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MEMORANDUM

HCM 16-09

Date: August 24, 2016

To: All Appointing Authorities

From: Lucinda Meltabarger, HCM Administrator

Re: Permanent Amendments to the Merit Rules

The 2016 permanent amendments to the Merit Rules will be effective August 25, 2016. A summary of the amendments is as follows:

- 260:25-5-44
Removes unnecessary references to the Position Description Questionnaire form number.
- 260:25-7-3
Removes a grammatically incorrect sentence fragment.
- 260:25-7-4; 260:25-7-13; 260:25-7-14; 260:25-7-17; 260:25-7-22
Clarifies that the salary referenced by the rules means “base salary” as defined by 260-25-1-2.
- 260:25-11-30
Allows an employee’s probationary period to be adjusted even if “leave without pay” status is not used.
- 260:25-11-36 and 260:25-11-55
Allows for greater administrative efficiency in the probationary/trial period by replacing the five days of leave without pay language with “more than thirty days of continuous absence”.
- 260:25-11-132
Gives the Appointing Authority the option to receive verbal resignations. Also, language was added that deems an employee to have resigned who is absent from his/her work station without prior approval (or having contacted his/her supervisor) for five days.
- 260:25-15-45
In an effort to give Appointing Authorities the full range of options granted by the Family Medical Leave Act of 1993, language was amended to allow Appointing Authorities the option to require employees on family medical leave to use all available paid leave prior to recording the absence as leave without pay. Your agency’s HR staff should consult Title 74 O.S. 840-2.22

prior to any changes in FMLA policy, as a strict construction of said statute could lend itself to a challenge at the Merit Protection Commission.

Below are the final promulgated permanent amendments to the Merit Rules. Please note that you can find a complete copy of the updated merit rules by clicking on the following link:

<https://www.ok.gov/opm/documents/MeritRulesTitle260.pdf>

If there are questions or if additional information is needed, please feel free to contact your classification/compensation liaison at HCM or by calling 405-521-2177.

SUBCHAPTER 5. POSITION ALLOCATION AND EMPLOYEE CLASSIFICATION SYSTEM

PART 4. ASSIGNMENT OF JOB FAMILY LEVELS

260:25-5-44. Determination of appropriate job family level

(a) Appointing Authorities shall use job family descriptors and the job family allocation made by the Administrator in assigning positions to job family levels. In determining the job family level to which a position shall be assigned, Appointing Authorities shall interpret and apply the Position Description Questionnaire (~~HCM 39~~), and the job family descriptor as a composite picture of positions the job family level includes [74:840 4.3]. Appointing Authorities may also use a Supplemental Position Description Questionnaire (~~HCM 39A~~) in assigning positions to job family levels.

(b) Relevant information about the position shall be considered. This may include, but is not limited to, individual position descriptions, information submitted by the Appointing Authority and employee, job audit reports, organizational charts, and lists of accountabilities to be used in appraising performance in the position.

(c) Consideration shall be given to the specific tasks and duties, levels of authority and responsibility, supervision received and exercised, discretion and judgment required, management of work processes and programs, organizational relationships to other positions, and any other factors which assist in the proper allocation of the position.

(d) Appointing Authorities may consider the relationship of positions to gain a better understanding of the duties and responsibilities of a position in assigning a position to a job family level.

SUBCHAPTER 7. SALARY AND PAYROLL

PART 1. SALARY AND RATE OF PAY

260:25-7-3. Entrance salary

(a) Appointing Authorities may establish the hiring rate for a classified job at any point between the minimum and maximum of the pay band for the job family level without prior approval of the Administrator. ~~Upon approval of the salary administration plan by the Administrator.~~ Hiring rates shall not be established below the minimum or above the maximum rate of pay established for a pay band.



(b) Appointing Authorities shall establish hiring rates for jobs included in a pay band based on the work performed, the duties and responsibilities assigned, and other relevant factors. This may include consideration of recruitment and retention issues, internal pay equity, market rates, previous hiring rates, and the training and qualifications of the employee being appointed.

260:25-7-4. Rate of pay upon reinstatement to the classified service

(a) When an Appointing Authority reinstates a person to the classified service in accordance with 260:25-9-102, the Appointing Authority may set the person's base salary at any point within the pay band for the job to which the person is reinstated which is consistent with the hiring range established for the job, salaries paid to other individuals performing similar work, or other relevant factors, except as provided in Subsection (b).

(b) When an Appointing Authority reinstates a person within the same agency to the classified service in accordance with 260:25-9-102 to a position in the same job family level as the employee's previous position after less than a 30-day break in service, the Appointing Authority shall set the employee's base salary at any rate within the pay band that does not exceed the employee's previous base salary.

260:25-7-13. Adjustments in rates of pay when pay bands are changed

When a pay band is changed for a job family level, all employees in that classification, including persons whose base rate of pay exceeds the maximum of the old pay band, shall receive an adjustment to the new pay band. No person's base salary may be reduced as a result of such a change. All employees of an agency in that job shall be given uniform treatment using one of the following methods: providing adjustment to the minimum of the new pay band; providing a percent increase given to each employee, which shall not exceed the percent of difference between the minimum of the old pay band and the minimum of the new pay band; or any other uniform method of adjustment approved by the Administrator. At the discretion of the Appointing Authority, no change in employee base salary need occur provided that all affected salaries fall within the new pay band. OAC 260:25-7-10 does not apply to adjustments made in accordance with this Section.

260:25-7-14. Rate of pay upon reclassification, promotion, career progression, demotion, and transfer

(a) **Rate of pay when incumbent is reclassified directly.** When an employee is reclassified directly under 260:25-5-90, the base rate of pay shall be fixed in accordance with 260:25-7-13.

(b) **Rate of pay upon promotion or career progression.**

(1) An Appointing Authority shall adopt objective written criteria for the amount of salary advancements on promotion or career progression. These criteria shall be a part of the agency salary administration plan established under 260:25-7-1.1 and shall be consistent with state and federal statutes prohibiting discrimination.

(2) The Appointing Authority shall set an employee's base salary on promotion or career progression at no less than 5% and no more than the maximum of the assigned pay band.

(3) The Appointing Authority shall not lower the base salary of an employee on promotion or career progression. If the employee's base salary before promotion or career progression exceeds the maximum of the new pay band, the employee's base salary shall remain the same.



(c) **Rate of pay when demoted.** The base rate of pay of an employee who is demoted shall be set by the Appointing Authority at any rate of pay within the pay band for the job to which demoted, which does not exceed that employee's last base rate of pay. An Appointing Authority may delay setting the base rate of pay upon demotion for up to 1 year when the demotion is due to an agency reorganization. For the purposes of this subsection, "agency reorganization" means the reclassification of employees in lieu of reduction-in-force.

(d) **Rate of pay upon intra-agency lateral transfer.** An Appointing Authority may provide up to a 5% increase in ~~salary~~ base rate of pay, not to exceed the maximum rate of pay for the pay band, for an employee upon intra-agency lateral transfer to a position in the same job family and level or another job family and level with the same pay band assignment, based on the needs of the agency. [74:840-2.17]

(e) Rate of pay upon interagency lateral transfer. An Appointing Authority may set the base rate of pay for an employee on an interagency lateral transfer at any rate of pay within the pay band for the job to which the person is transferred which is consistent with the hiring range established for the job, salaries paid to other individuals performing similar work, or other relevant factors.

260:25-7-17. Rate of pay upon detail to special duty

The pay of an employee who is detailed to special duty in accordance with ~~260-10-11-110~~ 260:25-11-110 shall not be reduced, but must be increased to at least the minimum base rate but not more than the maximum base rate the employee could receive upon promotion to that job family and level, provided:

- (1) any such temporary increase shall not affect eligibility for increase in the regular job family and level which the Appointing Authority could grant if the employee had not been detailed.
- (2) at the conclusion of the detail, pay shall revert to the authorized base rate of pay in the employee's regular job family and level.

260:25-7-22. Salary adjustments upon completion of initial probation or trial period

An Appointing Authority may provide base salary adjustments not to exceed 5% to probationary classified employees achieving permanent status following the initial probationary period. An Appointing Authority may also provide this base salary adjustment to employees reinstated to the classified service after a break in service upon completion of a probationary period, and to permanent classified employees successfully completing trial periods after intra-agency lateral transfer or promotion to a different job family level or career progression to a different job family level. [74:840-2.17]

SUBCHAPTER 11. EMPLOYEE ACTIONS

PART 3. PROBATIONARY EMPLOYEES

260:25-11-30. Probationary employees; general provisions

(a) All original appointments to classified positions shall be made from certificates, except as provided elsewhere in the Merit Rules or by statute, for a probationary period of 1 year, unless the length of the probationary period is reduced according to the provisions of this Section [74:840-



4.13]. At the end of the probationary period, the employee shall automatically become permanent [74:840-4.13]. At any time after the probationary employee has served 6 months, the Appointing Authority may waive the remainder of the probationary period by notifying the employee and the Human Capital Management Division in writing as to the waiver and the reasons for it [74:840-4.13]. The Appointing Authority may not extend the probationary period, but may adjust the probationary period due to ~~leave without pay~~ extended absence as provided in 260:25-11-36. The final working day of the probationary period shall be made known to the employee at the time of entry on duty and at the time of any adjustment or waiver of the probationary period. Some positions may have statutory probationary periods that differ from the conditions of this Section.

(b) Except as provided in 260:25-9-102, the provisions of this Part apply to probationary periods made in accordance with those Merit Rules.

(c) An employee on an original probationary appointment with the agency or any adjustment of the original probationary appointment, or on a probationary period with the agency after reinstatement, or an adjustment of such a probationary period may be released or dismissed in accordance with 260:25-11-32.

(d) The Appointing Authority may establish a written policy describing any agency standard for waiving the probationary period after 6 months and the reasons for the standard.

260:25-11-36. Leave of absence ~~without pay~~ for probationary employees: Adjustment of probationary period

(a) Upon written request, a probationary employee may be granted leave of absence without pay from the agency in accordance with 260:25-15-47, Leave of absence without pay, or 260:25-15-49, Leave because of absence due to job related illness or injury.

(b) ~~If the total amount of leave without pay exceeds 5 working days, the date of the final working day of the probationary period shall be adjusted by the number of working days the probationary employee was on leave without pay in excess of 5 working days. Notification of such leave to the Human Capital Management Division and the employee shall include the scheduled date of the final working day of the adjusted probationary period.~~ If a probationary employee is absent from work in excess of 30 continuous calendar days, the probationary period shall be adjusted by the number of calendar days the probationary employee was absent. The employee shall be notified at the earliest date that the probationary period is to be extended. Upon the employee's return to work, notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the probationary period.

PART 5. PROMOTIONS

260:25-11-55. Trial period and probationary period for promoted employees

(a) Trial period after intra-agency promotions.

(1) When a classified employee is promoted intra-agency, the employee shall serve a 6 month trial period in the job to which the employee has been promoted unless the Appointing Authority waives the trial period according to the provisions of this Section. The Appointing Authority may waive the trial period at any time by giving the employee written notice of the cancellation. Waiver of the trial period makes the promotion final.



(2) If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to the former position or another in the same job family level, at the salary the employee would have received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy filed with the Human Capital Management Division. [T]he employee shall not have the right to appeal [74:840-4.12].

(3) The promotion shall automatically become permanent at the end of the final working day of the trial period.

(4) The Appointing Authority may establish a written policy describing any agency standard for waiving the trial period and the reasons for the standard.

(b) Trial period after interagency promotion.

(1) An employee who is promoted interagency may, at the discretion of the receiving Appointing Authority, be required to serve a 6 month trial period in the new job only if the receiving agency has the job family from which the employee was promoted in its classification plan.

(2) The trial period may be canceled at any time, making the promotion final. Before the effective date of the promotion, the employee shall be informed in writing by the Appointing Authority whether the employee will be required to serve a trial period before such promotion becomes final. The promotion shall be permanent if the Appointing Authority fails to notify the employee in writing before the effective date of the promotion that a trial period is required under this paragraph. If an employee does not prove to be satisfactory in the new job during the trial period, the employee shall be reinstated to a position in the former job family in the same pay band for which the employee is qualified with the receiving agency, at the salary the employee would have received if the promotion had not taken place. However, the reasons for denying the employee permanent status in the promotional position shall be submitted in writing to the individual before the end of the trial period and a copy filed with the Human Capital Management Division. The promotion shall automatically become permanent at the end of the final working day of the trial period.

(c) If an employee on a trial period is absent from work in excess of 30 continuous calendar days the trial period shall be adjusted by the number of calendar days the employee was absent. The employee shall be notified at the earliest date that the trial period is to be extended. Upon the employee's return to work notification of such adjustment shall be provided to the employee and the Human Capital Management Division and shall include the adjusted date of the final working day of the trial period.

~~(c)~~ (d) **Statutory probationary period after intra-agency promotion.** An employee who is promoted to a job for which a probationary period is either permitted or required by Oklahoma Statutes shall be notified by the Appointing Authority of the probationary period before the effective date of the promotion. An employee shall not be required to serve a trial period after the promotion if a statutory probationary period is required.

PART 13. RESIGNATIONS

260:25-11-132. Method of resignation

(a) To resign in good standing, an employee must give the Appointing Authority at least 14 calendar days prior notice unless the Appointing Authority agrees in writing to permit a shorter



period of notice. The Appointing Authority will supply the employee written confirmation of any shorter period of notice that is allowed.

(b) Verbal resignations may be accepted by the Appointing Authority and implemented at his/her discretion.

(c) An employee who is absent from work without prior approval and who has not contacted his/her supervisor or agency representative within five working days is deemed to have resigned from state service.

SUBCHAPTER 15. TIME AND LEAVE

PART 5. MISCELLANEOUS TYPES OF LEAVE

260:25-15-45. FAMILY AND MEDICAL LEAVE

(a) The federal Family and Medical Leave Act of 1993 entitles eligible employees to family and medical leave. This section is not a comprehensive listing of the provisions of the federal Family and Medical Leave Act of 1993 (29 U.S.C, 2601 et seq.) and regulations promulgated thereunder, and is not intended to conflict with either the Act or the regulations. To be eligible, an employee shall have been employed by the state at least 12 months and have worked at least 1,250 hours during the preceding 12-month period.

(b) An eligible employee is entitled to family and medical leave for up to a total of 12 weeks during any 12-month period, for the following reasons:

- (1) the birth of the employee's son or daughter, and to care for the newborn child;
- (2) the placement with the employee of a son or daughter for adoption or foster care;
- (3) to care for the employee's spouse, son, daughter, or parent with a serious health condition. As used in this subsection, "son" or "daughter" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of a mental or physical disability;
- (4) a serious health condition that makes the employee unable to perform the functions of the employee's job; or
- (5) any qualifying exigency (as defined by U.S. Department of Labor Regulations) arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

(c) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 weeks of leave during a 12-month period to care for the service member. The leave described in this paragraph shall only be available during a single 12-month period. During the single 12-month period described in this paragraph, an eligible employee shall be entitled to combined total of 26 weeks of leave under paragraph (b) and (c). Nothing in this paragraph shall be construed to limit the availability of leave under paragraph (b) during any other 12-month period.

(d) An Appointing Authority may require that an employee's request for family and medical leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the



health care provider of the employee or the employee's ill family member. An Appointing Authority may require a certification issued by the health care provider of a covered service member being cared for by an employee.

(e) The entitlement to family and medical leave resulting from (b)(1) and (b)(2) of this Section expires at the end of the 12-month period beginning on the date of the birth or placement.

(f) When family and medical leave is taken to care for a sick family member as defined in (b)(3) of this Section, a covered service member as referenced in (c) of this Section, or for an employee's own serious health condition, leave may be taken intermittently or on a reduced leave schedule when it is medically necessary. When family and medical leave is taken for a qualifying exigency as referenced in (b)(5) of this Section, leave may be taken intermittently or on a reduced leave schedule. An Appointing Authority may adopt a policy allowing family and medical leave to be taken intermittently to care for a newborn child or newly placed adopted or foster child.

(g) Whenever it is possible, an employee shall schedule family and medical leave to accommodate the operations of the employee's agency. An employee shall give the Appointing Authority notice and a leave request at least 30 days before leave is to begin if the need for family and medical leave is expected. In any case in which the necessity for leave under (b)(5) of this Section is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable. When the need for family and medical leave is unexpected, an employee shall give the Appointing Authority notice and a leave request as soon as possible. The notice and request shall:

- (1) be in writing;
- ~~(2) refer to this Section;~~
- ~~(3) (2)~~ describe the reason for the family and medical leave;
- ~~(4) (3)~~ specify the type of leave the employee is requesting to account for the time off; and
- ~~(5) (4)~~ include any information or documentation required for the type of leave requested.

(h) The Appointing Authority has the responsibility to review requests for sick leave and leave without pay for designation as family and medical leave. The Appointing Authority has the right to designate leave taken for an FMLA-qualifying event as FMLA leave, regardless of whether the employee has requested FMLA leave. The Appointing Authority's designation decision shall be based only on information provided by the employee or the employee's spokesperson. In accordance with the federal Family and Medical Leave Act, the Appointing Authority shall not designate leave as family and medical leave retroactively, unless the Appointing Authority does not have sufficient information concerning the employee's reason for taking the leave until after the leave period has begun.

(i) Family and medical leave is not a separate type of leave, and it is not accrued or accumulated. An Appointing Authority ~~shall give~~ may require employees to use all available the following options paid leave prior to recording the absence as leave without pay in accordance with 260:25-15-47 to account for time lost because of leave under the federal Family and Medical Leave Act of 1993.

- ~~(1) Charge to accumulated annual leave [74:840-2.22];~~
- ~~(2) Charge to accumulated sick leave [74:840-2.22];~~
- ~~(3) Charge to leave donated by other state employees under Section 840-2.23 of Title 74 of the Oklahoma Statutes, which is also known as "shared leave";~~
- ~~(4) Charge to accumulated compensatory time.; or~~
- ~~(5) Record as leave without pay in accordance with 260:25-15-47.~~



(j) The agency shall continue paying the employee's insurance coverage while the employee is on family and medical leave.

(k) Upon return from family and medical leave, an employee shall have the right to be restored to the same or equivalent position and benefits, except for extension of his or her anniversary date for longevity pay, leave accrual, and calculation of retention points, he or she would have had if the employee had been continuously employed in pay status during the leave period.

(l) An employee shall not be required to take more leave than necessary to resolve the circumstance that precipitated the need for leave.

