

AAA Memo: HCM 2022-9

Date: June 21, 2022

The following bills affecting the state workforce have passed through the Legislature and been signed by the governor. An overview for each bill is provided below. Please contact Jake Smith at Jacob.smith@omes.ok.gov, if you have any questions.

HB 3420

HB 3420 amends the Civil Service and Human Capital Modernization Act, the Oklahoma Personnel Act and the Oklahoma Administrative Procedures Act.

- Effective date: May 11, 2022

Civil Service and Human Capital Modernization Act amendments

- Civil Service Division can use independent contractor ALJs or ALJs provided by the Oklahoma Attorney General's office.
- Confidential Whistleblower Program
 - Defines mismanagement.
 - Misuse of state funds or property must be criminal.
- Time frames
 - Employee has 10 business days to file complaint.
 - Hearings shall take place within 30 business days of complaint being filed.
- Punitive transfer
 - If employee is offered relocation incentive, the transfer is not a punitive transfer.
- Exempted employees are expanded to include:
 - Temporary employees employed to work less than 1,000 hours in a 12-month period.
 - Seasonal employees employed to work less than 1,600 hours in a 12-month period.
 - Employees in a trial period.
 - State employees whose employment status is otherwise provided by law.
- Conflict of interest regarding Civil Service Division and OMES representation
 - Specifically stated in the statute that conflict of interest does not exist.
- Civil Service Division is exempt from the requirements of 74 O.S. Section 20i
 - Civil Service Division does not have to receive OAG approval of ALJs hired as independent contractors.

Oklahoma Personnel Act amendments

- Definition section is pared down.
- OMES maintains the following duties:
 - Administer the workforce.
 - Perform both service and regulatory functions.
 - Maintain the system of employment.
 - Develop and maintain a classification and compensation system for state positions.
 - OMES fulfills this function through 260:130-15-2. Pay Range and Pay Increase Catalog and Codes
 - Human Capital Management will establish and maintain a master catalog of all state pay ranges and reasons for pay increases. Each reason for pay increase will be assigned a code. Human Capital Management will provide guidance, assistance and information regarding the pay range and pay increase catalog and codes.
 - Develop and maintain uniform occupation code system.
 - OMES fulfills this function through 260:130-13-2. Job Catalog and Codes
 - Human Capital Management will establish and maintain a master catalog of all state employment jobs. Each job profile will be assigned a code. Agencies will work with Human Capital Management to ensure all jobs are organized into the master catalog and code structure.
 - Conduct analyses of the rates of pay.
 - Develop employee training programs and standards for continuing training.
 - Establish rules on leave and pay.
 - Establish a workforce planning function.
 - Establish a quality management function.
- Oklahoma Merit Protection Commission
 - Sunsets Dec. 31, 2022.
 - Funds, powers and duties transfer to OMES.
- 74 O.S. Section 840-2.9
 - Alleged violations of this section are to be reported to the Oklahoma Attorney General rather than the Merit Protection Commission.
- Employee Assistance Program
 - OMES shall promulgate the rules for the State Employee Assistance Program.
 - OMES will partner with the Oklahoma Department of Mental Health and Substance Abuse Services to maintain the State Employee Assistance Program.
- Reductions-in-force and voluntary buy-outs
 - 74 O.S. § 840-2.27C
 - Notice of the RIF must be posted at least thirty (30) days before the beginning of the RIF.
 - The time frame is shortened from the previous sixty (60) days to thirty (30) days.
 - The RIF plan must still be provided to the director of OMES and any state employee association representing state employees.

- The RIF plan must still be approved by the cabinet secretary for the agency conducting the RIF before posting.
 - The RIF plan must still be posted for five (5) days.
 - The RIF plan requirements are now limited to:
 - Listing the specific positions to be abolished within specified units, divisions, facilities or agencywide.
 - Providing outplacement assistance and employment counseling from Oklahoma Employment Security Commission and any other outplacement assistance and employment counseling made available by the agency.
- 74 O.S. § 840-2.27D
 - The RIF severance benefits must include all the following:
 - Payment of employee-only health insurance premium cost for eighteen (18) months.
 - The longevity payment due to the affected employee on his/her next anniversary date.
 - Outplacement assistance.
 - **All the above options have to be paid to the separating employee.**
 - The RIF severance benefits must also include one or more of the following options:
 - Up to one (1) week of pay for each year of service.
 - Lump-sum payment of Five Thousand Dollars (\$5,000.00).
 - Payment for accumulated sick leave at up to one-half (1/2) of the employee's hourly rate.
 - The sick leave cannot be used for conversion to retirement credit if paid as RIF severance benefits.
 - **The agency has the ability to pick amongst the above options but must choose at least one option. The options chosen must be uniform to all employees affected by the particular RIF. For example, if an agency chooses to pay the lump-sum payment of \$5,000, the agency must pay that lump sum to all separating employees under the RIF plan.**
- 74 O.S. § 840-2.27E has not been repealed. The requirement to execute a release when receiving severance benefits is still in effect.
- Other key considerations:
 - RIFs are no longer appealable actions.
 - The RIF requirement does not apply to exempted employees. Agencies can provide severance benefits to separating employees not subject to the Civil Service and Human Capital Modernization Act and whose position is not subject to an imminent RIF. The severance benefits available to those employees are the same as set forth above for employees being separated pursuant to a RIF. If offered to exempted employees whose position is not subject to an imminent RIF, the

employees must execute a release of all claims against the agency and the State of Oklahoma as required by 74 O.S. § 840-2.27E.

- The ability to offer voluntary out benefits in anticipation of a RIF is no longer available. While 74 O.S. § 840-2.28 was not expressly repealed in HB 3420, agencies were only authorized to provide voluntary out benefits to unclassified and classified employees. Because unclassified and classified employees no longer exist, the authorization to provide voluntary out benefits no longer exists as well.
- 74 O.S. Section 840-4.19
 - Clarifies that all punitive transfers are subject to the Civil Service and Human Capital Modernization Act even though state agencies have the sole and final authority to designate the place or places where their employees work.
 - For transfers not deemed punitive, the State of Oklahoma shall pay for a portion of the employee's moving costs.
 - Minimum of \$2,500.
 - Maximum up to 20% of the employee's current salary.
- 74 O.S. Section 5003.5
 - Certain employees of the Department of Commerce shall be employed and compensated in a manner that compares equally to similar positions in the private sector.
 - Those employees are exempt from the Civil Service and Human Capital Modernization Act.

Oklahoma Administrative Procedure Act amendment

- 75 O.S. Section 311.2 is a new section of law to be codified.
 - Allows the Civil Service director to delegate the authority to issue a final agency order adverse to a party to the assigned administrative law judge.
 - Prescribes the requirements for the administrative law judge who can be delegated such responsibility.
 - Requires the Civil Service director to designate by written policy the types or categories of final agency order which may be issued by the administrative law judge.

HB 3422

HB 3422 amends 74 O.S. Section 840-2.17, which requires all salary increases to be authorized by statute or rules promulgated by OMES. Pay movement mechanisms previously allowed by 74 O.S. Section 840-2.17 are still permitted. HB 3422 also requires the state to fund a study to examine the overall human resources functions throughout the state and a study to examine the overall compensation for all positions covered by the Office of Management and Enterprise Services under the Human Capital Management Act beginning in fiscal year 2023. HB 3422 is effective May 11, 2022.

SB 970

SB 970 amends the Oklahoma Open Records Act, 51 O.S. Sections 24A.3, 24A.7 and 24A.10. 51 O.S. Section 24A.3 is amended to exempted from the definition of the term "record" any

information provided to a state agency or entity that will be utilized to provide a license or certificate to an individual including, but not limited to, an applicant's personal address, phone number, other contact information or any other material provided in order to qualify for or receive a license or certificate, provided the license or certificate shall be a public record. 51 O.S. Section 24A.7 is amended to state that it is the sole discretion of the public body to deem certain human resources records confidential. 51 O.S. Section 24.10 is amended to require public bodies that provide services to the public redact personal email addresses from any records and any portion of any record that contains the name or any other identifier of the occupants of any residential structure. SB 970 is effective Aug. 26, 2022.