

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

ADOPTED RULES GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAY-OFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND RE-EMPLOYMENT LIST.

2 MCAR 2.039 Eligibility to compete.

A. Open competitive selection processes. Competitive selection processes shall, after public notice, be open to all applicants who meet the reasonable standards or requirements fixed by the Commissioner with regard to factors that relate to the ability of the candidates to perform the duties of the position with reasonable efficiency and effectiveness. Persons with physical disabilities who, when demonstrated to the satisfaction of the Commissioner, could not be selected in the normal manner, shall be selected in such a manner that will fairly test their ability to perform the duties of the position.

In the case of an applicant who is blind, the department will provide the applicant with either a braille selection process, or the services of a reader chosen by the applicant with the approval of the department, or subject to the approval of the applicant, whichever means of screening is available to the department.

No applicant shall be rejected because the applicant lacks educational qualifications, unless such qualifications relate directly to the duties of the class for which the announcement is made, or where such educational requirements are established by federal agencies making grants-in-aid or otherwise contributing to state programs.

B. Promotional selection processes. Promotional selection processes shall be open to all permanent or probationary employees in the agency or other organization unit for which the selection process is being held who meet the requirements described in the announcements. All unclassified employees appointed for a period in excess of six months, and permanent or probationary employees in the classified service in any branch of state government who meet the established requirements may apply for promotional selection processes for positions designated as managerial or professional. Emergency, temporary and provisional employees in the classified service; unclassified employees appointed for a period of less than six months; pre-service trainees and interns are not eligible to compete in promotional selection processes for positions designated as professional or managerial.

C. Selection processes for incumbents of reallocated positions. The incumbent of a position which has been reallocated in accordance with 2 MCAR 2.019 shall be permitted to compete in the ~~same or equivalent~~ selection process as ~~last given~~ for the class to which the position has been reallocated, provided:

1. The incumbent did not participate in a written or competitive oral examination process for such a position ~~less than~~ in the six months previous to the date of reallocation;

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2. The reallocation did not result from the assignment of the incumbent to work out of class in a manner so as to bypass the selection process or to a vacancy in a new position which had not been allocated to a class, or from other action taken without regard to the appropriate selection process.

If the incumbent examined in accord with the above successfully completes the examination process, notwithstanding the provisions of 2 MCAR 2.084, the Commissioner may certify only the name of the eligible incumbent, provided the position has been reallocated to another class in the same occupational category as the initial classification.

In certifying eligibles to a position reallocated to a class in a different occupational category than the initial classification of the position, the provisions of 2 MCAR 2.084 shall apply.

Where the incumbent of a position which has been reallocated has failed to qualify in the selection process and/or otherwise is ineligible to continue in the position in the new class, the employee must be removed from the position within 30 calendar days from the date of notification to the appointing authority of the incumbent's failure to qualify.

Where the incumbent is ineligible to continue in the position and is not transferred, promoted or demoted, the lay-off provisions of the Personnel Law and Rules apply.

2 MCAR 2.040 Applications and Admissions.

A. The form of application. The application shall be made on forms prescribed by the Commissioner. The forms shall require information requested by the Commissioner and requested on the announcement. The application form shall contain a statement that wrongful statements on the application may subject the applicant to the penalty provisions of Minn. Stat. 43.35 and 2 MCAR 2.108, 2.110, or 2.111 and a statement regarding the responsibility of the appointing authority pursuant to Minn. Stat. 43.162 to verify information provided on the application.

B. Selection processes. Persons whose applications are received within the Department of Personnel on or before the last date for filing, and whose applications clearly show that the applicants meet the requirements for admission to the selection process as specified in the official announcement, shall be admitted to compete in the selection process for which they are applying. Where doubt exists as to whether an applicant meets the admission requirements, the Commissioner may conditionally authorize the applicant to participate in the selection process, but such action shall not be construed as entitling the applicant to become eligible for certification or appointment until the circumstances leading to the conditional acceptance are clarified to the Commissioner's satisfaction. Each individual whose application has been accepted shall be notified of the date, time and place for those parts of the selection process which require the candidate to appear in person. No person shall be admitted to any part of the selection process without proper authorization, or satisfactory evidence of acceptance or conditional acceptance of the application by the Commissioner.

2-MCAR 2.043 Character of selection processes.

A. Competitive selection process. Competitive selection processes for positions in the classified service shall relate to those matters which will fairly test the capacity and fitness of the candidate to discharge efficiently the duties, processes or employment sought by them.

B. Noncompetitive selection processes. The Commissioner may authorize the appointing authority to appoint an employee to a position requiring peculiar and exceptional qualifications of an administrative, scientific, professional or expert character.

The Commissioner shall require such tests or other evidence of qualifications as deemed necessary and each such appointment shall be subject to the appropriate probationary period.

2 MCAR 2.044 Conduct of selection processes. Any or all parts of the selection processes shall be held at such times and places as in the judgment of the Commissioner most nearly meet the needs of the service, ~~convenience of the applicants,~~ practicability of administration, and the convenience of applicants. ~~needs of the service.~~ The selection process shall be conducted either by the Commissioner or persons designated by the Commissioner. No person whose application has been accepted shall be entitled to take any part of the selection process on a date, time or place other than those determined by the Commissioner. In order to protect the security of examinations by providing a reasonable period between test administrations, applicants shall be prohibited from participating in the same written or oral tests more than once within any six month period. However, if the same written or oral test is used for more than one classification or if a classification is opened for competition on both a competitive and promotional basis within a six month period, an applicant who would otherwise be prohibited from participating in an examination because of the six month retest prohibition shall, upon submission of another application, have the scores obtained on the written or oral portion of the initial examination apply to the subsequent examination.

2 MCAR 2.048 Order of names on eligible list. Names of eligibles shall be placed on the eligible list in the order of their final earned rating plus preference credit, provided that the earned rating was a passing grade. In the case of a tie between a veteran and non-veteran, the name of the veteran shall be placed ahead of a non-veteran. ~~In case of other ties in final ratings, names shall be placed on the list in order of rating on the part of the selection process given the greatest weight. Any remaining ties shall be broken by arranging names on the basis of the last four digits of the Social Security number using a random point of origin.~~ In other cases where two or more candidates have identical final scores, their names shall be placed on the eligible list in random order.

2 MCAR §2.064 Duration of eligible lists. The Commissioner shall determine the period during which promotional or open competitive eligible lists shall remain in effect. However, this period shall not be less than six months for open competitive lists or one year for layoff, reemployment or promotional lists, nor more than three years for any list except for layoff lists, where the eligibility of a candidate shall be extended to a period of time equal to the employee's length of continuous service to a maximum of eight years. If an eligible list exists for any class and the Commissioner deems it necessary to establish another such list for the same class, the existing list shall ~~ordinarily~~ either be cancelled, ~~At the discretion of the Commissioner, an existing list may be~~ or combined with the new list by placing names of eligibles in order of final ratings as provided in these rules. In making this decision the Commissioner shall consider the following factors: the number of anticipated vacancies, the frequency of previous examination administrations, continued candidate availability, or changes in the selection process. The eligibility of individuals placed on such combined lists shall expire at the end of the period established by the Commissioner, but at the discretion of the Commissioner, such eligibility may be extended for an additional period or periods not to exceed three years~~, except for persons on lay-off lists, whose eligibility shall be extended to a period of time equal to the employee's state seniority to a maximum of eight years~~. With eligible lists for classes for which continuous or frequent testing is conducted, the term of individual candidate eligibility shall begin on the date of placement of the candidate's name on the eligible list and continue for a period established by the Commissioner, based on consideration of the following factors: the number of anticipated vacancies, continued candidate availability, or changes in the selection process.

name on the eligible list and continue for a period established by the Commissioner, based on consideration of the following factors: the number of anticipated vacancies, continued candidate availability, or changes in the selection process.

2 MCAR 2.082 Methods of filling vacancy upon receipt of request for an employee. The Commissioner shall certify the proper number of names from the appropriate eligibile list, or authorize some other kind of appointment as provided in Minn. Stat. Ch. 43 and these rules. No appointment, except an emergency appointment, shall be made without such certification or prior authorization. If the position ~~to be filled~~ is a permanent one, to be filled by certification from an eligible list, the Commissioner shall first certify from the agency layoff list. If no such layoff list exists, the Commissioner shall certify from the agency promotional list. In the absence of the above lists, the Commissioner shall certify from the eligible list deemed appropriate, taking into consideration any requests made by an appointing authority as to the list to be used.

However, if an appointing authority submits specific written statements that the interest of the state would be served best by certification from some list other than the agency promotional lists and that the use of such list is not practical, or the Commissioner finds that there are better qualified people on other eligible lists, the Commissioner may certify names from some eligible list other than the agency promotional list. In the case of a vacancy in a managerial or professional class, the Commissioner shall certify only from the layoff list, the state-wide promotional eligible list, the reemployment list, lists secured from other jurisdictions under the provisions of 2 MCAR 2.068 or an open competitive list as provided for in the Personnel Law.

2 MCAR 2.084 Certification of eligibles.

A. Order of certification.

1. In the case of a layoff list, the one name highest on the layoff list shall be certified for one vacancy.

2. In the case of competitive eligible lists, ~~upon initial entry into the state service,~~ the Commissioner shall certify the first ten names, when available, on such lists;, together with the names of any persons having the same score as the tenth name so certified; and as many additional names as may be necessary to comply with Minn. Stat. 43.15, subd. 5.

3. In the case of promotional eligible lists, the Commissioner shall certify the first three names on such lists ~~shall be certified~~, together with the ~~any additional~~ names of any persons having examination ratings within three points of the person on the list with the highest examination rating,; the names of any persons having the same score as the last name certified in accordance with the above; and as many additional names as may be necessary to comply with Minn. Stat. 43.15, subd. 5.

4. Eligibles shall be certified in strict order of standing without regard to sex or special qualifications, except when the Commissioner is satisfied that the facts and reasons specified by the appointing authority warrant such action, certification may be limited to the eligibles possessing the special qualifications.

~~B. Multiple vacancies. If more than one vacancy is to be filled, the name of one additional eligible for each additional vacancy shall be certified.~~

~~C.~~B. Concurrent Certification. Groups of eligibles shall be certified to the vacancies in order of receipt of requisitions for employees, with due regard for the right of eligibles standing highest on the list. This section shall not require simultaneous certification of the same names on different certifications made concurrently, but certification in such instances shall be consistent with guidelines established by the Commissioner.

~~D.~~C. Fewer than the Required Number of Eligibles. Whenever there are not sufficient names on an eligible list to make a complete certification, the Commissioner may augment those names by a sufficient number of names from other appropriate lists to make a complete certification.

E.D. Incomplete Certification. Where the number of names available to fill a vacancy are fewer than authorized by the law, except in the case of certification from the layoff list, the Commissioner may proceed to fill the vacancy in any other manner provided by the law or these rules. If there are fewer candidates on the eligible list for a class than the number of names that can be certified to a vacancy as provided by the law and these rules, the Commissioner may determine that the existing eligible list is a complete certification for consideration by the appointing authority.

E.E. Certification from Related Lists. The Commissioner may certify from eligible lists for higher classes to vacancies occurring in lower classes or from eligible lists for one class for vacancies in another class where the Commissioner determines the examination reasonably measures the ability of the eligible to perform the duties in the class to which certification is made.

G.F. Nonappointment of a Veteran When Certified. In the event of rejection by the appointing authority of an eligible entitled to veterans' preference under Minn. Stat. 43.30, when certified for a promotion or to fill a vacancy or a new position, the appointing authority shall forthwith file in writing the reasons for such rejection and shall furnish to the rejected veteran a copy thereof.

~~H.~~G. Withdrawal of Certification. In the event the appointment is not reported within ten days of the date of certification, the Commissioner may withdraw such certification and shall certify the names of eligibles included in such certification on the next requisition received for the appropriate class of employment.

2 MCAR 2.085 Permanent appointments from eligible lists. All vacancies in positions in the classified service having a duration in excess of six months shall be filled by appointment through certification from eligible lists except as otherwise provided in Minn. Stat. Ch. 43 and these rules. In making an appointment from an eligible list, the appointing authority shall give consideration to the quality and length of service of any eligible state employee in addition to the primary consideration of the knowledges, skills and abilities of the candidate in relation to the specific vacancy and the needs of the agency. An appointment shall be effective on the date stated on the report of appointment.

2 MCAR 2.086 Temporary appointment. Temporary appointments shall, when practicable, be made from eligible lists. If after the Commissoner has made a reasonable effort to certify eligibles for temporary appointments from existing eligible lists and has found it impractical to make such certification, the Commissioner may authorize the temporary appointment of an individual designated by the appointing authority. ~~If the person appointed to the temporary position has status in another class, such employee status and seniority will accrue in the class from which the employee was appointed.~~

2 MCAR 2.087 Emergency appointment. An emergency appointment is an appointment for a period not exceeding ten consecutive working days made under conditions necessitating immediate action to provide for carrying on work that must be continued in the public interest. ~~The Commissioner shall not approve successive emergency appointments nor shall the Commissioner approve more than three emergency appointments for one person within one calendar year.~~ (Minn. Stat. 43.20, subd. 3)

Prior approval shall not be required in the case of emergency appointments, but each such appointment shall be reported to the Commissioner before payment for services can be made.

In any case in which a need for action in filling a vacancy shall have been known, or could have been known by the exercise of due diligence far enough in advance to afford opportunity for appropriate action under some other provision of this law and these rules, no emergency shall be deemed to exist, and no emergency appointment shall be made.

~~When possible, an emergency appointment shall originally be made at the minimum rate for the class to which the position thus filled can be allocated properly. The Commissioner shall allocate the position filled by emergency appointment to the proper class and shall notify the appointing authority of such allocation and the rate of pay applicable thereto. After such notice no payroll reporting a different rate of pay shall be approved.~~

~~No seniority shall be gained as a result of an emergency appointment.~~

2 MCAR 2.088 Provisional appointment. In the absence of an appropriate eligible list and when authorized by the Commissioner, the appointing authority may appoint a qualified person to fill a vacant position on a provisional basis. The appointment shall terminate 90 days after establishment of an eligible list from which a selection and appointment could be made as a result of examination, or upon the expiration of six months, whichever comes first. ~~except~~ In individual cases, where the Commissioner may grant exceptions based on written documentation of continued shortage of qualified eligibles ~~for the good of the service.~~

~~No person may receive two provisional appointments in a twelve month period except the Commissioner may grant individual exceptions based upon written documentation for the good of the service.~~

The appointing authority in nominating a person for provisional employment, shall transmit to the Commissioner a statement of qualifications of the nominee in such form as the Commissioner shall prescribe.

~~No seniority shall be gained as a result of a provisional appointment except for the continuance of seniority in a lower class upon provisional promotion to a higher class pending certification and appointment from a promotional list.~~

2 MCAR 2.106 Retirement. Employees in the classified and unclassified service subject to mandatory retirement provisions of the Minnesota State Retirement Act must retire at the end of the day of their birthday in the year they must retire. ~~and may not be an employee of the state after their 65th birthday. (Minn. Stat. 43.051)~~ Employees in the classified and unclassified service subject to mandatory retirement provisions of the Teachers Retirement Act must retire at the end of the day on August 31 in the academic year in which they must retire. ~~they reach the age of 65 and may not be an employee of the State after mandatory retirement. (Minn. Stat. 354.44, subd. 1a)~~

Persl 109 Layoff. The appointing authority may lay off an employee in the classified service by reason of abolition of the position, shortage of work or funds, or other reasons outside the employee's control which do not reflect discredit on the service of the employee.

Duties formerly performed by laid off employees may be assigned to other permanent employees who, in the opinion of the Commissioner, hold positions in an appropriate class.

A. Order of layoff. Layoff of probationary or permanent employees shall be made in inverse order of seniority by employment conditions in the class of work and agency or other organizational unit involved, provided, however, that for positions within a class requiring special licensure, certification or registration and for positions which consist of a formally recognized option within a class, seniority shall be applied within the area of specialization. Except as provided above, no probationary or permanent employee shall be laid off from any position while any provisional or temporary employee is continuing in a position of the same class in the agency or other organizational unit involved.

Where it is determined that two or more persons in the class in the agency or organizational unit in which layoff is being made have equal seniority, the order of layoff in such tie cases shall be in inverse order of the date of acquisition of permanent status in the class, except where otherwise provided in written contracts with exclusive bargaining representatives.

Where the determination of seniority as provided in this rule does not establish definite seniority differentials, the order of layoff shall be determined by the average of the last two service ratings, if there are two, or the last such rating if there is only one, and the employee with the lowest such average or rating shall be laid off first. If no service ratings are available, the order of layoff shall be determined by the appointing authority in such a manner as to insure the retention in the state service of those employees deemed most valuable, except where otherwise provided in written contracts with exclusive bargaining representatives.

B. Seniority. Seniority for purposes of layoff or recall from layoff shall be the length of service in a specific class in a specific agency or organizational unit. Leave without pay and trainee appointments, except as provided elsewhere in these rules, and service with a different agency or organizational unit, shall not count towards seniority in the class, agency, or organizational unit in which the layoff is taking place. No seniority shall be gained as a result of an emergency appointment. No seniority shall be gained as the result of a provisional appointment except for the continuance of seniority in the lower class upon provisional promotion to a higher class pending probationary appointment in accord with Minn. Stat. Ch. 43 and these rules. No seniority shall be gained as a result of a temporary appointment except if the person appointed to a temporary position has status in another class, such employee's status and seniority will accrue in the class from which the employee was appointed.

Seniority of an employee in the class to which that employee is demoted shall be limited to service in the agency. Seniority shall include the total time of the employee's prior seniority in the class from which the employee was demoted, as well as other classes which the Commissioner determines as being sufficiently similar to the class to which demotion occurs. Seniority shall begin on the date of original appointment and thereafter such seniority shall be increased each calendar day without interruption except:

1. Upon termination.

2. Upon interruption of service in the agency for any reason other than leave of absence or layoff.

3. Upon expiration of eligibility for reappointment from the layoff list.

In the case of employees in a trainee class or an employee working under a provisional appointment, seniority shall be credited back to the date of hire at the time the employee begins to serve a probationary period in the same or a related classification in the same department.

C. Limited interruption of employment. Any interruption in employment not in excess of 15 calendar days, because of adverse weather conditions, shortage of materials or equipment, or for other unexpected or unusual reasons, shall not be considered a layoff.

D. Layoff notice. The appointing authority shall notify the employee to be laid off at least 15 days before the effective date of such layoff in writing, and shall certify to the Commissioner the reasons for such layoff. In any case, when an appointing authority fails to certify before the effective date thereof that the layoff was for reasons not reflecting to the discredit of the employee, it shall be deemed a dismissal and shall be subject to the rules regarding dismissal.

In case of seasonal, intermittent, part time or other occasional appointment of employees with classified status, the appointing authority may indicate to the employee and the Commissioner at the time of the appointment the approximate date of termination of employment, and such notices shall be considered to meet the requirements of law. (MS 43.23, Subd. 2)

E. Names of laid off employees to be placed on eligibility lists. The names of permanent or probationary employees laid off or demoted in lieu of layoff shall be placed in order of seniority on the layoff list for the class and agency or other organizational unit from which the layoff took place. The affected employees shall have their names placed also on the reemployment list.

F. Organizational units. An appointing authority may propose subdivision of the agency into organizational units for the purpose of employment or layoff by submitting to the Commissioner a written plan for such subdivision, together with reasons therefor. The Commissioner shall consider such proposals and the needs of the state service, and may establish organizational units within agencies. Such organizational units may be established on the basis of geographic areas, function, class of employment, or funding when there are special Federal grants, and may be different for different classes of employment. The Commissioner shall notify the appointing authority of establishment of organization units and such units shall thereafter be used for employment or layoff.

The appointing authority shall post a copy of such notice or shall notify affected employees of the establishment of such organizational units.

The Commissioner may cancel established organizational units upon notice to the appointing authority at any time the Commissioner deems such action to be in the best interest of the state service.

2 MCAR 2.134 General Regulations Governing Leaves of Absence with Pay. As far as practicable, grants of leaves shall be made prior to the beginning of the period of absence, and no payment for any absence shall be made until leave is properly approved.

Deductions from leave accumulations for an employee on leave with pay shall be made on a working day basis and no charge shall be made from leave accumulations for holidays, non-work days, or non-work days occurring at the beginning or during a period of leave with pay. No charge will be made for holidays or non-work days occurring at the end of a period of leave with pay if the employee returns on the first day thereafter or is granted additional leave without pay. If the employee is granted additional leave without pay, such employee will not be credited for a holiday occurring at the end of the period of leave with pay unless and until that employee returns to work at the expiration of the leave without pay.

Vacation and sick leave hours shall not be used in the payroll period in which they are earned. Accrual of vacation leave and sick leave during the period of leave of absence with pay shall occur only if the employee returns to employment on the first working day following the expiration of such leave with pay, or is granted additional leave without pay. If the employee is granted additional leave without pay, the employee will not be credited with vacation or sick leave accruals for the period of leave with pay unless and until returning to work at the expiration of the leave without pay. An employee on layoff does not continue to earn vacation and sick leave during such layoff.

2 MCAR 2.135 Vacation leave. This rule applies to all classified state employees in the executive branch except for non-tenured laborers, emergency employees, project employees or temporary appointment employees and also applies to all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR 2.004. ~~Annual~~ Vacation leave provisions may be established by the appointing authority for those unclassified employees listed in 2 MCAR 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage.

Each eligible non-managerial employee shall earn vacation with pay according to the rate listed below

HOURS OF VACATION ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

Number of Hours Worked During Pay Period	0 thru 5 years	After 5 thru 8 years	After 8 thru 18 years	After 18 thru 25 years	Over 25 years
0 - 9	0	0	0	0	0
10 - 19	3/4	1	1 1/4	1 1/2	1 1/2
20 - 29	1	1 1/4	1 3/4	2	2
30 - 39	1 1/2	2	2 3/4	3	3
40 - 49	2	2 1/2	3 1/2	3 3/4	4
50 - 59	2 1/2	3 1/4	4 1/2	4 3/4	5
60 - 69	3	3 3/4	5 1/4	5 3/4	6
70 - 79	3 1/2	4 1/2	6 1/4	6 3/4	7
80 and over	4	5	7	7 1/2	8

When sick leave and/or ~~annual~~ vacation leave is used in conjunction with the Workers' Compensation benefit, an eligible employee receiving Workers' Compensation benefits shall accrue vacation leave for the total number of hours compensated by Workers' Compensation, sick leave and ~~annual~~ vacation leave.

Changes in the rate of accumulation for eligible employees shall be made effective at the beginning of the next payroll period following completion of the specified amount of service.

Service shall begin on the date of state employment. Time on suspension or non-medical leave of absence without pay, if at least one full payroll period in duration, except as otherwise provided by law or these rules, shall not be counted in determining the date of completion of a full year. An eligible employee being paid for less than the full payroll period of 80 hours will have vacation accrual pro-rated for that payroll period. A vacation leave shall not be granted or accrued before completion of six calendar months of service. Upon completion of such period, vacation leave shall accrue to the employee from the beginning of the period of continuous service.

Departments or agencies may determine the time and establish schedules governing the use of vacation leave, except that in no instance will vacation leave be granted in increments of less than one-half hour except to permit utilization of lesser fractions that have been accrued.

Unused vacation leave may be accumulated to a total of 224 working hours. Supervisors should make every effort to schedule vacation leaves for their employees on a regular basis each calendar year in order to reduce the possibility of an employee losing vacation or leave because of a maximum accumulation having been exceeded. An eligible employee on military leave, as provided by these rules, shall not be limited to the maximum accrual of vacation leave. Such employee may immediately upon reinstatement from military leave take all vacation in excess of the maximum accumulation. As an alternative, the employee may elect to be credited with the vacation leave in excess of the maximum accumulation, but such leave shall be taken at a time determined by the appointing authority within two years of the date of reinstatement.

Any eligible employee who is separated from the state service by layoff, resignation, death, or otherwise, shall be paid for the number of working hours of unused vacation leave accumulated to that employee's credit.

An employee who is transferred or accepts employment under the jurisdiction of a new appointing authority, or in the unclassified service of the state, or an unclassified employee who transfers to the classified service, without interruption of services to the state shall be entitled to credit of accumulated unused vacation leave earned in the employee's former employment.

Notwithstanding 2 MCAR 2.004, any state employee except an elected employee who is separated from the state service or who is transferred or accepts employment under a new appointing authority, is entitled to pay for any accumulated vacation leave. (Minn. Stat. 43.222 - 43.224)

Department heads and deputies of departments listed in Minn. Stat. 15A.081, subd. 1, plus the Department of Military Affairs, shall earn vacation pay at the rate of six hours per full payroll period. Covered departments heads and deputies who currently are eligible to receive more than six hours per full payroll period shall continue to accrue at the higher rate.

Employees in positions designated as managerial shall accrue vacation leave in accordance with a schedule established by the Commissioner.

2 MCAR 2.136 Sick leave. This rule applies to all classified state employees in the executive branch except for non-tenured laborers, emergency employees, project employees, or temporary appointment employees and also applies to all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR 2.004. Sick leave provisions may be established by the appointing authority for those unclassified employees listed in 2 MCAR 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage. Sick leave shall be earned by each eligible employee according to the rate schedule indicated below

HOURS OF SICK LEAVE ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

Number of Hours Worked During Pay Period	Less than 900 hours	900 hours and maintained
0 - 9	0	0
10 - 19	3/4	1/4
20 - 29	1	1/2
30 - 39	1 1/2	3/4
40 - 49	2	1
50 - 59	2 1/2	1 1/4
60 - 69	3	1 1/2
70 - 79	3 1/2	1 3/4
80 and over	4	2

Changes in the rate of accumulation for eligible employees shall be made effective following the payroll period in which the 900 hour maximum accrual is attained.

An eligible employee being paid for less than a full payroll period of 80 hours will have sick leave pro-rated for that payroll period unless the employee is on Workers' Compensation, in which case sick leave would be accrued for the total hours compensated by Workers' Compensation, sick leave, and ~~annual~~ vacation leave provided that sick leave or ~~annual~~ vacation leave is used in conjunction with the Workers' Compensation benefit. Unused sick leave hours may be accumulated to a total of 900 working hours. When the maximum limitation has been accumulated, the rate of accumulation will be reduced to two hours per full payroll period, and these hours shall be placed in a lapsed sick leave bank. Any employee who has such lapsed sick leave recorded may apply to the appointing authority to have the lapsed sick leave restored in the event of an extended illness. The appointing authority may authorize use of all or any part of the lapsed sick leave after thorough investigation, including submission of complete medical reports providing both a diagnosis and prognosis of the illness. The appointing authority shall report to the Commissioner all instances of lapsed sick leave restored in such form as prescribed by the Commissioner.

Time off on authorized sick leave will be deducted from the first 900 hours. Once the employee no longer possesses 900 hours of sick leave, four working hours for each full payroll period will be accumulated until the 900 maximum limit is again obtained.

Employees may utilize their allowance of sick leave, without regard to length of service, on the basis of application to and approval by the appointing authority, where absence is necessitated by inability to perform the duties of the position by reason of illness, pregnancy, or pregnancy-related problems, or disability; by necessity for medical, dental, or chiropractic care; by exposure to contagious diseases under the circumstances in which the health of employees with whom they are associated or members of the public with whom they deal may be endangered by their attendance on duty; or by illness in their immediate family for such periods as their attendance shall be necessary. Employees may also utilize not more than three days sick leave for the birth or adoption of a child. The term "immediate family" shall be limited to the spouse, minor or dependent children, or parent living in the household of the employee and where the parent has no other person to provide the necessary nursing care. Either the appointing authority or the Commissioner may require medical examination, medical certificate, or statement from a chiropractor, as deemed necessary for approving the utilization of sick leave. A written statement from a Christian Science practitioner that the employee is a Christian Scientist and is undergoing treatment may be accepted in lieu of a medical statement.

Use of a reasonable period of sick leave shall be authorized in case of death of a spouse, the parents of a spouse, and the parents, grandparents, guardian, children, brothers, sisters, or wards of the employee. In no instance will sick leave be granted in increments of less than 1/2 hour except to permit utilization of lesser fractions that have been accrued.

Employees receiving injury on duty pay shall not have this time deducted from their regular accrued sick leave balance.

A former state employee who is reappointed within four years of separation from the state service under the provisions of the act and these rules except as a provisional, temporary or emergency appointee, may have previously accumulated, unused balance of sick leave revived and credited to that employee upon approval of the new appointing authority.

An employee who transfers to the jurisdiction of another appointing authority without interruption in service to the state shall be entitled to a credit in the new employment for the accumulated unused sick leave earned in the former employment.

Employees in the unclassified service of the state who are subsequently appointed to a position in the classified service, or vice versa, without an interruption in service shall have their accumulated but unused sick leave balance posted to their credit in the records of the employing department provided such sick leave is accrued in accordance with the provisions of these rules.

An employee of a merit system jurisdiction or the federal competitive service with probationary or permanent status may transfer or be appointed to a position in the state service and may be credited with the amount of sick leave accumulated at the time of transfer, but not more than 12 days. Such credit shall be reduced proportionately as sick leave is accumulated in the state service.

2 MCAR 2.142. Sick and Annual Vacation Leave Accumulated Balance and Accrual Rates Upon Reinstatement or Reappointment. An employee who is reinstated or reappointed to state service within one year of the date of resignation in good standing, retirement or layoff shall accrue ~~sick or annual~~ vacation leave at the same rate with the same ~~credit or~~ length of service that ~~existed~~ at the time of such separation. accredited LOS 11-9-78

An employee reappointed to state service after one year but not more than four years from the date of resignation in good standing, retirement or layoff may, at the appointing authority's discretion, accrue ~~sick and annual~~ vacation leave at the same rate and with the same accredited length of service that existed at the time of separation.

~~Employees in the unclassified service of the state who are subsequently appointed to a position in the classified service, or vice versa, without an interruption in service shall have their accumulated but unused annual and sick leave balance posted to their credit in the records of the employing department provided such sick and annual leave are accrued in accordance with the provisions of these rules.~~

2 MCAR 2.175 In addition to the procedures available in this chapter, a number of other appeal procedures may be available to state employees. These include: the Minnesota Personnel Board (Minn. Stat. 43.24); ~~the Governor's Affirmative Action Program (Executive Order 76, as amended);~~ the formal affirmative action complaint procedures established by each department in accord with the Statewide Affirmative Action Plan; grievance procedures under collective bargaining agreements; the United States Department of Labor; the United States Equal Employment Opportunity Commission; and the Minnesota Department of Human Rights~~; and municipal human rights commissions~~.

2 MCAR 2.235 "Probationary employee" means an employee who is serving a probationary period as defined in 2 MCAR 2.234 in a class to which ~~they have~~ the employee has been appointed ~~either from an eligible list~~ in accord with Minn. Stat. ch. 43 other than an emergency, temporary, provisional or unclassified appointment.

2 MCAR 2.239 "Provisional employee" means an employee who has been appointed to a position without having been appointed from an eligible list on a conditional basis in accordance with Minn. Stat. 43.20, subd. 2, pending examination and probationary appointment in accordance with Minn. Stat. Ch. 43 and these rules.

2 MCAR 2.241 "Reemployment List" means a list of current or former permanent or probationary employees laid off demoted in lieu of layoff, or separated from the service in good standing whose written applications for consideration for reemployment in the class ~~by the State has~~ have been approved by the Commissioner in accordance with 2 MCAR 2.061.

APPROVED AS TO FORM AND LEGALITY

NOV. 9 1978

WARREN SPANNAUS, ATTORNEY GENERAL

BY Lee E. Sheehy

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV - 9 1978
Joan Anderson Growe
Secretary of State
9:45 AM

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - 307 Space Center Personnel

Office Memorandum

TO : Lee E. Sheehy
Special Assistant Attorney General

DATE: November 9, 1978

FROM : Barbara Lindsey Sims
Special Assistant Attorney General

PHONE: 6-4349

SUBJECT: Proposed Amendment of Rules of the Department of Personnel

Enclosed please find the revision of the proposed rules discussed in your memorandum dated November 3, 1978. With revisions as follows:

1. 2 MCAR 2.039 (C)(1): The words "less than" have been stricken in the rules. This error was merely due to a typographical oversight.

2. 2 MCAR 2.064: Has been amended to substitute "shall" for "may" as stated in your memo. In addition, the factors which the Commissioner shall consider in determining whether to cancel or combine a list, have been moved to clarify what is being modified. There is no substantive change in this rule.

3. 2 MCAR 2.142: The change to correct the typographical error has been made.

BLS:dag
Enclosures

Our File No. 428

ADMIN. 1000 (REV. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : BARBARA LINDSEY SIMS
Special Assistant
Attorney General

DATE: November 3 , 1978

FROM : LEE E. SHEEHY
Special Assistant
Attorney General

PHONE: 296-1238

SUBJECT: In the Matter of the Proposed Amendment of Rules of the Department of Personnel Governing the Examination, Referral and Appointment of Candidates, Retirement, Lay-Off, Vacation and Sick Leave, Appeal Procedures, and the Definition of Probationary Employee, Provisional Employee and Re-Employment Lists.

The above-captioned rules have not been approved by this office or been filed with the Secretary of State for the reasons discussed below. After agency consideration of these reasons and appropriate agency action, if any, the rules may be resubmitted to this office. Upon resubmittal, please ensure that the original of the rules as proposed for adoption and the original of the Order Adopting are submitted as they are necessary to file with the Secretary of State. If you have any questions, do not hesitate to call me.

The above-captioned rules are returned for the following reasons:

1. 2 MCAR 2.039 (C)(1): The words "less than" are stricken in the rules as proposed in the State Register but are not stricken in the rules proposed for adoption. This may merely be a typographical oversight.

2. 2 MCAR 2.064: Amendments to the portion of this rule permitting the Commissioner to cancel existing rules are improper. First, the use of the word "may" gives the agency unbridled discretion and permits the agency to go beyond the factors established by the rule making the cancellation decision. The word "shall" must be used. More importantly, the location of the factors to be considered are placed after the Commissioner has made a finding that the need to cancel the list exists. It would seem that those factors should modify the phrase "deems it necessary" and should be moved to that portion of the sentence.

3. I have reviewed your memorandum dated October 26, 1978, and have concluded that the typographical error discussed therein may be corrected at this time. Please make the necessary changes upon resubmittal to this office.

LES/bw

cc: Duane Harves
Chief Hearing Examiner

~~480~~ Personnel Dept -
478

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 10-13-78 Temporary Rule _____

Resubmitted and Received _____

DUE DATE 11-3-78

a. Returned to Agency w/o filing w/Secy of State 11-3
b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A.
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
17. Petition by Public, where applicable N.A.

① p. 2 (c) (1) proposed shows "less than" stricken.
Adopted does not

② 2.064 "may"

③ 2.084 own separate rules for limited classes
How does this interrelate w/ Bind width?

2.136
④ 2.142 only sick leave transfers for unclassified First 2.91 & 2.142 covers

M.S. § 43.222

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - 307 Space Center Personnel

Office Memorandum

TO : Lee Sheehy
Special Assistant Attorney General

DATE: October 13, 1978

FROM : Barbara Lindsey Sims
Special Assistant Attorney General

PHONE: 6-4349

SUBJECT: In The Matter Of The Proposed Rules of The Department of Personnel Governing The Examination, Referral and Appointment Of Candidates, Retirement, Lay-off, Vacation and Sick Leave, Appeal Procedures, And The Definition of Probationary Employee, Provisional Employee And Re-employment List.
File No. Pers1-79-001-HC

Enclosed for your review and approval are the proposed rule amendments of the Department of Personnel in the above referenced matter. The rules as adopted are identical to their proposed form with two exceptions.

I have also enclosed for your information a copy of the adopted rules as they would be printed in the State Register if approved by you, so that the changes from the proposed rules are more readily apparent. If you have any questions, please call.

BLS:dag
Enclosures

RECEIVED
OCT 13 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - 307 Space Center Personnel

Office Memorandum

TO : Lee Sheehy
Special Assistant Attorney General

DATE: October 26, 1978

FROM : Barbara Lindsey Sims
Special Assistant Attorney General

PHONE: 6-4349

SUBJECT: In The Matter Of The Proposed Amendment Of Rules Of The Department of Personnel Governing The Examination, Referral and Appointment Of Candidates, Retirement, Layoff, Vacation And Sick Leave, Appeal Procedures, And The Definition Of Probationary Employee, Provisional Employee And Reemployment List.

As we discussed on the phone, the Department of Personnel has just discovered an error in 2 MCAR 2.142, which apparently occurred when the rules were renumbered and printed in 1974. The error occurs on the last line of the first paragraph. The words "credit or" should read "accredited". You will note that the correct language appears in the second paragraph of the rule.

I am enclosing a copy of 2 MCAR §2.142 as it would read if the correction can be made at this time and a copy of the rule as it was adopted in 1972. There is no record that the change was made intentionally and it appears to be a typographical error.

If it is possible to correct the rule at this time it would clarify the meaning of the rule. If not the correction can be made the next time the rules are amended. Thank you for your help.

BLS:dag
Enclosures

RECEIVED
OCT 26 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

the employee is using the leave for purposes other than those specified at the time of approval.

CivSer 146 Maternity Leaves of Absence. A maternity leave of absence shall be granted, when requested, to a pregnant probationary or permanent classified employee. In determining the commencement date of maternity leaves, appointing authorities shall review each request on its individual merits, taking into consideration individual capacities, specific duties, efficiency, health or welfare of the employee or unborn child, or other relevant criteria.

Filed March 3, 1972

CivSer 147 Sick and Annual Leave Accrual Rates Upon Reinstatement or Reappointment. An eligible employee who is reinstated or reappointed to state service within one year from the date of resignation in good standing, retirement or layoff, shall accrue sick and annual leave at the same rate and with the same accredited length of service that existed at the time of such separation.

An eligible employee reappointed to state service after one year, but not more than four years from the date of resignation in good standing, retirement or layoff, may, at his department head's discretion, accrue sick and annual leave at the same rate and with the same accredited length of service that existed at the time of separation. The four year provision shall take effect on July 2, 1969, and shall apply to all subsequent reappointments.

An employee in the unclassified service of the state, who is subsequently appointed to a position in the classified service without an interruption in service may, at his department head's discretion, continue to accrue sick and annual leave at the same rate and with the same accredited length of service that existed prior to his appointment to the classified service provided they were accrued in accordance with the provisions of CivSer 137 and CivSer 138.

Changes in the accrual rates for eligible employees who were reinstated or reappointed subsequent to July 2, 1969, shall be made effective at the beginning of the next payroll period following the filing of this rule with the Secretary of State.

(Filed March 3, 1972)

CivSer 148-149 Reserved for future use

2 MCAR 2.136 Sick leave. This rule applies to all classified state employees in the executive branch except for non-tenured laborers, emergency employees, project employees, or temporary appointment employees and also applies to all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR 2.004. Sick leave provisions may be established by the appointing authority for those unclassified employees listed in 2 MCAR 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage. Sick leave shall be earned by each eligible employee according to the rate schedule indicated below

HOURS OF SICK LEAVE ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

Number of Hours Worked During Pay Period	Less than 900 hours	900 hours and maintained
0 - 9	0	0
10 - 19	3/4	1/4
20 - 29	1	1/2
30 - 39	1 1/2	3/4
40 - 49	2	1
50 - 59	2 1/2	1 1/4
60 - 69	3	1 1/2
70 - 79	3 1/2	1 3/4
80 and over	4	2

Changes in the rate of accumulation for eligible employees shall be made effective following the payroll period in which the 900 hour maximum accrual is attained.

An eligible employee being paid for less than a full payroll period of 80 hours will have sick leave pro-rated for that payroll period unless the employee is on Workers' Compensation, in which case sick leave would be accrued for the total hours compensated by Workers' Compensation, sick leave, and vacation leave provided that sick leave or vacation leave is used in conjunction with the Workers' Compensation benefit. Unused sick leave hours may be accumulated to a total of 900 working hours. When the maximum limitation has been accumulated, the rate of accumulation will be reduced to two hours per full payroll period, and these hours shall be placed in a lapsed sick leave bank. Any employee who has such lapsed sick leave recorded may apply to the appointing authority to have the lapsed sick leave restored in the event of an extended illness. The appointing authority may authorize use of all or any part of the lapsed sick leave after thorough investigation, including submission of complete medical reports providing both a diagnosis and prognosis of the illness. The appointing authority shall report to the Commissioner all instances of lapsed sick leave restored in such form as prescribed by the Commissioner.

Time off on authorized sick leave will be deducted from the first 900 hours. Once the employee no longer possesses 900 hours of sick leave, four working hours for each full payroll period will be accumulated until the 900 maximum limit is again obtained.

Employees may utilize their allowance of sick leave, without regard to length of service, on the basis of application to and approval by the appointing authority, where absence is necessitated by inability to perform the duties of the position by reason of illness, pregnancy or pregnancy-related problems, or disability; by necessity for medical, dental, or chiropractic care; by exposure to contagious diseases under the circumstances in which the health of employees with whom they are associated or members of the public with whom they deal may be endangered by their attendance on duty; or by illness in their immediate family for such periods as their attendance shall be necessary. Employees may also utilize not more than three days sick leave for the birth or adoption of a child. The term "immediate family" shall be limited to the spouse, minor or dependent children, or parent living in the household of the employee and where the parent has no other person to provide the necessary nursing care. Either the appointing authority or the Commissioner may require medical examination, medical certificate, or statement from a chiropractor, as deemed necessary for approving the utilization of sick leave. A written statement from a Christian Science practitioner that the employee is a Christian Scientist and is undergoing treatment may be accepted in lieu of a medical statement.

Use of a reasonable period of sick leave shall be authorized in case of death of a spouse, the parents of a spouse, and the parents, grandparents, guardian, children, brothers, sisters, or wards of the employee. In no instance will sick leave be granted in increments of less than 1/2 hour except to permit utilization of lesser fractions that have been accrued.

Employees receiving injury on duty pay shall not have this time deducted from their regular accrued sick leave balance.

A former state employee who is reappointed within four years of separation from the state service under the provisions of the act and these rules except as a provisional, temporary or emergency appointee, may have previously accumulated, unused balance of sick leave revived and credited to that employee upon approval of the new appointing authority.

An employee who transfers to the jurisdiction of another appointing authority without interruption in service to the state shall be entitled to a credit in the new employment for the accumulated unused sick leave earned in the former employment.

Employees in the unclassified service of the state who are subsequently appointed to a position in the classified service, or vice versa, without an interruption in service shall have their accumulated but unused sick leave balance posted to their credit in the records of the employing department provided such sick leave is accrued in accordance with the provisions of these rules.

An employee of a merit system jurisdiction or the federal competitive service with probationary or permanent status may transfer or be appointed to a position in the state service and may be credited with the amount of sick leave accumulated at the time of transfer, but not more than 12 days. Such credit shall be reduced proportionately as sick leave is accumulated in the state service.

2 MCAR 2.142. Vacation Leave ~~Accumulated Balance and~~ Accrual Rates Upon Reinstatement or Reappointment. An employee who is reinstated or reappointed to state service within one year of the date of resignation in good standing, retirement or layoff shall accrue vacation leave at the same rate with the same ~~credit or~~ accredited length of service that existed at the time of such separation.

An employee reappointed to state service after one year but not more than four years from the date of resignation in good standing, retirement or layoff may, at the appointing authority's discretion, accrue vacation leave at the same rate and with the same accredited length of service that existed at the time of separation.

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAYOFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND REEMPLOYMENT LIST.

STATEMENT OF NEED

The above captioned rules are amendments to existing rules of the Department of Personnel. The last time the above captioned rules were amended was January 4, 1978.

The need to adopt these rules arises because of the need to implement Minn. Laws 1978, ch. 708 and to bring the rules into conformity with Minn. Laws 1978, ch. 734. The authority of the Department of Personnel to promulgate and adopt these rules is Minn. Laws 1978, ch 734 and Minn. Stat. §§43.05, subd. 2, 43.18, 43.23, and 43.323.

Specifically:

1. 2 MCAR §2.039 C is amended to delete the requirement that the examination given to the incumbent of a reallocated position be the same or equivalent to the one last given for the position.

The purpose of §2.039 C is to provide a method for permitting the incumbent of a position which has been reallocated to a higher level class, because the work which the incumbent himself/herself has been performing has been judged to be at that level, to remain in the position without requiring extensive competition in the exam process.

One situation in which reallocations occur is where the work performed in a single position or in several positions within a class has advanced to the point where it must be recognized as being beyond that required in the previous classification but there is no existing classification under which the newly recognized responsibilities can be placed. In such situations, a new classification must be established and a new examination developed for the new class even though it is unlikely that any positions other than those positions directly affected by reallocation decisions will be placed in the new classification. In such cases, the necessity for announcing an examination open to competition from all interested qualified applicants when the provisions of 2 MCAR §2.039 C dictate the retention of the incumbent, provided the incumbent passes, is unfair to other candidates who apply in good faith. With the current wording, however, we cannot administer the selection process to the incumbents of reallocated positions without first generating such competition by announcing the examination since the selection process must first be given before reallocated incumbents may take the selection process "as last given".

No useful purpose can be served by requiring the conduct of a competitive examination process and soliciting applications from hopeful applicants who only learn at the conclusion of that process that they had little if any chance for the position since there was an incumbent in the position who needed only to pass the examination to remain in the position. Candidates who have participated in such examinations have indicated to Personnel Department staff their displeasure with the process and their suggestion that the examination not be announced at all, nor other applications taken if the basis for the conduct of the process is only to permit the incumbent of a reallocated position the opportunity to test. The proposed amendments will permit reallocated incumbents an opportunity to qualify without the problems attendent with announcements of misleading and counterproductive examinations.

In situations where a class may be entered either through competitive examination or promotional examination and the competitive examination was given more recently than the promotional version of the selection process, the current wording of the rule requires that the incumbent of the reallocated position be administered the competitive selection process even though that

individual is a current state employee and would be more appropriately examined in a promotional process. Permitting the use of a promotional selection process for the incumbent of a reallocated position rather than tying the qualifying procedure to that which was last given for the class permits acceptance of a rating by the employee's supervisor into the process. The proposed amendments would permit the use of the most appropriate examination process available for the class for the incumbents of reallocated positions.

The suggested change in paragraph C.1. of the rule is merely to provide clarity and eliminate confusion in the wording of the rule.

2. The amendment to 2 MCAR §2.040 is needed to bring the rule on the form of application into conformity with the requirements of Minn. Laws 1978, ch. 734 §5. The 1978 legislature amended Minn. Stat. ch. 43 by adding a new section, Minn. Stat. §43.162, concerning the validity of applications and concluding with the statement that "Notice of the verification responsibilities of the appointing authority shall be conspicuously printed on all state employment application forms". The proposed amendment adds that notice requirement to the items which must be contained on the application.

Such a statement will plainly inform appointing authorities of their responsibilities and serve as a notice to applicants that information contained on the application will be verified. Such a procedure should increase the accuracy of application entries to the benefit of all candidates and should minimize truth stretching so that those applicants who give truthful information are not placed at a competitive disadvantage by those who would otherwise tend to exaggerate their biographical data.

3. It is proposed that 2 MCAR §2.043 be deleted inasmuch as the existing language merely repeats statutory language and serves only to increase the total length of the rules, therefore making it more difficult to find those portions of the rules which truly do supplement the statute. The requirement in §2.043A that selection processes test the capacity and the fitness of the candidate to discharge the duties of the position is stated explicitly in Minn. Stat. §43.13, subd. 1. The noncompetitive selection processes, referred to in §2.043B, relate back to appointment procedures in Minn. Stat. §§43.19 subd. 1(2) and 43.20 subd. 4 where the requirements for such appointments are stated explicitly. The paragraph of this rule requiring that appointments by noncompetitive selection processes be subject to the probationary period is unnecessary also as Minn. Stat. §43.21 requires same. What we have then in the existing rule is unnecessary material which is repetitive of statutes and which does not clarify or add to the statutory requirements or provide assistance to any individual working with the rules in any manner so as to call for retention.

4. .2 MCAR 2.044 is amended to require a six month interval before a candidate may retake a written or oral examination. Minn. Laws 1978 ch. 734 §2 amended Minn. Stat. §43.13 by adding a subdivision requiring increased frequency of testing for positions in the classified service. This new subdivision explicitly states that "necessary restrictions on the ability of an applicant to take repeated examinations for the same class shall be adopted as rules." Since nearly 150 examinations will be open to continuous testing with tests administered in some instances as frequently as every two weeks, it is necessary to limit the number of times an individual may repeat a test so that memory effect does not permit an individual to virtually reconstruct the test, research the most appropriate answers, and thereby inflate to near perfect his or her score on the examination. Under such circumstances the examination would become an inaccurate measure of the predicted knowledges, skills and abilities for job performance.

A six month period has been adopted as reasonable to negate memory and practice effect without unduly denying applicants the opportunity to better their possibilities for employment after intervening experience or knowledge acquisition. Six months is consistent with practices in a number of governmental jurisdictions with similar procedures.

The six month retest prohibition would apply only to written and oral examinations where memory effect could be present and does not place any restrictions on the other testing procedures such as experience and training or performance tests where administratively such a restriction would be helpful but not mandatory for the security of examinations. The provision for transfer of scores where the same test is used for more than one classification or where an examination is given on both a competitive and promotional basis makes the six month retest prohibition even more reasonable since no individual will be arbitrarily penalized for competing in an examination by being barred from competing for another position using the same test. Every effort has been made to permit applicants all possible opportunity for employment without compromising the security of written and oral tests.

5. 2 MCAR §2.048 is amended to delete the tie breaking procedures which are obsolete.

Minn. Laws 1978 ch. 734 §6 amended Minn. Stat. §43.18, subds. 2 and 3, to provide that in addition to certifying the top 3 candidates from promotional eligible lists and the top 10 candidates from competitive eligible lists, all candidates having the identical score as the last name certified under those provisions would also be certified as eligible for appointment thereby eliminating the need to artificially break ties among candidates with the same score on certification reports to vacant positions. This change accounts for the deletion of the tie breaking procedure in the last two sentences of §2.048 which, under the previous circumstances, had meaning for an individual's opportunity for appointment but is no longer necessary due to the statutory amendment.

The eligible list must, however, have names placed in some order since it is not possible to have a list without an ordering procedure. The breaking of ties with veterans first and then nonveterans remains a requirement of Minn. Stat. §43.30 but we propose that the ordering of names beyond that for placement on the eligible list (which does not affect an individual's opportunity for appointment since all tied scores will be referred) be simply on a random order basis.

The random ordering procedure is scientifically accepted as a means of ordering without disadvantage to any particular group or individual since it is statistically neutral. This procedure is used rather than alphabetical arrangement by last name which tends to disadvantage certain ethnic groups and certainly persons whose surnames start with letters at the end of the alphabet. The procedure is designed to be completely neutral but to meet the necessity for placing names on an eligible list in some order.

6. 2 MCAR § 2.064 is amended to establish the criteria the Commissioner will consider in abolishing lists, establishing new lists or merging lists when examinations are given with considerable frequency.

Minn. Laws 1978 ch. 734 §2 amended Minn. Stat. §43.13 by adding a subdivision relating to the frequency of testing which indicated that "Procedures for the incorporation of scores into one eligible list if more than one examination is given for a class in one year ... shall be adopted as rules." The amendment will also clarify the normal life of eligible lists by placing all material relating to that fact together rather than having it broken up as it appeared in the previous version of the rule.

When examinations are given frequently, the Commissioner must make a determination as to whether an existing list should be abolished or merged with a new list. To make that consideration he must balance the needs of operating agencies for well qualified candidates available for immediate employment with the concerns of applicants for maximum employment opportunity. The amount of use an eligible list gets by being referred to a number of vacancies, how many candidates remain available for continued periods of time and revisions in the selection process must all be taken into account in making this determination. Where only one in five candidates remains available from an exam given a year or more ago, or where the

examination process has changed so that candidates from a previous exam are not able to be considered on the same basis as new candidates, the most appropriate decision would be to abolish a previous list. Where, however, the examination process is identical and the majority of candidates remain available, the appropriate decision would be to combine the previous list with the new list.

7. 2 MCAR §2.082 is amended to clarify that appointment procedures are contained in both Minn. Stat. ch. 43 and the Personnel Rules.

The existence of a number of ways that an individual may be appointed to the classified service other than through an eligible list which are plainly defined in law and need not be reiterated in the rule (700 hour work experience appointments, conversion of provisional appointments to probationary appointments following 60 days of satisfactory performance and noncompetitive promotions or noncompetitive direct appointments) makes it necessary to insert a reference to the law as well as the rules as a basis for the "other kind of appointments" which might occur as referenced in this rule. The fact that appointments can be made in these other ways makes it important to point out that the remaining portion of the rule relates only to the filling of a position by certification from an eligible list so that no confusion need exist.

Since Minn. Stat. ch. 43 does provide for several types of appointment which are not made from eligible lists and are not covered in the rules and since this rule is not intended to place a restriction on those means of appointment it is necessary to so amend this rule.

8. 2 MCAR §2.084 is amended to conform to Minn. Laws 1978, chs. 708 and 734 §6.

The existing rule needs to include language permitting the referral of all candidates having the same score as the last name certified in accordance with the amendments to Minn. Stat. §43.18, subd. 2 and 3, and to include language referring to the expanded certification provisions of Minn. Stat. §43.15, subd. 5. Without the proposed changes the language of the existing rule would appear to be in conflict with the requirements of the amended law.

The elimination of the previous tie breaking requirements and the expansion of the appointment list beyond 3 or 10 (depending on whether the lists involved are promotional or competitive) for a single vacancy makes inappropriate the retention of the previous procedure of adding one name for each additional vacancy when an agency may already have 15 to 20 or more names for the first vacancy. With this procedure deleted, each individual vacancy will stand on its own merits with the procedures of the law and rules applying to it. The remaining paragraphs of the rule are re-lettered appropriately.

9. 2 MCAR §2.085 is amended to clarify that appointment procedures are contained in Minn. Stat. ch. 43 as well as the Personnel Rules.

Since Minn. Stat. ch. 43 does provide for several types of appointment (700 hour work experience appointments, conversion of provisional appointments to probationary appointments following 60 days of satisfactory performance and noncompetitive promotions or noncompetitive direct appointments) which are not covered in the rules and since this rule is not intended to place a restriction on the means of appointment in an effort to negate those portions of the law which permit other appointments, it is appropriate that a reference to the law as well as the rules be made here.

10. 2 MCAR §2.086 is amended to delete the reference to seniority from this rule and move it to 2 MCAR §2.109.

In order to make the determination of seniority acquisition easier, all information bearing on the acquisition of seniority is being placed in a single rule (2 MCAR §2.109) rather than in the rules relating to various types of appointment. This should make it easier for employees, applicants and personnel officers to determine seniority acquisition by referencing a single rule rather than proceeding throughout all rules relating to various appointments. No changes of substance are proposed.

11. 2 MCAR §2.087 is amended to delete language which is redundant and language which is unworkable as well as to move the provision relating to seniority to 2 MCAR §2.109.

The material being deleted in the first paragraph of §2.087 is unnecessary since Minn. Stat. 43.20, subd. 3, spells out very clearly the prohibition of successive emergency appointments and more than three emergency appointments in any 12 month period. Repeating this in the rule is redundant and serves only to make the rules longer and thus to make it more difficult to find the information and procedures that the rules alone contain.

The 4th paragraph of the existing rule has proven unworkable. It is necessary to make emergency appointments as flexible as possible in order to permit easy coverage of work tasks in true emergencies. Thus, removal of restrictions concerning rates of pay within the salary range for the class for emergency appointments and removal of allocation requirements for such appointments which have proven unworkable is necessary. Emergency appointments are for ten day periods and for such short term appointments it is frequently difficult to offer the minimum rate since the emergency nature of the appointment requires an individual who may need to be experienced beyond the minimum of the class in order for the appointment to be useful. The requirement to allocate the position is also difficult to adhere to since a ten day appointment is usually completed by the time the paper is assembled for determination.

The final paragraph relating to seniority is better removed from this rule and placed with the other seniority provisions in 2 MCAR §2.109. Placing all information about the acquisition of seniority in a single rule should make that kind of information easier to access for personnel officers, employees and prospective applicants alike.

12. 2 MCAR §2.088 is amended to clarify the duration of a provisional appointment, delete redundant information and move all provisions relating to seniority to 2 MCAR §2.109.

The intent of Minn. Stat. §43.20, subd. 2 regarding provisional appointments is to permit an agency to fill a vacancy where there is no eligible list or where the existing list is inadequate. The statute further indicates that this condition shall exist "only until a selection and appointment can be made after the competitive examination". The provisional appointment practice, as it has existed to this time, has overlooked this portion of the statute and made usual the continuation of any provisional appointment to a six month maximum, regardless of whether or not an eligible list from which an appointment could be made has come into existence during that time. While it takes some time for an agency to make an appointment from an eligible list and while the mere existence of a list should not immediately terminate the provisional appointment leaving an agency with no work coverage during the time they are proceeding to make an appointment from the newly established list, the rules should spell out a reasonable time period during which the selection and appointment procedure can take place and thereafter require the termination of the provisional appointment since the conditions requiring a provisional appointment would no longer exist.

90 days has been selected as a reasonable period for selection once an eligible list has been established since departments under collective bargaining agreements may need to proceed through a posting and bidding procedure which can continue for a substantial period of time and, depending upon the level of position involved, a fairly extensive period of notice to a previous employer may be involved in making an appointment from an eligible list. This time period is given to permit all but the rarest of circumstances to be covered by continuation of the provisional appointee while the appointment procedure goes on, but without permitting the provisional appointment to continue to a maximum of six months when an eligible list is established shortly after the provisional appointment is made.

The deletion of the second paragraph of the existing rule serves to diminish redundancy between the law and Minn. Stat. §43.20, subd. 2 since that statute quite specifically states that no person shall receive more than one provisional appointment nor serve more than six months in any twelve month period as a provisional appointee except where in individual cases the Commissioner grants an exception for the good of the service.

The last paragraph of the existing rule is being deleted from this rule and placed in 2 MCAR §2.109 where the other provisions on the acquisition of seniority appear. Placing all information about the acquisition of seniority in a single rule should make that kind of information easier to access for personnel officers, employees and prospective applicants alike.

13. 2 MCAR §2.106 is amended to delete the reference which prohibits an individual from being an employee of the state after his or her 65th birthday. The 1978 amendments to the Federal Age Discrimination in Employment Act, P.L. 95-256, prohibit the mandatory retirement of any employee covered by the act prior to age 70 effective January 1, 1979. Employees of any state or political subdivision thereof are among those employees covered by that act, 29 U.S.C. §621 et seq. Therefore, effective January 1, 1979, the federal act will supercede Minn. Stat. §§43.05, subd. 1 and 354.44, subd.1a which require that state employees retire at age 65. The provisions of this rule prohibiting employment after age 65 will be in violation of the federal act and must therefore be deleted. However, since certain state employees will still be required to retire prior to age 70 (the Highway Patrol, tenured state university and community college faculty, and certain correctional employees) and it is unclear what action the 1979 Legislature will take in this area, it is more reasonable to drop the prohibition altogether than to merely substitute age 70 for age 65.

14. 2 MCAR §2.109 is amended to place all provisions relating to seniority into one rule.

This change is suggested to collect in a single place all information dealing with the acquisition of seniority. This will eliminate the need to check for seniority acquisition in each rule relating to various types of appointments and provide a single reference on this subject. There is no substantive change in any of the provisions relating to seniority.

15. 2 MCAR §2.134 is amended to clarify that vacation and sick leave hours may not be used in the payroll period in which they are earned. Since such leave hours are accrued by payroll period, they are not actually accrued for use until the end of the payroll period. This clarification is the result of a request from employees of the Legislative Audit Commission. They indicated that there are several departments that allow the use of vacation or sick leave before the end of the payroll period in which it was earned. This practice results in confusing and inaccurate leave records which the auditors find difficult to audit and which significantly increase the potential for erroneous payments. This amendment will clearly establish a consistent statewide practice in this area.

The rule is also amended to substitute the word vacation for the word annual whenever it appears so that the terminology in the rules will be consistent and easier for individuals using the rules to understand.

16. 2 MCAR §§2.135 and 2.136 are amended to clarify that the appointing authority may establish vacation and sick leave provisions for those unclassified employees listed in 2 MCAR §2.004. 2 MCAR §2.004 excludes certain unclassified employees from coverage by the Personnel Rules unless they are specifically included. Although the appointing authorities of such employees establish their vacation and sick leave provisions, the language of the existing rules did not make this authority clear.

These rules are also amended to substitute the word vacation for the words annual whenever it appears so that the terminology in the rules will be consistent and easier for individuals using the rules to understand.

§2.136 is further amended to place a paragraph currently contained in §2.142 in this section where it more appropriately belongs. This will place all the language relating to sick leave balances into one rule and make it easier for persons using the rules to find.

17. 2 MCAR §2.142 is amended to delete the provision relating to sick leave balances from this rule and place it in §2.136 for the reasons outlined above. It is further amended to substitute the word vacation for the word annual whenever it appears so that the terminology in the rules will be consistent and easier for individuals using the rules to understand. The reference to the reinstatement of a former employee's sick leave accrual rate is deleted since there is only one sick leave accrual rate regardless of length of service. Therefore, there is nothing to reinstate and the language merely causes confusion.

18. 2 MCAR §2.175 is amended to conform to Minn. Laws 1978, ch. 708 and to delete the reference to municipal human rights commissions which is erroneous and therefore misleading. Minn. Laws 1978, ch. 708 establishes a statewide affirmative action plan and supercedes Executive Order 76, as amended. This amendment brings the rule into conformity with that change. The deletion of the reference to municipal human rights commissions is necessary to avoid misleading employees since municipal human rights commissions do not have the authority to resolve complaints against the State of Minnesota. Minn. Stat. §363.06 requires that a charge be filed within six months of the event giving rise to the grievance. An employee who first attempted to use a municipal agency might waste so much of this period that he or she was then unable to file a timely charge with the State Department of Human Rights. This amendment would eliminate this misleading reference without making any change in an employee's substantive rights.

19. 2 MCAR §2.235 is amended to clarify the definition of probationary employee.

This definition has always been somewhat incomplete as it appears to indicate that only an individual appointed from an eligible list need serve a probationary period. In fact, Minn. Stat. §43.21 on probationary periods indicates that "all original appointments and promotions within the classified civil service, shall be for a probationary period ...". The definition, therefore, needs to be amended to include employees who begin employment in a class by any of the other means of appointment. This group has always included noncompetitive appointments under Minn. Stat. §43.19, subd. 1(2), and Minn. Stat. §43.20, subd. 4, as well as interdepartmental and intergovernmental transfers. It now needs to include, as well, those appointments resulting from successful completion of a 700 hour trial work experience in accord with Minn. Laws 1978, ch. 630 and following a provisional appointment conversion to probationary appointment by the Commissioner in accord with Minn. Stat. §43.20, subd. 2 as amended by Minn. Laws 1978, ch. 734 §8. In short, all appointments to the classified service are subject to a probationary period except provisional, emergency and temporary appointments.

The language suggested is the best language which could be found to clarify the various means of appointment other than from the eligible list through which individuals can enter, transfer, or be promoted in the state service and begin a probationary period as required by statute. A review of the number of types of appointments which result in probationary period indicated that they were so numerous as to make such a list cumbersome and that the shorter list of appointments not subject to probationary periods would give greater clarity to the rules.

20. 2 MCAR §2.239 is amended to clarify the definition of provisional employee.

The definition of provisional employee has been too broad since individuals may be appointed to the state service without being appointed from an eligible list and still not be appointed on a provisional basis, to wit, those appointed noncompetitively under provisions of Minn. Stat. §§43.19, subd. 1(2), and 43.20, subd. 4, and now those appointed as a result of 700 hour work experience testing and by conversion of a provisional appointment to probationary appointment. The definition must therefore be clarified to indicate very specifically that this definition refers only to those individuals appointed conditionally under provisions of Minn. Stat. §43.20, subd. 2.

The proposed language provides a clearer definition of provisional employee such that no confusion need arise between those appointments made on a provisional basis and appointments made following other legal procedures but not from an eligible list as the previous definition permitted.

21. 2 MCAR §2.241 is amended to clarify the definition of reemployment list.

This definition has been too narrow to encompass the two groups of eligibles whose names may be placed on the reemployment list as provided in 2 MCAR §2.061. That rule does not limit candidacy for the reemployment list only to those separated from the service, but includes as well individuals who have been laid off from a classified position. This latter group may not necessarily be separated from service but may have remained in the service by accepting a demotion to a former or lower classification. In this case the individual is plainly permitted the opportunity for placement of his/her name on the reemployment list and the definition of that list should include the laid off employee as well as the employee who has separated from the service.

22. In addition to the above, the Department of Personnel proposes to amend various rules to correct grammatical errors.

Clarence E. Harris
Commissioner of Personnel

Dated: August 4, 1978

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAY-OFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND RE-EMPLOYMENT LIST.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Personnel Commissioner of the State of Minnesota on August 31, 1978 at 9:30 a.m. in Room 83 of the State Office Building, St. Paul, Minnesota, after proper notice required by Minn. Stat. Section 15.0412 (1977 supp.) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules and the reasonableness thereof;

NOW, THEREFORE, IT IS ORDERED that these rules identified as amendments to existing personnel rules, 2 MCAR 2.039, 2.040, 2.044, 2.048, 2.064, 2.082, 2.084-2.088, 2.106, 2.109, 2.134-2.136, 2.142, 2.175, 2.235, 2.239, and 2.241 are adopted and 2.043 is repealed this 10th day of October, 1978 pursuant to authority vested in me by Minn. Stat. Sections 43.05, subd. 2, 43.18, 43.23, 43.323 and Minn. Laws 1978, Chapters 708 and 734 and in accordance with the Administrative Procedures Act, Minn. Stat. Sections 15.0411 to 15.052.

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

Clarence E. Harris

CLARENCE E. HARRIS

COMMISSIONER OF PERSONNEL

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

ADOPTED RULES GOVERNING THE
EXAMINATION, REFERRAL AND
APPOINTMENT OF CANDIDATES,
RETIREMENT, LAY-OFF, VACATION
AND SICK LEAVE, APPEAL PROCEDURES,
AND THE DEFINITION OF PROBATIONARY
EMPLOYEE, PROVISIONAL EMPLOYEE
AND RE-EMPLOYMENT LIST.

The rules published at State Register, Volume 3, number 4, pp. 124-134, July 31, 1978 (3 S.R. 124) are adopted and are identical in every respect to their proposed form, with the following amendments:

2 MCAR 2.136 Sick leave. This rule applies to all classified state employees in the executive branch except for non-tenured laborers, emergency employees, project employees, or temporary appointment employees and also applies to all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR 2.004. Sick leave provisions may be established by the appointing authority for those unclassified employees listed in 2 MCAR 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage. Sick leave shall be earned by each eligible employee according to the rate schedule indicated below

HOURS OF SICK LEAVE ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

Number of Hours Worked During Pay Period	Less than 900 hours	900 hours and maintained
0 - 9	0	0
10 - 19	3/4	1/4
20 - 29	1	1/2
30 - 39	1 1/2	3/4
40 - 49	2	1
50 - 59	2 1/2	1 1/4
60 - 69	3	1 1/2
70 - 79	3 1/2	1 3/4
80 and over	4	2

Changes in the rate of accumulation for eligible employees shall be made effective following the payroll period in which the 900 hour maximum accrual is attained.

An eligible employee being paid for less than a full payroll period of 80 hours will have sick leave pro-rated for that payroll period unless the employee is on Workers' Compensation, in which case sick leave would be accrued for the total hours compensated by Workers' Compensation, sick leave, and vacation leave provided that sick leave or vacation leave is used in conjunction with the Workers' Compensation benefit. Unused sick leave hours may be accumulated to a total of 900 working hours. When the maximum limitation has been accumulated, the rate of accumulation will be reduced to two hours per full payroll period, and these hours shall be placed in a lapsed sick leave bank. Any employee who has such lapsed sick leave recorded may apply to the appointing authority to have the lapsed sick leave restored in the event of an extended illness. The appointing authority may authorize use of all or any part of the lapsed sick leave after thorough investigation, including submission of complete medical reports providing both a diagnosis and prognosis of the illness. The appointing authority shall report to the Commissioner all instances of lapsed sick leave restored in such form as prescribed by the Commissioner.

Time off on authorized sick leave will be deducted from the first 900 hours. Once the employee no longer possesses 900 hours of sick leave, four working hours for each full payroll period will be accumulated until the 900 maximum limit is again obtained.

Employees may utilize their allowance of sick leave, without regard to length of service, on the basis of application to and approval by the appointing authority, where absence is necessitated by inability to perform the duties of the position by reason of illness, pregnancy or pregnancy-related problems, or disability; by necessity for medical, dental, or chiropractic care; by exposure to contagious diseases under the circumstances in which the health of employees with whom they are associated or members of the public with whom they deal may be endangered by their attendance on duty; or by illness in their immediate family for such periods as their attendance shall be necessary. Employees may also utilize not more than three days sick leave for the birth or adoption of a child. The term "immediate family" shall be limited to the spouse, minor or dependent children, or parent living in the household of the employee and where the parent has no other person to provide the necessary nursing care. Either the appointing authority or the Commissioner may require medical examination, medical certificate, or statement from a chiropractor, as deemed necessary for approving the utilization of sick leave. A written statement from a Christian Science practitioner that the employee is a Christian Scientist and is undergoing treatment may be accepted in lieu of a medical statement.

Use of a reasonable period of sick leave shall be authorized in case of death of a spouse, the parents of a spouse, and the parents, grandparents, guardian, children, brothers, sisters, or wards of the employee. In no instance will sick leave be granted in increments of less than 1/2 hour except to permit utilization of lesser fractions that have been accrued.

Employees receiving injury on duty pay shall not have this time deducted from their regular accrued sick leave balance.

A former state employee who is reappointed within four years of separation from the state service under the provisions of the act and these rules except as a provisional, temporary or emergency appointee, may have previously accumulated, unused balance of sick leave revived and credited to that employee upon approval of the new appointing authority.

An employee who transfers to the jurisdiction of another appointing authority without interruption in service to the state shall be entitled to a credit in the new employment for the accumulated unused sick leave earned in the former employment.

Employees in the unclassified service of the state who are subsequently appointed to a position in the classified service, or vice versa, without an interruption in service shall have their accumulated but unused sick leave balance posted to their credit in the records of the employing department provided such sick leave is accrued in accordance with the provisions of these rules.

An employee of a merit system jurisdiction or the federal competitive service with probationary or permanent status may transfer or be appointed to a position in the state service and may be credited with the amount of sick leave accumulated at the time of transfer, but not more than 12 days. Such credit shall be reduced proportionately as sick leave is accumulated in the state service.

2 MCAR 2.142. Vacation Leave Accumulated Balance and Accrual Rates Upon Reinstatement or Reappointment. An employee who is reinstated or reappointed to state service within one year of the date of resignation in good standing, retirement or layoff shall accrue vacation leave at the same rate with the same credit or length of service that existed at the time of such separation.

An employee reappointed to state service after one year but not more than four years from the date of resignation in good standing, retirement or layoff may, at the appointing authority's discretion, accrue vacation leave at the same rate and with the same accredited length of service that existed at the time of separation.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PERSONNEL

In the Matter of the Proposed Amendment of Rules of the Department of Personnel Governing the Examination, Referral and Appointment of Candidates, Retirement, Lay-off, Vacation and Sick Leave, Appeal Procedures, and the Definition of Probationary Employee, Provisional Employee and Re-Employment List.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on August 31, 1978, before Harry Seymour Crump, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Personnel, and;

WHEREAS, the Department has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Department has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Department has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Personnel has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §. 15.0412, subd. 4.

Dated this 12th day of October, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF THE ATTORNEY GENERAL

IN THE MATTER OF THE PROPOSED RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAY-OFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND RE-EMPLOYMENT LIST.

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General, Barbara Lindsey Sims, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: October 10, 1978.

Barbara Lindsey Sims

BARBARA LINDSEY SIMS
Special Assistant Attorney General

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAY-OFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND RE-EMPLOYMENT LIST.

FINDINGS OF FACT

The above-entitled matter came on for hearing in St. Paul, Minnesota on August 31, 1978, before Harry Seymour Crump, a Hearing Examiner assigned by the Chief Hearing Examiner.

The following persons appeared for the Department of Personnel (hereinafter, "Personnel"): Donn Escher, Assistant Commissioner, Department of Personnel; Julie Vikmanis, Examining and Referral Manager, Department of Personnel; James Lee, Senior Personnel Representative, Department of Personnel; and Barbara Lindsey Sims, Special Assistant Attorney General, assigned to the Department of Personnel. Two other persons attending the hearing signed the hearing register. The hearing continued until all interested persons or groups had had an opportunity to participate.

Hearing Examiner Crump prepared the Report of the Hearing Examiner (hereinafter "Report"), dated October 3, 1978 pursuant to Minn. Stat. Section 15.052, subd. 3 and Minn. Rules H.E. 106.

Based upon all the records and proceedings herein, the Commissioner makes the following:

FINDINGS OF FACT

1. He adopts Findings 1 - 6 of the Report, which findings relate to the procedural requirements, and statutory authority for the proposed rules.

2. He adopts Findings 7 - 18 of the Report, which findings relate to the need for, the nonsubstantial modification of and the reasonableness of the proposed rules.

CONCLUSIONS

1. He adopts Conclusions 1 - 3 of the Report.

Dated: October 10, 1978.

CLARENCE E. HARRIS
Commissioner of Personnel

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAYOFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND REEMPLOYMENT LIST.

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, 1745 University Avenue, Room 300, St. Paul, Minnesota, and in support thereof, the Department of Personnel will introduce the following evidence at the hearing in this matter:

I. Testimony

Testimony will be presented explaining the various changes proposed, the conditions which led to the need for the proposed changes including a summary of specific legislation and legislative intent and the problems in interpretation of the present rules which are clarified in the proposed changes. It is anticipated that Donn Escher, Jim Lee and Julie Vikmanis of the Department of Personnel will explain each rule change and show that it is required by law or reasonably necessary as a change in the personnel process.

II. Documentary Evidence

We intend to introduce the following documentary evidence at the hearing in this matter:

1. Memoranda documenting the review by the Personnel Board of the proposed rule amendments.

2. Mermorandum from the Personnel Advisory Committee supporting several of the proposed rule amendments.

3. Appendix II and III of the Report of the Pennsylvania Civil Service Commission surveying civil service jurisdictions on their test procedures.

4. Letter from the Legislative Audit Commission.

III. Statutes, Laws and Rules

1. Age Discrimination in Employment Act Amendments of 1978, P.L. 95-256, approved April 6, 1978.

2. Minn. Stat. ch. 43

3. Minn. Laws 1978 ch. 630

4. Minn. Laws 1978 ch. 708

5. Minn. Laws 1978 ch. 734

Clarence E. Harris
Commissioner of Personnel

Dated: August 4, 1978

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAYOFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND REEMPLOYMENT LIST.

AFFIDAVIT OF MAILING

Agnes Holmes, being first duly sworn, deposes and says:

That on the 27 day of July, 1978, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Further affiant sayeth not.

Agnes Holmes

Subscribed and sworn to before me this

27 day of July, 1978.

CHRISTINE F. GOODWILL
NOTARY PUBLIC - MINNESOTA
DAKOTA COUNTY
MY COMMISSION EXPIRES NOV. 18, 1982

Christine F. Goodwill

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAYOFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND REEMPLOYMENT LIST.

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

James B. Lee, being duly sworn on oath deposes and says:

1) That he is an employee of the Department of Personnel of the State of Minnesota.

2) That on the 24th day of July, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups of persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. Sec. 15.0412.

3) That on the 24th day of July, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

James B Lee

Subscribed and sworn to before me this 24th day of July, 1978

DENISE A. GREENE
NOTARY PUBLIC – MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAR. 1, 1984

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAYOFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND REEMPLOYMENT LIST.

CERTIFICATE OF DELIVERY
SECRETARY
OF STATE LIST

I hereby certify that the attached 488 Labels 2 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:30 o'clock A .m., this 24th day of July, 1978, have requested pursuant to Minn. Stat. Sec. 15.0412, subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

SECRETARY OF STATE

By Donna Scott

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAYOFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND REEMPLOYMENT LIST.

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in Room 83, State Office Building, St. Paul, Minnesota 55155 on August 31, 1978 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Harry Crump, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8111, either before the hearing or within 5 working days after the close of the hearing.

The proposed amendments, if adopted, would amend 2 MCAR§§ 2.039 to delete the requirement that the selection process for incumbents of reallocated positions must be the same process as last given for the class to which the position has been reallocated; 2.040 to require that applications contain a statement on the verification of information; 2.044 to provide a six month retest prohibition for oral and written examinations; 2.048 to delete the tie breaking provision; 2.064 to clarify when eligible lists would be cancelled or merged and provide for the term of individual candidate eligibility; 2.082 and 2.085 to clarify that appointments are pursuant to Minn. Stat. ch. 43 and the personnel rules; 2.084 to provide for the certification of additional names as authorized by Minn. Laws 1978, chs. 708 and 734; 2.086, 2.087, 2.088 and 2.109 to consolidate all provisions relating to seniority into one rule and make other changes relating to emergency and provisional appointments; 2.106 to delete the provision which prohibits an individual from being an employee of the state after his or her 65th birthday; 2.134 to provide that vacation and sick leave hours may not be used during the payroll period in which they are earned; 2.135 and 2.136 to clarify that appointing authorities may establish

vacation and sick leave provisions for those unclassified employees listed in 2.004 and to move language relating to sick leave from 2.142 to 2.136; 2.175 to update what appeal procedures are available to state employees; 2.235, 2.239 and 2.241 to redefine probationary and provisional employees and reemployment list; and would repeal 2 MCAR§ 2.043.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Department of Personnel, 3rd Floor Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. A Statement of Need explaining why the agency feels the proposed rules are necessary and a Statement of Evidence outlining the testimony the department will be introducing at the hearing will be filed with the Office of Hearing Examiners at least 25 days prior to the hearing and will be available there for public inspection.

The agency's authority to promulgate the proposed rules is contained in Minn. Stat. ch. 43 and Minn. Laws 1978 chs. 708 and 734.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Clarence E. Harris

Commissioner of Personnel

Date: July 17, 1978

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING THE EXAMINATION, REFERRAL AND APPOINTMENT OF CANDIDATES, RETIREMENT, LAYOFF, VACATION AND SICK LEAVE, APPEAL PROCEDURES, AND THE DEFINITION OF PROBATIONARY EMPLOYEE, PROVISIONAL EMPLOYEE AND REEMPLOYMENT LIST.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Room 83, State Office Building, St. Paul, Minnesota 55155 on August 31, 1978 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Clarence E. Harris

Commissioner of Personnel

Date: July 17, 1978

Pages 2243-2298

State Register

STATE OF MINNESOTA

HIGHLIGHTS:

PROPOSED RULES
Administration of Chemical Tests for Intoxication

Pharmaceutical Practices

Aid to Families with Dependent Children Program

STATE CONTRACTS

OFFICIAL NOTICES

A detailed table of contents appears inside.

VOLUME 2, NUMBER 50

JUNE 19, 1978

this service, pursuant to Minn. Stat. § 144.802 (Supp. 1977) may be made in writing to Warren R. Lawson, M.D., within the time period outlined by statute.

Health Central, Inc., Ambulance Division, Application for Licensure

On May 16, 1978, Health Central, Inc., Ambulance Division, filed application with Warren R. Lawson, M.D., Commissioner of Health, for a license to operate a (an) emergency/nonemergency land ambulance service with a base of operation in Vadnais Heights, Minnesota. This notice is made pursuant to Minn. Stat. § 144.802 (Supp. 1977). Please be advised that subd. 2 of that statute states, in part: The Commissioner may grant or deny the license 30 days after notice of the filing has been fully published. If the commissioner receives a written objection to the application from any person within 20 days of the notice having been fully published, the license shall be granted or denied only after a contested case hearing has been conducted on the application. The commissioner may elect to hold a contested case hearing if no objections to the application are received. If a timely objection is not received, the commissioner may grant or deny the requested license based upon the information contained in the license application. If licensure is denied without hearing, the applicant, within 30 days after receiving notice of denial, may request and shall be granted a contested case hearing upon the application, at which hearing all issues will be heard de novo. Any objections to this service, pursuant to Minn. Stat. § 144.802 (Supp. 1977) may be made in writing to Warren R. Lawson, M.D., within the time period outlined by statute.

Higher Education Coordinating Board

Notice of Intent to Solicit Outside Information Regarding Proposed Amendment of Rules Governing Private Institution Registration

Notice is hereby given that the Minnesota Higher Education Coordinating Board is seeking information or opinions from sources outside the agency in preparing to propose the amendment of rules governing private institution registration (presently 5 MCAR §§ 2.0901-2.1000). Any interested persons may submit data or views on this subject in writing or orally to:

Ann Kelley
Minnesota Higher Education
Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-9672

Any written material received by the agency shall become a part of the hearing record in the event amended rules governing this subject are promulgated.

Department of Labor and Industry Occupational Safety and Health Division

Notice of Proposal for Reaffirmation of Rule

Please take notice, that pursuant to the decision of the Minnesota Supreme Court in *Minnesota Public Interest Research Group v. Minnesota Department of Labor and Industry*, _____ Minn. _____, 249 N.W.2d 437 (1976), E. I. Malone, Commissioner, Minnesota Department of Labor and Industry, has determined that the existing health standards regarding exposure of employees to carcinogens and vinyl chloride should be reaffirmed. These standards were adopted by the commissioner on February 13, 1975, and are consonant with the current Federal Occupational Safety and Health Standards published at 29 C.F.R. §§ 1910.1003 through 1910.1017.

Complete copies of the specific standards reaffirmed as described above are available by writing: Deputy Commissioner, Minnesota Department of Labor and Industry, 444 Lafayette Road, St. Paul, Minnesota.

Interested persons are hereby afforded a period of thirty (30) days to submit written data, comments, or objections to the rule proposed. Any interested person may request a public hearing on such objections.

May 31, 1978

Department of Personnel

Notice of Intent to Solicit Outside Opinion Regarding Personnel Rule Changes

Notice is hereby given that the Department of Personnel is seeking information or opinion from sources outside the

agency in preparing to propose rules relating to the verification of employment applications and amendments to its rules relating to the examination, referral and appointment of candidates for classified positions, emergency, probationary and provisional appointments, and annual and sick leave.

The department invites interested persons or groups to submit information or comments on these subjects in writing or orally to Donn Escher, Assistant Commissioner of Personnel, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101.

Written statements will be made a part of the public hearing record.

Pollution Control Agency

Application of the Department of Transportation for a Variance from NPC-2 for Construction and Operation of Interstate Highway 94 through North Minneapolis and Brooklyn Center

Notice of Hearing

It is hereby ordered and notice is hereby given that further hearing concerning the above-entitled matter will be held on Wednesday, the 12th day of July, 1978, at the Board Room of the Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota, beginning at 9:30 a.m. and continuing until all persons can be heard.

The hearing will be before William Seltzer, 1745 University Avenue, St. Paul, Minnesota 55104 (296-8105), a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota.

This matter was originally noticed on July 29, 1977, and was heard by the hearing Examiner on September 1, 2 and 6, 1977. The Hearing Examiner issued his report on March 9, 1978. This matter came on for final decision by the Minnesota Pollution Control Agency at its meeting on May 2, 1978. The agency accepted a portion of the Hearing Examiner's Report and granted variances from State Noise Standards for four land areas (identified as Areas Nos. 7, 9, 10 and 11) abutting the proposed Interstate Highway 94. As to all other areas for which variances were requested by the Department of Transportation (identified as Areas No. 1-6, 8, 12 and Areas A through L), the agency remanded this matter to the Hearing Examiner for the taking of further evidence concerning alternative noise abatement techniques and the reasonableness of the implementation thereof. A map prepared by the Department of Transportation which shows the locations of areas for which variances are requested is on file at the Minnesota Pollution Control Agency offices for inspection.

The purpose of the hearing will be to receive and consider testimony and evidence bearing on the application of the Department of Transportation for variances from State Noise Standards Minn. Reg. NPC-2 for the construction and operation of Interstate Highway 94, a proposed eight lane freeway through North Minneapolis and Brooklyn Center. The following subject matter will be addressed:

1. The need for a variance in Area Nos. 1, 8 and 12.

2. Alternative noise abatement techniques applicable to Area No. 4, including acquisition of property as a buffer zone, and the reasonableness of the implementation of such alternatives.

3. Alternative noise abatement techniques applicable to the residential high-rise buildings located in Areas Nos. 2, 3, 5 and 6 and the reasonableness of the implementation of such alternatives.

4. Alternative noise abatement techniques applicable to the residential properties located in Areas A through L, including the raising of presently proposed barrier heights in order to meet nighttime noise standards, and the reasonableness of the implementation of such alternatives.

5. Such additional evidence as the parties wish to present concerning alternative road surfaces on the proposed highway.

6. Such additional evidence as the parties wish to present concerning speed reduction on the proposed highway.

The Minnesota Pollution Control Agency is authorized to hold such hearing and grant such variances by Minn. Stat. § 116.07, subd. 5 (1976), and pursuant to its rules MPCA 6 and NPC-1(c). The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411 through 15.052 and rules HE 201 through 222. Questions concerning this matter may be directed to Special Assistant Attorney General Jocelyn Furtwangler Olson (296-7343) or Alfonso E. Perez, Chief of the Noise Section (296-7340), Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota 55113.

The above-cited procedural rules are available at the Office of Hearing Examiners or may be purchased from the Documents Section of the Department of Administration, 140 Centennial Building, St. Paul, Minnesota 55155 (296-2874). Copies of regulations and other documents pertinent to the proposed variance and application therefor are available for

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PERSONNEL

In the Matter of the Proposed Amendment of Rules of the Department of Personnel Governing the Examination, Referral and Appointment of Candidates, Retirement, Layoff, Vacation and Sick Leave, Appeal Procedures, and the definition of Probationary Employee, Provisional Employee and Reemployment List.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Harry Seymour Crump from the State Office of Hearing Examiners on August 31, 1978, at 9:30 a.m. in Room 83 of the State Office Building, Capitol Complex, in the City of Saint Paul, County of Ramsey, State of Minnesota.

This Report is a part of the rule hearing procedure held pursuant to Minn. Stat. Sec. 15.0411 to Sec. 15.0417, and Sec. 15.052, to determine whether the proposed rules should be adopted and given the force of law. Copies of this Report are available for review from the Department of Personnel and from the Office of Hearing Examiners.

Members of the agency panel appearing at the hearing included: Donn H. Escher, Assistant Commissioner, Department of Personnel; Julie Vikmanis, Examining and Referral Manager, Department of Personnel; James Lee, Senior Personnel Representative, Department of Personnel; Barbara Lindsey Sims, Special Assistant Attorney General, assigned to the Department of Personnel.

Two public witnesses appeared and only one spoke at the hearing. Two written comments were received from the public and a written response to one of the comments was received from the Department of Personnel (hereinafter the "Department") subsequent to the mailing of the Notice of Hearing through the end of the five working day period for written comment following the hearing.

Based upon all the testimony, exhibits and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On July 17, 1978, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On July 31, 1978, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 124.

3. On July 27, 1978, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On August 4, 1978, the Department filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) The Statement of Evidence, including the names of witnesses to be called;
(h) The names of Department personnel who will represent the agency;
(i) The Notice of Intent to Solicit Outside Information as published in the State Register at 2 State Register 2292 on June 19, 1978, together with memorandum by Senior Personnel Representative dated August 8, 1978, indicating that the Department received no response to said Notice;
(j) The Memorandum by the Secretary of the State Personnel Board advising that the Minnesota State Personnel Board has reviewed and approved the proposed amendments pursuant to Minn. Stat. Sec. 43.323; and
(k) The Memorandum by the Personnel Advisory Committee supporting several of the proposed rule amendments.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of hearing.

5. The record remained open through September 8, 1978 for the receipt of written comments and statements.

6. The Department cites as its statutory authority for promulgation of these rules Minn. Laws 1978, Ch. 708 and 734, and Minn. Stat. Sec. 43.05, subd. 2, Sec. 43.18, 43.23, 43.323 (1976).

2 MCAR Sec. 2.039 - Eligibility to Compete

7. Section 2.039 C. is amended to delete the requirement that the examination given to incumbents of a reallocated position be the same or equivalent to the one last given for the position. The purpose of the proposed rule is to facilitate the administration of the more appropriate examination selection process for the incumbent of a reallocated position. The proposed amendment would permit the incumbent of a reallocated position an opportunity to qualify without the Department conducting a competitive examination process and soliciting applications for the reallocated position.

8. The amendment to paragraph C. 1. of this rule is merely to provide clarify and eliminate confusion in the wording of the rule.

9. By letter dated August 28, 1978, from the Minnesota Energy Agency (hereinafter MEA) Mr. Brynolsfon suggested that Section 2.039 C.2. should be deleted since it does not meet the definition of Section 2.019. Thus, it constitutes a "change in allocation" under Section 2.018. At the hearing, the Department opposed any change as suggested by MEA. The Examiner concludes that the deletion of Section 2.039 C.2. is not a matter before the Hearing Examiner at this hearing, and therefore, is inappropriate to be considered herein.

10. In lieu of the Department's amendment of Section 2.039 C.1., Council 6, AFSCME, (hereinafter Council 6) suggested by post-hearing comment that "the incumbent did not participate in a the same written or competitive oral examination process for such a position" (in the six-months previous to the date of reallocation). (Ex. B.) By post-hearing comment, the

Department in opposing any change indicated that tests are no longer word for word the same. The content of tests remains virtually unchanged. Allowing individuals to retake the test immediately in such situations would give them an unfair advantage in the selection process because of the prior opportunity to review the test items. (Ex. 19) The rule is both needed and reasonable as proposed.

2 MCAR Sec. 2.044 - Conduct of Selection Processes

11. Section 2.044 sets out the conduct of the selection processes. It provides for a six month retest prohibition for oral and written examinations. The Department stated that since many examinations were open to continuous testing with tests administered, in some instances as frequently as every two weeks, it is necessary to limit the number of times an applicant may repeat a test so that memory effect does not permit an applicant to virtually reconstruct the test, research the most appropriate answers, and thereby inflate to nearly perfect his or her score on the examination. By a post-hearing comment, Council 6 suggested that the prohibition be only for three months and that Section 2.039 D.(1) be amended accordingly. (Ex. B) In citing the survey on retesting done by the State of Pennsylvania (Ex. 16), Council 6 pointed out that the most frequent retest time found in the survey was one month. By a post-hearing comment, the Department stated that the objections to the six-month retest interval do not reflect the additional information provided in the commentary surrounding the "summary of questionnaire response" contained in the exhibit. (Ex. 16) The survey authors specifically pointed out that the table summarizes "unusual" retest requirements, which are subject to a variety of exceptions. The Department's proposal seeks to establish a standard retest policy applicable to all cases. This approach is supported by the references cited in Appendix III of the survey. (Supra)

12. The Exhibit (Ex. 16) clearly shows that the length of the retest interval affects the retest results. The authors state: ". . .the shorter the elapsed time before retesting, the greater the score increase". In Section D of Appendix III, both sets of goals identify the length between the time elapsed and the test results, as well as point out that higher result retest scores on general ability tests result from test familiarity rather than an actual increase in job related knowledge.

13. In this rule, the Department also proposes to allow the transfers of scores if the same test is used for more than one classification. Council 6 suggested that this part of the rule be deleted and that the rules state that the retest prohibition apply only to tests for the same class. In addition, applicants should not be penalized because of the decision of the Department to use the same exam for different classes or for both competitive and promotional exams. The Department stated that this portion of the rule was based on convenience of the applicant as well as test security considerations. The Department stated that the Department of Personnel's determination to use

the same exam in more than one situation is based on careful review of the requirements of the classes. Where job analysis shows that the knowledge, skills and ability needed to successfully perform the duties of several classes are identical, the same selection process would be administered for the classes. Where the test for a classification is given both competitively and promotionally, the only differences in the promotion process are the restriction of applications to current state employees and the addition of a promotional rating and length of service credit. The written test itself would be the same in either case. (Ex. 19) As proposed, the rule is needed and reasonable.

2 MCAR Sec. 2.064 - Duration of Eligible Lists

14. Section 2.064 clarifies when eligible lists would be cancelled or merged and provide for the term of individual candidate eligibility. Council 6 suggested in its post-hearing comment that a definite eligibility period for the candidate's name to remain on the eligibility list should be established in advance for all examinations. (Ex. B, Item 3) In its reply, the Department stated that requiring the adoption of specific eligibility periods when the conditions which will prevail during the life of the list cannot be determined, would have expensive and unacceptable consequences. (Ex. 19) The viability of any given eligibility lists is affected by a number of variables. (E.g., number of appointments, continued availability of applicants) Under Minn. Stat. Sec. 43.17, subd. 2, candidates are already being informed of the minimum period of eligibility. This notice appears in the bi-monthly announcement. It is also contained in the individual notice of examination results sent to each applicant. The Department states that it would be nonsensical to state in open continuous announcement that the existing list is to be abolished or merged. Instead, the announcements for these classes inform candidates of the length of time they will remain on the list for possible appointments once they have successfully completed the selection process. (Ex. 19) The rule is needed and reasonable as proposed.

2 MCAR Sec. 2.087 - Emergency Appointments

15. This rule is amended to delete language which is redundant and unworkable. The final paragraph relating to seniority is removed from this section and inserted in Section 2.109. The deletion under this rule eliminates the requirement of making emergency appointments at the minimum rate for the class. By post-hearing comment, Council 6 questioned the statutory authority of the Department to pay emergency employees outside the salary range established for the class and assign positions to job classifications outside of the classified service. The Department cited Minn. Stat. Sec. 43.20, subd. 3, governing emergency appointments, which indicates that " . . . an appointment may be made without regard to the provisions of this chapter. . . ." The Department cited also Minn. Stat. Sec. 43.12, which provides for the general authority of the Commissioner of Personnel to make appointments. The Department further stated that it does not propose to pay emergency appointees without regard to the established salary ranges. Emergency

positions will be allocated to a specific class, and no rate of pay outside the existing salary range for that class would be allowed. The change which the Department proposed seeks to delete the time consuming and unnecessary requirement that allocations be approved in advance and that appointments be made at the minimum (i.e., the first step of a salary range for the class to which the position has been allocated). (Ex. 19) The rule, as proposed, is needed and reasonable. The Statutes (supra) provide for the authority of the Commissioner of Personnel to propose the rules herein under this section. Deletion of the unworkable provisions will facilitate methods for allocating emergency positions by the Department.

2 MCAR Sec. 2.135 and Sec. 2.136 - Vacation Leave and Sick Leave (respectively)

16. These rules deal with vacation and sick leaves for unclassified employees listed in Section 2.004. The proposed amendments are to clarify that the appointing authority may establish vacation and sick leave provisions for those unclassified employees. Section 2.004 excludes certain unclassified employees from coverage by personnel rules unless they are specifically included. MEA commented that rule Section 2.136 is similar to Section 2.135 except that Section 2.136 lacks the words "also applies to". At the hearing, the Department agreed to MEA's suggestion by inserting the words "also applies to" after the word "and" and before "all full-time unclassified employees" in rule Section 2.136. As amended, this rule is needed and reasonable and would not constitute a substantial change.

2 MCAR Sec. 2.142 - Vacation Leave Accurral Rates Upon Reinstatement or Reapppointment

17. The words "accumulated balance and" are being deleted from the title of this rule by the Department because of a technical error. The provision of accumulated balance contained in this rule was deleted from this section and inserted in Section 2.136. The correction is reasonable and needed and would not constitute a substantial change.

2 MCAR Sec. 2.040 A., 2.043, 2.048, 2.082, 2.084, 2.085, 2.086, 2.088, 2.106, 2.109, 2.134, 2.142, 2.175, 2.235, 2.239, 2.241.

18. The need for and the reasonableness of the above proposed amendments is provided in the Department's Statement of Need. It was read in its entirety by the Department at the hearing. No comments or statements were made in opposition to these proposed amendments during or after the hearing. The Statement of Need is hereby incorporated as Findings of Fact. The Hearing Examiner concludes that repeating the evidence in the Statement of Need serves no useful purpose. (See Exhibit 9, Statement of Need)

Based upon the foregoing Findings of Fact, the Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate Notice of Hearing was properly served and published by the Department. All other substantive and procedural requirements of statute or rule have been fulfilled.

2. The Department has demonstrated its statutory authority to adopt the proposed amendments to the rules.

3. By its Statement of Need and the evidence presented at the hearing and post-hearing comments, the Department has demonstrated a need for and reasonableness of the proposed amendments to the rule.

Based upon the foregoing Conclusions, the Examiner makes the following:

RECOMMENDATIONS

The Hearing Examiner recommends that the proposed amendments to the rules be adopted as proposed with the changes as found in Findings Nos. 16 and 17.

Dated: October 3, 1978.

Harry Seymour Crump

HARRY SEYMOUR CRUMP
Hearing Examiner

N O T I C E

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The Commissioner of Personnel shall, if he proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings and Order, to the Chief Hearing Examiner no earlier than five days subsequent to the receipt of this Report. This submission shall clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Commissioner on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. Thereafter, the Commissioner shall be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

LIST OF EXHIBITS

Department Ex. 1.	Copy of Proposed Amendments, Order for Hearing, and Notice of Hearing Filed Pursuant to 9 MCAR 2.102
Department Ex. 2.	Order for Hearing/Clarence E. Harris, Commissioner of Personnel/July 17, 1978
Department Ex. 3.	Notice of Hearing/Clarence E. Harris, Commissioner of Personnel/July 17, 1978
Department Ex. 4.	None
Department Ex. 5.	Certificate of Delivery of Secretary of State's List/July 24, 1978
Department Ex. 6.	Affidavit of Receipt of the Secretary of State's List/July 24, 1978
Department Ex. 7.	Affidavit of Mailing/July 27, 1978
Department Ex. 8.	The Secretary of State's List
Department Ex. 9.	Statement of Need/Clarence E. Harris, Commissioner of Personnel/August 4, 1978
Department Ex. 10.	Statement of Evidence/Clarence E. Harris, Commissioner of Personnel/August 4, 1978
Department Ex. 11.	Publication in State Register/3. S.R. 124/ July 31, 1978
Department Ex. 12.	Publication in State Register/2 S.R. 2292/June 19, 1978
Department Ex. 13.	Memorandum by James Lee, Senior Personnel Representative/August 8, 1978
Department Ex. 14.	Letters by Mary G. Anderson, Secretary, State Personnel Board/August 3, 1978, and by Clarence E. Harris, Commissioner of Personnel/July 18, 1978
Department Ex. 15.	Endorsement of Personnel Rules Changes/Personnel Advisory Committee
Department Ex. 16.	Appendix II and III of a Report of Survey of Practices, Review of Guidelines and Standards Published by the Pennsylvania Civil Service Commission
Department Ex. 17.	Memorandum/Warren L. Bartz, Audit Manager/Legislative Audit Commission/July 28, 1978
Department Ex. 18.	P.L. 95-256; Approved April 6, 1978/Age Discrimination in Employment Act of 1967, as amended
Department Ex. 19.	Letter, post-hearing comments/James Fritze, Assistant Commissioner of Personnel/September 8, 197
Public Ex. A.	Letter/Minnesota Energy Agency/Rudy Brynolfson, Assistant Director, Administration/August 28, 1978
Public Ex. B.	Letter/Council 6 AFSCME/Bernard L. Brommer, Executive Director/August 31, 1978

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.



Elizabeth Kinney (1886-1952), founder of the Sister Kinney Institute in Minneapolis, began her humanitarian career as a nurse, or "sister," in the Australian army. After emigrating to America in 1940, Sister Kinney began treating polio victims and opened the Institute in 1942. Today it is one of the most comprehensive rehabilitation centers for physically disabled people in this country.

Department of Personnel

Proposed Rules Governing the Examination, Referral and Appointment of Candidates, Retirement, Layoff, Vacation and Sick Leave, Appeal Procedures, and the Definition of Probationary Employee, Provisional Employee and Reemployment List

Order for Hearing

It is hereby ordered that a public hearing on the above-captioned rules be held in Room 83, State Office Building, St. Paul, Minnesota 55155 on August 31, 1978 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

It is further ordered that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

It is further ordered that the Notice of Hearing be published in the *State Register*.

Clarence E. Harris
Commissioner of Personnel

July 17, 1978

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 83, State Office Building, St. Paul, Minnesota 55155 on August 31, 1978 commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Harry Crump, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8111, either before the hearing or within 5 working days after the close of the hearing.

The proposed amendments, if adopted, would amend 2 MCAR §§ 2.039 to delete the requirement that the selection process for incumbents of reallocated positions must be the same process as last given for the class to which the position

has been reallocated; 2.040 to require that applications contain a statement on the verification of information; 2.044 to provide a six month retest prohibition for oral and written examinations; 2.048 to delete the tie breaking provision; 2.064 to clarify when eligible lists would be cancelled or merged and provide for the term of individual candidate eligibility; 2.082 and 2.085 to clarify that appointments are pursuant to Minn. Stat. ch. 43 and the personnel rules; 2.084 to provide for the certification of additional names as authorized by Laws of 1978, chs. 708 and 734; 2.086, 2.087, 2.088 and 2.109 to consolidate all provisions relating to seniority into one rule and make other changes relating to emergency and provisional appointments; 2.106 to delete the provision which prohibits an individual from being an employee of the state after his or her 65th birthday; 2.134 to provide that vacation and sick leave hours may not be used during the payroll period in which they are earned; 2.135 and 2.136 to clarify that appointing authorities may establish vacation and sick leave provisions for those unclassified employees listed in 2.004 and to move language relating to sick leave from 2.142 to 2.136; 2.175 to update what appeal procedures are available to state employees; 2.235, 2.239 and 2.241 to redefine probationary and provisional employees and reemployment list; and would repeal 2 MCAR § 2.043.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Department of Personnel, 3rd Floor Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. A Statement of Need explaining why the agency feels the proposed rules are necessary and a Statement of Evidence outlining the testimony the department will be introducing at the hearing will be filed with the Office of Hearing Examiners at least 25 days prior to the hearing and will be available there for public inspection.

The agency's authority to promulgate the proposed rules is contained in Minn. Stat. ch. 43 and Laws of 1978, chs. 708 and 734.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Clarence E. Harris
Commissioner of Personnel

July 17, 1978

2 MCAR § 2.039

2 MCAR § 2.039 Eligibility to compete.

A. Open competitive selection processes. Competitive selection processes shall, after public notice, be open to all applicants who meet the reasonable standards or requirements fixed by the commissioner with regard to factors that relate to the ability of the candidates to perform the duties of the position with reasonable efficiency and effectiveness. Persons with physical disabilities who, when demonstrated to the satisfaction of the commissioner, could not be selected in the normal manner, shall be selected in such a manner that will fairly test their ability to perform the duties of the position.

In the case of an applicant who is blind, the department will provide the applicant with either a braille selection process, or the services of a reader chosen by the applicant with the approval of the department, or subject to the approval of the applicant, whichever means of screening is available to the department.

No applicant shall be rejected because the applicant lacks educational qualifications, unless such qualifications relate directly to the duties of the class for which the announcement is made, or where such educational requirements are established by federal agencies making grants-in-aid or otherwise contributing to state programs.

B. Promotional selection processes. Promotional selection processes shall be open to all permanent or probationary employees in the agency or other organization unit for which the selection process is being held who meet the requirements described in the announcements. All unclassified employees appointed for a period in excess of six months, and permanent or probationary employees in the classified service in any branch of state government who meet the established requirements may apply for promotional selection processes for positions designated as managerial or professional. Emergency, temporary and provisional employees in the classified service; unclassified employees appointed for a period of less than six months; pre-service trainees and interns are not eligible to compete in promotional selection processes for positions designated as professional or managerial.

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C. Selection processes for incumbents of reallocated positions. The incumbent of a position which has been reallocated in accordance with 2 MCAR § 2.019 shall be permitted to compete in the ~~same or equivalent~~ selection process ~~as last given~~ for the class to which the position has been reallocated, provided:

1. the incumbent did not participate in a written or competitive oral examination process for such a position ~~less than~~ in the six months previous to the date of reallocation;

2. the reallocation did not result from the assignment of the incumbent to work out of class in a manner so as to bypass the selection process or to a vacancy in a new position which had not been allocated to a class, or from other action taken without regard to the appropriate selection process.

If the incumbent examined in accord with the above successfully completes the examination process, notwithstanding the provisions of 2 MCAR § 2.084, the commissioner may certify only the name of the eligible incumbent, provided the position has been reallocated to another class in the same occupational category as the initial classification.

In certifying eligibles to a position reallocated to a class in a different occupational category than the initial classification of the position, the provisions of 2 MCAR § 2.084 shall apply.

Where the incumbent of a position which has been reallocated has failed to qualify in the selection process and/or otherwise is ineligible to continue in the position in the new class, the employee must be removed from the position within 30 calendar days from the date of notification to the appointing authority of the incumbent's failure to qualify.

Where the incumbent is ineligible to continue in the position and is not transferred, promoted or demoted, the lay-off provisions of the Personnel Law and Rules apply.

2 MCAR § 2.040 Applications and admissions.

A. The form of application. The application shall be made on forms prescribed by the commissioner. The forms shall require information requested by the commissioner and requested on the announcement. The application form shall contain a statement that wrongful statements on the application may subject the applicant to the penalty provisions of Minn. Stat. § 43.35 and 2 MCAR §§ 2.108, 2.110, or 2.111 and a statement regarding the responsibility of the appointing authority pursuant to Minn. Stat. § 43.162 to verify information provided on the application.

B. Selection processes. Persons whose applications are received within the Department of Personnel on or before the last date for filing, and whose applications clearly show that the applicants meet the requirements for admission to the selection process as specified in the official announcement, shall be admitted to compete in the selection process for which they are applying. Where doubt exists as to whether an applicant meets the admission requirements, the commissioner may conditionally authorize the applicant to participate in the selection process, but such action shall not be construed as entitling the applicant to become eligible for certification or appointment until the circumstances leading to the conditional acceptance are clarified to the commissioner's satisfaction. Each individual whose application has been accepted shall be notified of the date, time and place for those parts of the selection process which require the candidate to appear in person. No person shall be admitted to any part of the selection process without proper authorization, or satisfactory evidence of acceptance or conditional acceptance of the application by the commissioner.

~~2 MCAR § 2.043 Character of selection processes.~~

~~A. Competitive selection process. Competitive selection processes for positions in the classified service shall relate to those matters which will fairly test the capacity and fitness of the candidate to discharge efficiently the duties, processes or employment sought by them.~~

~~B. Noncompetitive selection processes. The Commissioner may authorize the appointing authority to appoint an employee to a position requiring peculiar and exceptional qualifications of an administrative, scientific, professional or expert character.~~

~~The Commissioner shall require such tests or other evidence of qualifications as deemed necessary and each such appointment shall be subject to the appropriate probationary period.~~

2 MCAR § 2.044 Conduct of selection processes. Any or all parts of the selection processes shall be held at such times and places as in the judgment of the commissioner most nearly meet the needs of the service, ~~convenience of the applicants.~~ practicability of administration, and the convenience of applicants. ~~needs of the service.~~ The selection process shall be conducted either by the commissioner or persons designated by the commissioner. No person whose application has been accepted shall be entitled to take any part of the selection process on a date, time or place other than those determined by the commissioner. In order to protect the security of examinations by providing a reasonable period between test administrations, applicants shall be prohibited from participating in the same written or oral tests more than once within any six month period. However, if the same written or oral test is used for more than one classification or if a classification is opened for competition

on both a competitive and promotional basis within a six month period, an applicant who would otherwise be prohibited from participating in an examination because of the six month retest prohibition shall, upon submission of another application, have the scores obtained on the written or oral portion of the initial examination apply to the subsequent examination.

2 MCAR § 2.048 Order of names on eligible list. Names of eligibles shall be placed on the eligible list in the order of their final earned rating plus preference credit, provided that the earned rating was a passing grade. In the case of a tie between a veteran and nonveteran, the name of the veteran shall be placed ahead of a nonveteran. ~~In case of other ties in final ratings, names shall be placed on the list in order of rating on the part of the selection process given the greatest weight. Any remaining ties shall be broken by arranging names on the basis of the last four digits of the Social Security number using a random point of origin.~~ In other cases where two or more candidates have identical final scores, their names shall be placed on the eligible list in random order.

2 MCAR § 2.064 Duration of eligible lists. The commissioner shall determine the period during which promotional or open competitive eligible lists shall remain in effect. However, this period shall not be less than six months for open competitive lists or one year for layoff, reemployment or promotional lists, nor more than three years for any list except for layoff lists, where the eligibility of a candidate shall be extended to a period of time equal to the employee's length of continuous service to a maximum of eight years. If an eligible list exists for any class and the commissioner deems it necessary to establish another such list for the same class, the existing list ~~shall ordinarily~~ may be cancelled, at the discretion of the commissioner, based on consideration of the following factors: the number of anticipated vacancies, the frequency of previous examination administrations, continued candidate availability, or changes in the selection process. At the discretion of the commissioner, an existing list may be combined with the new list by placing names of eligibles in order of final ratings as provided in these rules. The eligibility of individuals placed on such combined lists shall expire at the end of the period established by the commissioner, but at the discretion of the commissioner, such eligibility may be extended for an additional period or periods not to exceed three years~~, except for persons on lay-off lists, whose eligibility shall be extended to a period of time equal to the employee's state seniority to a maximum of eight years~~. With eligible lists for classes for which continuous or frequent testing is conducted, the term of individual candidate eligibility shall begin on the date of placement of the candidate's name on the eligible list and continue for a period established by the commissioner, based on consideration of the following factors: the number of anticipated vacancies, continued candidate availability, or changes in the selection process.

2 MCAR § 2.082 Methods of filling vacancy upon receipt of request for an employee. The commissioner shall certify the proper number of names from the appropriate eligible list, or authorize some other kind of appointment as provided in Minn. Stat. ch. 43 and these rules. No appointment, except an emergency appointment, shall be made without such certification or prior authorization. If the position ~~to be filled~~ is a permanent one, to be filled by certification from an eligible list, the commissioner shall first certify from the agency layoff list. If no such layoff list exists, the commissioner shall certify from the agency promotional list. In the absence of the above lists, the commissioner shall certify from the eligible list deemed appropriate, taking into consideration any requests made by an appointing authority as to the list to be used.

However, if an appointing authority submits specific written statements that the interest of the state would be served best by certification from some list other than the agency promotional lists and that the use of such list is not practical, or the commissioner finds that there are better qualified people on other eligible lists, the commissioner may certify names from some eligible list other than the agency promotional list. In the case of a vacancy in a managerial or professional class, the commissioner shall certify only from the layoff list, the state-wide promotional eligible list, the reemployment list, lists secured from other jurisdictions under the provisions of 2 MCAR § 2.068 or an open competitive list as provided for in the Personnel Law.

2 MCAR § 2.084 Certification of eligibles.

A. Order of certification.

1. In the case of a layoff list, the one name highest on the layoff list shall be certified for one vacancy.

2. In the case of competitive eligible lists, ~~upon initial entry into the state service,~~ the commissioner shall certify the first ten names, when available, on such lists~~,~~ together with the names of any persons having the same score as the tenth name so certified; and as many additional names as may be necessary to comply with Minn. Stat. § 43.15, subd. 5.

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3. In the case of promotional eligible lists, the commissioner shall certify the first three names on such lists ~~shall be certified~~, together with the ~~any additional~~ names of any persons having examination ratings within three points of the person on the list with the highest examination rating.; the names of any persons having the same score as the last name certified in accordance with the above; and as many additional names as may be necessary to comply with Minn. Stat. § 43.15, subd. 5.

4. Eligibles shall be certified in strict order of standing without regard to sex or special qualifications, except when the commissioner is satisfied that the facts and reasons specified by the appointing authority warrant such action, certification may be limited to the eligibles possessing the special qualifications.

~~B. Multiple vacancies. If more than one vacancy is to be filled, the name of one additional eligible for each additional vacancy shall be certified.~~

~~C.~~ B. Concurrent certification. Groups of eligibles shall be certified to the vacancies in order of receipt of requisitions for employees, with due regard for the right of eligibles standing highest on the list. This section shall not require simultaneous certification of the same names on different certifications made concurrently, but certification in such instances shall be consistent with guidelines established by the commissioner.

~~D.~~ C. Fewer than the required number of eligibles. Whenever there are not sufficient names on an eligible list to make a complete certification, the commissioner may augment those names by a sufficient number of names from other appropriate lists to make a complete certification.

~~E.~~ D. Incomplete certification. Where the number of names available to fill a vacancy are fewer than authorized by the law, except in the case of certification from the layoff list, the commissioner may proceed to fill the vacancy in any other manner provided by the law or these rules. If there are fewer candidates on the eligible list for a class than the number of names that can be certified to a vacancy as provided by the law and these rules, the commissioner may determine that the existing eligible list is a complete certification for consideration by the appointing authority.

~~F.~~ E. Certification from related lists. The commissioner may certify from eligible lists for higher classes to vacancies occurring in lower classes or from eligible lists for one class for vacancies in another class where the commissioner determines the examination reasonably measures the ability of the eligible to perform the duties in the class to which certification is made.

~~G.~~ F. Nonappointment of a veteran when certified. In the event of rejection by the appointing authority of an eligible entitled to veterans' preference under Minn. Stat. § 43.30, when certified for a promotion or to fill a vacancy or a new position, the appointing authority shall forthwith file in writing the reasons for such rejection and shall furnish to the rejected veteran a copy thereof.

~~H.~~ G. Withdrawal of certification. In the event the appointment is not reported within ten days of the date of certification, the commissioner may withdraw such certification and shall certify the names of eligibles included in such certification on the next requisition received for the appropriate class of employment.

2 MCAR § 2.085 Permanent appointments from eligible lists. All vacancies in positions in the classified service having a duration in excess of six months shall be filled by appointment through certification from eligible lists except as otherwise provided in Minn. Stat. ch. 43 and these rules. In making an appointment from an eligible list, the appointing authority shall give consideration to the quality and length of service of any eligible state employee in addition to the primary consideration of the knowledges, skills and abilities of the candidate in relation to the specific vacancy and the needs of the agency. An appointment shall be effective on the date stated on the report of appointment.

2 MCAR § 2.086 Temporary appointment. Temporary appointments shall, when practicable, be made from eligible lists. If after the commissioner has made a reasonable effort to certify eligibles for temporary appointments from existing eligible lists and has found it impractical to make such certification, the commissioner may authorize the temporary appointment of an individual designated by the appointing authority. ~~If the person appointed to the temporary position has status in another class, such employee status and seniority will accrue in the class from which the employee was appointed.~~

2 MCAR § 2.087 Emergency appointment. An emergency appointment is an appointment for a period not exceeding ten consecutive working days made under conditions necessitating immediate action to provide for carrying on work that must be continued in the public interest. ~~The Commissioner shall not approve successive emergency appointments nor shall the Commissioner approve more than three emergency appointments for one person within one calendar year.~~ (Minn. Stat. § 43.20, subd. 3)

Prior approval shall not be required in the case of emergency appointments, but each such appointment shall be reported to the commissioner before payment for services can be made.

In any case in which a need for action in filling a vacancy shall have been known, or could have been known by the

exercise of due diligence far enough in advance to afford opportunity for appropriate action under some other provision of this law and these rules, no emergency shall be deemed to exist, and no emergency appointment shall be made.

~~When possible, an emergency appointment shall originally be made at the minimum rate for the class to which the position thus filled can be allocated properly. The Commissioner shall allocate the position filled by emergency appointment to the proper class and shall notify the appointing authority of such allocation and the rate of pay applicable thereto. After such notice no payroll reporting a different rate of pay shall be approved.~~

~~No seniority shall be gained as a result of an emergency appointment.~~

2 MCAR § 2.088 Provisional appointment. In the absence of an appropriate eligible list and when authorized by the commissioner, the appointing authority may appoint a qualified person to fill a vacant position on a provisional basis. The appointment shall terminate 90 days after establishment of an eligible list from which a selection and appointment could be made as a result of examination, or upon the expiration of six months, whichever comes first. ~~except~~ In individual cases, ~~where~~ the commissioner may grant exceptions based on written documentation of continued shortage of qualified eligibles ~~for the good of the service.~~

~~No person may receive two provisional appointments in a twelve month period except the Commissioner may grant individual exceptions based upon written documentation for the good of the service.~~

The appointing authority in nominating a person for provisional employment, shall transmit to the commissioner a statement of qualifications of the nominee in such form as the commissioner shall prescribe.

~~No seniority shall be gained as a result of a provisional appointment except for the continuance of seniority in a lower class upon provisional promotion to a higher class pending certification and appointment from a promotional list.~~

2 MCAR § 2.106 Retirement. Employees in the classified and unclassified service subject to mandatory retirement provisions of the Minnesota State Retirement Act must retire at the end of the day of their birthday in the year they must retire ~~and may not be an employee of the state after their 65th birthday. (Minn. Stat. § 43.051)~~ Employees in the classified and unclassified service subject to mandatory retirement provisions of the Teachers Retirement Act must retire at the end of the day on August 31 in the academic year in which they must retire. ~~they reach the age of 65 and may not be an employee of the State after mandatory retirement. (Minn. Stat. § 354.44, subd. 1a)~~

2 MCAR § 2.109 Layoff. The appointing authority may lay off an employee in the classified service by reason of abolition of the position, shortage of work or funds, or other reasons outside the employee's control which do not reflect discredit on the service of the employee.

Duties formerly performed by laid off employees may be assigned to other permanent employees who, in the opinion of the commissioner, hold positions in an appropriate class.

A. Order of layoff. Layoff of probationary or permanent employees shall be made in inverse order of seniority by employment conditions in the class of work and agency or other organizational unit involved, provided, however, that for positions within a class requiring special licensure, certification or registration and for positions which consist of a formally recognized option within a class, seniority shall be applied within the area of specialization. Except as provided above, no probationary or permanent employee shall be laid off from any position while any provisional or temporary employee is continuing in a position of the same class in the agency or other organizational unit involved.

Where it is determined that two or more persons in the class in the agency or organizational unit in which layoff is being made have equal seniority, the order of layoff in such tie cases shall be in inverse order of the date of acquisition of permanent status in the class, except where otherwise provided in written contracts with exclusive bargaining representatives.

Where the determination of seniority as provided in this rule does not establish definite seniority differentials, the order of layoff shall be determined by the average of the last two service ratings, if there are two, or the last such rating if there is only one, and the employee with the lowest such average or rating shall be laid off first. If no service ratings are available, the order of layoff shall be determined by the appointing authority in such a manner as to insure the retention in the state service of those employees deemed most valuable, except where otherwise provided in written contracts with exclusive bargaining representatives.

B. Seniority. Seniority for purposes of layoff or recall

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from layoff shall be the length of service in a specific class in a specific agency or organizational unit. Leave without pay and trainee appointments, except as provided elsewhere in these rules, and service with a different agency or organizational unit, shall not count towards seniority in the class, agency, or organizational unit in which the layoff is taking place. No seniority shall be gained as a result of an emergency appointment. No seniority shall be gained as the result of a provisional appointment except for the continuance of seniority in the lower class upon provisional promotion to a higher class pending probationary appointment in accord with Minn. Stat. ch. 43 and these rules. No seniority shall be gained as a result of a temporary appointment except if the person appointed to a temporary position has status in another class, such employee's status and seniority will accrue in the class from which the employee was appointed.

Seniority of an employee in the class to which that employee is demoted shall be limited to service in the agency. Seniority shall include the total time of the employee's prior seniority in the class from which the employee was demoted, as well as other classes which the commissioner determines as being sufficiently similar to the class to which demotion occurs. Seniority shall begin on the date of original appointment and thereafter such seniority shall be increased each calendar day without interruption except:

1. Upon termination.

2. Upon interruption of service in the agency for any reason other than leave of absence or layoff.

3. Upon expiration of eligibility for reappointment from the layoff list.

In the case of employees in a trainee class or an employee working under a provisional appointment, seniority shall be credited back to the date of hire at the time the employee begins to serve a probationary period in the same or a related classification in the same department.

C. Limited interruption of employment. Any interruption in employment not in excess of 15 calendar days, because of adverse weather conditions, shortage of materials or equipment, or for other unexpected or unusual reasons, shall not be considered a layoff.

D. Layoff notice. The appointing authority shall notify the employee to be laid off at least 15 days before the effective date of such layoff in writing, and shall certify to the commissioner the reasons for such layoff. In any case, when an appointing authority fails to certify before the effective date thereof that the layoff was for reasons not reflecting to the discredit of the employee, it shall be deemed a dismissal and shall be subject to the rules regarding dismissal.

In case of seasonal, intermittent, part time or other occasional appointment of employees with classified status, the appointing authority may indicate to the employee and the commissioner at the time of the appointment the approximate date of termination of employment, and such notices shall be considered to meet the requirements of law. (Minn. Stat. § 43.23, subd. 2)

E. Names of laid off employees to be placed on eligibility lists. The names of permanent or probationary employees laid off or demoted in lieu of layoff shall be placed in order of seniority on the layoff list for the class and agency or other organizational unit from which the layoff took place. The affected employees shall have their names placed also on the reemployment list.

F. Organizational units. An appointing authority may propose subdivision of the agency into organizational units for the purpose of employment or layoff by submitting to the commissioner a written plan for such subdivision, together with reasons therefor. The commissioner shall consider such proposals and the needs of the state service, and may establish organizational units within agencies. Such organizational units may be established on the basis of geographic areas, function, class of employment, or funding when there are special Federal grants, and may be different for different classes of employment. The commissioner shall notify the appointing authority of establishment of organization units and such units shall thereafter be used for employment or layoff.

The appointing authority shall post a copy of such notice or shall notify affected employees of the establishment of such organizational units.

The commissioner may cancel established organizational units upon notice to the appointing authority at any time the commissioner deems such action to be in the best interest of the state service.

2 MCAR § 2.134 General regulations governing leaves of absence with pay. As far as practicable, grants of leaves shall be made prior to the beginning of the period of absence, and no payment for any absence shall be made until leave is properly approved.

Deductions from leave accumulations for an employee on leave with pay shall be made on a working day basis and no charge shall be made from leave accumulations for holidays, non-work days, or non-work days occurring at the beginning or during a period of leave with pay. No charge will be made for holidays or non-work days occurring at the

end of a period of leave with pay if the employee returns on the first day thereafter or is granted additional leave without pay. If the employee is granted additional leave without pay, such employee will not be credited for a holiday occurring at the end of the period of leave with pay unless and until that employee returns to work at the expiration of the leave without pay.

Vacation and sick leave hours shall not be used in the payroll period in which they are earned. Accrual of vacation leave and sick leave during the period of leave of absence with pay shall occur only if the employee returns to employment on the first working day following the expiration of such leave with pay, or is granted additional leave without pay. If the employee is granted additional leave without pay, the employee will not be credited with vacation or sick leave accruals for the period of leave with pay unless and until returning to work at the expiration of the leave without pay. An employee on layoff does not continue to earn vacation and sick leave during such layoff.

2 MCAR § 2.135 Vacation leave. This rule applies to all classified state employees in the executive branch except for non-tenured laborers, emergency employees, project employees or temporary appointment employees and also applies to all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR § 2.004. ~~Annual~~ Vacation leave provisions may be established by the appointing authority for those unclassified employees listed in 2 MCAR § 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage.

Each eligible non-managerial employee shall earn vacation with pay according to the rate listed below.

Hours of Vacation Accrued During Each Payroll Period of Continuous Service

Number of Hours Worked During Pay Period	0 thru 5 years	After 5 thru 8 years	After 8 thru 18 years	After 18 thru 25 years	Over 25 years
0- 9	0	0	0	0	0
10-19	3/4	1	1 1/4	1 1/2	1 1/2
20-29	1	1 1/4	1 3/4	2	2
30-39	1 1/2	2	2 3/4	3	3
40-49	2	2 1/2	3 1/2	3 3/4	4
50-59	2 1/2	3 1/4	4 1/2	4 3/4	5
60-69	3	3 3/4	5 1/4	5 3/4	6
70-79	3 1/2	4 1/2	6 1/4	6 3/4	7
80 and over	4	5	7	7 1/2	8

When sick leave and/or ~~annual~~ vacation leave is used in conjunction with the Workers' Compensation benefit, an eligible employee receiving Workers' Compensation benefits shall accrue vacation leave for the total number of hours compensated by Workers' Compensation, sick leave and ~~annual~~ vacation leave.

Changes in the rate of accumulation for eligible employees shall be made effective at the beginning of the next payroll period following completion of the specified amount of service.

Service shall begin on the date of state employment. Time on suspension or non-medical leave of absence without pay, if at least one full payroll period in duration, except as otherwise provided by law or these rules, shall not be counted in determining the date of completion of a full year. An eligible employee being paid for less than the full payroll period of 80 hours will have vacation accrual prorated for that payroll period. A vacation leave shall not be granted or accrued before completion of six calendar months of service. Upon completion of such period, vacation leave shall accrue to the employee from the beginning of the period of continuous service.

Departments or agencies may determine the time and establish schedules governing the use of vacation leave, except that in no instance will vacation leave be granted in increments of less than one-half hour except to permit utilization of lesser fractions that have been accrued.

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Unused vacation leave may be accumulated to a total of 224 working hours. Supervisors should make every effort to schedule vacation leaves for their employees on a regular basis each calendar year in order to reduce the possibility of an employee losing vacation ~~or~~ leave because of a maximum accumulation having been exceeded. An eligible employee on military leave, as provided by these rules, shall not be limited to the maximum accrual of vacation leave. Such employee may immediately upon reinstatement from military leave take all vacation in excess of the maximum accumulation. As an alternative, the employee may elect to be credited with the vacation leave in excess of the maximum accumulation, but such leave shall be taken at a time determined by the appointing authority within two years of the date of reinstatement.

Any eligible employee who is separated from the state service by layoff, resignation, death, or otherwise, shall be paid for the number of working hours of unused vacation leave accumulated to that employee's credit.

An employee who is transferred or accepts employment under the jurisdiction of a new appointing authority, or in the unclassified service of the state, or an unclassified employee who transfers to the classified service, without interruption of services to the state shall be entitled to credit of accumulated unused vacation leave earned in the employee's former employment. Notwithstanding 2 MCAR § 2.004, any state employee except an elected employee who is separated from the state service or who is transferred or accepts employment under a new appointing authority, is entitled to pay for any accumulated vacation leave. (Minn. Stat. §§ 43.222-43.224)

Department heads and deputies of departments listed in Minn. Stat. § 15A.081, subd. 1, plus the Department of Military Affairs, shall earn vacation pay at the rate of six hours per full payroll period. Covered departments heads and deputies who currently are eligible to receive more than six hours per full payroll period shall continue to accrue at the higher rate.

Employees in positions designated as managerial shall accrue vacation leave in accordance with a schedule established by the commissioner.

2 MCAR § 2.136 Sick leave. This rule applies to all classified state employees in the executive branch except for non-tenured laborers, emergency employees, project employees, or temporary appointment employees and all full-time unclassified employees appointed for a period in excess of 6 months in the executive branch except those listed in 2 MCAR § 2.004. Sick leave provisions may be established by the appointing authority for those unclassified employees listed in 2 MCAR § 2.004 and for other employees who are not covered by this rule provided they are not specifically excluded from coverage. Sick leave shall be earned by each eligible employee according to the rate schedule indicated below.

Number of Hours Worked During Pay Period	Hours of Sick Leave Accrued During Each Payroll Period of Continuous Service: Less than 900 hours	900 hours and maintained
0- 9	0	0
10-19	3/4	1/4
20-29	1	1/2
30-39	1 1/2	3/4
40-49	2	1
50-59	2 1/2	1 1/4
60-69	3	1 1/2
70-79	3 1/2	1 3/4
80 and over	4	2

Changes in the rate of accumulation for eligible employees shall be made effective following the payroll period in which the 900 hour maximum accrual is attained.

An eligible employee being paid for less than a full payroll period of 80 hours will have sick leave pro-rated for that payroll period unless the employee is on Workers' Compensation, in which case sick leave would be accrued for the total hours compensated by Workers' Compensation, sick leave, and ~~annual~~ vacation leave provided that sick leave or ~~annual~~ vacation leave is used in conjunction with the Workers' Compensation benefit. Unused sick leave hours may be accumulated to a total of 900 working hours. When the maximum limitation has been accumulated, the rate of accumulation will be reduced to two hours per full payroll period, and these hours shall be placed in a lapsed sick leave bank. Any employee who has such lapsed sick leave recorded may apply to the appointing authority to have the lapsed sick leave restored in the event of an extended illness. The appointing authority may authorize use

of all or any part of the lapsed sick leave after thorough investigation, including submission of complete medical reports providing both a diagnosis and prognosis of the illness. The appointing authority shall report to the commissioner all instances of lapsed sick leave restored in such form as prescribed by the commissioner.

Time off on authorized sick leave will be deducted from the first 900 hours. Once the employee no longer possesses 900 hours of sick leave, four working hours for each full payroll period will be accumulated until the 900 maximum limit is again obtained.

Employees may utilize their allowance of sick leave, without regard to length of service, on the basis of application to and approval by the appointing authority, where absence is necessitated by inability to perform the duties of the position by reason of illness, pregnancy~~,~~ or pregnancy-related problems, or disability~~,~~; by necessity for medical, dental, or chiropractic care~~,~~; by exposure to contagious diseases under the circumstances in which the health of employees with whom they are associated or members of the public with whom they deal may be endangered by their attendance on duty~~,~~; or by illness in their immediate family for such periods as their attendance shall be necessary. Employees may also utilize not more than three days sick leave for the birth or adoption of a child. The term "immediate family" shall be limited to the spouse, minor or dependent children, or parent living in the household of the employee and where the parent has no other person to provide the necessary nursing care. Either the appointing authority or the commissioner may require medical examination, medical certificate, or statement from a chiropractor, as deemed necessary for approving the utilization of sick leave. A written statement from a Christian Science practitioner that the employee is a Christian Scientist and is undergoing treatment may be accepted in lieu of a medical statement. Use of a reasonable period of sick leave shall be authorized in case of death of a spouse, the parents of a spouse, and the parents, grandparents, guardian, children, brothers, sisters, or wards of the employee. In no instance will sick leave be granted in increments of less than ½ hour except to permit utilization of lesser fractions that have been accrued.

Employees receiving injury on duty pay shall not have this time deducted from their regular accrued sick leave balance.

A former state employee who is reappointed within four years of separation from the state service under the provisions of the act and these rules except as a provisional, temporary or emergency appointee; may have previously accumulated, unused balance of sick leave revived and credited to that employee upon approval of the new appointing authority.

An employee who transfers to the jurisdiction of another appointing authority without interruption in service to the state shall be entitled to a credit in the new employment for the accumulated unused sick leave earned in the former employment.

Employees in the unclassified service of the state who are subsequently appointed to a position in the classified service, or vice versa, without an interruption in service shall have their accumulated but unused sick leave balance posted to their credit in the records of the employing department provided such sick leave is accrued in accordance with the provisions of these rules.

An employee of a merit system jurisdiction or the federal competitive service with probationary or permanent status may transfer or be appointed to a position in the state service and may be credited with the amount of sick leave accumulated at the time of transfer, but not more than 12 days. Such credit shall be reduced proportionately as sick leave is accumulated in the state service.

2 MCAR § 2.142. ~~Sick and Annual~~ Vacation leave accumulated balance and accrual rates upon reinstatement or reappointment. An employee who is reinstated or reappointed to state service within one year of the date of resignation in good standing, retirement or layoff shall accrue ~~sick or annual~~ vacation leave at the same rate with the same credit or length of service that existed at the time of such separation.

An employee reappointed to state service after one year but not more than four years from the date of resignation in good standing, retirement or layoff may, at the appointing authority's discretion, accrue ~~sick and annual~~ vacation leave at the same rate and with the same accredited length of service that existed at the time of separation.

~~Employees in the unclassified service of the state who are subsequently appointed to a position in the classified service, or vice versa, without an interruption in service shall have their accumulated but unused annual and sick leave balance posted to their credit in the records of the employing department provided such sick and annual leave are accrued in accordance with the provisions of these rules.~~

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

2 MCAR § 2.175

2 MCAR § 2.175 In addition to the procedures available in this chapter, a number of other appeal procedures may be available to state employees. These include: the Minnesota Personnel Board (Minn. Stat. § 43.24); ~~the Governor's Affirmative Action Program (Executive Order 76, as amended);~~ the formal affirmative action complaint procedures established by each department in accord with the Statewide Affirmative Action Plan; grievance procedures under collective bargaining agreements; the United States Department of Labor; the United States Equal Employment Opportunity Commission; and the Minnesota Department of Human Rights~~; and municipal human rights commissions~~.

2 MCAR § 2.235 "Probationary employee" means an employee who is serving a probationary period as defined in 2 MCAR § 2.234 in a class to which ~~they have~~ the employee has been appointed ~~either from an eligible list~~ in accord with Minn. Stat. ch. 43 other than an emergency, temporary, provisional or unclassified appointment.

2 MCAR § 2.239 "Provisional employee" means an employee who has been appointed to a position without having been appointed from an eligible list on a conditional basis in accordance with Minn. Stat. § 43.20, subd. 2, pending examination and probationary appointment in accordance with Minn. Stat. ch. 43 and these rules.

2 MCAR § 2.241 "Reemployment list" means a list of current or former permanent or probationary employees laid off, demoted in lieu of layoff, or separated from the service in good standing whose written applications for consideration for reemployment in the class ~~by the State has~~ have been approved by the commissioner in accordance with 2 MCAR § 2.061.