. 26 workweeks of leave to care for a covered servicemember with a serious injury or illness.

**E.** Designation of FMLA leave. An employee need not specifically request FMLA leave to be placed on FMLA leave. If an eligible employee takes leave for any reason covered by the FMLA and has not already exhausted the employee's available FMLA leave, the agency head shall designate the employee's leave as FMLA leave.

**F.** Use of paid leave. Except for portions of industrial leave, an employee on FMLA leave shall be required to use the employee's available paid leave while on FMLA leave as follows and in the following order:

1. Sick leave or, as applicable, family sick leave subject to the provisions of R2-5A-B603.
2. Compensatory leave subject to the provisions of R2-5A-B607.

3. Annual leave subject to the provisions of R2-5A-B602.
  4. Leave without pay subject to the provisions of R2-5A-C602.
- G.** Insurance benefits continuation. An employee who is using leave with pay remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay while on FMLA leave may continue to participate in the employee insurance plans as follows:
1. Health benefit plan participation. An employee is eligible to continue to participate in the health benefit plan for the duration of the FMLA leave by paying the employee premium/contribution. An agency head may recover the state's portion of premium/contributions paid to maintain health coverage for an employee if the employee fails to return from FMLA leave under certain circumstances, in accordance with FMLA regulations incorporated by reference in subsection (A).
  2. Life insurance plan participation. An employee continues to participate in the Basic Life and Accidental Death and Dismemberment Insurance Plan and may continue to participate in the supplemental life and dependent life insurance coverage by paying the full premium/contribution.
  3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.
- H.** Return from FMLA leave. An agency head shall restore an employee returning from FMLA leave to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. The provisions of the FMLA, not the provisions of R2-5A-C602(C), shall govern return to work from leave without pay granted to complete an FMLA-qualified leave.
- I.** Employee responsibilities. An employee is required to adhere to the employing agency's call-in procedures, give the agency 30 days' notice in the event of a foreseeable leave, provide requested documentation, and periodic updates of the employee's status and intent to return to work as requested by the agency.
- J.** Agency rights. Nothing in the FMLA or this rule should be construed as limiting an agency's right to manage, discipline or terminate an employee, including an employee's failure to comply with the agency's request for appropriate documentation to substantiate the employee's need for the leave. However, an employee's use of FMLA leave cannot be considered as a negative factor in any employment decision.
- K.** Conflict. If there is a conflict between the provisions of these rules and the FMLA, the provisions of the FMLA govern.

## **R2-5A-D602. Industrial Leave**

### **A. Use of leave.**

1. An agency head shall place an employee who sustains a job-related illness or injury that is compensable under the Workers' Compensation Law, A.R.S. Title 23, Chapter 6 on sick leave.
2. If an employee who is on leave under the Worker's Compensation laws meets Family and Medical Leave Act (FMLA) eligibility requirements and the leave qualifies for FMLA leave, an agency head shall count it as FMLA leave. An agency head shall apply industrial leave and FMLA concurrently.
3. An employee shall use leave in an amount necessary to receive total payments (leave payments plus Workers' Compensation payments) that do not exceed the gross salary of the employee.
4. If an employee exhausts all sick leave, compensatory leave and annual leave, an agency head shall place the employee on leave without pay.

**B. Payments.** If an employee receives a retroactive Workers' Compensation payment for any period of industrial illness or injury for which leave payments were received, the employee shall reimburse the agency for Workers' Compensation payments that exceed 100% of the employee's base pay before the illness or injury, and the agency head shall restore the equivalent value of leave to the employee's appropriate leave account.

**C. Light duty.** If an employee has a job-related illness or injury that impairs performance on the former job, the agency head shall make every effort to place the employee in a suitable position within the agency, including a light duty assignment.

**D. Restriction.** An agency head shall not grant sick leave or leave without pay to an employee who fails to accept compensation available under the industrial injury and disease provisions of A.R.S. §§ 23-901 to 23-1091.

**E. Insurance benefits continuation.** An employee who is using leave with pay in accordance with subsection (A) remains eligible for continued participation in the employee insurance plans and the employee's share of premiums/contributions is paid through payroll deduction. An employee who is on leave without pay due to an industrial illness or injury may continue to participate in the employee insurance plans as follows:

1. Health benefit plan participation.
  - a. An employee may continue to participate in the health benefit plan for a maximum of six months from the date of illness or injury by paying the employee premium/contribution.
  - b. At the end of the six-month period, an employee who remains on leave without pay due to industrial illness or injury may continue to participate in the health benefit plan by paying both the state and employee premiums/contributions, until the employee returns to work or is

determined to be eligible for Medicare coverage or Long-term Disability, whichever occurs first.

2. Life insurance plan participation. An employee who is on leave without pay continues to participate in the basic life and accidental death and dismemberment insurance plan without cost for six months after the month in which the illness or injury occurs. During this six-month period, the employee may continue supplemental life and dependent life coverages that were in effect at the start of the leave by paying the applicable premium/contribution.
3. Termination of insurance. The insurance coverage of an employee on leave without pay who fails to pay insurance premiums/contributions when due shall terminate at 11:59 p.m. on the last day of the period covered by the last premium/contribution paid.

F. Accrual of leave. An employee shall continue to receive full leave accrual as long as the employee uses two or more hours of paid leave each day.

#### **R2-5A-D603. Military Leave**

An employee who requests absence with pay on military leave under A.R.S. § 26-168, 26-171, or 38-610 shall submit a copy of the orders for duty with the request for military leave. An employee may be absent with pay for military purposes for up to thirty days in any two consecutive federal fiscal years. All state agencies are responsible for complying with the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 and all applicable revisions. USERRA Regulations, 20 CFR 1002.1 through 20 CFR 1002.314 (April 2012), are incorporated by this reference and on file with the Department and available from the U.S. Government Printing Office, 732 North Capitol Street N.W., Washington, D.C. 20401. This incorporation by reference contains no future editions or amendments.

#### **R2-5A-D604. Victim Leave**

An employee who is a victim of a juvenile offense or a crime and who requests absence from work to attend court-related proceedings under A.R.S. § 8-420 or 13-4439 shall submit a copy of the form provided to the employee by the law enforcement agency or a copy of the information the law enforcement agency provided to the employee with the request for victim leave. An employee shall use the employee's available sick leave, compensatory leave or annual leave for such absence. If an employee exhausts all sick leave, compensatory leave and annual leave, an agency head shall place the employee on leave without pay.

## **ARTICLE 7. PERFORMANCE MANAGEMENT**

### **R2-5A-701. General**

- A.** Performance management system. The Director shall establish a performance management system to evaluate the job performance of state employees. The performance management system established by the Director shall contain performance rating levels and shall contain numerical points to apply to each performance rating level established.
- B.** Administration. The Director shall develop an administrative manual and training on the performance management system.
- C.** Exceptions. The performance management system may be used:
  - 1. As determined by the appointing authority for the agency head, to evaluate the job performance of the agency head.
  - 2. As determined by the agency head, to evaluate the job performance of:
    - a. Each deputy director, or equivalent, of the agency.
    - b. Each assistant director, or equivalent, of the agency.

### **R2-5A-702. Performance Management Process**

- A.** Performance plan. For the purposes of this subsection, “performance plan” means a document prepared by an employee’s supervisor that outlines what is expected of the employee and how the employee’s performance will be measured. Subject to review by agency management, a supervisor:
  - 1. Shall administer a performance plan for each employee within 30 days of becoming the employee’s supervisor.
  - 2. May modify a performance plan at any time during a performance period.
  - 3. Shall modify a performance plan when significant responsibilities or expectations are added to or removed from a position.
  - 4. Shall notify the affected employee of any modifications made to a performance plan under subsection (A)(2) or (3).
- B.** Performance evaluation requirements.
  - 1. Informal evaluation. A supervisor shall:
    - a. Monitor and evaluate an employee’s performance throughout the rating period,
    - b. Provide feedback to the employee on a regular basis, and
    - c. Attempt to correct inadequate performance where possible and appropriate.
  - 2. Formal evaluation. A supervisor shall:
    - a. Formally evaluate, document and rate the performance of each employee at least annually.

- b. Submit the evaluation to agency management for review prior to the evaluation being administered to the employee.
3. Covered probationary employees. Prior to granting a covered probationary employee permanent status, a supervisor shall evaluate a probationary employee at least once prior to the end of the employee's probationary period.

**C. Responsibilities.**

1. An employee shall comply with the performance plan established by the supervisor.
2. A supervisor shall comply with performance evaluation requirements.
3. An agency head shall ensure that all performance evaluations are completed as required by this Section.

## **ARTICLE 8. DISCIPLINARY ACTIONS**

**R2-5A-801. General**

**A. Authority.** An agency head has the primary authority and responsibility for managing the conduct of all employees within an agency. A covered employee may be disciplined only for cause. An agency head shall discipline a covered employee in accordance with this Article and the rules in Subchapter B of this Chapter. An uncovered employee serves at the pleasure of the appointing authority and may be dismissed at will. Except for an employee who is in a position listed in A.R.S. § 41-742(F), any action that involves a suspension greater than 80 working hours, an involuntary demotion, or a dismissal requires review by the Director prior to the agency head administering such action.

**B. Level of discipline.**

1. If an agency head deems it necessary to discipline an employee, the agency head may determine the level of discipline to be imposed, up to and including dismissal, subject to review by the Director, if applicable.
2. In determining the level of discipline to be imposed, the agency head may consider the following factors:
  - a. Consistent application of rules and standards,
    - i. Unless otherwise prescribed by statute, the agency head need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.
    - ii. In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used

for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

- b. Prior knowledge of rules and standards,
- c. The severity of the infraction,
- d. The repeated nature of violations,
- e. Prior corrective or disciplinary actions,
- f. Previous oral discussions,
- g. The employee's past work record,
- h. The effect on agency operations,
- i. The potential of the violations for causing damage to persons or property.

**C. Limitations.**

- 1. Except as otherwise provided by statute or rule, suspensions shall not exceed a total of 30 working days during any 12-month period. The 12-month period begins with the first day of the first suspension.
- 2. An employee who is involuntarily demoted must possess the qualifications for the position and:
  - a. A covered employee who has attained permanent status may be involuntarily demoted only to a regular position in the covered service.
  - b. An uncovered employee may be involuntarily demoted only to a position in the uncovered service.

**D. Review by Director.**

- 1. Letters of reprimand and suspensions without pay of 80 working hours or less are not subject to review by the Director.
- 2. Prior to imposing a suspension greater than 80 working hours, an involuntary demotion, or dismissal, the agency head shall submit the proposed action to the Director for review as prescribed in R2-5A-802, unless the employee is in a position listed in A.R.S. § 41-742(F). If the employee is in a position listed in A.R.S. § 41-742(F), a review by the Director is not required.

**R2-5A-802. Procedures for Review by the Director**

- A.** Prior to administering any action requiring review by the Director, the agency head shall submit the proposed letter to the Director prior to the date the agency head intends to issue the letter to the employee.
- B.** The Director shall review the agency head's proposed action and provide notification of concurrence or recommend modification to the proposed action.



- C. When the agency head administers the action to an employee, the agency head shall also send a copy of the employee's letter to the Director. If the agency head determines that no action will be taken, the agency head shall notify the Director.

**R2-5A-803. Employee Request for Review of Disciplinary Action**

- A. A covered employee who is issued a disciplinary action may have grievance or appeal rights, as applicable.
- B. An uncovered employee does not have grievance rights or the right of appeal to a state merit board or council.
- C. A covered employee who files a complaint on a disciplinary action alleging discrimination or harassment is precluded from also filing a grievance through the agency's grievance procedure on the same disciplinary action that is the subject of the employee's complaint.

**ARTICLE 9. COMPLAINTS**

**R2-5A-901. Complaint System**

- A. General. Each agency head shall:
  - 1. Adopt a procedure to address employee complaints concerning discrimination or harassment in compliance with this rule.
  - 2. Designate an employee of the agency to serve as the agency's complaint coordinator, who shall be responsible for receiving complaints, determining applicability under the complaint system, investigating or assigning the complaint to the appropriate individual within the agency for review or investigation, and tracking the processing of complaints.
- B. Matters subject to the complaint system. The adopted complaint procedure shall require the complainant to file the complaint with the agency complaint coordinator within 180 days of the action giving rise to the complaint and to clearly outline the allegations to be addressed, including whether the basis of the complaint is based on:
  - 1. Unlawful discrimination based on race, color, religion, sex (including pregnancy), age, national origin, genetic information or on the basis of a disability.
  - 2. Allegation of sexual harassment or other form of harassment.
  - 3. Retaliation for filing a complaint.
  - 4. Retaliation or intimidation for exercising any right under state or federal law.
- C. Preparation. A complainant shall not be allowed the use of state time or state property to prepare a complaint, prepare for a meeting with agency management or to meet with a representative. Subject

to supervisory approval, a complainant may request available compensatory or annual leave for this purpose.

- D. Multiple complaints.** Multiple complaints by an employee may be consolidated into a single complaint. Separate complaints filed by two or more employees regarding the same issue or issues may be consolidated into a group complaint. Employees having a common complaint may submit one group complaint, identifying one complainant as the selected spokesperson for the group. Employees who choose to file a group complaint are prohibited from filing separate complaints on the same issue.
- E. Amendments.** Once a complaint is submitted to the agency complaint coordinator, it may not be amended. If additional documentation is submitted by the complainant after the initiation of the complaint, the reviewing or investigating official may remand the complaint to the complainant for reconsideration and resubmission.
- F. Approval.** Each agency will submit its proposed complaint procedure and any subsequent changes to the Director for approval.

#### **R2-5A-902. Complaint Procedures**

- A. Content.** Each agency complaint procedure shall include as a minimum that:
  - 1. The agency head be notified of all verbal or written complaints of discrimination or harassment reported by an employee immediately upon receipt of a complaint.
  - 2. Employees who are told or otherwise become aware that discrimination or harassment is occurring must immediately report the allegation or complaint to the agency's complaint coordinator.
  - 3. The complaint include all facts and circumstances involved in the alleged violation, including:
    - a. Description of the incident(s),
    - b. Name(s) of individual(s) involved,
    - c. Name(s) of witness(es),
    - d. The date(s) the discrimination or harassment occurred (if known),
    - e. Resolution sought,
    - f. Federal or state law alleged to have been violated.
  - 4. The agency complaint coordinator shall acknowledge receipt of the complaint in writing to the complainant not later than five business days after receipt of the written complaint.
  - 5. The agency complaint coordinator shall initiate an investigation into the alleged complaint or assign the complaint to the appropriate individual within the agency for review or investigation within 10 business days and the review or investigation shall be completed within 60 business

days of receipt of the written complaint. If extenuating circumstances exist, an extension shall be requested through the agency complaint coordinator.

6. Barring resolution of the complaint by agreement of the parties, the agency complaint coordinator shall forward a written recommendation to the agency head, or designee, within 10 business days of completion of the review or investigation.
7. The agency head, or designee, shall review the findings and recommendations and issue a decision in writing to the complainant.
8. A statement advising that retaliation against an employee for filing a complaint in good faith will not be tolerated or permitted.
9. A statement specifying that a grievance filed by a covered employee under R2-5B-403 that includes an allegation of discrimination or harassment shall be reviewed or investigated under the provisions of this Article, and not the grievance system.

**B. Review by Director.**

1. An employee, other than a Department of Administration employee, who is not satisfied with the agency head's response to a complaint alleging discrimination or harassment, may elevate the complaint to the Director within five business days after the receipt of the agency head's response. The Director will furnish a copy of the final decision to the agency head and the complainant within 20 business days following receipt of the complaint by the Director. The 20 business days may be extended by the Director with the concurrence of the complainant. The decision of the Director is the final step in the complaint procedure.
2. A complainant who is a Department of Administration employee and who is not satisfied with the Director's decision on a complaint alleging discrimination or harassment may resubmit the complaint to the Director within five business days after receipt of the Director's decision. The Director will appoint an individual who is not an employee of the Department of Administration and who serves in a position that is assigned to manage an agency's employee relations or investigations work unit to investigate the resubmitted complaint. The investigator shall conduct an investigation and furnish a copy of the findings and final decision to the Director and the complainant within 20 business days following receipt of the complaint by the investigator. The 20 business days may be extended by the investigator with the concurrence of the complainant. The decision of the investigator is the final step in the complaint procedure.
3. The response will refer the employee to the appropriate entity if the employee is dissatisfied with the final step of the complaint procedure.

## **ARTICLE 10. SEPARATIONS**

### **R2-5A-1001. Voluntary Separation**

- A.** Resignation. An employee may terminate employment with the state by submitting a written resignation to the agency head. An employee should submit a resignation at least 10 business days prior to the effective date of the resignation. If an employee resigns orally, the agency head shall confirm the resignation in writing. An agency head may refuse to accept a resignation and separate the employee pursuant to R2-5A-1002.
- B.** Job abandonment. An agency head may consider an employee to have voluntarily resigned from employment with the agency when the employee is absent from duty for three consecutive workdays or equivalent without proper authorization.

### **R2-5A-1002. Involuntary Separation**

- A.** General. An agency head may terminate an employee as deemed necessary to meet the needs of the agency and in keeping with federal and state laws and regulations. A covered employee may be dismissed only for cause. An agency head shall dismiss a covered employee in accordance with Article 8 and the rules in Subchapter B of this Chapter.
- B.** Staff reduction. At times, a staff reduction is necessary due to lack of work, lack of funds, economic slowdowns, technological or structural changes in the agency's operations, or because a staff reduction is determined to be necessary to ensure the financial health and viability of the agency.
  - 1. Except for an employee who is in a position listed in A.R.S. § 41-742(F), a staff reduction of an uncovered employee requires review by the Director prior to the agency head administering such action.
  - 2. An agency head shall conduct staff reductions of covered employees in accordance with Subchapter B, Article 6, Reduction in Force.

## SUBCHAPTER B. COVERED EMPLOYEES

### ARTICLE 1. GENERAL

#### **R2-5B-101. Definitions**

In addition to the definitions provided in Subchapter A of this Chapter, the following definitions apply to this Subchapter:

“Limited appointment employee” means an employee who, before September 29, 2012, was subject to the provisions of A.R.S. Title 41, Chapter 4, Articles 5 and 6 that were in effect before September 29, 2012, was appointed to a position that was based on the duration of funding, and was not eligible to acquire reduction in force rights.

*“Original probationary period” means the specified period following initial appointment to covered service. A.R.S. § 41-741(10)*

“Permanent status” means the standing a covered employee achieves after the completion of an original probation or a promotional probation.

*“Probationary period” means a working test period of employment in a covered service position for evaluation of the employee's work. A.R.S. § 41-741(11)*

*“Promotional probation” means the specified period of employment following promotion of a permanent status employee to another covered position that has a higher pay grade. A.R.S. § 41-741(12)*

#### **R2-5B-102. Applicability**

**A.** The rules in this Subchapter are applicable to covered positions, applicants for covered positions and covered employees in the State Personnel System.

**B.** Covered service is limited to the following:

1. An employee who was in the state service as either a probationary or permanent status employee, was not required to become at will uncovered in accordance with A.R.S. Title 41, Chapter 4, Article 4, and who does not:
  - a. Voluntarily elect to become uncovered at will.
  - b. Voluntarily accept a change in assignment to a position in the uncovered service.
  - c. Have a break in service.
2. A newly hired employee who is appointed or a current uncovered employee who voluntarily accepts a change in assignment to:
  - a. A position in the Arizona Department of Corrections that is classified as a Correctional Officer I, Correctional Officer II, Correctional Officer III, or a Community Corrections

Officer; or

- b. A position in any state agency that requires certification as a full authority peace officer by the Arizona Peace Officer Standards and Training Board, provided the position is not in the uncovered service.

## **ARTICLE 2. EMPLOYMENT STATUS**

### **R2-5B-201. Applicability**

The rules under this Article are applicable only to positions in the covered service and covered employees.

### **R2-5B-202. Original Probation**

- A. General.** A new employee hired into a position in the covered service shall serve an original probation period of one year.
- B. Extension of probation.**
  - 1. An agency head may extend an employee's original probation up to six additional months for employment-related reasons.
  - 2. The probationary period shall be extended for any period for which a probationary employee is on leave without pay for more than 80 consecutive working hours. If original probation is extended for this reason, the employee's probation may exceed 18 months.
- C. Completion of original probation.**
  - 1. In accordance with the rules in Subchapter 5A, Article 7, a supervisor shall evaluate an original probationary employee and submit a report to the agency head before expiration of the employee's probationary period. If the agency head takes no action to extend the probationary period or to terminate the employee, the agency head shall grant permanent status to the employee upon completion of the probationary period.
  - 2. If an agency head determines at any time during an original probationary period that the services of a probationary employee are no longer required in that position for any reason or for no reason, the agency head may:
    - a. Dismiss the employee without a stated reason and without the right of appeal, providing the employee a letter of dismissal; or
    - b. Offer the employee another position for which the employee possesses the qualifications. An employee who accepts a position that is not in the covered service is an at will uncovered employee.

**D.** Change in position. An original probation employee who is selected for another position in the covered service shall serve an original probation period in the new position.

**R2-5B-203. Promotional Probation**

**A.** General. A permanent-status employee who is promoted to a position in the covered service shall serve a promotional probation period of six months.

**B.** Extension of probation.

1. An agency head may extend an employee's promotional probation up to six additional months for employment-related reasons.
2. The probationary period shall be extended for any period for which a probationary employee is on leave without pay for more than 80 consecutive working hours. If promotional probation is extended for this reason, the employee's probation may exceed one year.

**C.** Completion of promotional probation.

1. In accordance with the rules in Subchapter 5A, Article 7, a supervisor shall evaluate a promotional probationary employee and submit a report to the agency head before expiration of the employee's probationary period. If the agency head takes no action to extend the probationary period, to revert or separate the employee, or offer the employee another position, the agency head shall grant permanent status to the employee upon completion of the probationary period.
2. If an employee fails to complete a promotional probation successfully the agency head may revert the employee in the current employing agency to:
  - a. A vacant position in the class in which the employee held permanent status immediately before promotion, or
  - b. A similar position in another class at the same grade as the class that the employee holds permanent status if the employee possesses the qualifications for that position.

**D.** Discipline. Neither subsection (C)(2)(a) nor (b) shall preclude the imposition of disciplinary action.

**E.** Failure to complete promotional probation. An employee who is reverted shall not have the right to appeal.

**R2-5B-204. Permanent Status**

A covered employee who has successfully completed the employee's probationary period shall attain permanent status in the position.

**R2-5B-205. Change from Covered to Uncovered Service**

- A. Voluntary election. A covered employee may voluntarily elect to become an at will uncovered employee without a change in assignment. Such an election is subject to the approval of the head of the employing agency and the Director. If approved, the effective date of the employee's change to uncovered service shall be the first day of the pay period immediately following the Director's approval.
- B. Change in assignment. Except for a special assignment, a covered employee who voluntarily accepts a change in assignment to a position that is not in the covered service, regardless of whether the voluntary change in assignment is a promotion, demotion, or lateral transfer, is an at will uncovered employee. The effective date of the employee's change to uncovered service shall be the same as the effective date of the change in assignment. A special assignment is not a change in assignment.
- C. Return to state employment. A covered employee who has a break in service and returns to employment in an agency in the State Personnel System in any capacity shall be an at will uncovered employee, unless the appointment is to a position in the covered service.

**ARTICLE 3. DISCIPLINARY ACTIONS**

**R2-5B-301. General**

- A. Applicability. The rules under this Article are applicable only to covered employees.
- B. Review by Director. Disciplinary actions for covered employees are subject to the review requirements outlined in R2-5A-801(D) and R2-5A-802.

**R2-5B-302. Reprimand**

- A. Authority. An agency head may issue a written reprimand to an employee for cause.
- B. Reprimand Procedures. The agency head shall provide the employee with a written statement of the reasons for the reprimand and the employee's grievance rights.

**R2-5B-303. Suspension**

- A. Authority. An agency head may suspend an employee without pay for cause.
- B. Limitation. Except as otherwise provided by statute or rule, suspensions shall not exceed a total of 30 working days during any 12-month period. The 12-month period begins with the first day of the first suspension.
- C. Pre-suspension procedures for suspensions exceeding 80 working hours. Before an employee with permanent status can be suspended for more than 80 working hours, the agency head shall submit the



proposed action to the Director for review as prescribed in R2-5A-802, give the employee written notice of the charges, a summary of the agency head's basis for the charges, and an opportunity for the employee to present a written response. The employee's response shall be made not later than three business days after the employee receives notice of the charges, unless extended in writing by the agency head.

- D. Suspension procedures. The agency head shall provide the employee with a written statement of the reasons for the suspension. The statement shall specify the period of suspension and the employee's grievance or appeal rights.

**R2-5B-304. Involuntary Demotion**

- A. Authority. An agency head may involuntarily demote a permanent status employee for cause to any covered position in the employing agency, provided the employee possesses the qualifications for such position.
- B. Pre-demotion procedures. Before an employee with permanent status can be involuntarily demoted, the agency head shall submit the proposed action to the Director for review as prescribed in R2-5A-802, give the employee written notice of the charges, a summary of the agency head's basis for the charges, and an opportunity for the employee to present a written response. The employee's response shall be made not later than three business days after the employee receives notice of the charges, unless extended in writing by the agency head.
- C. Involuntary demotion procedures. Prior to the effective date of the involuntary demotion, a written notice containing specific reasons for the demotion and the employee's right of appeal shall be provided to the employee and the Director.
- D. Probation. Except as otherwise provided in these rules, an employee who is involuntarily demoted shall not be required to serve a probationary period in the position to which demoted.

**R2-5B-305. Dismissal**

- A. Relief from duty. Nothing in this rule shall preclude the agency head from immediately placing an employee on administrative leave pending implementation of procedures under this Section, but no pay shall be withheld for such period.
- B. Dismissal during original probation. An employee on original probation may be dismissed without a stated reason and without the right of appeal.
- C. Pre-dismissal procedures. Before an employee with permanent status can be dismissed, the agency head shall submit the proposed action to the Director for review as prescribed in R2-5A-802, give the employee written notice of the charges, a summary of the agency head's basis for the charges, and an

opportunity for the employee to present a written response. The employee's response shall be made not later than three business days after the employee receives notice of the charges, unless extended in writing by the agency head.

- D.** Dismissal procedures. The agency head may dismiss an employee with permanent status only for cause but not before attempting to serve the employee personally or by registered or certified mail, return receipt requested (addressee only), with written notice of the specific reasons for dismissal in sufficient detail to inform the employee of the facts, with a copy to the Director. The agency head shall include a statement of the employee's right to appeal.
- E.** Effective date of dismissal. The dismissal action is not effective until one of the following occurs:
  - 1. The employee signs for receipt of the dismissal letter personally served or served by mail;
  - 2. Three business days have passed since the letter was mailed to the employee; or
  - 3. An attempt is made to personally serve the dismissal letter, but the employee refuses to sign for the letter. Such attempt to personally serve the letter shall be witnessed.

#### **ARTICLE 4. GRIEVANCES**

##### **R2-5B-401. Applicability**

The rules under this Article are applicable only to covered employees.

##### **R2-5B-402. Grievance System**

- A.** General. Each agency that has one or more covered employees shall:
  - 1. Adopt a grievance procedure which will afford each covered employee a systematic means of resolving an employee's disagreement with the receipt of a disciplinary action that is either:
    - a. A written reprimand, or
    - b. A suspension of:
      - i. 40 working hours or less if the employee is a full authority peace officer, or
      - ii. 80 working hours or less if the employee is a covered employee in any other capacity.
  - 2. Designate an employee of the agency to serve as the agency's grievance coordinator, who shall be responsible for receiving grievances, determining applicability under the grievance system, forwarding the grievance to the appropriate individual within the agency for review or investigation, and tracking the processing of grievances.
- B.** Non-applicable matters. The adopted grievance procedure shall not apply to any matter for which another method of review is provided, including but not limited to:
  - 1. Retirement, Life Insurance, or Health Insurance;

2. Any classification action;
  3. Any recruitment, selection, or appointment;
  4. Any compensation action;
  5. A disciplinary action that is either:
    - a. A suspension of:
      - i. More than 40 working hours if the employee is a full authority peace officer, or
      - ii. More than 80 working hours if the employee is a covered employee in any other capacity,
    - b. A demotion, or
    - c. A dismissal.
  6. A complaint alleging discrimination or harassment; or
  7. Any reduction in force action.
- C. Restrictions.** An employee may not submit a grievance challenging the following management rights:
1. An agency head's right to direct agency employees.
  2. An agency head's right to hire, promote, transfer, assign, and retain employees.
  3. An agency head's right to maintain efficiency of government operations and to determine the methods, means, and personnel by which these operations are to be conducted.
- D. Preparation.** A grievant shall not be allowed the use of state time or state property to prepare a grievance, prepare for a meeting with agency management or to meet with a representative. Subject to supervisory approval, a grievant may request available compensatory or annual leave for this purpose.
- E. Steps.** An agency's grievance procedure shall have two steps for review.
1. As determined by the agency head, the first step in the grievance procedure shall be:
    - a. The employee's second line supervisor,
    - b. The assistant director or equivalent, or
    - c. Any level of management between (a) and (b).
  2. The final step in the grievance procedure shall be the agency head, or designee.
  3. An agency head may choose to incorporate an additional step in the agency grievance procedure after the first step review.
- F. Amendments.** Once a grievance is submitted to the first step, it may not be amended. If additional documentation is submitted by the grievant after the initiation of the grievance, the reviewing official may remand the grievance to the appropriate previous level for reconsideration.
- G. Approval.** Each agency head will submit the agency's proposed grievance procedure and any subsequent changes to the Director for approval.

**R2-5B-403. Grievance Procedures**

Content. The grievance procedure established in each state agency shall include as a minimum:

1. An initial statement that any complaint alleging unlawful discrimination or unlawful harassment will be reviewed or investigated according to the provisions of the separate complaint process outlined in Subchapter A, Article 9, and not the grievance system.
2. A requirement that the grievant have an oral discussion with the immediate supervisor in an attempt to resolve the employee's disagreement with the disciplinary action, prior to initiating the written grievance procedure.
3. A requirement that the employee file the grievance in writing with the agency grievance coordinator, within 10 business days after the occurrence of the action being grieved. The date of occurrence of a:
  - a. Reprimand is the date the reprimand was issued to the employee.
  - b. Suspension is the first day of suspension.
4. A requirement that the grievance contain a complete statement of all the facts and circumstances involved and the specific redress sought.
5. A provision that the grievant may select a representative at any step in the procedure after the oral discussion with the immediate supervisor.
6. A requirement that another state employee who serves as the representative of a grievant must receive approval for annual or compensatory leave to represent the grievant.
7. A requirement that the grievant must have a minimum of five business days after receipt of a response to forward the grievance at any step, must sign the grievance at each step, and must state the reasons why the response at the previous step was unsatisfactory.
8. A requirement that the agency head will respond to the grievant not later than 30 business days after receipt of the grievance at the first step. Within the 30 business day period, the time for any step may be extended by the agency head with the concurrence of the grievant.
9. A statement that the decision of the agency head is the final step in the grievance process.

**ARTICLE 5. APPEALS**

**R2-5B-501. Applicability**

The rules under this Article are applicable only to covered employees who have attained permanent status.

**R2-5B-502. General**

- A. Except for an employee who is a full authority peace officer, an employee may file an appeal on the receipt of a disciplinary action that is either:
  - 1. A suspension for more than 80 working hours,
  - 2. An involuntary demotion, or
  - 3. A dismissal.
- B. Such appeals shall be filed with the State Personnel Board and in accordance with the rules established by the Board.

**R2-5B-503. Full Authority Peace Officers**

- A. A full authority peace officer may file an appeal on the receipt of a disciplinary action that is either:
  - 1. A suspension for more than 40 working hours,
  - 2. An involuntary demotion, or
  - 3. A dismissal.
- B. Such appeals shall be filed with the Law Enforcement Merit System Council and in accordance with the rules established by the Council.

**ARTICLE 6. REDUCTION IN FORCE**

**R2-5B-601. Applicability**

The rules under this Article are applicable only to covered positions and covered employees.

**R2-5B-602. Reduction in Force Procedures**

- A. General.
  - 1. An agency head shall submit to the Director a proposal to conduct a reduction in force if required for one or more of the following reasons:
    - a. Lack of funds or work,
    - b. Abolition of one or more covered positions,
    - c. Material change in job duties or agency organization, or
    - d. Introduction of a cost reduction initiative.
  - 2. An agency head shall submit the proposal for a reduction in force at least 30 business days before the proposed effective date of the reduction in force. If circumstances beyond the agency's control do not permit at least 30 business days' notice, the agency head shall submit the proposal as soon as the agency head is aware of the necessity for a reduction in force.

3. An agency head shall include all of the following in the proposal for a reduction in force:
    - a. The reason for the reduction in force;
    - b. The proposed scope of the reduction in force, which shall be limited to either:
      - i. The agency,
      - ii. An organizational unit of the agency, or
      - iii. Agency operations within a geographic area,
    - c. Each specific covered position proposed for elimination and an organization chart identifying each position, and
    - d. The proposed effective date of the reduction in force.
  4. An agency head shall submit a proposal that is consistent with A.R.S. § 41-772 and this Section.
  5. An agency head shall not approve a personnel action that would have an effect on the reduction in force after the agency head has submitted a proposal for a reduction in force.
  6. An agency head shall not re-establish a position that was abolished as a result of a reduction in force for two years if the position was filled when the reduction in force occurred, unless the position was abolished due to fiscal constraints, legislative action, or court order.
- B. Administration of reduction in force.** The Director shall review and approve, modify or deny a reduction in force within 20 business days of receipt. Upon approval of the Director to conduct a reduction in force:
1. An agency head shall separate a covered employee who is not a permanent status employee in the class affected by the reduction in force in the following order before any reduction in force action is taken that affects a permanent status employee, provided the separation of the non-permanent status employee will accomplish, or assist in accomplishing, the purpose of the reduction in force:
    - a. Temporary employee,
    - b. Original probationary employee, and
    - c. Limited appointment employee.
  2. An agency head shall use retention points to identify a permanent status employee within a class series affected by a reduction in force for retention in the employee's current position, transfer, reduction, or separation based on the employee's relative standing on the retention point list.
  3. An agency head shall base retention points upon performance calculated in accordance with the instructions in subsections (C) and (D).
  4. An employee on promotional probation or special assignment shall compete for retention in the employee's permanent status class.
  5. An employee in an underfill position shall compete for retention in the employee's permanent status class.

6. A permanent part-time employee shall compete for retention against another permanent part-time employee in the same class.
- C.** Calculation of retention points. An agency head shall compute the average score of a maximum of the three most recent performance evaluations in the 24 months concluded before the date of proposal for a reduction in force. An employee's average score shall be the employee's retention points. If an employee has not had a performance evaluation in the past 24 months, the employee shall receive 2.0 retention points.
  - D.** Resolution of ties. An agency head shall break any tie in total retention points in the following manner and order:
    1. The employee with the highest most recent performance evaluation shall be given preference.
    2. If a tie continues to exist, the agency head shall break the tie by lot.
  - E.** Offer of position.
    1. An agency head shall provide written notice at least five business days in advance to each employee identified for transfer, reduction, or separation. If circumstances beyond the agency's control do not permit at least five business days' notice, the agency head shall provide notice as soon as the agency head is aware of the necessity to transfer, reduce, or separate the employee.
    2. The notice shall include:
      - a. The reason for and effective date of the action;
      - b. A job offer, if any, including the salary, location of the position, and supervisor's name;
      - c. The availability of reduction in force procedures and records for review, with references to relevant statutes and rules; and
      - d. The employee's right to request a review of the determination as provided in R2-5B-603.
    3. An agency head shall offer a position to an employee identified for transfer, reduction, or separation with the highest number of points on the retention point list in descending order as follows:
      - a. If a vacant covered position exists and an employee possesses the required qualifications for the position, an agency head shall make the single best offer, in terms of pay range, within the agency of:
        - i. A regular position at the same or lower pay range in the same class series as the employee's present permanent status position;
        - ii. A regular position at the same or lower pay range in any class series in which the employee has held permanent status during the past five years; or
        - iii. If both positions described in subsections (E)(3)(a)(i) and (ii) are available, the position described in subsection (E)(3)(a)(i).

- b. If the offer under subsection (E)(3)(a) is a position at a lower pay range, the agency head shall provide the employee the option of accepting a vacant covered:
  - i. Funded, regular position at the employee's present pay range in a class series in which the employee has never held permanent status for which the employee is qualified; or
  - ii. Temporary or part-time position at the employee's present pay range for which the employee is qualified.
4. An employee shall possess the qualifications required when the position was last filled, unless the Director grants an exception.
5. Any job offer shall contain a time period of not less than three business days in which the employee may accept the offer. Failure of an employee to reply in writing within the stated time period, or failure to accept the job offer, shall constitute a resignation. An employee may accept a job offer and retain the right to request a review of the determination.
6. If no position exists, the agency head may separate the employee.

**R2-5B-603. Employee Request for Review**

- A.** An employee may request a review of the following determinations made during a reduction in force:
  1. Calculation of the employee's retention points,
  2. A job offer resulting in the employee's transfer or reduction, and
  3. Notification of the employee's separation.
- B.** Within three business days of receipt of a determination notice, unless a longer period is authorized by an agency head, an employee may submit a written request to the agency head for a review of the determination. The request for review shall be based upon an error, contain specific information concerning the error involved, and include a proposed resolution of the problem.
- C.** The agency head shall review the request and respond to the employee within five business days after receipt of the request.
- D.** An agency head may postpone any portion of a reduction in force until completion of an employee request for review.