

Minnesota Attorney General: Administrative Rules Proceedings

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2 MCAR § 2.009 Labor service. Classes of positions involving unskilled labor, as designated by the Commissioner, shall comprise the labor service.

The Commissioner may at any time review the duties performed by any labor service employee. The appointing authority and the employee shall supply any information requested by the Commissioner in connection with such review. If the Commissioner thereafter determines that the duties performed are not properly those of a position in the labor service, the Commissioner shall take action deemed necessary to comply with the law and these rules.

Any personnel action affecting an employee or a position in the labor service shall be reported to the Commissioner by written notice upon such form as the Commissioner may prescribe.

Reports of appointment, termination, or interruption of employment in the labor service shall be effected as follows:

A. Employees in the labor service who have been employed for a total of six months in a period of twelve consecutive months shall be known as classified tenured laborers and shall receive the same tenure rights and benefits given other classified employees of the state not in the labor service. The appointing authority's certificate that the employee has met these conditions will establish the employee's tenure rights. Such certification shall be in the manner and form prescribed by the Commissioner.

B. A tenured laborer shall be given written notice of disciplinary action and shall have rights in accordance with law (Minn. Stat. § 43.24).

2 MCAR § 2.010 Temporary designation of positions in the unclassified service. The Commissioner may authorize the designation of a position in the unclassified service for a limited period of time. The appointing authority shall report to the Commissioner the description of the position and the conditions under which it is to be established, which serve to limit the duration of employment, the expected termination date and the nature of the function to which it is to be assigned. Any position which has been designated in the unclassified service by the Commissioner, in accordance with this rule, and which will continue for longer than two years, shall be reviewed at the end of the second year by the Commissioner to determine whether it shall continue in the unclassified service. No position assigned to the unclassified service in accordance with this rule shall continue longer than three years in the unclassified service and, except as provided by Minn. Stat. § 15.61, no employee shall continue in a position or positions established in the unclassified service under the provisions of this rule to perform the same function in the same agency for a total of more than three years. (Minn. Stat. § 43.05)

2 MCAR § 2.018 Allocation of positions. When a new classified or unclassified position is to be established or a vacant classified or unclassified position is to be filled, the appointing authority shall notify the Commissioner in the prescribed manner, and the Commissioner shall allocate the position to the appropriate class in the classified service. If the position is in the unclassified service, the Commissioner shall compare the position to an appropriate class if such class exists or if not, establish a salary range for the position as provided by law. (Minn. Stat. § 43.064 as amended by Laws of 1979, ch. 332, § 17.)

The Commissioner, after making an allocation or comparing, shall notify the appointing authority of that action. The action shall become effective immediately, but the appointing authority may within ten days file an application for reconsideration with the Commissioner, together with any written evidence by way of affidavits, statements or exhibits which the appointing authority may desire to have considered. The Commissioner shall act promptly upon that application and shall notify the appointing authority of the final action.

2 MCAR § 2.019 Reclassification of positions. If a classified or unclassified position seems to be improperly allocated, or compared, the Commissioner shall, independently or upon request of an appointing authority or permanent employee, investigate the duties of the affected position. Following the investigation, the Commissioner may reallocate, change the allocation of, or recompare the position to an appropriate class. In making a request for a review of a position, the appointing authority or permanent employee shall set forth specifically the changes that have occurred in the particular position which warrant the requested action along with other documentation prescribed by the Commissioner. If the Commissioner determines that a request for the reclassification of a position is not properly documented, the request shall be returned to the sender within ten days of receipt of the request, and the employee shall be immediately notified of such action. The Commissioner shall notify the affected employee and the appointing authority of the final classification decision.

2 MCAR § 2.024 Work out of class pay. When an employee is expressly assigned to perform all the duties of a position allocated to a different classification that is temporarily unoccupied for reasons other than vacation or short periods of sick leave and the work out of class asssignment exceeds 15 consecutive work days, the employee when assigned to work in a lower or equal class shall be paid for all such hours at the employee's current rate of pay; or when assigned to work in a higher class shall be paid for all such hours at a rate within a higher range which is equal to the minimum rate for the higher class or one step higher than the employee's current salary, whichever is greater.

2 MCAR § 2.029 Administration of the wage and salary plan. Except for subdivisions F. and G., this rule also applies to those unclassified positions which have been directly compared to the classified service. The following provisions assume that funds are available and expenditures have been authorized by the Commissioner of Finance.

A. Beginning salary. The minimum rate of pay shall normally be paid upon appointment to a class. In schedules A and C, the appointing authority may, however, make an original appointment within the salary range but not to exceed the third salary step.

All original appointments beyond the minimum rate for a class shall be documented in the form prescribed by the Commissioner and shall be based upon the exceptional qualifications of the candidate or the unavailability of candidates at the minimum rate, and consideration shall be given to the salaries of current employees in the same or related classifications.

In the Special Teachers Salary schedule, appointments may be made up to and including the sixth step under conditions outlined in the compensation provisions relating to that schedule.

B. Salary on promotion. Promotional increases shall normally be of one or two salary steps, depending on the actual increase in responsibilities assumed upon promotion, unless greater adjustment is necessary to bring the employee's salary to the minimum of the new pay range. Any promotional increase beyond that provided for above must be approved in advance by the Commissioner based on documentation to support such additional increase. No salary increase may be granted which would place the employee's rate of pay above the authorized salary range.

C. Salary upon reemployment or reinstatement. If a former employee is reemployed or reinstated into a class in which that employee was previously employed, the appointing authority may make an appointment at the same rate of pay the employee had been receiving at the time of separation from the state civil service and/or the class, plus any automatic adjustments that may have been made since the employee left the state civil service and/or the class. Appointments above such rate of pay must be approved by the Commissioner before they can take effect.

D. Salary increases. Salary increases may be granted in accordance with law. (Minn. Stat. §§ 43.12, 43.121-43.122, 43.126-43.127 and other applicable provisions.)

E. Achievement awards. In addition to being eligible for normal salary increases, employees whose positions are assigned to salary Schedule A are eligible for achievement awards based on demonstrated outstanding performance. Increases in this schedule must be submitted and awarded within the context of a results-oriented management or standards of performance system which has been approved by the Commissioner. An achievement award shall be awarded as prescribed by law. Achievement awards shall be administered in a manner that will encourage and recognize excellence among employees. Achievement award increases may be granted up to 30% of the classified and 30% of the unclassified employees whose salary ranges are set by direct comparison to the classified service authorized for the agency at the beginning of the fiscal year. Unclassified positions where the salaries are set by statute are not to be included in the calculations of the number of allowable increases for unclassified employees.

F. Salary decreases. Salary decreases for just cause may be made to reduce the salary of the employee within the salary range. In the case of a permanent employee, written notice of intent to effect such reduction in pay, and the reasons for such action, shall be given to the employee at least 5 working days prior to the effective date of the reduction and a copy submitted to the Commissioner prior to the effective date of the reduction. The permanent employee so affected may request a hearing before the Board as provided in the law.

G. Salary on transfer. An employee who is transferred to a different agency in the same class or to a similar class shall receive the salary being paid before such transfer. In any case of transfer, no employee shall receive a rate of pay below the minimum of the range for the class to which such employee has been transferred.

H. Salary on demot[redacted]. An employee who has been d[redacted]ed to a class in a lower salary range shall be paid a salary rate within the range of the class to which such employee has been demoted except as provided by law. (Minn. Stat. § 43.12, subd. 26.)

I. Total remuneration. This subdivision applies to all classified and unclassified employees in the executive branch. Except as otherwise provided in these rules, no employee shall receive pay in addition to the salary authorized for services rendered either in the discharge of the assigned ordinary duties, or additional duties which may be performed by the employee or which the employee may undertake or volunteer to perform.

An employee may receive a separate salary from more than one state agency for hours worked during the same pay period under the following conditions:

1. The work assignments performed for another state agency is not part of the employee's normal duties; the employee is qualified to perform the assignment; and the appointing authorities of both agencies and the Commissioner approve the assignment in advance; or

2. The employee is appointed under provisions of these rules to less than full-time positions in more than one state agency, and the combined established work schedules do not exceed a normal 40 hour work week.

Employees in payroll status in two or more agencies for a total of 75% or more of the time, because of concurrent appointments, shall be eligible for state paid insurance in the same manner as other employees. The state paid premium for such eligible employees shall be borne by the agency in which the majority of the time is worked.

J. Hourly rates. Hourly rates of pay shall be paid in accordance with law. (Minn. Stat. §§ 16.027 and 43.01, subd. 9)

K. Project employment. The Commissioner may authorize a rate of pay which may exceed the maximum of the range provided by not more than 70% where skilled craft employment is on a strictly project basis. In cases of project employment, the employee shall not be entitled to any other benefits.

Project employment for purposes of this rule shall be restricted to a planned work program which normally will be completed in a specified time period and is not of a seasonal or regularly recurring nature.

2 MCAR § 2.031 Retroactive pay upon reallocation. Except for reallocations resulting from a position classification study of an agency or subdivision thereof initiated by the Department of Personnel or an appointing authority, if the incumbent of a position which is reallocated upward to a class existing at the time of the request receives a probationary appointment to the reallocated position, pay for the reallocated position shall commence fifteen calendar days after the receipt in the Department of Personnel of a reallocation request determined by the Department of Personnel to be properly documented, and it shall continue from that date for up to a maximum of sixty calendar days or until the effective date of the appointment, whichever occurs first. If more than sixty days after the initial fifteen day period elapse, payment shall be for the final sixty days in the period.

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 the federal agencies making grants-in-aid or otherwise contributing to state programs.

B. Promotional selection processes. Promotional selection processes shall be open to all employees of the state, the agency or other organizational unit for which the selection process is being held who meet the requirements described in the announcements and who hold classified positions in the executive branch of the state civil service, or the Minnesota State

Retirement System, or [redacted] Teachers Retirement Associati[redacted] or the Legislative Audit Commission; or who hold unclassified positions in the executive or legislative branches of the state civil service. Emergency employees and interns are not eligible to compete in promotional selection processes.

C. Selection processes for incumbents of reallocated positions. The Commissioner may authorize any appointing authority to promote the incumbent of a reallocated position to a higher class without examination in accordance with law. In the absence of such authorization the incumbent of a position which has been reallocated in accordance with 2 MCAR § 2.019 and 2 MCAR § 2.240 shall be permitted to compete in the selection process for the class to which the position has been reallocated. ~~provided~~ (Minn. Stat. § 43.19, subd. 1(2))

If the incumbent of a reallocated position passes the examination process, notwithstanding the provisions of 2 MCAR § 2.084, the Commissioner may certify only the name of the eligible incumbent.

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 § 2.045 Appointing authority may develop and/or conduct selection process. The appointing authority may be authorized to develop selection processes using techniques approved by the Commissioner and/or to conduct selection processes using materials approved by the Commissioner. Such authorization shall be only for classes that are designated by the Commissioner.

The Commissioner shall review the selection process developed and/or administered by the appointing authority for conformance to the law and these rules, and may modify the process used or the classes for which such selection processes are used when deemed necessary for the best interest of the state service.

2 MCAR § 2.046 Rating results of selection processes.

A. Appropriate scientific techniques and procedures shall be used in scoring the results of selection processes and in determining the relative ranking of competitors. Such techniques may include electronic data processing of test answer or experience and training rating forms filled out by the applicant. The minimum rating for which eligibility may be achieved shall be set by the Commissioner, taking into account the number of vacancies anticipated during the term of the eligible list. Final rank may be based on all factors of the selection process and other qualifying elements as shown on the competitor's application or other verified information. Final ratings of each competitor shall be determined by averaging the earned score of each part of the selection process in accordance with the weights established for each part prior to the date of any part of the selection process. All competitors may be required to obtain at least a minimum rating in each part of the

selection process in order to receive a final passing rating or to be rated on the remaining parts of the process. Where rating procedures involve assignment of a numerical score, a score of 70 is necessary to pass and a score of 100 is the maximum score awarded to any competitor.

B. The Commissioner may announce, in advance of the establishment of an eligible list, the maximum number of competitors who shall have their names placed on the list, or who shall be permitted to compete in any of the separate parts of the selection process. Under such procedure, those considered as having passed and who are permitted to take the remainder of the screening process shall be the set number of candidates scoring highest in the process or part thereof. The Commissioner also may establish a procedure for admitting candidates to a subsequent stage of the selection process in rank-order of score on the previous stage and candidates may be invited to complete the examination process as the need to create or enlarge an eligible list is determined.

C. Competitors failing to qualify as eligible for the class for which the screening process was conducted may, with the approval of the Commissioner, be rated with reference to their eligibility for a lower class for which a selection process is being conducted and in cases where competitors signify their willingness to accept appointment to such lower class. If found eligible, names of these competitors shall be added to the eligible list for such lower class.

2 MCAR § 2.061 Reemployment list. The reemployment list shall contain the names of all permanent or probationary employees laid off in the class of employment, and the names of former permanent or probationary employees in the

class whose written applications made within three years of separation in good standing are approved by the Commissioner based on considerations of quality of service. The Commissioner shall consider the recommendation of the appointing authority before approving or disapproving applications for reemployment. A person may remain on a reemployment list for up to three years and must return to employment in the class within four years of separation from the class.

The name of a laid-off employee shall be placed on the reemployment list for all classes in which the employee possessed permanent or probationary status prior to layoff and for locations and employment conditions for which the employee is eligible and has expressed a willingness to accept employment. When notice of layoff is given to the department, the appointing authority shall also notify the department of the classes, locations and employment conditions which the employee is willing to consider. The laid off employee may make changes in availability for classes, locations or employment conditions at any time within three years from the date of layoff.

2 MCAR § 2.065 Removal of names from eligible lists. In addition to the causes stated in Minn. Stat. § 43.14, the Commissioner may remove names from eligible lists permanently or temporarily for any of the following reasons:

A. Appointment through certification from such list to fill a permanent position.

B. Appointment to fill a permanent position through certification from a list for another class at the same or higher salary. If an employee is on more than one eligible list at the same or higher salary, the employee may be kept on other eligible lists by a written request to the Commissioner.

C. Failure to respond within seven days from the date of mailing to a written inquiry of the Commissioner relative to availability for appointment or failure to respond within seven days from the date of mailing to a written inquiry of an appointing authority sent by certified mail relative to availability for employment.

D. Failure to respond within two days to a telegraph inquiry from the Commissioner relative to availability for appointment.

E. Declination of appointment under such conditions as the eligible previously indicated would be acceptable.

F. Failure to report for duty or for scheduled employment interview within the time prescribed by the appointing authority.

G. Expiration of term of eligibility on the eligible list.

H. Failure to maintain a record of current address with the Department. For this purpose, the return of a letter by the postal authority, if properly addressed to the last address on the records, shall be deemed sufficient grounds for such removal of the name from the eligible list.

I. In the case of agency promotional lists, appointment or transfer of an employee to a new agency or another duly established organizational unit.

J. In the case of promotional lists, upon termination in the state service.

K. In the case of promotional lists upon certification to three separate positions except that the name of an individual so removed shall continue to be referred to positions in the class in the agency which gave the individual a satisfactory or better rating in the selection process for such class.

L. Upon certification at least seven times to the same or different appointing authorities where no appointment is made.

M. Subsequent documentation that the candidate on the eligible list does not meet the requirements of the position(s) to which such candidate may be certified.

2 MCAR § 2.067 Statement of availability. Whenever an eligible submits a statement restricting the conditions under which that individual will be available for employment the eligible's name shall be withheld from all certifications which do not meet the conditions specified. An eligible may file a new statement any time during the duration of an eligible list, modifying any prior statement regarding conditions under which the eligible will be available for employment, except that if such statement results in the withdrawal of the eligible's name from the certification outstanding at the time of receipt of statement, it may be deemed a declination of appointment. If such statement would result in the addition of the eligible's name to a certification outstanding at the time of receipt of the statement, it may be added at the request of an appointing authority.

2 MCAR § 2.086 Temporary appointment. Temporary appointments shall be made in accordance with Minnesota Statutes. (Minn. Stat. § 43.20, subd. 5 as amended by Laws of 1979, ch. 332, § 45)

2 MCAR § 2.087 Emergency appointment. Emergency appointments shall be made in accordance with Minnesota Statutes. (Minn. Stat. § 43.20, subd. 3 as amended by Laws of 1979, ch. 332, § 44)

2 MCAR § 2.091 Transfers.

A. An employee may be transferred to a position in the same class in a different agency, or organization unit, with the approval of the Commissioner and the appointing authorities concerned. Transfers of an employee may be made from a position in one class to a position in another class only if it is determined by the Commissioner that the employee to be transferred possesses satisfactory qualifications and if the Commissioner is satisfied that such transfer is in the best interests of the service. The Commissioner may require written examinations or other evidence for the purpose of determining qualifications for transfer.

B. No transfer or change in work assignment imposed as a penalty or which otherwise prejudices any employee, and without the employee's voluntary consent, shall be approved unless the Commissioner is satisfied that such action is necessary in the best interest of the state service.

C. Seniority shall be transferred in all cases of transfer within the same agency, or in cases of transfer by the Commissioner of Administration, but shall not be transferred in other cases of inter-departmental transfer.

D. A transferred probationary or permanent employee may be required to serve a full probationary period beginning on the date of transfer at the request of the receiving appointing authority. The agency shall file notice of this requirement in writing with the Commissioner and shall provide a copy of the notice to the employee prior to completion of the transfer. In the absence of such notice, transfer of a probationary employee will not affect the running of the probationary period, and transfer of a permanent employee shall be with such status and not subject to a probationary period. When a probationary period is required in the case of a transfer of a permanent employee, such employee shall have a thirty calendar day trial period in the new position before the employee may be dismissed (except for just cause) demoted, or transferred without the employee's consent. Upon dismissal during the probationary period for cause other than misconduct or delinquency on the part of the employee during the probationary period and after the thirty calendar day trial period, the employee shall be restored to the position held prior to transfer.

E. The Commissioner may enter into arrangements with public personnel agencies in other jurisdictions for the purpose of effecting transfer of employees. The Commissioner shall not approve any transfer of an employee from a jurisdiction without a federally approved merit system to a grant-in-aid agency. Transferred employees shall accrue vacation leave in accordance with these rules and may be credited with accumulated service in the agency from which transfer is made for purposes of determining vacation accrual rate. Transferred employees may be required to serve a new probationary period and may be credited with accumulated sick leave as provided in 2 MCAR § 2.136.

F. Any state employee who is transferred on a temporary basis to a non-state agency shall continue to accrue benefits, seniority and retirement of a state employee.

2 MCAR § 2.097 Duration of probationary period. All original and promotional appointments shall be tentative subject to the probationary period as follows:

A. Employees in salary schedules A, B, and C shall serve a probationary period in working hours as follows:

Salary Schedule	Hours of Satisfactory Service
A	1044 working hours
B	348 working hours
C	696 working hours

For purposes of this rule, working hours shall include hours actually worked, excluding overtime, except that working hours shall include overtime hours actually worked if the employee is required to liquidate the overtime in compensatory time off. Working hours shall also include paid holidays; and paid leave taken in increments of less than the employee's normal work day.

B. Teachers, institutional education administrators, and educational supervisors shall serve a probationary period of one year.

C. Employees in the management compensation schedule shall normally serve a probationary period of twelve months. An appointing authority may reduce the length of an individual period to not less than nine months, provided the employee has demonstrated the ability to effectively perform the duties and

responsibilities of the position and the training requirements established pursuant to Minn. Stat. § 43.32, subd. 9 have been met. With the approval of the Commissioner of Personnel, the probationary period may be extended to provide sufficient time for individual managers to complete mandatory minimum training requirements provided the total probationary period does not exceed two years.

D. The appointing authority may require employees who are transferred from another jurisdiction to serve a probationary period.

E. The following general provision regarding probationary periods shall apply:

1. Unpaid leave, to the extent that it exceeds ten or more work days, shall be added to the length of the probationary period for those employees covered by paragraphs B and C above.

2. The probationary period shall include all regular service, excluding time served in emergency, provisional, or temporary employment.

3. An employee who is promoted prior to the completion of the probationary period to a higher position in the same occupational field and in the same agency shall complete the probationary period in the lower position by service in the higher position. The appointing authority shall certify that employee for permanent status in the lower position at the end of the specified probationary period for such class, or its equivalent period following the employee's original appointment to the position. In the absence of certification, the employee shall be deemed to possess permanent status.

4. When a probationary employee is granted a leave of absence to accept a position in the unclassified service, the unfulfilled portion of the probationary period in the classified service may be completed by service in the unclassified service position, provided that: a) There is a positive recommendation by the appointing authority approved by the Commissioner; and b) the work in the unclassified position is within the same agency and general occupational field and is at least equivalent in difficulty and responsibility to the work in the position in the classified service. Classes shall be considered to be in the same occupational field when the appointing authority determines, after an analysis of the positions involved, that it is possible to evaluate the probability of satisfactory service in one class by observing service in the other class.

5. All appointments from eligible lists other than the layoff list shall be subject to a probationary period beginning the date of the new appointment.

6. An appointing authority may require employees transferred from the jurisdiction of another appointing authority to serve a probationary period as provided by this rule.

7. An employee demoted during or at the end of the probationary period shall have the time in the higher class count toward the completion of any previously uncompleted probationary period in the class to which the employee is demoted.

2 MCAR § 2.108 Suspension. An appointing authority may suspend an employee without pay for just cause.

Any permanent employee who is suspended for thirty days or less shall, before the action is taken, be presented with a statement in writing setting forth the reasons for the suspension. The employee may use the grievance procedure in 2 MCAR §§ 2.175-178, including appeal to the Commissioner.

Any permanent employee who is suspended for more than thirty days shall, at least five days before the effective date of the suspension, be presented with a statement in writing setting forth the reasons for the suspension. A copy of the statement shall be immediately submitted to the Commissioner. Any permanent employee suspended without pay for more than thirty days may appeal to the Personnel Board within thirty days after the effective date of the suspension.

No seniority shall be acquired during the period of suspension.

If it is proved to the appointing authority's satisfaction that the employee was unjustifiably suspended, any employment rights and benefits that the employee would have if the suspension had not occurred will be returned to that employee.

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.

The appointing authority may assign duties formerly performed by laid off employees to other employees. A permanent employee assigned duties formerly performed by a laid off employee may submit a request for reclassification of his/her position under the provision of 2 MCAR § 2.019.

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.

When 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 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 appointing authority shall determine the order of layoff so as

to ensure 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. If an employee receives a probationary appointment with no break in service after working in a trainee class or under a provisional appointment to the same or related classification in the same agency, his/her seniority shall be credited back to the date of the trainee or provisional appointment.

Seniority of an employee in the class to which that employee is being demoted shall be limited to service in the agency. Seniority shall include the total time of employment in all related higher or equally paid classes in which the employee has served within the agency, as well as other classes which the Commissioner determines as being sufficiently similar to the class to which

demotion is occurring. 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.

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. At least 15 days prior to the effective date of layoff, the appointing authority shall provide written notice of layoff to each employee who is to be laid off. The appointing authority shall notify the Commissioner in writing of the reasons for the layoff. If the appointing authority fails to notify the Commissioner that layoff was for reasons not reflecting on the discredit of the employee before the effective date of the layoff, the layoff 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 names of affected employees also shall be 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 organizational 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 § 2.110 Demotion. The appointing authority may demote an employee for just cause.

A permanent employee shall, before the action is taken, be furnished with a statement in writing setting forth the reasons for the demotion. The employee shall be permitted five days time to reply in writing or upon request to appear personally and reply to the head of the agency. A copy of the statement and employee's reply, if any, shall be filed with the Commissioner prior to the effective date of the demotion. A permanent employee, upon written request, may demand a hearing within 30 days of the effective date of the action before the Board. (Minn. Stat. § 43.24)

If at any time during the probationary period the appointing authority determines an employee's performance does not meet work standards, the appointing authority may demote the employee to a position in the class and agency from which the employee was promoted. No employee serving a probationary period following transfer or promotion shall be demoted except for just cause or without the employee's consent during the first 30 calendar days of the probationary period. (Minn. Stat. § 43.21; Minn. Stat. § 43.19, subd. 3 as amended by Laws of 1979, ch. 332, § 43)

If a demotion is grieved and it is proved to the appointing authority's satisfaction that the employee was unjustifiably demoted, the appointing authority shall restore any employment rights and benefits that the employee would have had if the demotion had not occurred.

Any permanent or probationary employee about to be laid off shall be demoted to replace the employee with least seniority in the next lower class in which the employee previously served, unless the employee elects to be laid off. In either event, the name of the employee shall be placed on any appropriate reemployment lists as provided by 2 MCAR § 2.061.

An appointing authority, with the consent of the affected employee, may demote, in lieu of layoff, a permanent or probationary employee not covered in the preceding provision. Such action shall not entitle the employee to a hearing in the demotion, but the employee's name shall be placed on the layoff list and upon written request may be placed on the reemployment list of the class from which that employee was demoted. No employee so demoted shall displace a permanent or probationary employee except in order of seniority as determined by these rules.

2 MCAR § 2.118 Reinstatement after resignation, retirement, voluntary demotion, or expiration of a leave of absence. Upon written approval of the Commissioner, an appointing authority may reinstate a former probationary or permanent employee to a position in a former class within one year of the date of resignation, retirement, voluntary demotion, or expiration of leave of absence. Seniority upon reinstatement shall be calculated as provided in 2 MCAR § 2.119. No former employee shall be reinstated directly as provided in this rule if a layoff list exists for the class for the agency or organizational unit but may make application to have his/her name placed on the reemployment list.

2 MCAR § 2.119 Restoration of seniority. An appointing authority, who reemploys an employee who has been employed continuously by the state and who left the employment of the agency, shall reinstate the seniority that existed at the time the employee left the agency.

Any employee who was mandatorily retired at age 65 prior to January 1, 1979, shall have all seniority existing at the time of the mandatory retirement restored upon the employee's return to state service in any employment status in which seniority is accrued.

Except as provided above, seniority of a former employee who was reinstated or appointed from a reemployment list shall begin on the date of reemployment in the state service. Seniority at the time of termination may be restored by the appointing authority upon the written request of the employee.

2 MCAR § 2.131 Holidays. Holidays will be observed as prescribed by the legislature. (Minn. Stat. § 645.44, subd. 5)

This rule applies to all classified employees and, notwithstanding 2 MCAR § 2.004, all full-time unlimited unclassified employees in the executive branch of government, except non-tenured laborers; temporary employees; emergency employees; student workers appointed after January 1, 1980; and project employees. Intermittent employees shall become eligible for holidays after completion of 100 working days in any twelve month period. Interns do not receive holiday pay. Holiday leave provisions may be established by the appointing authority for employees not covered by this rule, provided they are not specifically excluded from coverage.

The following days are [redacted]idays and an alternate day off [redacted]all be granted for work done on these days, except where payment is allowed under the overtime provisions of 2 MCAR § 2.130.

New Year's Day . . . . . January 1

Washington's and Lincoln's Birthday. . . . . .Third Monday in February

Memorial Day . . . . . Last Monday in May

Independence Day . . . . . July 4

Labor Day . . . . . First Monday in September

Veterans Day . . . . . November 11

Thanksgiving Day . . . . . Fourth Thursday in November

Day After Thanksgiving . . . . . ~~Fourth Friday in November~~ Friday After Thanksgiving

Christmas Day . . . . . December 25

Employee's Birthday . . . . . Employee's Birthdate

Where a collective bargaining agreement specifies holidays covered employees shall receive only the holidays set forth in that agreement.

~~Medical doctors compensated under the provisions of Minn. Stat. § 43.126 shall observe a floating holiday in lieu of the birthday holiday.~~

A. When New Year's Day, Independence Day, Veterans Day, Christmas Day or the employee's birthday fall on Sunday, the following day shall be considered the official holiday for employees. When these holidays fall on Saturday, the preceding day shall be considered the official holiday for employees. An employee, regardless of work schedule, shall receive the same number of holidays as an employee whose regular work week is Monday through Friday. Where seven day a week schedules are in effect, the actual holiday shall be observed as the holiday for employees working within such schedule. When any of the above holidays fall on an employee's regularly scheduled day off, the employee's scheduled work day which is closest to the holiday, which is not a holiday, shall be scheduled as a holiday for that employee unless other arrangements are agreed to between the appointing authority and the employee. When an employee has days off that are not consecutive and the holiday falls on one of the scheduled days off, either the date before or the day after the holiday(s) shall be observed as the holiday at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee. When an employee has three or more consecutive days off and a holiday falls on one or more of the scheduled days off, either the day(s) before or the day(s) after the consecutive days off or any combination thereof shall be observed as the holiday(s) at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee.

For purposes of this r[redacted], when a workshift includes co[redacted]ecutive hours which fall in two calendar days, that workshift shall be considered as falling on the calendar day in which the majority of hours in the shift fall. When a workshift includes an equal number of consecutive hours in each of two calendar days, that workshift shall be considered as falling on the first of the two calendar days.

When an employee's birthday falls on any of the other holidays listed above, the employee's first scheduled work day following the holiday which is not a holiday, shall be observed as the birthday holiday. Except in leap years, when an employee's birthday falls on February 29, March 1 shall be observed as the birthday holiday. An eligible employee whose birthday falls during a period of seasonal layoff shall be entitled to be paid for the birthday holiday during the first payroll period after return from layoff.

B. The appointing authority in an agency which remains open on a holiday for performance of public business may designate a sufficient number of employees to maintain the continuity of the agency's operations on such days.

C. Holidays which occur within the employee's vacation or sick leave period will not be charged to the employee's vacation or sick leave time.

D. Employees must be on the payroll on the work day immediately preceding and the work day immediately following a holiday to be eligible for such holiday.

For the purpose of determining eligibility for holiday pay, "on the payroll" shall mean those who are on paid leave or actively working.

E. Employees who normally work less than full-time and eligible intermittent employees shall have their holiday pay prorated on the following basis:

Hours that would have been worked during the pay period had there been no holiday	Holiday hours earned for each holiday in the pay period
Less than 9.5	0
At least 9.5, but less than 19.5	1
At least 19.5, but less than 29.5	2
At least 29.5, but less than 39.5	3
At least 39.5, but less than 49.5	4
At least 49.5, but less than 59.5	5
At least 59.5, but less than 69.5	6
At least 69.5, but less than 79.5	7
At least 79.5	8

Eligible intermittent employees shall receive a holiday if they work the day before and the day after a holiday. If such intermittent employee works on a holiday, that employee will be reimbursed for the holiday in addition to the pay for the time worked. This pay shall be in accordance with the above schedule. Seasonal employees are entitled to holidays as defined in this rule.

With the approval of the appointing authority, part-time employees may be allowed to arrange their work schedules, in payroll periods that include a holiday, to avoid any reduction in salary due to a loss of hours because of the proration of holiday hours, provided such rescheduling does not result in the payment of overtime.

Any eligible employee mandatorily retired on a holiday or holiday weekend shall be entitled to be paid for the holiday(s).

Holiday pay shall be computed at the employee's normal day's pay (i.e., the employee's regular hourly rate of pay multiplied by the number of hours in his/her normal work day), and shall be paid in cash.

Any employee who works on a holiday shall be paid cash at the employee's appropriate overtime rate for all hours worked in addition to holiday pay described in this section, or at the discretion of the appointing authority, shall be paid in cash at the employee's appropriate overtime rate for all hours worked in addition to an alternate holiday in lieu of holiday pay provided in this section. Such alternate holiday shall be granted within thirty days of the pay period in which the holiday occurs, but if there is no agreement as to the date of the alternate holiday between the appointing authority and the employee, such holiday shall be paid in cash.

F. Employees who observe religious holidays on days which do not fall on a Sunday or a legal holiday shall be entitled to such days off to observe the religious holiday upon 21 days advance written notice to the appointing authority. Such days off to observe these religious holidays shall be taken without pay, or upon the election of the employee, may be charged against accumulated vacation leave. If the appointing authority can arrange to have the employee work an equivalent number of hours at another time during the fiscal year to compensate for the days lost for observance of religious holidays, these holidays may be taken against such hours actually worked.

2 MCAR § 2.133 Absence because of illness or injury for which worker's compensation is paid by the state.

A. Hazardous occupation injuries. Employees of the state corrections and welfare institutions; the School for the Deaf; the Braille and Sight Saving School; the Department of Veterans' Affairs; state patrol troopers; conservation officers and crime bureau agents who incur a disabling injury in the ordinary course of employment may be eligible for injured on duty pay. In order to be eligible for such pay, employees must have been acting in a reasonable and prudent manner in compliance with established rules and procedures of the appointing authority when the injury is incurred. Such injuries must be the direct result of aggressive and/or criminal and/or intentional acts, or their consequences, by a person who is a resident or is under the custodial control of a correctional, educational, veterans' or welfare institution; or the injury must have occurred while attempting to apprehend, restrain, or take into custody an institutional inmate or resident, or suspected violator of the law.

Eligible employees shall receive compensation in an amount equal to the difference between the employee's regular rate of pay and benefits paid under Worker's Compensation. Such injured on duty pay shall not exceed an amount equal to 240 times the employee's regular hourly rate of pay per disabling injury, and shall not affect the employee's regular accrued vacation, sick leave, or over-time credits.

B. Other job-related injuries. Notwithstanding 2 MCAR § 2.004, any classified or unclassified employee in the executive branch may elect to use accumulated vacation or sick leave or both during a period of absence due to compensable illness or injury. Such leave may be used on the following basis:

1. Transfer of the worker's compensation benefits to the State to be credited to the employee's sick leave or vacation accrual in proportion to the amount of compensation received and accept sick leave or vaction time for the compensable sickness or injury;

or

2. Keep the worker's compensation benefits and receive from the State an additional compensation from the accumulated sick leave or vacation leave;

but

in either case, the total rate of compensation may not exceed the regular compensation of the employee. (Minn. Stat. § 176.021, subd. 5)

An employee so absent shall be entitled to immediate return to actual employment upon appropriate release from worker's compensation status.

2 MCAR § 2.134 General provisions governing leaves of absence with pay. As far as practicable, requests for leave 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 by the appointing authority.

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 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, but shall be credited to the employee's records at the end of that payroll period.

An employee on layoff does not earn vacation and sick leave.

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; student workers appointed after January 1, 1980; 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. Intermittent employees shall become eligible after completion of 100 working days in any twelve month period. Interns shall not accrue vacation leave. 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 <u>non-managerial</u> employee shall accrue vacation with pay according to the rate listed below:

HOURS OF VACATION ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

No. Hours Worked During Pay Period	0 thru 3 yrs. if appointed on or after 7/1/79	0 thru 3 yrs. if appointed before 7/1/79	After 3 thru 5 years	After 5 thru 8 years	After 8 thru 12 years	After 12 thru 20 years	Over 20 years
Less than 9.5	0	0	0	0	0	0	0
At least 9.5, but less than 19.5	.50	.75	.75	1	1.25	1.50	1.50
At least 19.5, but less than 29.5	.75	1	1	1.25	1.75	2	2
At least 29.5, but less than 39.5	1	1.50	1.50	2	2.75	3	3
At least 39.5, but less than 49.5	1.50	2	2	2.50	3.50	3.75	4
At least 49.5, but less than 59.5	2	2.50	2.50	3.25	4.50	4.75	5
At least 59.5, but less than 69.5	2.25	3	3	3.75	5.25	5.75	6
At least 69.5, but less than 79.5	2.75	3.50	3.50	4.50	6.25	6.75	7
At least 79.5	3	4	4	5	7	7.50	8

Medical-Doctors-Compensated-Under-the-Provisions of-Minn.-Stat.-§-43.126-Shall-Accrue Vacation-with-Pay-According-to-the-Rate Listed-Below:

No.-of-Hours Worked-During Pay-Period	0-thru-3 Years	3-thru 5-years	5-thru 12-years	After-12 years
Less-than-9.5	0	0	0	0
At-least-9.5 but-less-than-19.5	1	1.25	1.50	1.75
At-least-19.5 but-less-than-29.5	1.25	1.50	2	2.25
At-least-29.5 but-less-than-39.5	2	2.25	3	3.50
At-least-39.5 but-less-than-49.5	2.50	3	4	4.50
At-least-49.5 but-less-than-59.5	3.25	3.75	5	5.75
At-least-59.5 but-less-than-69.5	3.75	4.50	6	6.75
At-least-69.5 but-less-than-79.5	4.50	5.25	7	8
At-leat-79.5	5	6	8	9

When sick leave and/or 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 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, who is paid for less than the full payroll period of 80 hours, will have vacation accrual pro-rated for that payroll period. 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 date of hire or in the case of intermittent employees, from the date of eligibility. The appointing authority may permit employees transferred to the classified state civil service from another jurisdiction under the provisions of 2 MCAR § 2.091 E to accrue vacation leave on the basis of their length of service in the agency from which the transfer was made.

The appointing authority 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 240 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 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.

If an employee becomes ill or disabled while on vacation, such leave shall be changed to sick leave effective the date of illness or disability, upon notice to the employee's appointing authority. The appointing authority may require the employee to furnish a medical statement from a medical practitioner as soon as practicable.

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 intermittent employee's accrued but unused vacation leave shall be liquidated by cash payment on the last payroll period in June of each fiscal year.

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 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 for the first five years of continuous state service; eight hours per full payroll period after five years of continuous state service; and nine hours per full payroll period after twelve years of continuous state service.

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; student workers appointed after January 1, 1980; 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. Intermittent emloyees shall become eligible for purposes of this rule after completion of 100 working days in any twelve month period. Interns shall not accrue sick leave. 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 accrued 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
Less than 9.5	0	0
At least 9.5, but less than 19.5	.75	.25
At least 19.5, but less than 29.5	1	.50
At least 29.5, but less than 39.5	1.50	.75
At least 39.5, but less than 49.5	2	1
At least 49.5, but less than 59.5	2.50	1.25
At least 59.5, but less than 69.5	3	1.50
At least 69.5, but less than 79.5	3.50	1.75
At least 79.5	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 pay~~ ~~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.~~ When sick leave and/or vacation leave is used in conjunction with the workers' compensation benefit, an eligible employee receiving workers' compensation benefits shall accrue sick leave for the total number of hours compensated by workers' compensation, sick leave and vacation leave. 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.

Full Time Employees Shall

Earn Sick Leave on the Following Basis Each Payroll Period:

Sick Leave Balance at Start of Payroll Period	Number of Hours Credited to Balance	Number of Hours Credited to Bank
896 or less	4	0
897	3	1
898	2	2
899	1	2

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. Sick leave to arrange for the birth or adoption of a child shall be limited to not more than three consecutive work days. 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.

An employee incurring an on the job injury shall be paid his/her regular rate of pay for the remainder of the workshift. Any necessary deductions from accrued sick leave for employees so injured shall not commence until the first scheduled work day following the injury.

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 his/her previously accumulated, unused balance of sick leave restored upon approval of the new appointing authority.

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 is appointed to the classified service, without interruption of services to the state shall be entitled to credit of accumulated unused sick leave earned in the former employment.

An employee of another jurisdiction or the federal competitive service with probationary or permanent status may be transferred under the provisions of 2 MCAR § 2.091 E or appointed to a position in the state service. The appointing authority may credit the employee with the amount of sick leave accumulated not to exceed 12 days. Such credit shall be reduced proportionately as sick leave is accumulated in the state service.

2 MCAR § 2.138 Other leaves with pay. Notwithstanding 2 MCAR § 2.004, any classified or unclassified employee in the executive branch shall be granted leave of absence with pay for:

A. Service upon a jury. Compensation shall be at the employee's regular base rate of pay less the fee received for jury duty, exclusive of expenses paid by the court. Employees whose scheduled shift is other than a day shift shall be reassigned to a day shift during the period of service upon a jury. When not impaneled for actual service and only on call, the employee shall report to work.

B. Appearance before court, legislative committee, or other judicial or quasi-judicial body in response to a subpoena or other direction by proper authority <u>for purposes related to the employee's state job</u> other than those instituted by the employee or his exclusive representative. The employee

shall receive regular p[redacted]less any fee received, exclus[redacted] of court paid expenses for serving as a witness, as required by the court.

C. Attendance in court in connection with an employee's official duty. Such attendance shall include the time required in going to the court and returning to the employee's headquarters.

D. Time required to report and be processed through pre-induction examination(s) conducted by the armed forces preliminary to military service.

E. Educational purposes, if such education is required by the appointing authority.

F. Voting pursuant to Minn. Stat. § 204A.36.

G. Preparation for and participation in world, Olympic or Pan American games pursuant to Minn. Stat. § 15.62, subd. 3 as amended by Laws of 1979, ch. 208, § 1.

Any voluntary absence to appear and testify in private litigation not as an officer of the state but as an individual, shall be taken as an vacation leave, leave of absence without pay, or as a deduction from authorized accumulated overtime.

2 MCAR § 2.141 Maternity/Paternity or adoption leave of absence without pay. A maternity/paternity or adoption leave of absence shall be granted to a permanent, probationary, or unclassified natural parent or adoptive parent in the classified or unclassified service for a period not to exceed 6 months,

when requested in conjunction with the birth or adoption of a child. Maternity/Paternity or adoption leave may be extended up to a total maximum of one year by mutual consent between the employee and the appointing authority.

2 MCAR § 2.181 Expense allowances.

A. Means of travel.

1. State-owned vehicles. An employee may be permanently assigned a state-owned vehicle when required by law or if circumstances make such assignment necessary when recommended by the appointing authority and approved by the Commissioner of Administration.

Agencies operating vehicles not in the Central Motor Pool shall operate them on a pool basis following rules of the Department of Administration for the operation of such state-owned vehicles.

2. Privately-owned vehicles and aircraft. The compensation for use of a personal automobile is 19 cents per mile when a motor pool vehicle is not available. Mileage shall be paid based on the most direct route according to Transportation Department records. Deviations from the shortest direct route, such as vicinity driving or driving from the employee's residence where the employee's residence becomes the point of departure, shall be shown on the expense account as a daily total, with a separate explanation outlining the reasons for such mileage. No additional reimbursement will be made for incidental expenses to the operation or maintenance of a personal automobile for state business except for payment of toll charges and parking.

The employee who elects to use a personal car on official state business with the approval of the appointing authority when traveling within the state in cases where a motor pool vehicle is available shall be reimbursed at the rate of 14 cents per mile. The higher rate may be paid if the use of the motor pool vehicle would have resulted in a greater cost to the state than the reimbursement of the personal car rate, of if an employee requires a vehicle with hand controls or other adaptive driving devices, or if the vehicle must be large enough to accommodate a wheelchair and such a state-owned vehicle is not available.

Employees who use a specially equipped personal van or van-type vehicle on official state business shall be reimbursed for mileage at the rate of 31 cents per mile. In order to qualify for this reimbursement rate, the vehicle must be equipped with a ramp, lift, or other level changing device designed to provide access for a wheelchair. ~~and the vehicle must be operated by the handicapped employee from the wheelchair.~~

The appointing authority may authorize travel in personal aircraft when it is deemed in the best interest of the state. Mileage reimbursement in such cases shall be 31 cents per mile and shall be based on the shortest route based on direct air mileage between the point of departure and the destination.

3. Out-of-state travel. Payment for expenses for transportation by personal vehicle for out-of-state travel shall be made on the basis of a single coach air fare for each vehicle used.

If available, motor pool vehicles or state-owned vehicles may be used for out-of-state travel. When a central motor pool vehicle is used, reimbursement will be made to the Central Motor Pool. The expense of such vehicles shall be charged against the out-of-state authorization of the agency.

When personal vehicles are used in driving to out-of-state locations not available by commercial transportation, travel reimbursement shall be made on an actual mileage basis in accordance with these rules.

Any in-state travel expense directly related to an out-of-state trip shall be charged against the annual out-of-state travel allowance for the agency involved.

4. Commercial transportation. State employees may travel in-state and out-of-state by commercial transportation when authorized by the agency head. Air transportation shall be by coach class except in those instances where such space is not available. When an employee has a reservation for a flight that is not going to be used, such employee shall be accountable for the cancellation of such reservation. Air charter service may be used for in or out-of-state travel where such charter service is more practical than commerical transportation. The appointing authority may reimburse the employee for the use of a public bus on state business, where the use of the bus results in less cost to the state than the use of a state or personal vehicle.

5. Motorcycle reimbursement. Reimbursement for use of a motorcycle on official state business, when authorized in advance by the appointing authority, shall be at the rate of 10 cents per mile.

B. Meals and lodging.

1. Employees shall claim reimbursement only for the amount actually paid for meals when in a travel status. The amount must be reasonable, taking into consideration the location in which the meal is obtained.

Maximum reimbursement, including sales tax for meals within the state, shall be $3.00 for breakfast, $4.00 for lunch, and $7.00 for dinner.

Maximum reimbursement, including sales tax for meals outside the state or on trains shall be $4.00 for breakfast, $5.00 for lunch, and $9.00 for dinner.

Reimbursement for an official breakfast, luncheon, dinner, or banquet meeting shall be the actual cost of the meal.

An employee in a travel status between employee's work station and a field assignment may claim reimbursement for meals under the following circumstances:

a. Breakfast, providing the employee leaves home before 6:00 a.m. and is away from the permanent or temporary station.

b. Dinner, providing such employee returns home after 7:00 p.m. and is away from the permanent or temporary station.

c. Employees may be reimbursed for noon meals if the employee is in a travel status. Employees stationed in the seven-county metropolitan area shall not be reimbursed for meals obtained in the seven-county metropolitan area except when properly authorized as a special expense in

section D below. In other areas the cost of a noon meal shall only be reimbursed where such employee would not ordinarily have incurred such a cost and the employee is considered in a travel status. Any request for reimbursement under this section shall include a statement in writing that the employee has complied with provisions of this section of the rules.

Because of variances in in-state and out-of-state hotel or motel accommodations, no fixed amounts are prescribed. It is the responsibility of the appointing authority to instruct the employee to use good judgment in incurring lodging costs. Charges shall be reasonable and consistent with the facilities available. The appointing authority may authorize the use of rental housing where the use of regular hotel or motel accommodations would result in a greater cost to the state.

C. Other fees and expenses.

1. Parking fees. Employees using state-owned or private vehicles shall be reimbursed on an actual expense basis. Charges shall be necessary and reasonable, and consistent with the facilities available. When receipt or other evidence of payment is issued to the employee, such receipt must be submitted with the expense reimbursement request.

2. Telephone calls. When it is necessary to place a work related long distance call, the employee should request that the operator bill the call to the home office telephone number. An employee who pays cash for a work related long distance call, may obtain reimbursement for such call.

3. Personal expenses. Personal expenses for purposes of this rule are defined as dry cleaning, laundry, and baggage handling. Employees continuing in a travel status in excess of one week who do not return home during that week may claim reimbursement not to exceed $7.00 per week for laundry or not to exceed $6.00 for dry cleaning and pressing expenses for each week after the first week. If an employee returns home during a period of time in which he/she continues in travel status, the employee is not eligible for reimbursement for laundry, dry cleaning or pressing in the subsequent week. Receipts must accompany the claim for reimbursement. The employee's judgment is to be used regarding baggage handling expense. No reimbursement shall be made for personal phone calls, valet service, or similar personal expenses.

D. Special expenses. Special expenses shall require prior approval of the appointing authority and the approval of the Commissioner of Personnel, who shall issue guidelines regarding eligible special expenses. This section also applies to any state board, council, or commission member.

E. Station assignments. The appointing authority shall assign employees permanent or temporary stations with such assignments to be in the best interest of the state and travel origin and records shall be based on these permanent or temporary assigned stations. An appointing authority reporting deviation from this provision shall submit a request in accordance with the rules relating to special expenses. Employees away from such designated stations on unfinished assignments may be allowed mileage reimbursement for trips to their stations on alternate weekends. An employee may return to the station each weekend at state expense if the cost of such return is less than that of remaining in the field.

F. Payment of expenses.

1. Expense accounts. Expense accounts for all state employees shall be submitted to the Commissioner of Finance on the prescribed form (see Accounting Procedures Manual, Section E-2). If a receipt is required and the receipt has been lost or is otherwise unavailable, an affidavit stating the facts covering the expenditure shall accompany the expense account.

An agency may be billed directly for expenses such as registration or conference fees, travel agencies, hotels and motels. Such billings shall include the name of the employee and the nature and date of the expense. Payment shall be processed promptly and charged to the allotment classification for travel.

2. Advances. An agency may upon request advance an estimated amount for approved travel expenses, if greater than $50.00, to an employee who will be traveling on state business.

The authority for advance of travel expense payments may not exceed the maximum allowance permitted under state travel regulations.

In the case of travel expense advances agencies having imprest cash funds shall make the advance from such accounts if possible. In other instances, agencies shall prepare a statement with supporting expense voucher clearly stating the advance is being made under provisions of Minn. Stat. § 43.33. In all cases after the actual expense is determined, a final employee report for the trip and/or period for which the advance was made shall be prepared and forwarded to the Department of Finance. The advance payment transaction date

and transaction number must be shown on the final employee expense report. The final expense voucher shall include the number of the state warrant covering the advance payment. If additional payment is due the employee, an additional state warrant shall be prepared in the usual manner. If an advance payment exceeds the actual expenses, the employee shall return the excess which shall be deposited in accordance with provisions established by the Commissioner of Finance.

G. Insurance. Any employee flying a personal aircraft on official state business must show proof of adequate liability insurance coverage by a firm licensed to do business in Minnesota. Such coverage shall be in an amount of $50,000 minimum for each passenger seat, $50,000 per person, and $150,000 per accident for public liability for bodily injury, and $50,000 property damage.

It shall be the responsibility of the employee to immediately notify the appointing authority of any change in insurance coverages under such employee's aircraft liability insurance.

H. Automobile leasing. An employee may be reimbursed for car rental expenses where the use of a state car in the conduct of state business is not possible and the use of a rental car is the only or the least expensive method of transportation. An employee using such rental car must indicate the need for the rental and attach an itemized statement for the rental upon requesting reimbursement.

2 MCAR § 2.182 Relocation expenses.

A. Authorization. An employee shall be reimbursed for relocation expenses under the provisions of this rule if the conditions of 2 MCAR § 2.182 B.6. are met and if:

1. The appointing authority determines that an employee is required to be transferred or reassigned to a different work station, when the transfer or reassignment is not for the employee's sole benefit, or:

2. The employee must change residence as a condition of employment, or:

3. The employee accepts an appointment at a higher salary range, or:

4. The employee is reassigned, transferred or demoted to a vacant position in the employee's agency due to the abolishment, transfer of the function to another governmental jurisdiction or private enterprise, removal to a new location or to another state agency of all or a major portion of the operations of the employee's appointing authority.

An employee transferred under these conditions shall receive prior authorization before incurring any expenses authorized by this rule.

An employee who is demoted during the probationary period after the trial period, shall receive those relocation expenses provided in 2 MCAR § 2.182 B.3. and 4.

Relocation expenses authorized by this rule may be paid to a person initially accepting employment in the state service with the advance approval of the Commissioner. Payment shall be made only after the person becomes a state employee.

B. Relocation expenses covered.

1. Travel status. An employee transferred or reassigned at the convenience of the state service as defined in paragraph A. above shall be considered in a travel status for a period of up to ninety calendar days and shall be authorized to be reimbursed for return to such employee's original work station once a week. During the first ninety calendar days the state may also reimburse the cost of transporting the employee's spouse twice during such period, including the cost of mileage, meals and lodging, but not to exceed a total period of seven calendar days. In addition, the state may reimburse the employee's family for reasonable transportation costs to the new work station at the point that the move is made, including mileage, meals and lodging. Such expenses shall be reimbursed consistent with these rules.

2. Realtor's fees. The state may pay the cost of realtor's fees on the home being sold by the employee but in no case shall such payment exceed $3,000.00.

3. Moving expenses. The state shall pay the cost of moving and packing of household goods. The employee shall obtain two or more bids for packing and moving of household goods. Approval shall be given by the appointing authority before authorizing a mover to pack and ship household goods. The state shall also pay for the cost of moving house trailers where

that is the domicile of the employee, including the cost of transporting blocks, skirts, or other attached fixtures. The employee shall obtain two or more bids.

4. Miscellaneous expenses. The employee shall be reimbursed up to a maximum of $350.00 for miscellaneous expenses directly related to a move. Such expenses shall be reimbursed when supported by documentation. These expenses may include such things as disconnecting and connecting appliances and/or utilities, or other costs associated with the purchasing or rental of a new residence not covered elsewhere in this rule.

5. Liability. Neither the State of Minnesota nor any of its agencies shall be responsible for loss or damage to any employee's household goods or personal effects as a result of such transfer.

6. Eligibility. In order to be eligible for any payment of moving expenses or to be eligible for reimbursement of any expenses under this section, the new permanent work station shall be at least 35 miles from the current work station or the change in residence must be required by the appointing authority as a condition of employment and the change in residence must be completed within 6 months of the effective date of the appointment to the new position, unless an extension of time is approved by the appointing authority.

2 MCAR § 2.201 "Agency" means a department, commission, board, institution, or other branch of the state service, in which all positions are under the same appointing authority.

2 MCAR § 2.202 "Agency Promotional List" means an eligible list of employees of the agency or duly established organizational unit established by competitive examination from which promotions may be made.

2 MCAR § 2.203 "Allocation" means the assignment of a new or vacant an individual position to an appropriate class, on the basis of the kind, difficulty, and responsibility of the work performed in the position.

2 MCAR § 2.226 "Open Competitive List" means an eligibile list established by open competitive examination from which original appointments may be made.

2 MCAR § 2.232 "Permanent Employee" means an employee in the classified service who has successfully completed the initial probationary period.

2 MCAR § 2.240 "Reclassification" means a reallocation, or change in allocation of an individual position by raising it to a higher class, reducing it to a lower class, or moving it to another class at the same level. A reclassification shall be considered a "reallocation" when the reclassification is the result of significant changes over a period of time in the kind, difficulty, or responsibility of the work performed in such position. A reclassification shall be considered a "change in allocation" when the reclassification is the result of changes in the organizational structure of an agency or abrupt changes in the duties and responsibilities of the position. A reclassification shall also be considered a change in allocation if it is the result of assignment of the incumbent in a manner so as to bypass the selection process.

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 state civil service and/or the class in good standing whose written applications for consideration for reemployment in the class have been approved by the Commissioner in accordance with 2 MCAR § 2.061.

2 MCAR § 2.244 "Statewide Promotional List" means an eligible list of state employees established by competitive examination from which promotions may be made to any state agency.

APPROVED AS TO FORM AND LEGALITY

Nov. 19 1979 19____

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 19 1979
Joan Anderson Growe
Secretary of State
9:45 AM

DEPARTMENT Attorney General

Office Memorandum

BARBARA L. SUNQUIST
Commissioner of Personnel

TO :

DATE: 11/19/79

Attn: ANDREA KIRCHER
Special Assistant
Attorney General

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1238

SUBJECT: Rules as Approved In the Matter of the Proposed Amendment of Rules of the Department of Personnel Regarding Personnel Administration

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

LES/dw
Enclosure
cc: Duane Harves
Marshall Whitlock

Our File: #556

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 11/2/79 DUE DATE 11/22/79
Lee 11/12. 11-25-79

Resubmitted and Received 11-15-79

a. Returned to Agency w/o Filing w/Secretary of State _____
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 ✓
   Sufficiency ✓
6. Secretary of State's List ✓ (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓
11. Statement of Need and ~~Evidence~~ Reasonableness.
12. Hearing Examiner's Report ✓ note Para. 16 re § 2.135
13. Agency's Findings of Fact ✓ X
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓
16. Report of Chief Hearing Examiner ✓
17. Order Approving Incorporation by Reference, where applicable N/A
18. Certificate of Compliance with Rulemaking Procedures ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
20. Petition by Public, where applicable N/A

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed
Amendment of Rules of the
Department of Personnel
regarding Personnel Administration

I hereby certify that the attached 354 labels & 2 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:00 o'clock A.M., this 8th day of August, 1979, have requested pursuant to M.S. 15.0412 (1978), 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

Joan Anderson Growe

By Kathy Hjelm

Dept Exhibit No. 6
File No. PERSL-80-001-GB
Date 9-12-79

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Department of Personnel

Dept Exhibit No. 1
File No. PERSL-80-001-GB
Date 9-12-79

Notice of Intent to Solicit
Outside Opinion Regarding
Rules of the Department
of Personnel

The Department of Personnel is drafting rules to implement Minn. Stat. Ch. 43 as amended by Laws 1979, Ch. 332.

The Department will also be drafting changes in Personnel Rules for the purpose of clarifying and simplifying existing procedures.

The subjects covered by the proposed rule changes include the following:

labor service; temporary designation of positions in the unclassified service; reallocation of positions; work-out-of-class; severance pay; eligibility to compete in promotional examinations; rating results of selection processes; reemployment list; removal of names from eligible lists; statement of availability; temporary appointment; emergency appointment; transfers; duration of probationary period; suspension; layoff; demotion; reinstatement after resignation, retirement, or expiration of leave of absence; restoration of seniority; holidays; absence because of illness or injury for which worker's compensation is paid; general regulations governing leaves of absence with pay; vacation; sick leave; other leaves with pay; child bearing/child rearing leaves of absence without pay; other leaves of absence without pay; availability of performance appraisal reports; training standards; travel expense reimbursement; relocation expenses; and the definitions of "agency",

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"agency promotional list", "open competitive list", "permanent employee", "reallocation", "reemployment list", and "statewide promotional list".

The Department invites interested persons or groups to provide written information, comments and advice on these subjects to James Lee, Minnesota Department of Personnel, 3rd Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101.

Written statements will be made part of the public hearing record and must be submitted by July 27, 1979 to be considered in the original rules draft.

Doris H. Escher, Asst. Comm.
for:
Barbara L. Sundquist
Commissioner

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STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES REGARDING PERSONNEL ADMINISTRATION.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on September 12, 1979, before George A. Beck, 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 on September 27, 1979; and

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

WHEREAS, the Department of Personnel has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and 9 MCAR § 2.110; 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 of Personnel 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, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4.

Dated this 31st day
of October, 1979.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

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STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF PERSONNEL

In the Matter of the Proposed
Amendment of Rules Regarding
Personnel Administration.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before State Hearing Examiner George A. Beck at 8:30 a.m. on Wednesday, September 12, 1979, in Room 83 of the State Office Building on Wabasha Street between Aurora and Fuller, in the City of Saint Paul, County of Ramsey, State of Minnesota.

This report is a part of a rule hearing procedure pursuant to Minn. Stat. Sec. 15.0411 to Sec. 15.0417 and Sec. 15.052 to determine whether the proposed rule amendments should be adopted and given the force of law. A copy of this report may be obtained from the Office of Hearing Examiners for the cost of reproduction.

Members of the agency panel appearing at the hearing included: Donn H. Escher, Assistant Commissioner, Department of Personnel; James Lee, Senior Personnel Representative, Classification and Compensation Division, Department of Personnel; Jenipher Hance, Secretary, Department of Personnel; Julie Vikmanis, Examining and Referral Manager, Department of Personnel; Michael Koebnick, Manager, Classification and Compensation Division, Department of Personnel; Nancy Arneson McClure, Pre-Service Trainee, Assistant State Negotiator, Labor Relations Division, Department of Personnel; and Andrea Mitau Kircher, Special Assistant Attorney General, representing the Department of Personnel.

Seventeen persons signed the hearing register. Two public witnesses appeared and spoke at the hearing. The Department submitted 15 written exhibits. Eleven written comments were received from the public. A list of the exhibits is attached to this report.

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

FINDINGS OF FACT

1. On July 30, 1979, the Department of Personnel filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rule.
(b) An Order for Hearing.
(c) A proposed Notice of Hearing.
(d) A statement of the number of persons expected to attend and the length of the hearing.

2. On August 13, 1979, a Notice of Hearing and a copy of the proposed rule amendments were published at 4 State Register 117.

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3. On August 9, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State to receive such notice.

4. On August 17, 1979, the Department filed the following documents with the Hearing Examiner:

(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 Certificate of Delivery of the Secretary of State's list.
(f) The Statement of Need and Reasonableness.

On August 20, 1979, the Department filed with the Hearing Examiner a memorandum listing the names of the Department personnel who would represent the Department at the hearing. Although this memorandum, required by 9 MCAR Sec. 2.105 H., was filed late, no person was prejudiced thereby.

The documents above cited 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 19, 1979, for the receipt of written comments and statements.

6. Pursuant to its authority as set out at Minn. Stat. Sec. 43.06(5), the State Personnel Board reviewed these proposed rule amendments and approved them at its meeting on August 16, 1979. (Ex. 10)

7. The Department cites Minn. Stat. Sec. 43.05, subd. 2 as authority for these proposed rule amendments. As amended by Minn. Laws 1979, Ch. 332, Minn. Stat. Sec. 43.05, subd. 2(2) provides, in part, as follows:

> (2) Promulgate personnel rules for the purpose of carrying out the provisions of this chapter; these rules shall provide, among other things, for current records of efficiency, and standards of performance, for all employees subject to the provisions of this chapter; the manner of completing appointments and promotions; rejection of eligible candidates; examinations; retention of examination records under the provisions of section 138.163; creation of eligible lists, with successful candidates ranked according to their ratings in the examinations; leaves of absence with and without pay; transfers, reinstatements, layoffs, vacations, and hours of work; public notice of examinations; procedure for changes of rates of pay; compulsory retirement at fixed ages; and other conditions of employment. . . .

8. The subject of this rule proceeding is the amendment of a large number of existing personnel rules. The need to adopt these amendments rises because of statutory changes contained in Minn. Laws 1979, Ch. 332, along with the need to correct grammar, clarify meanings, simplify existing procedures and the need to convert temporary rules published at 3 State Register 2106 on June 4, 1979, to permanent rules.

9. The amendments to the rules listed in this paragraph received no public comment either at the hearing or in the written statements. A review of the Department's Statement of Need and Reasonableness shows that the Department has properly documented the need for and the reasonableness of

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the amendments to these rules: 2 MCAR Sec. 2.009, 2.010, 2.018, 2.019, 2.024, 2.029, 2.031, 2.039, 2.046, 2.061, 2.065, 2.086, 2.087, 2.091, 2.097, 2.099, 2.109, 2.110, 2.118, 2.119, 2.133, 2.134, 2.141, 2.182, 2.201, 2.203, 2.226, 2.232, 2.240, 2.241, and 2.244.

10. At the hearing, the Department announced three essentially typographical mistakes. At Section 2.039 C., in the last line of the first paragraph, the word "Provided:" was inadvertently not deleted when it should have been since the provisos following were deleted. (Ex. 13, p. 1) In Section 2.135, in the first line of the second paragraph, the words "non managerial" were inadvertently deleted and should not have been. (Ex. 13, p. 1) Also, in the first paragraph following the medical doctors' vacation rate schedule in Section 2.135, the word "eligible" was inadvertently stricken in the rule as published and should not have been. These changes do not appear to be substantial.

11. The Department published a Notice of Intent to Solicit Outside Opinion at 4 State Register 52 on July 16, 1979. No comments or opinions were received as a result of this publication. (Ex. 8)

12. The amendment to 2 MCAR Sec. 2.045 allows the appointing authority to participate with the Commissioner in the development as well as the use of selection processes, when authorized by the Commissioner. The Department states that this proposed delegation follows from a recommendation made in the Legislative Audit Commission ("LAC") Report. That Report concluded that greater participation in the selection process by those most familiar with the positions being filled would improve the process and its results. (Ex. 8, p. 4; Ex. 8B, p. xi) This amendment was supported by the Personnel Advisory Committee ("PAC") which is made up of personnel directors from the largest state agencies. They stated that the amendment should assist in improving the results of selection processes as well as their acceptability to state managers. (Ex. 8C, p. 1)

This amendment was questioned by the Minnesota State Employees Union AFSCME Council No. 6 ("Council 6"). Council 6 believes that it is essential that the Department retain the function of development of selection procedures in order to ensure fairness and validity of tests as required by Minn. Stat. Sec. 43.13. Council 6 believes that appointing authorities should have to justify selection processes on a case-by-case basis to the Department as is currently done. (Ex. K, p. 1) The Department has adequately demonstrated the need for and reasonableness of this amendment. It should be noted that the appointing authority must first be authorized by the Commissioner to develop selection processes and that such authorization is only for the classes designated by the Commissioner. The selection process developed by the appointing authority is subject to review by the Commissioner for conformance to the law and rules, and may be modified by the Commissioner.

13. Section 2.067 concerning a statement of availability is proposed to be amended to add a sentence which would indicate the procedure to be followed when a candidate changes his availability by adding an employment

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condition or geographical location condition. The amendment provides that if there is a certification outstanding when such a statement is received, then the person's name may be added at the request of an appointing authority. The Department states that appointing authority should have discretion to determine whether they wish to provide consideration to the person who has changed his mind about his availability since it may already have received the names of other candidates, begun contacting them, and may have extended an offer of appointment. (Ex. 8, p. 6) The Department believes that the IAC Report supports this type of change. (Ex. 8B, p. xiv, 46) The PAC stated that this amendment will mean that the appointing authority will not be placed in the position of having made offers to candidates who subsequently become ineligible by reason of the addition of names by the Department of Personnel without forewarning to the agency. Since the wording of the amendment is permissive, however, a candidate inadvertently left off a list could be included later. (Ex. 8C, p. 1)

Council 6 opposes this amendment based upon the belief that it will allow the appointing authority to pick and choose who shall have the opportunity to be certified and hired. It is concerned that this procedure might infringe upon the collective bargaining agreement requirement that the most senior employee on an eligible list be hired. Council 6 recommends that the eligible's name be added at the request of the employee rather than at the request of an appointing authority. (Ex. K, p. 2) The Department points out, however, that the certification will still be made by the Department in accord with the statute and rules and suggests that this is a reasonable way to balance interests of all of the applicants involved. The Department asserts that procedures for certification of eligible lists have always been governed by the law and rules and not by the collective bargaining agreement and states that the agreement merely indicates what considerations the appointing authority must act upon once he receives a certification. The Department has demonstrated the need for and reasonableness of this amendment.

14. Section 2.108 dealing with suspension is amended to provide that any permanent employee who is suspended for 30 days or less may use the grievance procedure set out at 2 MCAR Sec. 2.175-178 including appeal to the Commissioner. This amendment is necessary since the Legislature restricted appeals to the Personnel Board to suspensions of more than 30 days. This amendment was supported by the Personnel Board. (Ex. 10) The procedure would provide an aggrieved employee with the possibility of review by an entity other than the appointing authority. (Ex. 8, p. 8) The amendment is needed and reasonable. 2 MCAR Sec. 2.177 C. is somewhat ambiguous as to whether or not the Commissioner is required to hold a hearing once she determines that the dispute does in fact concern personnel law or rules and is therefore properly appealable. If the hearing is gratuitous, the hearing procedure may be exempt from the Minnesota Administrative Procedure Act under Setty v. Minnesota State College Board, 235 N.W.2d 594 (Minn. 1975). Given the nature and seriousness of this type of dispute, the

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Commissioner may very well wish to have these hearings conducted pursuant to the Administrative Procedure Act even though the rule may not strictly speaking require it. If so, the Department should consider adding the words "pursuant to Minn. Stat. Sec. 15.0411 - Sec. 15.052" to the end of the proposed amendment in the second paragraph of the rule.

15. In Section 2.131 dealing with holidays, the holidays granted were proposed for amendment to conform to the recent legislative change. Jay L. Croft of the Minnesota State Council for the Handicapped pointed out that defining the day after Thanksgiving as the "fourth Friday in November" will not be accurate when November 1 falls on a Friday since in that case the fourth Friday will occur six days before Thanksgiving. (Ex. B) The Department proposed an amendment which would replace the above-quoted language with "Friday after Thanksgiving" in November. (Ex. 12; Ex. 13, p. 1)

Rudy Brynolfson, Assistant Director of the Energy Agency, questioned whether or not the floating holidays for managers instead of a birthday holiday ought to be incorporated into the rules. (Ex. B) The Department replied that Minn. Stat. Sec. 43.127, subd. 6 allows the Commissioner to establish a benefit package for managerial personnel that need not be promulgated as rules. The Department suggests that to do so would mean the loss of a good deal of flexibility. (Ex. 13, p. 2)

As amended at hearing, the rule amendments to Section 2.131 have been shown to be needed and reasonable.

16. Section 2.135 concerning vacation leave is proposed for amendment to provide a separate vacation accrual rate for medical doctors compensated pursuant to Minn. Stat. Sec. 43.126. The schedule is more liberal than that for other State employees. Dr. Ronald C. Young, Medical Director of the Department of Public Welfare, stated in a written memorandum that recruiting and keeping qualified physicians to staff the state's nine state hospitals and two nursing homes is a serious problem. He believes that this rule amendment will assist the Department in recruiting physicians while the existing vacation structure is a negative incentive to prospective and current physician employees. He states that in view of the responsibilities assigned to physicians in state hospitals, it is reasonable to provide them with a vacation benefit package comparable to management personnel. (Ex. 8Q) The administrator of the Willmar State Hospital, Lester E. Johnson, supported this amendment and stated that unless he could offer a reasonable vacation period in the neighborhood of three weeks annually and upward, he would have difficulty hiring physicians. (Ex. C)

Council 6 stated that there was no reason why medical doctors should have better vacation accrual rates than other state employees. Council 6 also stated that they could find no specific statutory authority to establish a different benefit structure for medical doctors. (Ex. K, p. 2) In reply, the Department states that the proposed amendment is authorized by Minn. Stat. Sec. 43.111, which provides that it is the state's policy that employees be paid a total compensation which is competitive with that paid for like positions in other private and public employment. The Department

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suggests that the difficulty which the state encounters in recruiting medical doctors is that there is no adequate provision for continuing the level of employees' benefits if they leave another organization to join the state service. (Ex. 15, p. 2)

The Department has adequately demonstrated the need for and reasonableness of the proposed rule amendment. A more difficult question is whether or not statutory authority exists for this amendment. The Department's general authority at Minn. Stat. Sec. 43.05, subd. 2, specifically gives the Commissioner authority to promulgate rules dealing with vacations. Section 43.126, which authorizes special rates of pay for physicians, mentions only salary and does not deal with other benefits. Council 6 points out that while the Legislature specifically authorized annual leave different from other state employees in the case of managerial employees (Minn. Stat. Sec. 43.127, subd. 6), it has not done so in regard to medical doctors compensated under Minn. Stat. Sec. 43.126. Minn. Stat. Sec. 43.111 offers no specific rulemaking authority. Since there is no specific authority for a different vacation accrual rate for Section 43.126 employees, and in light of the Legislature's specific exemption to create different rates for managerial employees, it must be concluded that the Department has not documented its statutory authority to promulgate a vacation accrual rate for medical doctors under Section 43.126 which is different from other State employees. This new language is clearly a legislative rule as defined by our Supreme Court in Minnesota-Dakotas Retail Hardware Association, et al. v. State of Minnesota, et al., 279 N.W.2d 360 (Minn. 1979) (filed May 11, 1979) and accordingly, the Court has held the authorizing statute must explicitly delegate the power to make legislative rules with the force and effect of law. The same reasoning would also seem to apply to the fifth paragraph of Section 2.131 as it is proposed to be amended which gives medical doctors a floating holiday in lieu of the birthday holiday much like managerial employees.

17. One comment was addressed to the Department's amendment of Section 2.136 dealing with sick leave when an employee is on workers' compensation. Ted Spencer, Personnel Director of the Department of Corrections, noted that a substantive change had inadvertently been made and recommended that the following language be used in place of the amended sentence.

> When sick leave and/or vacation leave is used in conjunction with the workers' compensation benefit, an eligible employee receiving workers' compensation benefits shall accrue sick leave for the total number of hours compensated by workers' compensation, sick leave and vacation leave. (Ex. A)

The Department agreed to the suggestion and stated that Mr. Spencer's language should be adopted. (Ex. 13, p. 1-2) So amended, the proposed rule amendments to Section 2.136 are needed and reasonable.

18. Section 2.138 B. was proposed for amendment to limit time off with pay when subpoenaed to those cases where the appearance is for a job related purpose. The Department stated that if the employee is subpoenaed as a

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private citizen in a matter unrelated to his job, the state should not have to pay the employee for the time away from work. (Ex. 8, p. 18) Ted Spencer suggested that the rule amendment should provide for the situation where a state employee also works part-time as a local police officer or fireman and claims that he is entitled to state paid time under this rule. (Ex. E) In response to this comment, the Department proposed that the words "for job related purposes" in the proposed rule amendment be replaced with the words "for purposes related to the employee's state job,". (Ex. 11, Ex. 13, p. 2) With the amendment made at the hearing, the proposed amendments to Section 2.138 are needed and reasonable.

19. Section 2.181 sets out expense allowances. The Department proposed to amend Section 2.181 A.2. to increase the compensation for use of a personal automobile from 16¢ per mile to 19¢ per mile. The Department states that the proposed rates are not meant to reimburse employees for the total cost of operating an automobile, but is meant to pay for basically gas and oil. The Department estimates that the 19¢ rate provides about 55% reimbursement of the total costs of operating the vehicle. (Ex. 8, p. 18) The Benton County Board passed a resolution urging that the mileage reimbursement rate be set at at least 21¢ per mile and that some more flexible formula be used in the rule which would provide for the increasing cost of gasoline. (Ex. F) The rate which may be paid by county boards is controlled by the state rule. A speaker at the hearing also expressed support for a higher cents per mile figure. In reply, the Department pointed out that the Federal Government has recently revised its mileage reimbursement rate to 18.5¢ per mile for Federal employees and that the City of Saint Paul has within the last few weeks negotiated a contract with some of its employees which sets the mileage reimbursement rate at 19¢ per mile. The Department has demonstrated that the increase to 19¢ per mile is needed and reasonable.

Jay L. Croft, Assistant Director of the State Council for the Handicapped, suggested that the following language be added onto the second paragraph of Section 2.181 A.2.:

> or if an employee requires a vehicle with hand controls or other adaptive driving devices, or if the vehicle must be large enough to accommodate a wheelchair, and such a vehicle is not available.

This addition would allow payment of the higher 19¢ rate when an employee requires a special vehicle which is not available from the state. Mr. Croft believes that this will codify existing practice. (Ex. I) Scott Rostron, a State employee who requires a specially equipped van also stated that those State employees who require a driver should be eligible for the higher reimbursement rate. (Ex. J) The Department may consider this suggestion.

The Department also proposed a new paragraph to be inserted in this section which provides a reimbursement rate of 31¢ per mile for employees who must use a specially equipped personal van. There was general support for the rule from the State Council for the Handicapped (Ex. I) and from State employees who use such vans (Ex. H, J). Concern was expressed,

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however, over the requirement that the vehicle must be operated "from the wheelchair". Since some quadriplegics can transfer from their wheelchair into an adapted van seat, the rule language as proposed might inadvertently exclude them. (Ex. H, J) In response, the Department suggested that the phrase "or from an appropriate adaptive seating device" be added to the end of the paragraph in question. So amended, the proposed rule amendment is needed and reasonable.

The Department also proposed to raise the aircraft rate from 25¢ per mile to 31¢ per mile. This proposed amendment received specific support (Ex. G) and is needed and reasonable. (Ex. 13, p. 2)

The Department also proposed to amend Section 2.181 C.3. to increase the reimbursement for laundry and dry cleaning expenses for employees continuing in a travel status in excess of one week. The Department stated that the current rates had not been adjusted for four years and that at the present time it would cost approximately $4.00 to dry clean one suit at a regular dry cleaning establishment and that the $6.00 reimbursement is intended to recognize that a hotel will charge a higher rate for laundry and dry cleaning services. See also, Ex. 8X as to reasonableness.

Council 6 opposed the proposal to increase these rates on the grounds that these rates are covered by collective bargaining agreements and that the current contracts provide for the existing rates or increases less than those in the proposed rule amendment. Council 6 suggests that the proposed amendment will increase the number of different expense policies. (Ex. K, p. 3) The Department has demonstrated the need for and reasonableness of this amendment based upon the inflationary impact over the past four years and the testimony of the Revenue employees.

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

CONCLUSIONS

1. That the Department of Personnel gave proper notice of the promulgation of the proposed rule amendments.

2. That the Department of Personnel has statutory authority to promulgate the proposed rule amendments except as noted at Finding of Fact No. 16.

3. That the Department of Personnel has fulfilled all relevant, substantive and procedural requirements of law or rule except as indicated at Finding of Fact No. 4.

4. That the Department of Personnel has demonstrated the need for and the reasonableness of the proposed rule amendments by an affirmative presentation of facts in the record.

5. That the finding of need or reasonableness in regard to any particular rule amendment should not preclude or discourage the Department from modifying the language based upon a further examination of the public comments, provided that no substantial change is made, and provided that the rule finally adopted is based upon facts appearing in the record.

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

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RECOMMENDATION

It is recommended that, with the exception of the amendment discussed at Finding of Fact No. 16, the proposed rule amendments be adopted with attention to the Findings of Fact set out herein.

Dated: September 27, 1979.

GEORGE A. BECK
State 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.

Thereafter, the Department of Personnel shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency findings, a copy of the rules as originally proposed, and a copy of the rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. The Department will 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.

M E M O R A N D U M

The Department of Personnel prepared an excellent Statement of Need and Reasonableness for use in this rule hearing proceeding. The document was clearly written and thorough in explaining why an amendment was needed and why a particular amendment was a reasonable or non-arbitrary way of solving the problem. The use of this comprehensive Statement before and at the hearing enabled the participants to reduce the length of the Agency's oral presentation at the hearing and to narrow the discussion to those matters which were actually in dispute.

G.A.B.

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PUBLIC EXHIBITS

Public Exhibit A	Memo/Ted Spencer, Personnel Director to Barbara Sundquist, Commissioner of Personnel/August 16, 1979
Public Exhibit B	Letter/Jay L. Croft, Assistant Director, Minnesota State Council for the Handicapped/ August 28, 1979
Public Exhibit C	Letter/Lester E. Johnson, Administrator, Willmar State Hospital/August 31, 1979
Public Exhibit D	Memo/Rudy Brynolfson, Energy Agency/June 20, 1979, with attachment
Public Exhibit E	Memo/Ted Spencer, Personnel Director to Jim Lee, State Personnel/September 7, 1979
Public Exhibit F	Letter/Richard T. Jessen, Benton County Attorney, with copy of County Board Resolution 1979-59/September 6, 1979
Public Exhibit G	Letter/Thomas A. Kellenberger, Pharm. D., Dur Coordinator, Surveillance and Utilization Review Division, State Department of Public Welfare/September 7, 1979
Public Exhibit H	Letter/Dale Polton, Human Services Specialist, Vocational Rehabilitiation Division, Department of Economic Security/September 12, 1979
Public Exhibit I	Memo/Jay L. Croft, Assistant Director, State Council for the Handicapped/September 12, 1979
Public Exhibit J	Letter/Scott Rostron, Title V Administrator, Department of Economic Security/September 14, 1979
Public Exhibit K	Letter/Pete Benner, Administrative/Research Assistant, AFSCME, Council 6, AFL-CIO/ September 14, 1979

DEPARTMENT EXHIBITS

Department Exhibit 1	Notice of Intent To Solicit Outside Opinion Regarding Rules of the Department of Personnel
Department Exhibit 2	Notice of Hearing and Proposed Rules as published in 4 State Register 117
Department Exhibit 3	Order For Hearing
Department Exhibit 4	Notice Of Hearing
Department Exhibit 5	Affidavit of Receipt of the Secretary of State's List
Department Exhibit 6	Certificate of Receipt of the Secretary of State's List
Department Exhibit 7	Names of persons who will represent the Department at the hearing
Department Exhibit 8	Statement of Need and Reasonableness
Attachment A	Unofficial Copy of Chapter 43 as amended by the 1979 Legislature
Attachment B	Minnesota State Legislature, Legislative Audit Commission, Program Evaluation Division, Department of Personnel/May 19, 1978
Attachment C	Endorsement of Personnel Rule Changes/The Personnel Advisory Committee/August 13, 1979
Attachment D	Federal Register, Office of Personnel Management, Standards for a Merit System of Personnel Administration/Final Rule; Revision/Friday, February 16, 1979, Part III
Attachment E	Attorney General Opinion/January 4, 1963
Attachment F	New 1978 Mandatory Retirement and Age Discrimination Rules with Explanation and State Survey/The Age Discrimination in Employment Act Amendments of 1978

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Attachment G	Chapter 40, 1979 Session/Public And Private Employees--Mandatory Retirement Age
Attachment H	Memo/Thomas J. Crowe, Personnel Director, Minneapolis Veterans Home, Minneapolis to Nancy McClure, Assistant Negotiator/August 8, 1979
Attachment I	Agreement (Non-Supervisory) between Minnesota State Employees Union AFSCME, Council No. 6 AFL-CIO and the State of Minnesota/July 1, 1979 through June 30, 1981
Attachment J	Agreement (Supervisory) between Minnesota State Employees Union AFSCME, Council No. 6 AFL-CIO and the State of Minnesota/July 1, 1979 through June 30, 1981
Attachment K	Non-Supervisory Agreement between State of Minnesota On Behalf of its Appointing Authorities and the Independent Minnesota Association of Government Employees (IMAGE) and its Affiliated Local Bargaining Units
Attachment L	Supervisory Agreement between State of Minnesota On Behalf of its Appointing Authorities and the Independent Minnesota Association of Government Employees (IMAGE) and its Affiliated Local Supervisory Bargaining Units
Attachment M	Labor Agreement between the St. Cloud State University and the International Union of Operating Engineers Local No. 49/Effective July 1, 1979 through June 30, 1981
Attachment N	Agreement between the Department of Public Welfare for the following institutions: Cambridge State Hospital, Moose Lake State Hospital, Willmar State Hospital and the International Union of Operating Engineers Local No. 49/Effective July 1, 1979 through June 30, 1981
Attachment O	Agreement between the Department of Transportation, State of Minnesota, and the International Union of Operating Engineers Local No. 49/Effective July 1, 1979 through June 30, 1981
Attachment P	List of Exclusive Bargaining Representatives and the Number of Employees represented as of July 1, 1979
Attachment Q	Memo/Ronald C. Young, M.D., Medical Director, Department of Public Welfare to Barbara L. Sundquist, Commissioner of Personnel/July 31, 1979
Attachment R	Laws of Minnesota, 1977, Ch. 452, Sec. 32
Attachment S	Agreement between the Department of Natural Resources, State of Minnesota and the Minnesota Conservation Officers' Association
Attachment T	Memo/Clarence E. Harris, Acting Commissioner of Personnel to Department Heads and Personnel Officers/January 3, 1978
Attachment U	Laws of Minnesota, 1979, Ch. 208, Sec. 1
Attachment V	Memo/Taum Ulrich, Handicapped Director to Jim Lee, Personnel Representative, Classification and Compensation/August 14, 1979
Attachment W	Memo/Norm Dybdahl, Deputy Commissioner, Finance to Donn Escher, Assistant Commissioner of Personnel/May 17, 1979, with attachments from Department of Education
Attachment X	Memo/Wm. J. O'Neill, Personnel Office, Department of Revenue, to Jim Lee, Department of Personnel/August 17, 1979
Attachment Y	Memo/Richard L. Brubacher, Commissioner of Administration to Richard W. Session, Commissioner of Personnel/March 30, 1977
Attachment Z	Article, Wall Street Journal/August 15, 1979

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Department Exhibit 9	Letter/Barbara L. Sundquist, Commissioner of Personnel to Duane R. Harves, Chief Hearing Examiner/July 30, 1979 (Re: Scheduling of Rules Hearing)
Department Exhibit 10	Letter/Mary G. Anderson, Secretary, State Personnel Board to Commissioner Sundquist/ August 21, 1979
Department Exhibit 11	Amendment of 2 MCAR Sec. 2.138 B.
Department Exhibit 12	Amendment of 2 MCAR Sec. 2.131
Department Exhibit 13	Letter/Donn H. Escher, Assistant Commissioner, Department of Personnel/September 14, 1979
Department Exhibit 14	Letter/Donn H. Escher, Assistant Commissioner, Department of Personnel/September 19, 1979
Department Exhibit 15	Letter/Donn H. Escher, Assistant Commissioner, Department of Personnel/September 19, 1979

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Amended Sections of Proposed Rules.

C. Selection processes for incumbents of reallocated positions. The Commissioner may authorize any appointing authority to promote the incumbent of a reallocated position to a higher class without examination in accordance with law. In the absence of such authorization the incumbent of a position which has been reallocated in accordance with 2 MCAR § 2.019 and 2 MCAR § 2.240 shall be permitted to compete in the selection process for the class to which the position has been reallocated. ~~provided~~ (Minn. Stat. § 43.19, subd. 1(2))

If the incumbent of a reallocated position passes the examination process, notwithstanding the provisions of 2 MCAR § 2.084, the Commissioner may certify only the name of the eligible incumbent.

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.

C. Competitors failing to qualify as eligible for the class for which the screening process was conducted may, with the approval of the Commissioner, be rated with reference to their eligibility for a lower class for which a selection process is being conducted and in cases where competitors signify their willingness to accept appointment to such lower class. If found eligible, names of these competitors shall be added to the eligible list for such lower class.

2 MCAR § 2.131 Holidays. Holidays will be observed as prescribed by the legislature. (Minn. Stat. § 645.44, subd. 5)

This rule applies to all classified employees and, notwithstanding 2 MCAR § 2.004, all full-time unlimited unclassified employees in the executive branch of government, except non-tenured laborers; temporary employees; emergency employees; student workers appointed after January 1, 1980; and project employees. Intermittent employees shall become eligible for holidays after completion of 100 working days in any twelve month period. Interns do not receive holiday pay. Holiday leave provisions may be established by the appointing authority for employees not covered by this rule, provided they are not specifically excluded from coverage.

The following days are holidays and an alternate day off shall be granted for work done on these days, except where payment is allowed under the overtime provisions of 2 MCAR § 2.130.

New Year's Day . . . . . January 1

Washington's and Lincoln's Birthday. . . . . .Third Monday in February

Memorial Day . . . . . Last Monday in May

Independence Day . . . . . July 4

Labor Day . . . . . First Monday in September

Veterans Day . . . . . November 11

Thanksgiving Day . . . . . Fourth Thursday in November

Day After Thanksgiving . . . . . ~~Fourth Friday in November~~ Friday After Thanksgiving

Christmas Day . . . . . December 25

Employee's Birthday . . . . . Employee's Birthdate

Where a collective bargaining agreement specifies holidays, covered employees shall receive only the holidays set forth in that agreement.

~~Medical doctors compensated under the provisions of Minn. Stat. § 43.126 shall observe a floating holiday in lieu of the birthday holiday.~~

A. When New Year's Day, Independence Day, Veterans Day, Christmas Day or the employee's birthday fall on Sunday, the following day shall be considered the official holiday for employees. When these holidays fall on Saturday, the preceding day shall be considered the official holiday for employees. An employee, regardless of work schedule, shall receive the same number of holidays as an employee whose regular work week is Monday through Friday. Where seven day a week schedules are in effect, the actual holiday shall be observed as the holiday for employees working within such schedule. When any of the above holidays fall on an employee's regularly scheduled day off, the employee's scheduled work day which is closest to the holiday, which is not a holiday, shall be scheduled as a holiday for that employee unless other arrangements are agreed to between the appointing authority and the employee.

When an employee has days off that are not consecutive and the holiday falls on one of the scheduled days off, either the date before or the day after the holiday(s) shall be observed as the holiday at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee. When an employee has three or more consecutive days off and a holiday falls on one or more of the scheduled days off, either the day(s) before or the day(s) after the consecutive days off or any combination thereof shall be observed as the holiday(s) at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee.

For purposes of this rule, when a workshift includes consecutive hours which fall in two calendar days, that workshift shall be considered as falling on the calendar day in which the majority of hours in the shift fall. When a workshift includes an equal number of consecutive hours in each of two calendar days, that workshift shall be considered as falling on the first of the two calendar days.

When an employee's birthday falls on any of the other holidays listed above, the employee's first scheduled work day following the holiday which is not a holiday, shall be observed as the birthday holiday. Except in leap years, when an employee's birthday falls on February 29, March 1 shall be observed as the birthday holiday. An eligible employee whose birthday falls during a period of seasonal layoff shall be entitled to be paid for the birthday holiday during the first payroll period after return from layoff.

B. The appointing authority in an agency which remains open on a holiday for performance of public business may designate a sufficient number of employees to maintain the continuity of the agency's operations on such days.

C. Holidays which occur within the employee's vacation or sick leave period will not be charged to the employee's vacation or sick leave time.

D. Employees must be on the payroll on the work day immediately preceding and the work day immediately following a holiday to be eligible for such holiday.

For the purpose of determining eligibility for holiday pay, "on the payroll" shall mean those who are on paid leave or actively working.

E. Employees who normally work less than full-time and eligible intermittent employees shall have their holiday pay prorated on the following basis:

Hours that would have been worked during the pay period had there been no holiday	Holiday hours earned for each holiday in the pay period
Less than 9.5	0
At least 9.5, but less than 19.5	1
At least 19.5, but less than 29.5	2
At least 29.5, but less than 39.5	3
At least 39.5, but less than 49.5	4
At least 49.5, but less than 59.5	5
At least 59.5, but less than 69.5	6
At least 69.5, but less than 79.5	7
At least 79.5	8

Eligible intermittent employees shall receive a holiday if they work the day before and the day after a holiday. If such intermittent employee works on a holiday, that employee will be reimbursed for the holiday in addition to the pay for the time worked. This pay shall be in accordance with the above schedule. Seasonal employees are entitled to holidays as defined in this rule.

With the approval of the appointing authority, part-time employees may be allowed to arrange their work schedules, in payroll periods that include a holiday, to avoid any reduction in salary due to a loss of hours because of the proration of holiday hours, provided such rescheduling does not result in the payment of overtime.

Any eligible employee mandatorily retired on a holiday or holiday weekend shall be entitled to be paid for the holiday(s).

Holiday pay shall be computed at the employee's normal day's pay (i.e., the employee's regular hourly rate of pay multiplied by the number of hours in his/her normal work day), and shall be paid in cash.

Any employee who works on a holiday shall be paid cash at the employee's appropriate overtime rate for all hours worked in addition to holiday pay described in this section, or at the discretion of the appointing authority, shall be paid in cash at the employee's appropriate overtime rate for all hours worked in addition to an alternate holiday in lieu of holiday pay provided in this section. Such alternate holiday shall be granted within thirty days of the pay period in which the holiday occurs, but if there is no agreement as to the date of the alternate holiday between the appointing authority and the employee, such holiday shall be paid in cash.

F. Employees who observe religious holidays on days which do not fall on a Sunday or a legal holiday shall be entitled to such days off to observe the religious holiday upon 21 days advance written notice to the appointing authority. Such days off to observe these religious holidays shall be taken without pay, or upon the election of the employee, may be charged against accumulated vacation leave. If the appointing authority can arrange to have the employee work an equivalent number of hours at another time during the fiscal year to compensate for the days lost for observance of religious holidays, these holidays may be taken against such hours actually worked.

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; student workers appointed after January 1, 1980; 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. Intermittent employees shall become eligible after completion of 100 working days in any twelve month period. Interns shall not accrue vacation leave. 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 <u>non-managerial</u> employee shall accrue vacation with pay according to the rate listed below:

HOURS OF VACATION ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

No. Hours Worked During Pay Period	0 thru 3 yrs. if appointed on or after 7/1/79	0 thru 3 yrs. if appointed before 7/1/79	After 3 thru 5 years	After 5 thru 8 years	After 8 thru 12 years	After 12 thru 20 years	Over 20 years
Less than 9.5	0	0	0	0	0	0	0
At least 9.5, but less than 19.5	.50	.75	.75	1	1.25	1.50	1.50
At least 19.5, but less than 29.5	.75	1	1	1.25	1.75	2	2
At least 29.5, but less than 39.5	1	1.50	1.50	2	2.75	3	3
At least 39.5, but less than 49.5	1.50	2	2	2.50	3.50	3.75	4
At least 49.5, but less than 59.5	2	2.50	2.50	3.25	4.50	4.75	5
At least 59.5, but less than 69.5	2.25	3	3	3.75	5.25	5.75	6
At least 69.5, but less than 79.5	2.75	3.50	3.50	4.50	6.25	6.75	7
At least 79.5	3	4	4	5	7	7.50	8

When sick leave and/or [redacted]cation leave is used in conju[redacted]ion 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 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, who is paid for less than the full payroll period of 80 hours, will have vacation accrual pro-rated for that payroll period. 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 date of hire or in the case of intermittent employees, from the date of eligibility. The appointing authority may permit employees transferred to the classified state civil service from another jurisdiction under the provisions of 2 MCAR § 2.091 E to accrue vacation leave on the basis of their length of service in the agency from which the transfer was made.

The appointing authority 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 240 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 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.

If an employee becomes ill or disabled while on vacation, such leave shall be changed to sick leave effective the date of illness or disability, upon notice to the employee's appointing authority. The appointing authority may require the employee to furnish a medical statement from a medical practitioner as soon as practicable.

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 intermittent employee's accrued but unused vacation leave shall be liquidated by cash payment on the last payroll period in June of each fiscal year.

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 vac[redacted]on leave earned in the former [redacted]loyment.

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 for the first five years of continuous state service; eight hours per full payroll period after five years of continuous state service; and nine hours per full payroll period after twelve years of continuous state service.

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; student workers appointed after January 1, 1980; 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. Intermittent emloyees shall become eligible for purposes of this rule after completion of 100 working days in any twelve month period. Interns shall not accrue sick leave. 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 accrued by each eligible employee according to the rate schedule indicated below:

HOURS [redacted] SICK LEAVE ACCRUED DURING EAC[redacted] AYROLL

PERIOD OF CONTINUOUS SERVICE

Number of Hours Worked During Pay Period	Less than 900 hours	900 hours and maintained
Less than 9.5	0	0
At least 9.5, but less than 19.5	.75	.25
At least 19.5, but less than 29.5	1	.50
At least 29.5, but less than 39.5	1.50	.75
At least 39.5, but less than 49.5	2	1
At least 49.5, but less than 59.5	2.50	1.25
At least 59.5, but less than 69.5	3	1.50
At least 69.5, but less than 79.5	3.50	1.75
At least 79.5	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.~~ When sick leave and/or vacation leave is used in conjunction with the workers' compensation benefit, an eligible employee receiving workers' compensation benefits shall accrue sick leave for the total number of hours compensated by workers' compensation, sick leave and vacation leave. 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.

Full Time Employees Shall

Earn Sick Leave on the Following Basis Each Payroll Period:

Sick Leave Balance at Start of Payroll Period	Number of Hours Credited to Balance	Number of Hours Credited to Bank
896 or less	4	0
897	3	1
898	2	2
899	1	2

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. Sick leave to arrange for the birth or adoption of a child shall be limited to not more than three consecutive work days. 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.

An employee incurring an on the job injury shall be paid his/her regular rate of pay for the remainder of the workshift. Any necessary deductions from accrued sick leave for employees so injured shall not commence until the first scheduled work day following the injury.

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 his/her previously accumulated, unused balance of sick leave restored upon approval of the new appointing authority.

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 is appointed to the classified service, without interruption of services to the state shall be entitled to credit of accumulated unused sick leave earned in the former employment.

An employee of another jurisdiction or the federal competitive service with probationary or permanent status may be transferred under the provisions of 2 MCAR § 2.091 E or appointed to a position in the state service. The appointing authority may credit the employee with the amount of sick leave accumulated not to exceed 12 days. Such credit shall be reduced proportionately as sick leave is accumulated in the state service.

B. Appearance before court, legislative committee, or other judicial or quasi-judicial body in response to a subpoena or other direction by proper authority for purposes related to the employee's state job other than those instituted by the employee or his exclusive representative. The employee shall receive regular pay less any fee received, exclusive of court paid expenses for serving as a witness, as required by the court.

A. Means of travel.

1. State-owned vehicles. An employee may be permanently assigned a state-owned vehicle when required by law or if circumstances make such assignment necessary when recommended by the appointing authority and approved by the Commissioner of Administration.

Agencies operating vehicles not in the Central Motor Pool shall operate them on a pool basis following rules of the Department of Administration for the operation of such state-owned vehicles.

2. Privately-owned vehicles and aircraft. The compensation for use of a personal automobile is 19 cents per mile when a motor pool vehicle is not available. Mileage shall be paid based on the most direct route according to Transportation Department records. Deviations from the shortest direct route, such as vicinity driving or driving from the employee's residence where the employee's residence becomes the point of departure, shall be shown on the expense account as a daily total, with a separate explanation outlining the reasons for such mileage. No additional reimbursement will be made for incidental expenses to the operation or maintenance of a personal automobile for state business except for payment of toll charges and parking.

The employee who elects to use a personal car on official state business with the approval of the appointing authority when traveling within the state in cases where a motor pool vehicle is available shall be reimbursed at the rate of 14 cents per mile. The higher rate may be paid if the use of the motor pool vehicle would have resulted in a greater cost to the state than the reimbursement of the personal car rate, of if an employee requires a vehicle

with hand controls or other adaptive driving devices, or if the vehicle must be large enough to accommodate a wheelchair and such a state-owned vehicle is not available.

Employees who use a specially equipped personal van or van-type vehicle on official state business shall be reimbursed for mileage at the rate of 31 cents per mile. In order to qualify for this reimbursement rate, the vehicle must be equipped with a ramp, lift, or other level changing device designed to provide access for a wheelchair. ~~and the vehicle must be operated by the handicapped employee from the wheelchair.~~

The appointing authority may authorize travel in personal aircraft when it is deemed in the best interest of the state. Mileage reimbursement in such cases shall be 31 cents per mile and shall be based on the shortest route based on direct air mileage between the point of departure and the destination.

3. Out-of-state travel. Payment for expenses for transportation by personal vehicle for out-of-state travel shall be made on the basis of a single coach air fare for each vehicle used.

If available, motor pool vehicles or state-owned vehicles may be used for out-of-state travel. When a central motor pool vehicle is used, reimbursement will be made to the Central Motor Pool. The expense of such vehicles shall be charged against the out-of-state authorization of the agency.

When personal vehicles are used in driving to out-of-state locations not available by commercial transportation, travel reimbursement shall be made on an actual mileage basis in accordance with these rules.

Any in-state travel expense directly related to an out-of-state trip shall be charged against the annual out-of-state travel allowance for the agency involved.

4. Commercial transportation. State employees may travel in-state and out-of-state by commercial transportation when authorized by the agency head. Air transportation shall be by coach class except in those instances where such space is not available. When an employee has a reservation for a flight that is not going to be used, such employee shall be accountable for the cancellation of such reservation. Air charter service may be used for in or out-of-state travel where such charter service is more practical than commerical transportation. The appointing authority may reimburse the employee for the use of a public bus on state business, where the use of the bus results in less cost to the state than the use of a state or personal vehicle.

5. Motorcycle reimbursement. Reimbursement for use of a motorcycle on official state business, when authorized in advance by the appointing authority, shall be at the rate of 10 cents per mile.

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED AMENDMENT OF THE RULES OF THE DEPARTMENT OF PERSONNEL GOVERNING PERSONNEL ADMINISTRATION

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Personnel Commissioner of the State of Minnesota on September 12, 1979, at 8:30 a.m. in room 83 of the State Office Building, St. Paul, Minnesota after proper notice required by Minn. Stat. § 15.0412 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 arguements, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and all 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 2.009, 2.010, 2.018, 2.019, 2.024, 2.029, 2.031, 2.039, 2.045, 2.046, 2.061, 2.065, 2.067, 2.086, 2.087, 2.091, 2.097, 2.108, 2.109, 2.110, 2.118, 2.119, 2.131, 2.133, 2.134, 2.135, 2.136, 2.138, 2.141, 2.181, 2.182, 2.201, 2.202, 2.203, 2.226, 2.232, 2.240, 2.241 and 2.244 are adopted and 2.099 is repealed this 29th day of October, 1979 pursuant to authority vested in me by Minn. Stat. §§ 43.05, subd. 2, 43.323 and Minn. Laws of 1979, Chapter 332 and in accordance with the Administrative Procedures Act, Minn. Stat. §§ 15.0411 to 15.052.

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

Barbara L. Sundquist

Barbara L. Sundquist
Commissioner of Personnel

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF PERSONNEL REGARDING PERSONNEL ADMINISTRATION.

FINDINGS OF FACT

The above-entitled matter came on for hearing in St. Paul, Minnesota on September 12, 1979 before George A. Beck, a Hearing Examiner assigned by the Chief Hearing Examiner.

The following persons appeared for the Department of Personnel (hereinafter, "Personnel"): Donn H. Escher, Assistant Commissioner, Department of Personnel; James Lee, Senior Personnel Representative, Classification and Compensation Division, Department of Personnel; Jennifer Hance, Secretary, Department of Personnel; Julie Vikmanis, Examining and Referral Manager, Department of Personnel; Michael Koebnick, Manager, Classification and Compensation Division, Department of Personnel; Nancy Arneson McClure, Pre-Service Trainee, Assistant State Negotiator, Labor Relations Division, Department of Personnel; and Andrea Mitau Kircher, Special Assistant Attorney General, representing the Department of Personnel. Seventeen persons attending the hearing signed the hearing register. Two public witnesses appeared and spoke at the hearing. The Department submitted fifteen written exhibits. Eleven written comments were received from the public, and the hearing continued until all interested persons or groups had had an opportunity to participate.

Hearing Examiner Beck prepared the Report of the Hearing Examiner (hereinafter "Report"), dated September 27, 1979 pursuant to Minn. Stat. Section 15.052, subd. 3 and 9 MCAR 2.106.

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

FINDINGS OF FACT

1. She adopts Findings 1 - 7 of the Report, which findings relate to the procedural requirements, and statutory authority for the proposed rules.

2. She adopts Findings 8 - 19 of the Report, which findings relate to the need for, the nonsubstantial modification of and the reasonableness of the proposed rules.

CONCLUSIONS

1. She adopts Conclusions 1 - 5 of the Report.

Dated: 10-29-79

Barbara L. Sundquist

BARBARA L. SUNDQUIST
Commissioner of Personnel

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption as proposed and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Personnel

Adopted Temporary Rules Governing Travel and Relocation Reimbursement, Probationary Period, Vacation Leave and Holidays

The temporary rules published at *State Register*, Volume 3, Number 48, pp. 2106-2113, June 4, 1979 (3 S.R. 2106) were approved by the Attorney General and became effective July 1, 1979. The adopted rules do not differ from the proposed rules.

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 rule or amendment. 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.

Department of Personnel

Proposed Amendment of Rules Regarding Personnel Administration

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 September 12, 1979 commencing at 8:30 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 material may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter Erickson, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8111. Unless a longer period not to exceed twenty calendar days is ordered by the Hearing Examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 *et seq.*

The proposed amendments, if adopted, would amend 2 MCAR § § 2.009 Labor service; 2.010 Temporary designation of positions in the unclassified service; 2.018 Allocation of position; 2.019 Reallocation of position; 2.024 Work out of class; 2.029 Administration of the wage and salary plan; 2.031

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."

Retroactive pay upon reallocation; 2.039 Eligibility to compete; 2.045 Appointing authority may conduct selection process; 2.046 Rating results of selection processes; 2.061 Reemployment list; 2.065 Removal of names from eligible lists; 2.067 Statement of availability; 2.086 Temporary appointment; 2.087 Emergency appointment; 2.091 Transfers; 2.097 Duration of probationary period; 2.099 Demotions during the probationary period; 2.108 Suspension; 2.109 Layoff; 2.110 Demotion; 2.118 Reinstatement after resignation; retirement or expiration of a leave of absence; 2.119 Restoration of seniority; 2.131 Holidays; 2.133 Absence because of illness or injury for which Workers' Compensation is paid; 2.134 General regulations governing leave of absence with pay; 2.135 Vacation leave; 2.136 Sick leave; 2.138 Other leaves with pay; 2.141 Child bearing/Child rearing leave of absence without pay; 2.181 Expense allowances; 2.182 Relocation expenses; and the definitions of "Agency," "Agency Promotional List," "Allocation," "Open Competitive List," "Permanent Employee," "Reallocation," "Reemployment List," "Statewide Promotion List."

These rules are being amended to correct grammar, clarify meanings, simplify existing procedures, implement Minn. Stat. ch. 43 as amended by Laws of 1979, ch. 332, and convert temporary rules published at *State Register*, Vol. 3, No. 48, p. 2106, June 4, 1979 (3 S.R. 2106) to permanent rules.

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.

The statutory authority to promulgate the proposed rules is contained in Minn. Stat. ch. 43 and Laws of 1979, ch. 332.

Notice: The proposed rules are subject to change as a result of the rules hearing process. The Department therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the hearing process.

Please be advised that pursuant to Minn. Stat. § 10A.03, subd. 1 (1978) lobbyists must register with the State Ethical Practices Board within five days after becoming lobbyists.

" 'Lobbyist' means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

'Lobbyist' does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over $250, excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim."

Minn. Laws 1979, ch. 59 § 3. Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to a hearing, a Statement of Need and Reasonableness will be available for review at the office of the Department of Personnel and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the Department of Personnel at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Department of Personnel may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Department of Personnel. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Department of Personnel (in the case of Personnel's submission or resubmission to the Attorney General).

Promulgation of these proposed rule provisions will not result in the expenditure of public monies by local public bodies.

Barbara L. Sundquist
Commissioner of Personnel

Amendments as Proposed

2 MCAR § 2.009 Labor service. Classes of positions involving unskilled labor, as designated by the Commissioner, shall comprise the labor service.

The Commissioner may at any time review the duties performed by any labor service employee. The appointing authority and the employee shall supply any information requested by the Commissioner in connection with such review. If the Commissioner thereafter determines that the duties performed are not properly those of a position in the labor service, the Commissioner shall take action deemed necessary to comply with the law and these rules.

Any personnel action affecting an employee or a position in the labor service shall be reported to the Commissioner by written notice upon such form as the Commissioner may prescribe.

~~A.~~ Reports of appointment, termination, or interruption of employment in the labor service shall be effected as follows:

A.~~1.~~ Employees in the labor service who have been employed for a total of six months in a period of twelve consecutive months shall be known as classified tenured laborers and shall receive the same tenure rights and benefits given other classified employees of the state not in the labor service. The appointing authority's certificate that the employee has met these conditions will establish the employee's tenure rights. Such certification shall be in the manner and form prescribed by the Commissioner.

B.~~2.~~ A tenured laborer shall be given written notice of disciplinary action and shall have rights in accordance with law (Minn. Stat. § 43.24).

~~B. Promotion from the labor service. Tenured laborers shall be eligible to compete in promotional selection processes when they meet the requirements specified in the examination announcement.~~

2 MCAR § 2.010 Temporary designation of positions in the unclassified service. The Commissioner may authorize the designation of a position in the unclassified service for a limited period of time. The appointing authority shall report to the Commissioner the description of the position and the conditions under which it is to be established, which serve to limit the duration of employment, the expected termination date and the nature of the function to which it is to be assigned. Any position which has been designated in the unclassified service by the Commissioner, in accordance with this rule, and which will continue for longer than two years, shall be reviewed at the end of the second year by the Commissioner to determine whether it shall continue in the unclassified service. No position, ~~except student worker positions,~~ assigned to the unclassified service in accordance with this rule shall continue longer than three years in the unclassified service and, except as provided by Minn. Stat. § 15.61, no employee shall continue in a position or positions established in the unclassified service under the provisions of this rule to perform the same function in the same agency for a total of more than three years. (Minn. Stat. § 43.05)

2 MCAR § 2.018 Allocation of positions. When a new classified or unclassified position is to be established; or a vacant classified or unclassified position is to be filled; ~~or the duties and responsibilities of a classified or unclassified position are changed as a result of changes in the organizational structure of an agency or other action resulting in abrupt changes in the duties and responsibilities,~~ the appointing authority shall notify the Commissioner in the prescribed manner, and the Commissioner shall allocate the position to the appropriate class in the classified service. ~~or~~ If the position is in the unclassified service, ~~where possible, to a comparable class~~ the Commissioner shall compare the position to an appropriate class if such class exists or if not, establish a salary range for the position as provided by law. (Minn. Stat. § 43.064 as amended by Laws of 1979, ch. 332, § 17.)

The Commissioner, after making an allocation or comparison, shall notify the appointing authority of that action. The action shall become ~~immediately~~ effective immediately, but the appointing authority may within ten days file ~~with the Commissioner~~ an application for reconsideration with the Commissioner, together with any written evidence by way of affidavits, statements or exhibits which the appointing authority may desire to have considered. The Commissioner shall act promptly upon that application and shall notify the appointing authority of the final action.

2 MCAR § 2.019 Reallocation Reclassification of positions. If, ~~because of changes occurring over a period of time in the kind, responsibility or difficulty of work performed in~~ a classified or unclassified position, it seems to be improperly allocated, or compared, the Commissioner shall, independently or upon request of an appointing authority or permanent employee, investigate the duties of the affected position. Following the investigation, the Commissioner may reallocate, change the allocation of, or recompare the position to an appropriate class. In making a request for a review of a position, the appointing authority or permanent employee shall set forth specifically the changes that have occurred in

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the particular position which warrant the requested action along with other documentation prescribed by the Commissioner. If the Commissioner determines that a request for the ~~reallocation~~ reclassification of a position is not properly documented, the request shall be returned to the sender within ten days of receipt of the request, and the employee shall be immediately notified of such action. The Commissioner shall notify the affected employee and the appointing authority of the final classification decision.

2 MCAR § 2.024 Work out of class pay. When an employee is expressly assigned to perform all the duties of a position allocated to a ~~higher level~~ different classification that is temporarily unoccupied for reasons other than vacation or short periods of sick leave and ~~such work~~ the work out of class assignment exceeds 15 consecutive work days ~~in duration~~, the employee when assigned to work in a lower or equal class shall be paid for all such hours at the employee's current rate of pay; or when assigned to work in a higher class shall be paid for all such hours at a rate within a higher range which is equal to the minimum rate for the higher class or one step higher than the employee's current salary, ~~of the assignment, at the minimum of the salary range for the higher class or receive a one step increase,~~ whichever is greater. ~~Appointments to these assignments shall be made in accordance with 2 MCAR §§ 2.081-2.091. If the assignment is to a position at an equal or lower level classification, the employee shall be paid at the employee's current rate of pay.~~

2 MCAR § 2.029 Administration of the wage and salary plan. ~~2 MCAR § 2.029.~~ eExcept for subdivisions F. and G., this rule also applies to those unclassified positions which have been directly compared to the classified service. The following provisions assume that funds are available and expenditures have been authorized by the Commissioner of Finance.

A. Beginning salary. The minimum rate of pay shall normally be paid upon appointment to a class. In schedules A and C, the appointing authority may, however, make an original appointment within the salary range but not to exceed the third salary step.

All original appointments beyond the minimum rate for a class shall be documented in the form prescribed by the Commissioner and shall be based upon the exceptional qualifications of the candidate or the unavailability of candidates at the minimum rate, and consideration shall be given to the salaries of current employees in the same or related classifications.

In the Special Teachers salary schedule, appointments may be made up to and including the sixth step under conditions outlined in the compensation provisions relating to that schedule.

B. Salary on promotion. Promotional increases shall normally be of one or two salary steps, depending on the actual increase in responsibilities assumed upon promotion, unless greater adjustment is necessary to bring the employee's salary to the minimum of the new pay range. Any promotional increase beyond that provided for above must be approved in advance by the Commissioner based on documentation to support such additional increase. No salary increase may be granted which would place the employee's rate of pay above the authorized salary range.

C. Salary upon reemployment or reinstatement. If a former employee is reemployed or reinstated into a class in which that employee was previously employed, the appointing authority may make an appointment at the same rate of pay the employee had been receiving at the time of separation from the state civil service and/or the class, plus any automatic adjustments that may have been made since the employee left the state civil service and/or the class. Appointments above such rate of pay must be approved by the Commissioner before they can take effect.

D. Salary increases. Salary increases may be granted in accordance with law. (Minn. Stat. §§ 43.12, 43.121-43.122, 43.126-43.127 and other applicable provisions.)

E. Achievement awards. In addition to being eligible for normal salary increases, employees whose positions are assigned to salary Schedule A are eligible for achievement awards based on demonstrated outstanding performance. Increases in this schedule must be submitted and awarded within the context of a results-oriented management or standards of performance system which has been approved by the Commissioner. An achievement award shall be awarded as prescribed by law. Achievement awards shall be administered in a manner that will encourage and recognize excellence among employees. Achievement award increases may be granted up to 30% of the classified and 30% of the unclassified employees whose salary ranges are set by direct comparison to the classified service authorized for the ~~department~~ agency at the beginning of the fiscal year. Unclassified positions where the salaries are set by statute are not to be included in the calculations of the number of allowable increases for unclassified employees.

F. Salary decreases. Salary decreases for just cause may be made to reduce the salary of the employee within the salary range. In the case of a permanent employee, written notice of intent to effect such reduction in pay, and the reasons for such action, shall be given to the employee at least 5 working days prior to the effective date of the reduction and a copy submitted to the Commissioner prior to the effective date of the reduction. The permanent employee so affected may request a hearing before the Board as provided in the law.

G. Salary on transfer. An employee who is transferred to a different ~~department~~ agency in the same class or to a similar class shall receive the salary being paid before such transfer. In any case of transfer, no employee shall receive a rate of pay below the minimum of the range for the class to which such employee has been transferred.

H. Salary on demotion. An employee who has been demoted to a class in a lower salary range shall be paid a salary rate within the range of the class to which such employee has

been denoted except as provided ~~in~~ by law. (Minn. Stat. § 43.12, subd. 26.)

I. Total remuneration. ~~Notwithstanding 2 MCAR §§ 2.004 and 2.029, 2 MCAR § 2.029 I.~~ This subdivision applies to all classified and unclassified employees in the executive branch. Except as otherwise provided in these rules, no employee shall receive pay in addition to the salary authorized for services rendered either in the discharge of the assigned ordinary duties, or additional duties which may be performed by the employee or which the employee may undertake or volunteer to perform.

An employee may receive a separate salary from more than one state agency for hours worked during the same pay period under the following conditions:

1. The work assignment performed for another state agency is not part of the employee's normal duties; the employee is qualified to perform the assignment; and the appointing authorities of both agencies and the Commissioner approve the assignment in advance; or

2. ~~An~~ The employee ~~may be~~ is appointed under provisions of these rules to less than full-time positions in more than one state agency, ~~provided the employee has been appointed under the provisions of these rules,~~ and the combined established work schedules do not exceed a normal 40 hour work week.

~~3.~~ Employees in payroll status in two or more agencies for a total of 75% or more of the time, because of concurrent appointments, shall be eligible for state paid insurance in the same manner as other employees. The state paid premium for such eligible employees shall be borne by the agency in which the majority of the time is worked.

J. Hourly rates. Hourly rates of pay shall be paid in accordance with law. (Minn. Stat. §§ 16.027 and 43.01, subd. 9)

K. Project employment. The Commissioner may authorize a rate of pay which may exceed the maximum of the range provided by not more than 70% where skilled craft employment is on a strictly project basis. In cases of project employment, the employee shall not be entitled to any other benefits.

Project employment for purposes of this rule shall be restricted to a planned work program which normally will ~~normally~~ be completed in a specified time period and is not of a seasonal or regularly recurring nature.

2 MCAR § 2.031 Retroactive pay upon reallocation. Except for reallocations resulting from a position classification study of an agency or subdivision thereof initiated by the Department of Personnel or an appointing authority, if the incumbent of a position which is reallocated upward to a class existing at the time of the request receives a probationary appointment to the reallocated position, pay for the reallocated position shall commence ~~sixty~~ calendar ~~days prior to the incumbent employee's probationary appointment to that position, but in no event shall such retroactive pay commence earlier than~~ fifteen calendar days after the receipt in the Department of Personnel of a reallocation request determined by the Department of Personnel to be properly documented, and it shall continue from that date for up to a maximum of sixty calendar days or until the effective date of the appointment, whichever occurs first. If more than sixty days after the initial fifteen day period elapse, payment shall be for the final sixty days in the period.

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 dDepartment 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 dDepartment, or subject to the approval of the applicant, whichever means of screening is available to the dDepartment.

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 the 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~~ of the state, the agency or other organizational unit for which the selection process is being held who meet the requirements described in the announcements and who hold classified positions in the executive branch of the state civil service, or the Minnesota State Retirement System, or the Teachers Retirement Association, or the Legislative Audit Commission; or who hold unclassified positions in the executive or legislative branches of the state civil service. ~~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~~

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~~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 Commissioner may authorize any appointing authority to promote the incumbent of a reallocated position to a higher class without examination in accordance with law. In the absence of such authorization the incumbent of a position which has been reallocated in accordance with 2 MCAR § 2.019 and 2 MCAR § 2.240 shall be permitted to compete in the selection process for the class to which the position has been reallocated. ~~,~~ Provided (Minn. Stat. § 43.19, subd. 1(2))

~~1. The incumbent did not participate in a written or competitive oral examination process for such a position 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 of a reallocated position ~~examined in accord with the above successfully completes~~ passes 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 § 2.045 Appointing authority may develop and/or conduct selection process. The appointing authority may be authorized to develop selection processes using techniques approved by the Commissioner and/or to conduct selection processes using materials approved by the Commissioner. Such authorization shall be only for classes that are designated by the Commissioner.

The Commissioner shall review the selection process developed and or administered by the appointing authority for conformance to the law and these rules, and may modify the process used or the classes for which such selection processes are used when deemed necessary for the best interest of the state service.

2 MCAR § 2.046 Rating results of selection processes.

A. Appropriate scientific techniques and procedures shall be used in scoring the results of selection processes and in determining the relative ranking of competitors. Such techniques may include electronic data processing of test answer or experience and training rating forms filled out by the applicant. The minimum rating for which eligibility may be achieved shall be set by the Commissioner, taking into account the number of vacancies anticipated during the term of the eligible list. Final rank may be based on all factors of the selection process and other qualifying elements as shown on the competitor's application or other verified information. Final ratings of each competitor shall be determined by averaging the earned score of each part of the selection process in accordance with the weights established for each part prior to the date of any part of the selection process. All competitors may be required to obtain at least a minimum rating in each part of the selection process in order to receive a final passing ~~score~~ rating or to be rated on the remaining parts of the process. Where rating procedures involve assignment of a numerical score, a score of 70 is necessary to pass and a score of 100 is the maximum score awarded to any competitor.

B. The Commissioner may announce, in advance of the establishment of an eligible list, the maximum number of competitors who shall have their names placed on the list, or who shall be permitted to compete in any of the separate parts of the selection process. Under such procedure, those considered as having passed and who are permitted to take the remainder of the screening process shall be the set number of candidates scoring highest in the process or part thereof. The Commissioner also may also establish a procedure for admitting candidates to a subsequent stage of the selection process in rank-order of score on the previous stage and candidates may be invited to complete the examination process as the need to create or enlarge an eligible list is determined.

C. Competitors failing to qualify as eligible for the class for which the screening process was conducted may, with the approval of the Commissioner, be rated with reference to their eligibility for a lower class for which a selection process is being conducted and in cases where competitors signify their willingness to accept appointment to such lower class. If found eligible, ~~their~~ names of these competitors ~~may then~~ shall be added to the eligible list for such lower class.

2 MCAR § 2.061 Reemployment list. The reemployment list shall contain the names of all permanent or probationary employees laid off in the class of employment, and the names of former permanent or probationary employees in the class whose written applications made within three years of separation in good standing are approved by the Commissioner based on considerations of quality of service. The Commissioner shall consider the recommendation of the ~~last~~ appointing authority before approving or disapproving applications

for reemployment. of former employees and shall approve or disapprove each application considering the quality of service as evidenced by service reports submitted by the last appointing authority. Names shall be placed on the reemployment list based on the quality of service as indicated in the individual's performance appraisals. A person may remain on a reemployment list for up to three years and must return to state service employment in the class within four years of separation from the class.

The name of a laid-off employee shall be placed on the reemployment list for all classes in which the employee possessed permanent or probationary status prior to layoff and for locations and employment conditions for which the employee is eligible and has expressed a willingness to accept employment. Initial notice of which classes, locations and employment conditions the employee is willing to consider shall be made to the Department of Personnel by the appointing authority at the point notification of layoff is given to the Department. Subsequent changes in availability for classes, locations, or employment conditions shall be made any time within three years of the date of layoff by the laid-off employee. When notice of layoff is given to the department, the appointing authority shall also notify the department of the classes, locations and employment conditions which the employee is willing to consider. The laid off employee may make changes in availability for classes, locations or employment conditions at any time within three years from the date of layoff.

2 MCAR § 2.065 Removal of names from eligible lists. In addition to the causes stated in Minn. Stat. § 43.14, the Commissioner may remove names from eligible lists permanently or temporarily for any of the following reasons:

A. Appointment through certification from such list to fill a permanent position.

B. Appointment to fill a permanent position through certification from a list for another class at the same or higher salary. If an employee is on more than one eligible list at the same or higher salary, the employee may be kept on other eligible lists by a written request to the Commissioner.

C. Failure to respond within seven days from the date of mailing to a written inquiry of the Commissioner relative to availability for appointment or failure to respond within seven days from the date of mailing to a written inquiry of an appointing authority sent by certified mail relative to availability for employment.

D. Failure to respond within two days to a telegraph inquiry from the Commissioner relative to availability for appointment.

E. Declination of appointment under such conditions as the eligible previously indicated would be acceptable.

F. Failure to report for duty or for scheduled employment interview within the time prescribed by the appointing authority.

G. Expiration of term of eligibility on the eligible list.

H. Failure to maintain a record of current address with the dDepartment. For this purpose, the return of a letter by the postal authority, if properly addressed to the last address on the records, shall be deemed sufficient grounds for such removal of the name from the eligible list.

I. In the case of agency promotional lists, appointment or transfer of an employee to a new agency or another duly established organizational unit.

J. In the case of promotional lists, upon termination in the state service.

K. In the case of promotional lists upon certification to three separate positions except that the name of an individual so removed shall continue to be referred to positions in the class in the department agency which gave the individual a satisfactory or better rating in the selection process for such class.

L. Upon certification at least seven times to the same or different appointing authorities where no appointment is made.

M. Subsequent documentation that the candidate on the eligible list does not meet the requirements of the position(s) to which such candidate may be certified.

2 MCAR § 2.067 Statement of availability. Whenever an eligible submits a statement restricting the conditions under which that individual will be available for employment the eligible's name shall be withheld from all certifications which do not meet the conditions specified. An eligible may file a new statement any time during the duration of an eligible list, modifying any prior statement regarding conditions under which the eligible will be available for employment, except that if such statement results in the withdrawal of the eligible's name from the certification outstanding at the time of receipt of statement, it may be deemed a declination of appointment. If such statement would result in the addition of the eligible's name to a certification outstanding at the time of receipt of the statement, it may be added at the request of an appointing authority.

2 MCAR § 2.086 Temporary appointment. Temporary appointments shall, when practicable, be made from eligible lists in accordance with Minnesota Statutes. 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 Com-

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~~missioner may authorize the temporary appointment of an individual designated by the appointing authority.~~ (Minn. Stat. § 43.20, subd. 5 as amended by Laws of 1979, ch. 332, §45)

2 MCAR § 2.087 Emergency appointment. Emergency appointments shall be made in accordance with Minnesota Statutes. (Minn. Stat. § 43.20, subd. 3 as amended by Laws of 1979, ch. 332, § 44) ~~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. (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.~~

2 MCAR § 2.091 Transfers.

A. An employee may be transferred to a position in the same class in a different ~~department,~~ agency, or organization unit, with the approval of the Commissioner and the appointing authorities concerned. Transfers of an employee may be made from a position in one class to a position in another class only if it is determined by the Commissioner that the employee to be transferred possesses satisfactory qualifications and if the Commissioner is satisfied that such transfer is in the best interests of the service. The Commissioner may require written examinations or other evidence for the purpose of determining qualifications for transfer.

B. No transfer or change in work assignment imposed as a penalty or which otherwise prejudices any employee, and without the employee's voluntary consent, shall be approved unless the Commissioner is satisfied that such action is necessary in the best interest of the state service.

C. Seniority shall be transferred in all cases of transfer within the same ~~department~~ agency, or in cases of transfer by the Commissioner of Administration, but shall not be transferred in other cases of inter-departmental transfer.

D. A transferred probationary or permanent employee may be required to serve a full probationary period beginning on the date of transfer at the request of the receiving appointing authority. The agency shall file ~~N~~notice of this requirement ~~shall be filed~~ in writing with the Commissioner and ~~copies~~ shall provide a copy of the notice ~~shall be given~~ to the employee prior to completion of the transfer. In the absence of such notice, transfer of a probationary employee will not affect the running of the probationary period, and transfer of a permanent employee shall be with such status and not subject to a probationary period. When a probationary period is required in the case of a transfer of a permanent employee, such employee shall have a thirty calendar day trial period in the new position before the employee may be dismissed (except for just cause) demoted, or transferred without the employee's consent. Upon dismissal during the probationary period for cause other than misconduct or delinquency on the part of the employee during the probationary period and after the thirty calendar day trial period, the employee shall be restored to the position held prior to transfer.

E. The Commissioner may enter into arrangements with public personnel agencies in other jurisdictions for the purpose of effecting transfer of employees. The Commissioner shall not approve any transfer of an employee from a jurisdiction without a federally approved merit system to a grant-in-aid agency. ~~Such~~ t Transferred employees shall accrue ~~annual and sick~~ vacation leave in accordance with these rules and may be credited with ~~on the basis of their~~ accumulated service in the agency from which transfer is made, for purposes of determining vacation accrual rate. ~~and shall~~ Transferred employees may be required to serve a new probationary period and may be credited with accumulated sick leave as provided in 2 MCAR § 2.136.

F. Any state employee who is transferred on a temporary basis to a non-state agency shall continue to accrue benefits, seniority and retirement of a state employee.

2 MCAR § 2.097 Duration of probationary period. All original and promotional appointments shall be tentative subject to the probationary period as follows: ~~determined by the Commissioner of Personnel.~~

A. Employees in salary schedules A, B, and C shall serve a probationary period in working hours as follows:

~~A. Half to full time employees in salary schedule A shall serve a probationary period of six calendar months. Less than half-time employees shall serve a probationary period of nine calendar months.~~

~~B. Half to full time employees in salary schedule B shall serve a probationary period of two calendar months. Less than half time employee shall serve a probationary period of three calendar months.~~

~~C. Half to full time employees in salary schedule C shall serve a probationary period of four calendar months. Less than half-time employees shall serve a probationary period of six calendar months.~~

Salary Schedule	Hours of Satisfactory Service
A	1044 working hours
B	348 working hours
C	696 working hours

For purposes of this rule, working hours shall include hours actually worked, excluding overtime, except that working hours shall include overtime hours actually worked if the employee is required to liquidate the overtime in compensatory time off. Working hours shall also include paid holidays;

and paid leave taken in increments of less than the employee's normal work day.

B. ~~D.~~ Teachers, institutional education administrators, and educational supervisors shall serve a probationary period of one year.

C. ~~E.~~ Employees in the management compensation schedule shall normally serve a probationary period of twelve months. An appointing authority may reduce the length of an individual period to not less than nine months, provided the employee has demonstrated the ability to effectively perform the duties and responsibilities of the position and the training requirements established pursuant to Minn. Stat. § 43.32, subd. 9 of ~~2 MCAR § 2.166~~ have been met. With the approval of the Commissioner of Personnel, the probationary period may be extended to provide sufficient time for individual managers to complete mandatory minimum training requirements provided the total probationary period does not exceed two years.

D. The appointing authority may require employees who are transferred from another jurisdiction to serve a probationary period.

E. The following general provision regarding probationary periods shall apply:

1. Unpaid leave, to the extent that it exceeds ten or more work days, shall be added to the length of the probationary period for those employees covered by paragraphs B and C above.

2. The probationary period shall include all regular service, excluding time served in emergency, provisional, or temporary employment.

3. An employee who is promoted prior to the completion of the probationary period to a higher position in the same occupational field and in the same ~~department~~ agency shall complete the probationary period in the lower position by service in the higher position. The appointing authority shall certify that employee for permanent status in the lower position at the end of the specified probationary period for such class, or its equivalent period following the employee's original appointment to the position. In the absence of certification, the employee shall be deemed to possess permanent status.

4. When a probationary employee is granted a leave of absence to accept a position in the unclassified service, the unfulfilled portion of the probationary period in the classified service may be completed by service in the unclassified service position, provided that: ~~subject to~~ a) There is a positive recommendation of by the appointing authority ~~and approval~~ approved ~~of~~ by the Commissioner~~;~~ and b) ~~provided that~~ the work in the unclassified position is within the same ~~department~~ agency and general occupational field and is at least equivalent in difficulty and responsibility to the work in the position in the classified service. Classes shall be considered to be in the same occupational field when the appointing authority determines, after an analysis of the positions involved, that it is possible to evaluate the probability of satisfactory service in one class by observing service in the other class.

5. All employees ~~appointed~~ appointments from eligible lists other than the layoff list shall be subject to a probationary period beginning the date of the new appointment.

6. An appointing authority may require ~~E~~employees transferred from the jurisdiction of one another appointing authority to that of ~~another appointing authority~~ may be to serve subject to a probationary period as provided by this ~~section of the rules.~~

~~For the purposes of this rule, classes shall be considered to be in the same occupational field when the appointing authority determines, after an analysis of the positions involved, that it is possible to evaluate the probability of satisfactory service in one class by observing service in the other class.~~

7. An employee demoted during or at the end of the probationary period shall have the time in the higher class count toward the completion of any previously uncompleted probationary period in the class to which the employee is demoted.

~~2 MCAR § 2.099 Demotions during the probationary period. Demotions of probationary employees shall be subject to the provisions of these rules.~~

~~An employee demoted during or at the end of the probationary period shall have the time in the higher class count toward the probationary period in the class to which such employee is demoted.~~

2 MCAR § 2.108 Suspension. An appointing authority may suspend an employee without pay for just cause.

Any permanent employee who is suspended for thirty days or less shall, before the action is taken, be presented with a statement in writing setting forth the reasons for the suspension. The employee may use the grievance procedure in 2 MCAR § § 2.175-178, including appeal to the Commissioner.

Any permanent employee who is suspended for more than thirty days shall, at least five days before the effective date of the suspension, be presented with a statement in writing setting forth the reasons for the suspension. A copy of the statement shall be immediately submitted to the Commissioner. Any permanent employee ~~who~~ is suspended without pay for more than thirty days may appeal to the Personnel Board within thirty days after the effective date of ~~such action~~ the suspension.

No seniority shall be acquired during the period of suspension.

If it is proved to the appointing authority's satisfaction that the employee was unjustifiably suspended, any employment rights and benefits that the employee would have if the suspension had not occurred will be returned to that employee.

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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.

The appointing authority may assign ~~D~~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 permanent employee assigned duties formerly performed by a laid off employee may submit a request for reclassification of his/her position under the provision of 2 MCAR §2.019.

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~~ When 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 appointing authority shall determine the order of layoff ~~shall be determined by the appointing authority in such a manner~~ so as to ~~insure~~ ensure 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. If an employee receives a probationary appointment with no break in service after working in a trainee class or under a provisional appointment to the same or related classification in the same agency, his/her seniority shall be credited back to the date of the trainee or provisional appointment.

Seniority of an employee in the class to which that employee is being 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,~~ employment in all related higher or equally paid classes in which the employee has served within the agency, as well as other classes which the Commissioner determines as being sufficiently similar to the class to which demotion is occurring ~~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.~~ At least 15 days prior to the effective date of layoff, the appointing authority shall provide written notice of layoff to each employee who is to be laid off. The appointing authority shall notify the Commissioner in writing of the reasons for the layoff. If the appointing authority fails to notify the Commissioner that layoff was for reasons not reflecting on the discredit of the employee before the effective date of the layoff, the layoff 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 names of affected employees also shall ~~have their names~~ be 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 organizational 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 § 2.110 Demotion. The appointing authority may demote an employee for just cause.

A permanent employee shall, before the action is taken, be furnished with a statement in writing setting forth the reasons for the demotion. The employee shall be permitted five days time to reply in writing or upon request to appear personally and reply to the head of the ~~department~~ agency. A copy of the statement and employee's reply, if any, shall be filed with the Commissioner prior to the effective date of the demotion. A permanent employee, upon written request, may demand a hearing within 30 days of the effective date of the action before the Board. (Minn. Stat. § 43.24)

If at any time during the probationary period the appointing authority determines an employee's performance does not meet work standards, the appointing authority may demote the employee to a position in the class and agency from which the employee was promoted. No employee serving a probationary period following transfer or promotion shall be demoted except for just cause or without the employee's consent during the first 30 calendar days of the probationary period. (Minn. Stat. § 43.21; Minn. Stat. § 43.19, subd. 3 as amended by Laws of 1979, ch. 332, § 43)

If a demotion is grieved and it is proved to the appointing authority's satisfaction that the employee was unjustifiably demoted, the appointing authority shall restore any employment rights and benefits that the employee would have had if the demotion had not occurred. ~~will be returned to the employee.~~

Any permanent or probationary employee about to be laid off shall be demoted to replace the employee with least seniority in the next lower class in which ~~that~~ the employee previously served, unless the employee elects to be laid off. In either event, the name of ~~such~~ the employee shall be placed on ~~an~~ any appropriate reemployment lists as provided by 2 MCAR § 2.061.

An appointing authority, with the consent of the affected employee, may demote in lieu of layoff, a permanent or probationary employee not covered in the preceding provision. Such action shall not entitle the employee to a hearing in the demotion, but the employee's name shall be placed on the layoff list and upon written request may be placed on the reemployment list of the class from which that employee was demoted. No employee so demoted shall displace a permanent or probationary employee except in order of seniority as determined by these rules.

2 MCAR § 2.118 Reinstatement after resignation, retirement, voluntary demotion, or expiration of a leave of absence. Upon written approval of the Commissioner, an appointing authority may reinstate a former probationary or permanent employee to a position in a former class within one year of the date of resignation, retirement, voluntary demotion, or expiration of leave of absence. Seniority upon reinstatement shall be calculated as provided in 2 MCAR § 2.119. No ~~such~~ former employee shall be reinstated directly as provided in this rule if a layoff list exists for the class for the agency or organizational unit, but ~~such former employee~~ may make application to have ~~their~~ his/her name placed on the reemployment list, ~~as provided by these rules.~~

2 MCAR § 2.119 Restoration of seniority. ~~An employee who has been employed continuously by the state and who voluntarily left employment with one agency to enter employment with another agency shall have the seniority at the time of termination of services in the first agency reinstated upon reemployment in that agency.~~ An appointing authority, who

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reemploys an employee who has been employed continuously by the state and who left the employment of the agency, shall reinstate the seniority that existed at the time the employee left the agency.

Any employee who was mandatorily retired at age 65 prior to January 1, 1979, shall have all seniority existing at the time of the mandatory retirement restored upon the employee's return to state service in any employment status in which seniority is accrued.

Except as provided above, Sseniority of a former employee who was reinstated or appointed from a reemployment list shall begin on the date of reemployment in the state service. Seniority at the time of termination may be restored by the appointing authority upon the written request of the employee.

2 MCAR § 2.131 Holidays. Holidays will be observed as prescribed by the legislature. (Minn. Stat. § 645.44, subd. 5)

This rule applies to all classified employees and, notwithstanding 2 MCAR § 2.004, all full-time unlimited unclassified employees in the executive branch of government, except non-tenured laborers~~;~~; temporary employees~~;~~; emergency employees; student workers appointed after January 1, 1980; and project employees. Intermittent employees shall become eligible for holidays after completion of 100 working days in any twelve month period. Interns do not receive holiday pay. Holiday leave provisions may be established by the appointing authority for employees not covered by this rule, provided they are not specifically excluded from coverage.

The following days are holidays and an alternate day off shall be granted for work done on these days, except where payment is allowed under the overtime provisions of 2 MCAR § 2.130.

New Year's Day	January 1
Washington's and Lincoln's Birthday	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
~~Columbus Day~~	~~Second Monday in October~~
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	Fourth Friday in November
Christmas Day	December 25
Employee's Birthday	Employee's Birthdate

Where a collective bargaining agreement specifies holidays, covered employees shall receive only the holidays set forth in that agreement.

Medical doctors compensated under the provisions of Minn. Stat. § 43.126 shall observe a floating holiday in lieu of the birthday holiday.

A. When New Year's Day, Independence Day, Veterans Day, or Christmas Day or the employee's birthday fall on Sunday, the following day shall be considered the official holiday for employees. When these holidays fall on Saturday, the preceding day shall be considered the official holiday for employees. An employee, regardless of work schedule, shall receive the same number of holidays as an employee whose regular work week is Monday through Friday. Where seven day a week schedules are in effect, the actual holiday shall be observed as the holiday for employees working within such schedule. When any of the above holidays fall on an employee's regularly scheduled day off, the employee's scheduled work day which is closest to the holiday, which is not a holiday, shall be scheduled as a holiday for that employee unless other arrangements are agreed to between the appointing authority and the employee. When an employee has days off that are not consecutive and the holiday falls on one of the scheduled days off, either the date before or the day after the holiday(s) shall be observed as the holiday at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee. When an employee has three or more consecutive days off and a holiday falls on one or more of the scheduled days off, either the day(s) before or the day(s) after the consecutive days off or any combination thereof shall be observed as the holiday(s) at the appointing authority's discretion unless other arrangements are agreed to between the appointing authority and the employee.

For purposes of this rule, when a workshift includes consecutive hours which fall in two calendar days, that workshift shall be considered as falling on the calendar day in which the majority of hours in the shift fall. When a workshift includes an equal number of consecutive hours in each of two calendar days, that workshift shall be considered as falling on the first of the two calendar days.

When an employee's birthday falls on any of the other holidays listed above, the employee's first scheduled work day following the holiday which is not a holiday, shall be observed as the birthday holiday. Except in leap years, when an employee's birthday falls on February 29, March 1 shall be observed as the birthday holiday. An eligible employee whose birthday falls during a period of seasonal layoff shall be entitled to be paid for the birthday holiday during the first payroll period after return from layoff.

B. The appointing authority in ~~those agencies~~ an agency which remains open on a holiday ~~to the public~~ for performance of public business may designate a sufficient number of employees to maintain the continuity of the agency's operations on such days.

C. Holidays which occur within the employee's vacation or sick leave period will not be charged to the employee's vacation or sick leave time.

D. Employees must be on the payroll on the work day immediately preceding and the work day immediately following a holiday to be eligible for such holiday.

For the purpose of determining eligibility for holiday pay, "on the payroll" shall mean those who are ~~in pay status~~ on paid leave or actively working.

E. Employees who normally work less than full-time ~~or~~ and eligible intermittent employees are compensated for shall have their holidays pay prorated on the following basis:

Hours that would have been worked during the pay period had there been no holiday	Holiday hours earned for each holiday in the pay period
~~0~~ 9 Less than 9.5	0
~~10-19~~ At least 9.5, but less than 19.5	1
~~20-29~~ At least 19.5, but less than 29.5	2
~~30-39~~ At least 29.5, but less than 39.5	3
~~40-49~~ At least 39.5, but less than 49.5	4
~~50-59~~ At least 49.5, but less than 59.5	5
~~60-69~~ At least 59.5, but less than 69.5	6
~~70-79~~ At least 69.5, but less than 79.5	7
~~80~~ At least 79.5	8

Eligible ~~Intermittent~~ intermittent employees shall receive a holiday if they work the day before and the day after a holiday. If such intermittent employee works on a holiday, that employee will be reimbursed for the holiday in addition to the pay for the time worked. This pay shall be in accordance with the above schedule. Seasonal employees are entitled to holidays as defined in this rule.

With the approval of the appointing authority, part-time employees may be allowed to arrange their work schedules, in payroll periods that include a holiday, to avoid any reduction in salary due to a loss of hours because of the proration of holiday hours, provided such rescheduling does not result in the payment of overtime.

Any eligible employee mandatorily retired on a holiday or holiday weekend shall be entitled to be paid for the holiday(s).

Holiday pay shall be computed at the employee's normal day's pay (i.e., the employee's regular hourly rate of pay multiplied by the number of hours in his/her normal work day), and shall be paid in cash.

Any employee who works on a holiday shall be paid cash at the employee's appropriate overtime rate for all hours worked in addition to holiday pay described in this section, or at the discretion of the appointing authority, shall be paid in cash at the employee's appropriate overtime rate for all hours worked in addition to an alternate holiday in lieu of holiday pay provided in this section. Such alternate holiday shall be granted within thirty days of the pay period in which the holiday occurs, but if there is no agreement as to the date of the alternate holiday between the appointing authority and the employee, such holiday shall be paid in cash.

F. Employees who observe religious holidays on days which do not fall on a Sunday or a legal holiday shall be entitled to such days off to observe the religious holiday upon 21 days advance written notice to the appointing authority. Such days off to observe these religious holidays shall be taken without pay, or upon the election of the employee, may be charged against accumulated vacation leave. If the appointing authority can arrange to have the employee work an equivalent number of hours at another time during the fiscal year to compensate for the days lost for observance of religious holidays, these holidays may be taken against such hours actually worked.

2 MCAR § 2.133 Absence because of illness or injury for which worker's compensation is paid by the state.

A. Hazardous occupation injuries. Employees of the state corrections and welfare institutions~~;~~ the School for the Deaf~~;~~ the Braille and Sight Saving School~~;~~ the Department of Veterans' Affairs; ~~highway~~ state patrol officers troopers~~;~~ conservation officers and crime bureau agents who incur a disabling injury in the ordinary course of employment may be eligible for injured on duty pay. In order to be eligible for such pay, employees must have been acting in a reasonable and prudent manner in compliance with established rules and procedures of the appointing authority when the injury is incurred. Such injuries must be the direct result of aggressive and/or criminal and/or ~~overt~~ intentional acts, or their consequences, by a person ~~in~~ who is a resident or is under the custodial control of a correctional, educational, veterans' or welfare institution~~;~~ or the injury must have occurred while attempting to apprehend, restrain, or take into custody an institutional inmate or resident, or suspected violator of the law.

Eligible employees shall receive compensation in an amount equal to the difference between the employee's regular rate of pay and benefits paid under Worker's Compensation. Such injured on duty pay shall not exceed an amount equal to 240 times the employee's regular hourly rate of pay ~~for~~ per disabling injury, and shall not affect the employee's regular accrued vacation, sick leave, or over-time credits.

B. Other job-related injuries. Notwithstanding 2 MCAR § 2.004, any classified or unclassified employee in the executive branch may elect to use accumulated vacation or sick leave or both during a period of absence due to compensable illness or injury. Such leave may be used on the following basis:

1. Transfer of the worker's compensation benefits to the State to be credited to the employee's sick leave or vacation accrual in proportion to the amount of compensation received and accept sick leave or vacation time for the compensable sickness or injury;

or

2. Keep the worker's compensation benefits and receive from the State an additional compensation from the accumulated sick leave or vacation leave:

but

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in either case, the total rate of compensation may not exceed the regular compensation of the employee. (Minn. Stat. § 176.021, subd. 5)

An employee so absent shall be entitled to immediate return to actual employment upon appropriate release from worker's compensation status.

2 MCAR § 2.134 General ~~regulations~~ provisions governing leaves of absence with pay. As far as practicable, ~~grants of~~ requests for 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 by the appointing authority.

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 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~~.~~, but shall be credited to the employee's records at the end of that payroll period. ~~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.~~

An employee on layoff does not earn vacation and sick leave.

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; student workers appointed after January 1, 1980; 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. Intermittent employees shall become eligible after completion of 100 working days in any twelve month period. Interns shall not accrue vacation leave. 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~~ accrue vacation with pay according to the rate listed below:



THE RED RIVER VALLEY of northwestern Minnesota is the home of the Northern Pocket Gopher, a furry miner whose habit of eating plant roots and tubers makes it an unwelcome pest. Its mounds can also interfere with haying activities on farms.

HOURS OF VACATION ACCRUED DURING EACH PAYROLL PERIOD OF CONTINUOUS SERVICE

No. Hours Worked During Pay Period	0 thru 5 3 yrs. if appointed on or after 7/1/79	0 thru 3 yrs. if appointed before 7/1/79	After 3 thru 5 years	After 5 thru 8 years	After 8 thru ~~18~~ 12 years	After ~~18~~ 12 thru ~~25~~ 20 years	Over ~~25~~ 20 years
~~0~~ 9 Less than 9.5	0	0	0	0	0	0	0
~~10~~ 19 At least 9.5, but less than 19.5	.50	~~¾~~ .75	.75	1	~~¼~~ 1.25	~~1½~~ 1.50	~~1½~~ 1.50
~~20~~ 29 At least 19.5, but less than 29.5	.75	1	1	~~¼~~ 1.25	~~1¾~~ 1.75	2	2
~~30~~ 39 At least 29.5, but less than 39.5	1	~~1½~~ 1.50	1.50	2	~~2¾~~ 2.75	3	3
~~40~~ 49 At least 39.5, but less than 49.5	1.50	2	2	~~2½~~ 2.50	~~3½~~ 3.50	~~3¾~~ 3.75	4
~~50~~ 59 At least 49.5, but less than 59.5	2	~~2½~~ 2.50	2.50	~~3¼~~ 3.25	~~4½~~ 4.50	~~4¾~~ 4.75	5
~~60~~ 69 At least 59.5, but less than 69.5	2.25	3	3	~~3¾~~ 3.75	~~5¼~~ 5.25	~~5¾~~ 5.75	6
~~70~~ 79 At least 69.5, but less than 79.5	2.75	~~3½~~ 3.50	3.50	~~4½~~ 4.50	~~6¼~~ 6.25	~~6¾~~ 6.75	7
~~80 and over~~ At least 79.5	3	4	4	5	7	~~7½~~ 7.50	8

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Medical Doctors Compensated Under the Provisions of Minn. Stat. § 43.126 Shall Accrue Vacation with Pay According to the Rate Listed Below:

No. of Hours Worked During Pay Period	0 thru 3 Years	3 thru 5 years	5 thru 12years	After 12 years
Less than 9.5	0	0	0	0
At least 9.5, but less than 19.5	1	1.25	1.50	1.75
At least 19.5, but less than 29.5	1.25	1.50	2	2.25
At least 29.5, but less than 39.5	2	2.25	3	3.50
At least 39.5, but less than 49.5	2.50	3	4	4.50
At least 49.5, but less than 59.5	3.25	3.75	5	5.75
At least 59.5, but less than 69.5	3.75	4.50	6	6.75
At least 69.5, but less than 79.5	4.50	5.25	7	8
At least 79.5	5	6	8	9

When sick leave and/or 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 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~~ who is 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~~ date of hire or in the case of intermittent employees, from the date of eligibility. The appointing authority may permit employees transferred to the classified state civil service from another jurisdiction under the provisions of 2 MCAR § 2.091 F to accrue vacation leave on the basis of their length of service in the agency from which the transfer was made.

~~Department or agencies~~ The appointing authority 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~~ 240 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 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.

If an employee becomes ill or disabled while on vacation, such leave shall be changed to sick leave effective the date of illness or disability, upon notice to the employee's appointing authority. The appointing authority may require the em-

ployee to furnish a medical statement from a medical practitioner as soon as practicable.

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 intermittent employee's accrued but unused vacation leave shall be liquidated by cash payment on the last payroll period in June of each fiscal year.

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 for the first five years of continuous state service; eight hours per full payroll period after five years of continuous state service; and nine hours per full payroll period after twelve years of continuous state service. ~~Covered department 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 nontenured laborers; emergency employees; project employees; student workers appointed after January 1, 1980; 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. Intermittent employees shall become eligible for purposes of this rule after completion of 100 working days in any twelve month period. Interns shall not accrue sick leave. 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~~ accrued 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	Less than 9.5	0	0
~~10-19~~	At least 9.5, but less than 19.5	~~¾~~ .75	~~⅛~~ .25
~~20-29~~	At least 19.5, but less than 29.5	1	~~½~~ .50
~~30-39~~	At least 29.5, but less than 39.5	~~1½~~ 1.50	~~¾~~ .75
~~40-49~~	At least 39.5, but less than 49.5	2	1
~~50-59~~	At least 49.5, but less than 59.5	~~2½~~ 2.50	~~1¼~~ 1.25
~~60-69~~	At least 59.5, but less than 69.5	3	~~1½~~ 1.50
~~70-79~~	At least 69.5, but less than 79.5	~~3½~~ 3.50	~~1¾~~ 1.75
~~80 and over~~	At least 79.5	4	2

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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~~ who is paid for less than a full payroll period of 80 hours will have sick leave pro-rated for that payroll period, ~~unless the~~ An employee is on Workers' Compensation, ~~in which case sick leave would be~~ will accrued sick leave based on ~~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.~~

Full Time Employees Shall
Earn Sick Leave on the Following Basis Each Payroll Period:

Sick Leave Balance at Start of Payroll Period	Number of Hours Credited to Balance	Number of Hours Credited to Bank
896 or less	4	0
897	3	1
898	2	2
899	1	2

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.~~ Sick leave to arrange for the birth or adoption of a child shall be limited to not more than three consecutive work days. 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.

An employee incurring an on the job injury shall be paid his/her regular rate of pay for the remainder of the workshift. Any necessary deductions from accrued sick leave for employees so injured shall not commence until the first scheduled work day following the injury.

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 ~~their~~ his/her previously accumulated, unused balance of sick leave ~~revived and credited to that employee~~ restored 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 those rules. 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 is appointed to the classified service, without interruption of services to the state shall be entitled to credit of accumulated unused sick leave earned in the former employment.

An employee of a merit system another jurisdiction or the federal competitive service with probationary or permanent status may be transfer transferred under the provisions of 2 MCAR § 2.091 E. or be appointed to a position in the state service. The appointing authority and may be credited the employee with the amount of sick leave accumulated not to exceed 12 days, 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 § 2.138 Other leaves with pay. Notwithstanding 2 MCAR § 2.004, any classified or unclassified employee in the executive branch shall be granted leave of absence with pay for:

A. Service upon a jury. Compensation shall be at the employee's regular base rate of pay less the fee received for jury duty, exclusive of expenses paid by the court. Employees whose scheduled shift is other than a day shift shall be reassigned to a day shift during the period of service upon a jury. When not impaneled for actual service and only on call, the employee shall report to work.

B. Appearance before court, legislative committee, or other judicial or quasi-judicial body as a witness in an action involving the federal government, State of Minnesota, or a political subdivision thereof, in response to a subpoena or other direction by proper authority for job related purposes other than those instituted by the employee or his exclusive representative. The employee shall receive regular pay less any fee received, exclusive of court paid expenses for serving as a witness, as required by the court.

C. Attendance in court in connection with an employee's official duty. Such attendance shall include the time required in going to the court and returning to the employee's headquarters.

D. Time required to report and be processed through preinduction examination(s) conducted by the armed forces preliminary to military service.

E. Educational purposes, if such education is required by the appointing authority.

F. Voting pursuant to Minn. Stat. § 204.15 204A.36.

G. Preparation for and participation in world, Olympic or Pan American games pursuant to Minn. Stat. § 15.62, subd. 3 as amended by Laws of 1979, ch. 208, § 1.

Any voluntary absence to appear and testify in private litigation not as an officer of the state but as an individual, shall be taken as an annual vacation leave, leave of absence without pay, or as a deduction from authorized accumulated overtime.

2 MCAR § 2.141 Child bearing/child rearing leave of absence without pay. Maternity/Paternity or adoption leave of absence without pay. A child bearing/child rearing maternity/paternity or adoption leave of absence shall be granted, when requested, to a permanent, probationary, or unclassified natural parent or adoptive parent in the classified or unclassified service for a period not to exceed 6 months, when requested in conjunction with the birth or adoption of a child. Child bearing/child rearing Maternity/Paternity or adoption leave may be extended up to a total maximum of one year by mutual consent between the employee and the appointing authority.

2 MCAR § 2.181 Expense allowances.

A. Means of travel.

1. State-owned vehicles. An employee may be permanently assigned a state-owned vehicle when required by law or if circumstances make such assignment necessary when recommended by the appointing authority and approved by the Commissioner of Administration.

Departments Agencies operating vehicles not in the Central Motor Pool shall operate them on a pool basis following rules of the Department of Administration for the operation of such state-owned vehicles.

2. Privately-owned automobiles vehicles and aircraft. The compensation for use of a personal automobile is 16 19 cents per mile when a motor pool vehicle is not available. Mileage shall be paid based on the most direct route according to Transportation Department records. Deviations from the shortest direct route, such as vicinity driving or driving from the employee's residence where the employee's residence becomes the point of departure, shall be shown on the expense account as a daily total, with a separate explanation outlining the reasons for such mileage. No additional reimbursement will be made for incidental expenses to the operation or maintenance of a personal automobile for state business except for payment of toll charges and parking.

The employee who elects to use a personal car on official state business with the approval of the appointing authority when traveling within the state in cases where a motor pool vehicle is available shall be reimbursed at the rate of 11 14 cents per mile. The higher rate may be paid if the use of the motor pool vehicle would have resulted in a greater cost to the state than the reimbursement of the personal car rate.

Employees who use a specially equipped personal van or

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van-type vehicle on official state business shall be reimbursed for mileage at the rate of 31 cents per mile. In order to qualify for this reimbursement rate, the vehicle must be equipped with a ramp, lift, or other level changing device designed to provide access for a wheelchair, and the vehicle must be operated by the handicapped employee from the wheelchair.

~~The reimbursement for mileage shall be adjusted as follows:~~

~~A "base rate" gasoline price shall be established by computing the average price per gallon of gasoline delivered to the Central Motor Pool during the month of April, 1977. A "new rate" shall be calculated in the same manner for each month commencing in July, 1977. The difference, if any between the "base rate" and the "new rate" shall be added to the sum of any changes in federal or state gasoline taxes levied on or after April 1, 1977, and such total shall be referred to as the "adjusted difference." Effective the second month following the computation of the "new rate," mileage reimbursement rates shall be increased or decreased by 1 cent for each full 10 cent increase or decrease in the "adjusted difference." In no event shall such mileage rates be less than the rates of 16 cents or 11 cents as set forth above.~~

The appointing authority may authorize travel in personal aircraft when it is deemed in the best interest of the state. Mileage reimbursement in such cases shall be ~~25~~ 31 cents per mile and shall be based on the shortest route based on direct air mileage between the point of departure and the destination.

3. Out-of-state travel. Payment for expenses for transportation by personal vehicle for out-of-state travel shall be made on the basis of a single coach air fare for each vehicle used.

If available, motor pool vehicles or state-owned vehicles may be used for out-of-state travel. When a central motor pool vehicle is used, reimbursement will be made to the Central Motor Pool. The expense of such vehicles shall be charged against the out-of-state authorization of the ~~department~~ agency.

When personal vehicles are used in driving to out-of-state locations not available by commercial transportation, travel reimbursement shall be made on an actual mileage basis in accordance with these rules.

Any in-state travel expense directly related to an out-of-state trip shall be charged against the annual out-of-state travel allowance for the ~~department~~ agency involved.

4. Commercial transportation. State employees may travel in-state and out-of-state by commercial transportation when authorized by the ~~department~~ agency head. Air transportation shall be by coach class except in those instances where such space is not available. When an employee has a reservation for a flight that is not going to be used, such employee shall be accountable for the cancellation of such reservation. Air charter service may be used for in or out-of-state travel where such charter service is more practical than commercial transportation. The appointing authority may reimburse the employee for the use of a public bus on state business, where the use of the bus results in less cost to the state than the use of a state or personal vehicle.

5. Motorcycle reimbursement. Reimbursement for use of a motorcycle on official state business, when authorized in advance by the appointing authority, shall be at the rate of 8 10 cents per mile. ~~This rate shall not be subject to the escalator provision of 2 MCAR § 2.181 A.2.~~

B. Meals and lodging.

1. Employees shall claim reimbursement only for the amount actually paid for meals when in a travel status. The amount must be reasonable, taking into consideration the location in which the meal is obtained.

Maximum reimbursement, including sales tax for meals within the state, shall be ~~$2.45~~ $3.00 for breakfast, ~~$2.95~~ $4.00 for lunch, and ~~$5.00~~ $7.00 for dinner.

Maximum reimbursement, including sales tax for meals outside the state ~~and~~ or on trains shall be ~~$3.20~~ $4.00 for breakfast, ~~$3.70~~ $5.00 for lunch, and ~~$7.90~~ $9.00 for dinner.

~~The maximum reimbursement for meals shall be increased based upon the food away from home component of the consumer's price index for urban wage earners and clerical workers for Minneapolis-St. Paul, new series index (1967-100).~~

~~The base period for any adjustment shall be the July, 1977 index and the April, 1978 index. For each full 1.5 points rise in the food away from home component of the index during the base period, the maximum reimbursement for dinner shall be increased 5 cents effective July 1, 1978. The maximum reimbursement for breakfast and lunch shall each also be increased by one half of the amount of the increase for dinner. If the increased maximum reimbursements for breakfast and lunch results in an amount not equally divisible by five the maximum reimbursement for breakfast shall be rounded down to the next amount divisible by five, and the maximum reimbursement for lunch shall be rounded up to the next amount that is equally divisible by five.~~

Reimbursement for an official breakfast, luncheon, dinner, or banquet meeting shall be the actual cost of the meal.

An employee in a travel status between employee's work station and a field assignment may claim reimbursement for meals under the following circumstances:

a. Breakfast, providing the employee leaves home before 6:00 a.m. and is away from the permanent or temporary station.

b. Dinner, providing such employee returns home after 7:00 p.m. and is away from the permanent or temporary station.

c. Employees may be reimbursed for noon meals if the employee is in a travel status. Employees stationed in the seven-county metropolitan area shall not be reimbursed for

meals obtained in the seven-county metropolitan area except when properly authorized as a special expense in section D below. In other areas the cost of a noon meal shall only be reimbursed where such employee would not ordinarily have incurred such a cost and the employee is considered in a travel status. Any request for reimbursement under this section shall include a statement in writing that the employee has complied with provisions of this section of the rules.

Because of variances in in-state and out-of-state hotel or motel accommodations, no fixed amounts are prescribed. It is the responsibility of the appointing authority to instruct the employee to use good judgment in incurring lodging costs. Charges shall be reasonable and consistent with the facilities available. The appointing authority may authorize the use of rental housing where the use of regular hotel or motel accommodations would result in a greater cost to the state.

C. Other fees and expenses.

1. Parking fees. Employees using state-owned or private vehicles shall be reimbursed on an actual expense basis. Charges shall be necessary and reasonable, and consistent with the facilities available. When receipt or other evidence of payment is issued to the employee, such receipt must be submitted with the expense reimbursement request.

2. Telephone calls. ~~Telephone calls between state offices and cities shall be made using the state telephone network if at all possible. When the state telephone network is not readily available, employees should use a WATS line where such lines are available. Use of either the state telephone network or the WATS line is explained in the state telephone directory.~~

~~In cases where~~ When it is necessary to place a ~~regular~~ work related long distance call, the employee should request that the operator bill the call to the home office telephone number. ~~If a~~An employee who pays cash for a work related long distance call, may obtain reimbursement for such calls ~~may be obtained by using an employee expense report.~~

~~State personnel who must frequently place long distance telephone calls may be eligible for a telephone credit card. The procedure for obtaining a state telephone credit card is explained in the state telephone directory.~~

3. Personal expenses. Personal expenses for purposes of this rule are defined as dry cleaning, laundry, and baggage handling. Employees continuing in a travel status in excess of one week who do not return home during that week may claim reimbursement not to exceed ~~$3.50~~ $7.00 per week for laundry or not to exceed ~~$2.00~~ $6.00 for dry cleaning and pressing expenses for each week after the first week. If an employee returns home during a period of time in which he/she an employee continues in a travel status, the employee is not eligible for reimbursement for laundry, dry cleaning or pressing in the subsequent week, after such return. Receipts must accompany the claim for reimbursement. The employee's judgment is to be used regarding baggage handling expense. No reimbursement shall be made for personal phone calls, valet service, or similar personal expenses.

D. Special expenses. Special expenses shall require prior approval of the appointing authority and the approval of the Commissioner of Personnel, who shall issue guidelines regarding eligible special expenses. This section also applies to any state board, council, or commission member.

E. Station assignments. The appointing authority shall assign employees permanent or temporary stations with such assignments to be in the best interest of the state and travel origin and records shall be based on these permanent or temporary assigned stations. ~~A department head~~ An appointing authority reporting deviation from this provision shall submit a request in accordance with the rules relating to special expenses. Employees away from such designated stations on unfinished assignments may be allowed mileage reimbursement for trips to their stations on alternate weekends. An employee may return to the station each weekend at state expense if the cost of such return is less than that of remaining in the field.

F. Payment of expenses.

1. Expense accounts. Expense accounts for all state employees shall be submitted to the Commissioner of Finance on the prescribed form (see Accounting Procedures Manual, Section E-2). If a receipt is required and the receipt has been lost or is otherwise unavailable, an affidavit stating the facts covering the expenditure shall accompany the expense account.

~~A department~~ An agency may be billed directly for expenses such as registration or conference fees, travel agencies, hotels and motels. Such billings shall include the name of the employee and the nature and date of the expense. Payment shall be processed promptly and charged to the allotment classification for travel.

2. Advances. ~~A department~~ An agency may upon request advance an estimated amount for approved travel expenses, if greater than $50.00, to an employee who will be traveling on state business.

The authority for advance of travel expense payments may not exceed the maximum allowance permitted under state travel regulations.

In the case of travel expense advances ~~departments~~ agencies having imprest cash funds shall make the advance from such accounts if possible. In other instances, ~~departments~~ agencies shall prepare a statement with supporting expense

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voucher clearly stating the advance is being made under provisions of Minn. Stat. § 43.33. In all cases after the actual expense is determined, a final employee report for the trip and/or period for which the advance was made shall be prepared and forwarded to the Department of Finance. The advance payment transaction date and transaction number must be shown on the final employee expense report. The final expense voucher shall include the number of the state warrant covering the advance payment. If additional payment is due the employee, an additional state warrant shall be prepared in the usual manner. If an advance payment exceeds the actual expenses, the employee shall return the excess which shall be deposited in accordance with provisions established by the Commissioner of Finance.

G. Insurance. ~~Department heads shall require proof of automobile liability insurance in the minimum amount required by law before approving travel involving private automobile mileage allowance.~~

Any employee flying a personal aircraft on official state business must show proof of adequate liability insurance coverage by a firm licensed to do business in Minnesota. Such coverage shall be in an amount of $50,000 minimum for each passenger seat, $50,000 per person, and $150,000 per accident for public liability for bodily injury, and $50,000 property damage.

It shall be the responsibility of the employee to immediately notify the appointing authority of any change in insurance coverages under such employee's ~~automobile and~~ aircraft liability insurance.

H. Automobile leasing. An employee may be reimbursed for car rental expenses where the use of a state car in the conduct of state business is not possible and the use of a rental car is the only or the least expensive method of transportation. An employee using such rental car must indicate the need for the rental and attach an itemized statement for the rental upon requesting reimbursement.

2 MCAR § 2.182 Relocation expenses.

A. Authorization. An employee shall be reimbursed for relocation expenses under the provisions of this rule if the conditions of 2 MCAR § 2.182 B.6. are met and if:

1. The appointing authority determines that an employee is required to be transferred or reassigned to a different work station, when the transfer or reassignment is not for the employee's sole benefit, or:

2. The employee must change residence as a condition of employment, or:

3. The employee accepts an appointment at a higher salary range, or:

4. The employee is reassigned, transferred or demoted to a vacant position in the employee's ~~state department~~ or agency due to the abolishment, transfer of the function to another governmental jurisdiction or private enterprise, removal to a new location or to another state agency of all or a major portion of the operations of the employee's appointing authority.

An employee transferred under these conditions shall receive prior authorization before incurring any expenses authorized by this rule.

An employee who is demoted during the probationary period after the trial period, shall receive those relocation expenses provided in 2 MCAR § 2.182 B.3. and 4.

Relocation expenses authorized by this rule may be paid to a person initially accepting employment in the state service with the advance approval of the Commissioner. Payment shall be made only after the person becomes a state employee.

B. Relocation expenses covered.

1. Travel status. An employee transferred or reassigned at the convenience of the state service as defined in paragraph A. above shall be considered in a travel status for a period of up to ~~sixty~~ ninety calendar days and shall be authorized to be reimbursed for return to such employee's original work station once a week. During the first ~~sixty~~ ninety calendar days the state may also reimburse the cost of transporting the employee's spouse twice during such period, including the cost of mileage, meals and lodging, but not to exceed a total period of seven calendar days. In addition, the state may reimburse the employee's family for reasonable transportation costs to the new work station at the point that the move is made, including mileage, meals and lodging. Such expenses shall be reimbursed consistent with these rules.

2. Realtor's fees. The state may pay the cost of realtor's fees on the home being sold by the employee but in no case shall such payment exceed $3,000.00.

3. Moving expenses. The state shall pay the cost of moving and packing of household goods. The employee shall obtain two or more bids for packing and moving of household goods. Approval shall be given by the appointing authority before authorizing a mover to pack and ship household goods. The state shall also pay for the cost of moving house trailers where that is the domicile of the employee, including the cost of transporting blocks, skirts, or other attached fixtures. The employee shall obtain two or more bids.

4. Miscellaneous expenses. The employee shall be reimbursed up to a maximum of ~~$250.00~~ $350.00 for miscellaneous expenses directly related to a move. Such expenses shall be reimbursed when supported by documentation. These expenses may include such things as disconnecting and connecting appliances and/or utilities, or other costs associated with the purchasing or rental of a new residence not covered elsewhere in this rule.

5. Liability. Neither the State of Minnesota nor any of its agencies shall be responsible for loss or damage to any employee's household goods or personal effects as a result of such transfer.

6. Eligibility. In order to be eligible for any payment of moving expenses or to be eligible for reimbursement of any

expenses under this section, the new permanent work station shall be at least 35 miles from the current work station or to the change in residence must be required by an the appointing authority as a condition of employment; and the change in residence must be completed within 6 months of the effective date of the appointment to the new position, unless an extension of time is approved by the appointing authority.

2 MCAR § 2.201 "Agency" means a department, ~~division,~~ commission, board, institution, or other branch of the state service, in which all positions are under the same appointing authority.

2 MCAR § 2.202 "Agency Promotional List" means an eligible list of ~~permanent and probationary~~ employees of the agency or duly established organizational unit established by competitive examination from which promotions are may be made.

2 MCAR § 2.203 "Allocation" means the ~~original~~ assignment of a new or vacant ~~an~~ individual position to an appropriate class, ~~or changes in assignment resulting from changes in the organizational structure of an agency or abrupt changes in the duties of a position,~~ on the basis of the kind, difficulty, and responsibility of the work performed in the position.

2 MCAR § 2.226 "Open competitive list" means an eligible list established by open competitive examination from which original appointments ~~are~~ may be made.

2 MCAR § 2.232 "Permanent employee" means an employee in the classified service who has ~~been appointed to a position after~~ successfully ~~completing~~ completed the initial probationary period.

2 MCAR § 2.240 ~~"Reallocation"~~ "Reclassification" means a reassignment reallocation, or change in allocation of an individual position by raising it to a higher class, reducing it to a lower class, or moving it to another class at the same level on the basis. A reclassification shall be considered a "reallocation" when the reclassification is the result of significant changes over a period of time in the kind, difficulty, or responsibility of the work performed in such position ~~which have occurred over a period of time.~~ A reclassification shall be considered a "change in allocation" when the reclassification is the result of changes in the organizational structure of an agency or abrupt changes in the duties and responsibilities of the position. A reclassification shall also be considered a change in allocation if it is the result of assignment of the incumbent in a manner so as to bypass the selection process.

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 state civil service and/or the class in good standing whose written applications for consideration for reemployment in the class have been approved by the Commissioner in accordance with 2 MCAR § 2.061.

2 MCAR § 2.244 "Statewide Promotional List" means an eligible list of ~~permanent and probationary~~ state employees established by competitive examination from which promotions may be made to any state agency. ~~agencies other than the one in which the eligible is employed.~~

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STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

RECEIVED
AUG 17 1979
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF PERSONNEL REGARDING PERSONNEL ADMINISTRATION.

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 September 12, 1979 commencing at 8:30 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 material may be submitted at the hearing. In addition, written materials may be submitted by mail to Peter Erickson , Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8111. Unless a longer period not to exceed twenty calendar days is ordered by the Hearing Examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 et seq..

The proposed amendments, if adopted, would amend 2 MCAR 2.009 Labor service; 2.010 Temporary designation of positions in the unclassified service; 2.018 Allocation of position; 2.019 Reallocation of position; 2.024 Work out of class; 2.029 Administration of the wage and salary plan; 2.031 Retroactive pay upon reallocation; 2.039 Eligibility to

Dept Exhibit No. 4
File No. PERSL-80-001-GB
Date 9-12-79

compete; 2.045 Appointing authority may conduct selection process; 2.046 Rating results of selection processes; 2.061 Reemployment list; 2.065 Removal of names from eligible lists; 2.067 Statement of availability; 2.086 Temporary appointment; 2.087 Emergency appointment; 2.091 Transfers; 2.097 Duration of probationary period; 2.099 Demotions during the probationary period; 2.108 Suspension; 2.109 Layoff; 2.110 Demotion; 2.118 Reinstatement after resignation, retirement or expiration of a leave of absence; 2.119 Restoration of seniority; 2.131 Holidays; 2.133 Absence because of illness or injury for which Workers' Compensation is paid; 2.134 General regulations governing leave of absence with pay; 2.135 Vacation leave; 2.136 Sick leave; 2.138 Other leaves with pay; 2.141 Child bearing/Child rearing leave of absence without pay; 2.181 Expense allowances; 2.182 Relocation expenses; and the definitions of "Agency", "Agency Promotional List", "Allocation", "Open Competitive List", "Permanent Employee", "Reallocation", "Reemployment List", "Statewide Promotion List".

These rules are being amended to correct grammar, clarify meanings, simplify existing procedures, implement Minn. Stat. ch. 43 as amended by Laws 1979, ch. 332, and convert temporary rules published at State Register, Vol. 3, No. 48, p. 2106, June 4, 1979 (3 S.R. 2106) to permanent rules.

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.

The statutory authority to promulgate the proposed rules is contained in Minn. Stat. ch. 43 and Laws of 1979, ch. 332.

Notice: The proposed rules are subject to change as a result of the rules hearing process. The Department therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the hearing process.

Please be advised that pursuant to Minn. Stat. § 10A.03, subd. 1 (1978) lobbyists must register with the State Ethical Practices Board within five days after becoming lobbyists.

> "'Lobbyist' means any individual:
>
> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
> (b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.
>
> 'Lobbyist' does not include any:
>
> (a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;
> (b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;
> (c) Individual while engaged in selling goods or services to be paid for by public funds;
> (d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;
(f) Stockholder of a family farm corporation as defined in section 500.24, subdivision 1, who does not spend over $250, excluding his own travel expenses, in any year in communicating with public officials; or
(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim."

Minn. Laws 1979, ch. 59 § 3. Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to a hearing, a Statement of Need and Reasonableness will be available for review at the office of the Department of Personnel and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the Department of Personnel at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Department of Personnel may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Department of Personnel. If you desire to be notified, you may so indicate at the hearing. After the hearing,

you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the Department of Personnel (in the case of Personnel's submission or resubmission to the Attorney General).

Promulgation of these proposed rule provisions will not result in the expenditure of public monies by local public bodies.

Dated: 8-13-74

Barbara L. Sundquist
BARBARA L. SUNDQUIST
Commissioner of Personnel

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

In the Matter of the Proposed
Amendment of Rules of the
Department of Personnel
regarding Personnel Administration

AFFIDAVIT OF MAILING

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

That on the 9th day of August, 1979, 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 paid to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

James B. Lee

Subscribed and sworn to before me
this 9 day of August,
1979.

Christine F. Goodwill
Notary Public

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

Dept Exhibit No. 8
File No. PERSL-80-001-GB
Date 9-12-79

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

RECEIVED
AUG 17 1979
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES REGARDING PERSONNEL ADMINISTRATION

STATEMENT OF NEED AND REASONABLENESS

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

The need to adopt these amended rules arises because of the need to implement Laws of 1979, ch. 332, correct grammar, clarify meanings, simplify existing procedures and convert temporary rules published at the State Register, Vol. 3, No. 48, p. 2106, June 4, 1979 (3 S.R. 2106) to permanent rules. The authority of the Department of Personnel to promulgate and adopt these rules is Laws of 1979, ch. 332 and Minn. Stat. § 43.05, subd. 2.

Specifically:

1. 2 MCAR § 2.009 Labor service.

Minn. Stat. § 43.19, subds. 1 and 4 were amended by Laws of 1979, ch. 332, § 43, to provide that all persons holding positions in the "executive branch of the state civil service or the legislative branch of state civil service, and classified positions on the staff of the legislative auditor, Minnesota state retirement system and teacher retirement association" are eligible to compete in promotional examinations. Revision of 2 MCAR § 2.009 is proposed because of this legislative change. Now all employees in the labor service, not just those who have achieved tenure, must be eligible to compete. We thus propose to delete section B of this rule which limited eligibility to those with tenure.

2. 2 MCAR § 2.010 Temporary designation of positions in the unclassified service.

Student worker positions are now statutorily unclassified under the provisions of Minn. Stat. § 43.09, subd. 2 as amended by Laws of 1979, ch. 332, § 19. State agency heads will no longer need to request that the Commissioner of Personnel temporarily designate a student worker position in the unclassified service. Therefore, any reference to student worker positions in this rule is inappropriate and unnecessary. Failure to strike a reference to student worker positions would serve only to create confusion about the process for the appointment of student workers.

3. 2 MCAR § 2.018 Allocation of positions.

2 MCAR § 2.018 is amended to deal only with the procedures governing the allocation of a new or vacant position to an appropriate class. All references to changes in allocation of an already existing class are deleted, and are added to 2 MCAR § 2.019. This change, along with the changes in 2 MCAR § 2.019, 2 MCAR § 2.203, and 2 MCAR § 2.240, is reasonable because it provides for a better organizational structure of the rules. (The organizational implications of all four of these rule changes will be discussed here. When considering the reasonableness of the three subsequent related rules, 2 MCAR § 2.019, 2 MCAR § 2.203, and 2 MCAR § 2.240, this discussion will be referred to.)

One rule, 2 MCAR § 2.018, now deals with the assignment of a new or vacant job to a proper class. This procedure is called "allocation". It is defined in 2 MCAR § 2.203, a rule which now will define only the allocation procedure just described.

Another rule, 2 MCAR § 2.019, now will deal with the reassignment of an occupied position to a different class. This procedure is called "reclassification", as defined in 2 MCAR § 2.240. The new organization of the rules makes clear that there are two methods by which an occupied position may be reclassified:

1) Reallocation, which results from significant changes over a period of time in the kind, difficulty, or responsibility of the work performed in such position; and,

2) Change in allocation, which results from changes in the organizational structure of an agency or abrupt changes in the duties and responsibilities of the position, or results from the assignment of the incumbent in a manner so as to bypass the selection process.

Placing information about the method of assigning new or vacant positions to a class in one rule, and information about the method of reassigning of an occupied position to another class in a separate rule, should make the information more accessible to managers, supervisors and employees.

2 MCAR § 2.018 is also amended to clarify that if it is not possible to compare an unclassified position with positions in a class in the classified service, the Commissioner is to establish a salary range for the position as provided by Laws of 1979, ch. 332, § 17, attached as Exhibit A. This change is reasonable because the current rule leaves unclear what the Commissioner is to do with positions involving duties and responsibilities unique to the unclassified service.

The wording of the second paragraph of 2 MCAR § 2.018 has been reordered. The reordering is intended to make the rules more understandable. No substantive change is intended.

4. 2 MCAR § 2.019 Reclassification of positions.

The amendments to 2 MCAR § 2.019 tie into the amendments to 2 MCAR § 2.018.

2 MCAR § 2.018 will now deal with the process of assigning a new or vacant position to the proper class.

2 MCAR § 2.019 will now deal with the reassignment of an occupied position to a different class. The rule is retitled "Reclassification", and has two subdivisions "reallocation" and "change in allocation". The intent of this change is to make clear that there are two methods by which an occupied position can be reclassified; i.e., moved from one classification to another. The two methods, "reallocation" and "change in allocation" are defined in the proposed amendment to 2 MCAR § 2.240.

This proposed change is reasonable in that it provides for a better organizational structure of the rules (see discussion under 2 MCAR § 2.018).

The proposed change is also intended to clarify the distinction between a reallocation and a change in allocation. This clarification is necessary because Laws of 1979, ch. 332, § 43 permits the Commissioner to approve promotions of reallocated incumbents without examination. Removal of the examination requirement on reallocations makes critical a clear distinction between reallocations and changes in allocation since the examination requirement continues for changes in allocation.

5. 2 MCAR § 2.024 Work Out of Class Pay.

This rule has been amended to make it clear that 1) Work Out of Class assignments will be paid for through a pay differential instead of the use of a temporary appointment and 2) Work Out of Class assignments may involve the duties of an equally or lower-paid class. The amendment also provides a method for determining an employee's appropriate rate of pay during the Work Out of Class assignment.

In the past, employees have been compensated for Work Out of Class assignments through the use of a temporary appointment to equally paid classes. The use of temporary appointments for this purpose was expedient because there was no statutory authority for payment of a differential even though labor agreements and the personnel rules required that employees who were assigned all of the duties of a temporarily vacant position be compensated for that assignment. The use of temporary appointments has created some confusion regarding seniority, salary progression and employee benefit eligibility. Minn. Stat. § 43.12 has been amended by Laws of 1979, ch. 332, § 30 to authorize the Commissioner to pay for Work Out of Class assignments. It was the intent of the legislature that Work Out of Class

compensation be in the form of a differential because the law specifically mentions "pay" and the authority to pay is located in Minn. Stat. § 43.12, which is the section primarily devoted to compensation provisions of the personnel law. The payment of a differential is a simpler procedure not affecting the issues of seniority, salary progression and employee benefits which were raised by utilizing the temporary appointment procedure to compensate employees for Work Out of Class assignments.

The amendment of the rules is necessary because the current rule conflicts with the new statutory authority and the proposed language is reasonable because it provides the same salary as the use of temporary appointments has provided, without the accompanying confusion created by the temporary appointment of a current state employee.

6. 2 MCAR § 2.029 Administration of the wage and salary plan.

The introductory paragraph of this rule has been amended for clarity and readability, without changing the substance of the paragraph. The use of the long citation is unnecessary and confusing, as the words "this rule" serve the same purpose.

Subd. C of this rule is amended to reflect the fact that revision of 2 MCAR § 2.061 would allow those employees who are voluntarily demoted to apply for reemployment or reinstatement. The proposed revision makes it clear that voluntarily demoted employees shall receive the same salary consideration as employees who resign or are laid off and subsequently returned to work.

Subd. E of this rule is amended to delete the word "department" and replace it with the word "agency", which is a more appropriate description of the Personnel Department's clientele. The Personnel Rules apply to all state agencies, not just those agencies designated as "departments" in Minn. Stat. § 15.01. Throughout the rule there will be a number of locations where the word "department" has been deleted and replaced with the word "agency" for this purpose.

Subd. I is amended for clarity by deleting the use of the word "notwithstanding" and by rewriting clause 2 to be read in the present tense, as is part 1.

It is essential that subd. K be amended for clarity by reconstructing the first sentence in the second paragraph.

The substance of 2 MCAR § 2.029 is unchanged, except in subd. C as previously indicated. The revisions for clarification are necessary because the current language is poorly structured.

7. 2 MCAR § 2.031 Retroactive pay upon reallocation.

This rule has been amended for clarification of the method for calculating the amount of back pay upon reallocation. There is no change in substance. The current language has proven to be hard to interpret. The proposed revision makes it clear that back pay begins 15 days after the Department of Personnel receives a reallocation request and continues for not longer than 60 days. It is also intended that, if the probationary appointment is more than 75 days after the receipt of the reallocation request, the period of back pay is the final 60 days prior to the probationary appointment. This revision is prompted by evidence of confusion regarding the meaning of the rule. The new language is easier to read and should lead to more efficient and consistent use of the rule.

8. 2 MCAR § 2.039 Eligibility to compete.

Revision of 2 MCAR § 2.039B is proposed to comply with the changes made in Minn. Stat. 43.19 subdivisions 1 and 4 by Laws of 1979, ch. 332, § 43. These statutory changes expanded eligibility for promotional examinations to all persons holding positions in the "executive branch of the state civil service or the legislative branch of the state civil service, and classified positions on the staff of the legislative auditor, Minnesota state retirement system and teachers retirement association." In § 2.039B, the terms

"permanent or probationary" have the effect of limiting eligibility to employees in the classified service. Since the 1979 amendment extends promotional examination eligibility to unclassified employees as well, these terms should be deleted.

The statute includes the phrase "so far as practicable" in describing the eligibility of current employees for promotional examinations. Consequently, two exceptions to a general overall eligibility should remain in the rules and are reasonable in view of the status of employment of these persons. First, emergency employees whose term of employment is limited to 30 days or less and who would be unlikely to remain employed by the conclusion of the selection process for which they might apply should be excluded from the class of employees eligible to compete in promotional exams. Second, interns, who are not employees, but students participating in work-related educational experiences, do not enjoy the same rights and benefits as employees do. It is reasonable to exclude these persons from the right to compete in promotional examinations. Thus, with the exception of emergency employees and interns, the proposed revision of § 2.039B authorizes all previously excluded employees such as temporary and provisional employees, pre-service trainees, and temporary unclassified employees to compete in promotional examinations so required by the statutory revision.

Revision of 2 MCAR § 2.039C is proposed to bring it into conformity with the change in Minn. Stat. § 43.19, subd. 1 (2) made by Laws of 1979, ch. 332, § 43, which gives the Commissioner authority to approve promotions of incumbents of reallocated positions without examinations. This revision is designed to indicate clearly that the provisions of this rule are to be employed when she does not invoke her discretionary statutory authority to make such promotions directly. In those situations where some type of testing is desired, we propose to remove restrictions 1 and 2 of the existing rule and to direct use of a qualifying examination process rather than a competitive ranking test procedure for incumbents of reallocated positions. Removal of these test restrictions also removes the necessity for the distinction in referral procedures in the third and fourth paragraphs of the existing rules. Paragraph three is thus revised to reflect a standard procedure for all candidates examined for reallocation purposes. A citation to the definition section is added to assure that the term "reallocation" is understood.

Remaining changes are proposed for clarity of expression or to indicate plainly that the department referenced is the Department of Personnel.

9. 2 MCAR § 2.045 Appointing authority may conduct selection process.

The proposed change in this rule would extend delegation of the Commissioner's authority to another area of the selection process. Previously, appointing authorities were permitted to administer examinations already developed by the Department of Personnel. The proposed revision will allow them to develop such processes themselves, providing they use development techniques approved by the Commissioner. This proposed extention of delegation follows a recommendation made in the Legislative Audit Commission staff report on the Department of Personnel. That recommendation arose from discussions with appointing authorities which caused LAC staff to conclude that greater participation in the selection process by those most familiar with the positions being filled would improve the process and its results. See excerpts from the May 19, 1978, Program Evaluation Division Legislative Audit Commission report on the Department of Personnel, attached as Exhibit B.

Extending delegation of authority in the selection area is supported by the Personnel Advisory Committee, made up of personnel directors from the largest state agencies. See attached Exhibit C.

10. 2 MCAR § 2.046 Rating results of selection processes.

A change is being proposed in section A of this rule in order to permit group ranking of candidates for state positions. Specifically, we are proposing to change the word "score" to "rating" so that candidate qualifications may be assessed in more generalized terms, such as "qualified", "well qualified", "best qualified"; or "passing", "not passing", etc., as an

alternative to using exact numerical scores which recognize differences of as little as one point, or even fractions thereof, when validity evidence may not be sufficient to support such distinctions. This procedure has been increasingly used by public employers to gain some needed flexibility in the selection process, to better meet federal testing guidelines, and to minimize adverse impact of selection processes on protected groups.

Group ranking of candidates is now acceptable to the Federal Office of Personnel Management and is incorporated in the "Standards for a Merit System of Personnel Administration." The Minnesota Department of Personnel must meet these federal guidelines so that various state agencies retain eligibility for federal funding. See excerpt from "Standards for a Merit System of Personnel Administration" 44 Fed. Reg. 10244 (Feb. 16, 1979), attached as Exhibit D.

Adding the new sentence proposed to Section A of this rule would codify a long-standing practice of the Department of Personnel, providing public notice of department policy. The need for a minimum score is self-evident. Using 70.00 is a widespread practice in public jurisdictions due to its common use in the public school grading system and therefore provides a standard reference point for most applicants. Using a maximum score of 100 is supported by the same reasoning. Further, an opinion of then Attorney General Walter F. Mondale, rendered in January, 1963, lends support to this system. See Exhibit E, attached.

The necessity for setting a maximum score arises from the fact that in addition to the score which any competitor can receive in the selection process itself, bonus points may be awarded for such factors as veteran's preference and length of service. Establishing a maximum score harms no applicants, since any person with bonus points who would otherwise receive a score of more than 100 is guaranteed consideration for any vacancy for which he/she is available by virtue of having the maximum possible score, regardless of the number of others with whom he may share this advantage.

The proposed changes in Sections B & C of this rule are for grammatical clarity.

11. 2 MCAR § 2.061 Reemployment list.

The proposed revision to this rule is designed to permit return to a former class via reemployment, not only to employees who resign or were laid off, but also to those who accept voluntary demotions. The proposed change would also provide reemployment to all classes in which the employee served within the three years preceeding a request for reemployment, rather than limiting this action to the last class in which the employee served. The last class in which the employee served may be one which affords fewer possibilities of appointment than other classes in which the employee also previously served and is willing to accept employment.

The proposed changes in the first paragraph are to delete references to obsolete and unnecessarily exacting practices, while retaining the essential basis for deciding whether or not to grant an applicant's request for reemployment consideration. Determination of whether or not candidates applying for reemployment should be placed on eligible lists has been based and would continue to be based on considerations of quality of service. The term "service reports" is obsolete. Performance appraisal is now based on documents which are used to evaluate employee performance and are available for use by the appointing authority and the Commissioner of Personnel. The Commissioner will continue to base her determinations to grant or withhold reemployment list eligibility on considerations of quality of service, but will make only the decision of whether or not to place the name on the list. There is no need for a ranking procedure based on degrees of quality of service, since the entire reemployment eligible list is referred to the appointing authority.

The proposed change in the final sentence of the first paragraph is designed to permit reemployment of an employee who has taken a voluntary demotion. Voluntary demotions generally occur because the employee desires a job change, which necessitates a move to a position in a lower level classification. Current provisions make it necessary for the employee who

accepts such a voluntary demotion to compete in the examination process in order to be repromoted to the class in which he/she already has a record of satisfactory service. The proposed change allows the individual to return to the former classification without competing in the examination process again.

The proposed change in the second paragraph is designed to identify clearly what party (the appointing authority or the employee) is responsible for taking actions to ensure that the laid off employee receives the reemployment consideration he/she is provided by this rule.

The Personnel Advisory Committee, composed of personnel directors from the largest state agencies, has endorsed this proposed change because it provides greater flexibility for filling positions in their agencies. See Exhibit C.

12. 2 MCAR § 2.065 Removal of names from eligible lists.

An addition is proposed to section F of this rule to provide for removal from the eligible lists of the names of candidates who fail to report for scheduled employment interviews. This is a fairly common occurence and leaves the agency with the name of an eligible who is, for all practical purposes, unavailable for employment. In providing information about this candidate's status to the Department of Personnel, agencies have had no specific way to indicate the reason they have found the person unavailable. Although subdivision E or F may be cited, indicating that in effect the applicant has declined appointment by not appearing for the interview, or that failure to appear constitutes failure to report for duty, it seems most appropriate to make provision for this particular situation. The rule as amended will allow appointing authorities to refer easily and consistently to the reason for removing these people from the list when responding to our agency.

The change in K of this rule is proposed for consistency with statutory definitions and the definition of the word "agency" at 2 MCAR § 2.276. Throughout these rules it was intended that the word "Department" be replaced by "agency". This particular instance was apparently overlooked during the previous rules revision.

The proposed change to this rule is supported by the Personnel Advisory Committee made up of personnel directors of major state agencies. See Exhibit C.

13. 2 MCAR § 2.067 Statement of availability.

This rule provides a procedure to follow when a candidate changes his availability by deleting a location or employment condition which he had earlier indicated he would accept. No procedure has previously been outlined in the rules concerning what action to take if the candidate changes his availability by adding an employment condition or geographic location. This rule change is designed to notify candidates and state agencies of conditions under which a candidate's name may be added to an outstanding certification report if a change in availability would potentially make the candidate eligible for an existing vacancy. At the time of such a change in availability, appointing authorities may already have received the names of candidates, begun contacting them, and already have extended an offer of appointment to a candidate whose eligibility could be destroyed by the addition of another candidate. Therefore, appointing authorities should have discretion to determine whether they wish to provide consideration to the person who has changed his mind about his availability. The approach proposed will provide maximum flexibility to the appointing authority, the primary client of the Department of Personnel. Revising procedures which give more discretion to appointing authorities is in accord with recommendations of the Legislative Audit Commission. Their staff report encouraged such delegation and emphasized that the Department's primary responsibility is to provide service to state agencies. See excerpts from Legislative Audit Commission Program Evaluation Division report on Department of Personnel, May 19, 1978, attached as Exhibit B.

The Personnel Advisory Committee, made up of personnel directors of major state agencies, supports the proposed rule change because it provides greater flexibility to appointing authorities to fill positions with qualified candidates. See attached Exhibit C.

14. 2 MCAR § 2.086 Temporary appointment.

Minn. Stat. § 43.20, subd. 5 as amended by Laws of 1979, ch. 332, § 45 provides a procedure for making temporary appointments. As a result, this rule is no longer necessary. The proposed change will delete unnecessary repetition of law and direct the attention of readers to the appropriate statute.

15. 2 MCAR § 2.087 Emergency appointments.

Minn. Stat. § 43.20, subd. 3 as amended by Laws of 1979, ch. 332, § 44 describes and limits emergency appointments. As a result, this rule is no longer necessary. The proposed change will direct the attention of readers to the appropriate statute.

16. 2 MCAR § 2.091 Transfers.

Subd. D has been amended to make it clear that the appointing authority is the party required to notify the Commissioner and the transferee if a new probationary period is required. This revision also changes the unnecessary plural "copies" to "copy". The sentence has been further reconstructed to provide for ease of reading.

Subd. E has been revised to:

1. Make it clear that transfer arrangements are limited to personnel jurisdictions in the public sector;

2. Provide for transfer of an employee to a grant-in-aid agency only from a federally approved merit system in order to avoid disqualification for Federal funds;

3. Give the appointing authority the discretion to credit the employee with accumulated service in the previous jurisdiction for purposes of accruing vacation leave;

4. Give the appointing authority discretion to determine if a probationary period should be required, and;

5. Provide a reference to an otherwise obscure section of the sick leave rule, which permits an appointing authority to accept up to 12 days sick leave from the previous jurisdiction.

The current rule mandated the initial vacation accrual rate and new probationary period for employees transferred from other jurisdictions. It is reasonable to give the agency heads some discretion in these two areas, in order to enable them to negotiate with prospective transferees.

The Legislative Audit Commission, in its report on the study of the Department of Personnel, has recommended delegation and decentralization of decision-making authority to the operating agency managers. Amendment of this rule will allow operating agencies to consider the needs of their agency and the status of current employees when making decisions regarding the transfer of employees.

It is also reasonable for the Commissioner of Personnel to avoid endangering the state's eligibility for Federal funds by preventing the transfer of employees from non-merit system agencies to grant-in-aid agencies.

The reference to the sick leave rule brings together in one place all of the provisions of the rules that need to be considered when undertaking an inter-governmental transfer.

17. 2 MCAR § 2.097 Duration of probationary period.

This rule has been reorganized in addition to one substantive change and several changes intended to clarify the rule. The introductory sentence has been changed to make it clear that probationary periods are dealt with entirely in this rule and to avoid giving the reader the impression that there

may be either another document which contains more information on probationary periods, or some unspecified discretionary authority has been retained by the Commissioner.

The next revision changes the method for determining the end of a probationary period. Under the current rule, it is possible for two employees appointed on the same day to complete their probationary periods on the same day even though one employee may have worked many more hours than the other. Expressing the probationary period in terms of working hours will ensure that employees are treated equally regardless of employment conditions. It will also provide management an adequate opportunity to observe the work of intermittent employees before they complete probationary periods, when they may not work for several months at a time.

Subds. A, B, C and D address the length of the probationary period for various salary schedules and the appointing authority's option to require a probationary period when an employee is transfered from another public jurisdiction under the provisions of 2 MCAR § 2.091E.

Subd. E contains general provisions that apply to probationary periods. Language in part 1 has been amended to make it clear that it only applies to teachers and managers. The language does not make sense if a probationary period is measured in terms of hours worked. Part 4 of subd. E is reworded to read better without substantive change. The last sentence, which appears as new language, has merely been transplanted from another paragraph of the rule. The new placement improves organization by combining related ideas in one paragraph.

Part 5 has been amended for grammatical reasons because the appointment, not the employee, is subject to the completion of a probationary period. There is no change in meaning.

Part 6. has been amended to make it clear that the appointing authority is the acting party that may require a new probationary period upon transfer of an employee.

Part 7 of subd. E is the same sentence found in 2 MCAR § 2.099, reworded without substantive change. This change consolidates provisions regarding the same subject matter. 2 MCAR § 2.099 should be deleted.

18. 2 MCAR § 2.099 Demotions during the probationary period.

This rule should be deleted. All provisions regarding probationary periods should be grouped in one rule, 2 MCAR § 2.097. The first sentence of 2 MCAR § 2.099 states the obvious point that all demotions are subject to the rules. The second sentence has been moved to 2 MCAR § 2.097E.

19. 2 MCAR § 2.108 Suspension.

Minn. Stat. § 43.24 was amended by Laws of 1979, ch. 332, § 47, to provide for appeal to Personnel Board if the employee is suspended for more than 30 days. Previously, a suspension of any length could be appealed. 2 MCAR § 2.108 is revised to clarify that classified employees have access to the Personnel Rule grievance procedure when suspended for 30 days or less. That procedure provides an aggrieved employee with the possibility that the action taken by his appointing authority may be reviewed by an entity other than the agency which took the action complained of.

The third paragraph is revised to reflect the statutory change in Minn. Stat. § 43.20, as amended by Laws of 1979, ch. 332, § 47, which specifies that a suspension must be of more than 30 days before appeal may be made to the Personnel Board.

20. 2 MCAR § 2.109 Layoff.

This rule has been revised for clarification purposes only. The second paragraph has been rewritten to make it clear that it is the appointing authority who reassigns duties. The proposed change also removes the unnecessary restriction that duties be reassigned only to permanent employees, and provides explicit reference to the mechanism for the review of positions by the Commissioner.

The second paragraph of subd. A should be revised to eliminate unnecessary words, without changing the meaning. The third paragraph is amended for clarity.

Subd. B is amended by moving and rewriting the sentence regarding the calculation of seniority if the employee previously served a trainee or provisional appointment. The sentence is moved to a place where it is less likely to be overlooked and puts all language regarding the calculation of seniority into one paragraph. The use of seniority in the process of demoting is changed to make it clear that seniority from higher and equally-paid classes may be used in determining which, if any, employees in the lower class an employee may displace, instead of merely determining the employee's new seniority after the demotion has already occurred.

Subds. D and E were rewritten for clarity and ease of reading without a change in substance.

21. 2 MCAR § 2.110 Demotion.

Minn. Stat. § 43.19, subd. C, as amended by Laws of 1979, ch. 332, § 43, specifies that a demoted, probationary employee may be demoted to a position in the class and agency from which the employee was promoted. The previous version of Minn. Stat. § 43.19, subd. C, specified that the demoted employee must be returned to the very same position he/she was promoted from. The third paragraph of the rule is amended to conform to other provisions of the law.

The fourth paragraph is amended to make it clear that if the appointing authority is convinced a demotion which was grieved was unjustified, restoration of employment rights and benefits shall result. The amended rule requires the appointing authority to reinstate the employee without any loss, a logical conclusion to such a finding.

The fifth paragraph is amended to recognize the fact that the employee may request that his/her name be placed on a reemployment list for more than one class.

22. 2 MCAR § 2.118 Reinstatement after resignation, retirement, or expiration of leave of absence.

A revision to this rule is proposed for the same purpose as revision of 2 MCAR § 2.061 on reemployment, to permit the employee who takes a voluntary demotion to return to his/her former higher classification without competing in an examination process for the higher class in which he previously served on a satisfactory basis. The proposed change in the last sentence of this rule is a grammatical improvement to remove redundancy, increase clarity and provide subject/pronoun agreement.

The Personnel Advisory Committee, made up of personnel directors of major state agencies, has endorsed this change because it provides greater flexibility in filling positions in their agencies with qualified candidates. See Exhibit C.

23. 2 MCAR § 2.119 Restoration of seniority.

The first paragraph of 2 MCAR § 2.119 is reworded. The rewording is intended to provide clarity. No substantive change is intended.

2 MCAR § 2.119 is also amended to provide that certain mandatorily retired employees shall have all seniority existing at the time of mandatory retirement restored upon return to state service under certain conditions.

This proposed addition to the rule is reasonable because it adopts a policy which is in conformity with the intent of the Federal Age Discrimination in Employment Act of 1967, as amended by P.L. 95-256, attached as Exhibit F, and Laws of 1979, ch. 40, attached as Exhibit G. The federal and state laws intended to make it feasible for persons age 65 to 70 to continue working (see paragraph 504, New 1978 Mandatory Retirement and Age Discrimination Rules with Explanation and State Survey, Commerce Clearing

House, p. 51, attached as Exhibit F). Much of the feasibility is lost if the person must return as a new employee, with no credit for the seniority he/she had accrued before mandatory retirement. Lack of seniority has an adverse effect on sick leave and vacation accruals; and on job mobility. The additional words in the third paragraph are necessary because of the insertion of a new second paragraph.

24. 2 MCAR § 2.131 Holidays.

2 MCAR § 2.131 is amended to exclude intermittent employees from the holiday provisions of these rules until they have worked 100 days in any 12 month period. This proposed change is reasonable because an intermittent employee is one who works on-call, as needed. An intermittent employee has no obligation to work a particular schedule; he/she may be unavailable on any particular day, at his/her own choosing. There is no need to provide a paid holiday for the typical intermittent employee. Holiday pay should be provided to employees who work regularly, to whom a day off is an unusual occurrence; and to whom the loss of a day's pay, were there no holiday pay, would alter the amount of the paycheck on which the employee has learned to rely.

However, in some situations an intermittent employee may be frequently called to work and may work as much as half-time or even full-time. When it becomes evident that a particular intermittent employee is working frequently, which is defined as working 100 working days in any 12 month period, it is reasonable to treat him/her equitably with other employees who work the same amount of time and who are eligible for holiday pay.

This rule is also amended to clarify that student workers are not covered by the holiday provisions of these rules. It has been the intent of the Department to exclude student workers in the past. However, the Department became aware that this intent was not explicit in the rules. To make the intent clear, specific language excluding student workers appointed after January 1, 1980, is being added. The January 1, 1980, date was chosen because it is the target date for enactment of these rules. It is reasonable that student workers not be eligible for holidays. Many of them are earning academic credits for their work experience. All of them are clearly not permanent employees. Other non-permanent employees do not receive holiday pay; non-tenured laborers, temporary and emergency employees are already excluded.

The rule is also amended to clarify that interns are not covered by the holiday provisions of these rules. Interns are not state employees; they are on contract with the state. In this capacity, they have never been eligible for holiday pay. The specific exclusion is being added to the rules to make this information more readily available to managers, supervisors and employees.

The rule is also amended by adding that holiday leave provisions may be established for employees not covered by the rule only if they are not specifically excluded from coverage. This conforms the holiday rule to the current rules on vacation and sick leave, and explicitly clarifies current practice.

2 MCAR § 2.131 is amended to delete Columbus Day as a holiday, and to add the Friday after Thanksgiving in its place. This proposed change is reasonable because it conforms the rules to the statutes. Laws of 1979, ch. 332, § 92 provides that "for the executive branch of the State of Minnesota, 'holiday' also includes the Friday after Thanksgiving but does not include Christopher Columbus Day". This provision of the statutes prohibits the conducting of state business on holidays. It is reasonable to change the days on which employees observe holidays to conform with the days on which the state may not transact public business. Otherwise, employees would be available for work on days on which the state didn't need them; and would be unavailable, or available only at overtime rates, on days on which the state was mandated to conduct public business.

2 MCAR § 2.131 is also amended to add the Employee's Birthday as a holiday.

The addition of a holiday is reasonable because it conforms the rules to collective bargaining agreements covering a vast majority of other state employees. (See collective bargaining agreements attached as Exhibits I, J, K, L, M, N, O, between the State and AFSCME, Council 6, the Independent Minnesota Association of Government Employees, and the International Union of Operating Engineers, Local No. 49, and list of approximate number of employees represented by each exclusive representative, attached as Exhibit P). This is necessary to maintain equity among employees working in similar job classifications with similar working conditions.

The choice of the Employee's birthday as the additional holiday is reasonable because of the following:

1. Pursuant to Laws of 1979, ch. 332, § 110, the Commissioner has statutory authority to add a birthday holiday; there would be no statutory authority for the addition of any other holiday.

2. The birthday holiday is less expensive than a fixed holiday. An agency does not need to close down, and seven day operations do not need to pay overtime to maintain adequate staffing on the birthday holiday. As long as adequate notice is given, an appointing authority can reschedule other employees to cover for an employee absent on his/her birthday, thus avoiding any payment of overtime.

3. The birthday holiday poses fewer scheduling problems than other non-fixed holidays, such as floating holidays. The distribution of birthdays among employees can be expected to be random, and an appointing authority can reasonably expect that only a small percentage of the workforce would be absent on any given day for the birthday holiday. However, with a floating holiday, the appointing authority would expect less random use of the holiday. Many employees would probably elect to use days around Christmas, the Fourth of July, or other holidays. And, assuming that a floating holiday would have to be taken within the fiscal year in which earned, many employees would probably elect to use one the last few days of the year.

The rule has also been amended to provide that when a collective bargaining agreement specifies holidays, employees covered by that agreement shall receive only the holidays set forth in that agreement. This addition is necessary to ensure that employees whose exclusive representative did not negotiate an additional holiday will not claim entitlement to the extra holiday under the rules.

The rule is also amended to provide that certain medical doctors shall observe a floating holiday. The letter from Dr. Ronald Young, Medical Director, Department of Public Welfare, attached as Exhibit Q, addresses the reasonableness of this amendment.

Subd. A of the rule is amended as follows:

1. Certain provisions are added to provide for an alternate day off for an employee whose birthday falls on a Saturday, Sunday or another holiday, during a period of seasonal layoff or on February 29. It would not be equitable for some employees to receive a birthday holiday and others not to receive it merely because of the day on which the birthday occurs.

2. The rule is amended to provide that "where seven day a week schedules are in effect, the actual holiday shall be observed as the holiday for employees working within such schedule". In seven day a week operations, no distinction is made among working days and non-working days; all days are working days. It is, therefore, unnecessary to designate a different day as the holiday when the holiday falls on a Saturday or Sunday. This change also was necessary to conform the rules to the AFSCME, Council 6 collective bargaining agreement. This provision was added to that agreement during the last round of negotiations. Since AFSCME, Council 6

covers a large number of employees in the Departments of Public Welfare and Corrections, where the seven day a week operations are most prevalent, it is reasonable to amend the rule language to conform to the Council 6 agreement. Otherwise, those agencies would have employees observing the actual holiday on different days which would make it difficult for the agencies to administer both the rules and the Council 6 agreement.

3. The rule is also amended to add clarifying language concerning the procedures to be followed if a holiday falls on an employee's regularly scheduled day off, and clarifying language concerning determination of the holiday when a work shift falls in two calendar days. The exact procedures to follow in these areas have not been clear in the past.

   The Personnel Rules provide a method of informing managers, supervisors and employees of personnel procedures to be followed. By setting forth a specific procedure, notice can be given to interested parties, and consistent application can hopefully be obtained.

Subd. B of the rule has been reworded to provide clarity. No substantive change is intended.

In Subd. D of the rule, the terminology "in pay status" has been replaced by "on paid leave or actually working" which is the actual meaning of "in pay status". This change is intended to provide clarity. No substantive change is intended.

Subd. E of the rule is amended as follows:

1. The first paragraph is amended to clarify the intent of the language: proration is used for employees who normally work less than full-time, not for a full-time employee who happens to work less than 80 hours in the pay period in which a holiday occurs.

2. The proration chart is amended to clarify the number of holiday hours earned by an employee who works an hourly increment between, for example, 19 and 20 hours. The fractions in the chart have been changed to decimals, because the new payroll system uses decimals, not fractions. This change is intended to ease utilization of the new payroll system.

3. The paragraph after the proration chart is amended to conform to other amendments regarding intermittent employees.

4. The rule is also amended to provide that a part-time employee for whom a scheduled day of work falls on a holiday, may work another day in that payroll period so that he/she may receive his/her normal pay check. This change is to clarify that a part-time employee does not automatically suffer a reduction in earnings when a holiday falls on a scheduled work day. The appointing authority retains discretion in granting such changes, in order to meet workload needs and avoid payment of overtime.

5. The rule is also amended to provide that an employee who is mandatorily retired on a holiday or holiday weekend shall be entitled to holiday pay.

   The rules provide that to be eligible for holiday pay, an employee must be in payroll status on the day before and the day after the holiday. It would be unreasonable to deny holiday pay to a retiring employee, who may have given years of service to the state, merely because mandatory retirement kept him/her from working the day after the holiday.

6. The rule is also amended to clarify that holiday pay is at the employee's normal day's pay, and shall be paid in cash. This language is intended to clarify current procedure, and is a reasonable addition to the rules because it makes the procedure readily accessible to managers, supervisors and employees.

7. The rule is also amended by adding clarifying language concerning pay for work on a holiday. This language is intended to clarify current procedure, and is a reasonable addition to the rules because it makes the procedure readily accessible to managers, supervisors and employees.

25. 2 MCAR § 2.133 Absence because of illness or injury for which workers compensation is paid by the state.

2 MCAR § 2.133 is amended to make employees of the Department of Veteran's Affairs eligible for injured on duty pay. This is reasonable because the Department of Veteran's Affairs, like the other departments covered by this rule, operates facilities which expose employees to the possibility of injury due to the nature of the clientele needing care at those facilities. The memorandum from Thomas J. Crowe, Personnel Director for the Minnesota Veterans' Home, attached as Exhibit H, verifies this statement.

The rule is also amended to change the reference to "highway patrol officers" to "state patrol troopers". This change was made to conform the rule language to statutory language, Laws of 1977, ch. 452, § 2, attached as Exhibit R, changing the term "officers" to "troopers".

2 MCAR § 2.133 is also amended to indicate that injuries must be the direct result of aggressive and/or criminal and/or intentional acts, or their consequences. The current rule uses the term "overt" instead of "intentional".

Webster's New World Dictionary, Second College Edition defines "overt" as:

"1. not hidden; open; observal be; apparent; manifest. 2. Law; done openly and publicly, without attempt at concealment and with evident intent."

This definition indicates that an overt act is one that evidences intent and that is done openly. It is reasonable to substitute the word "intentional" for the word "overt" because there is no intended requirement that the act be done openly and publicly. In fact, it is very possible that an injury could occur under concealed conditions. The requirement intended by the word "overt" is that the act be committed with evident intent. The term "intentional" better describes this requirement.

2 MCAR § 2.133 is also amended to clarify that the person causing the injury must either be a resident or under the custodial control of the institution. The addition of the language regarding residents of the institution is reasonable because many of the institutions, i.e., the Department of Public Welfare and Department of Education institutions in particular, do not have custodial control of their clients.

The change in the second paragraph is grammatical.

26. 2 MCAR § 2.134 General regulations governing leaves of absence with pay.

The introductory paragraph is amended to delete the word "regulation" and substitute the more general word "provision" because the Department of Personnel does not promulgate regulations in the technical sense of that word. Another revision makes it clear that the appointing authority is the acting body in approving leaves of absence.

The third paragraph is amended to delete the requirement that an employee return from leave before using any vacation or sick leave earned while gone. Vacation and sick leave, like the employee's pay check, are components of total compensation. It is not reasonable to withhold the use of vacation or sick leave hours beyond the end of the payroll period in which they are earned, any more than it would be reasonable to withhold a vacationing or sick employee's pay check until he or she returns to work. The proposed last sentence of 2 MCAR § 2.134 is not new. It is a revision of the last sentence of the current rule, rewritten in a more straightforward manner.

27. 2 MCAR § 2.135 Vacation leave.

2 MCAR § 2.135 is amended to exclude intermittent employees from the vacation provisions of these rules until they have worked 100 days in any 12 month period. This change is reasonable because an intermittent employee is one who works on-call, as needed. An intermittent employee has no obligation to work a particular schedule; he/she may be unavailable on any particular day, at his/her own choosing. An intermittent employee is free to take time for vacation whenever desired just by being unavailable when called. There is no need to provide vacation leave for this type of employee.

However, in some situations, an intermittent employee may be frequently called to work, and may work as much as half-time, or even full-time. When it becomes evident that a particular employee is working frequently, which is defined as working 100 working days in any 12 month period, it is reasonable to treat him/her equitably with other employees who work the same amount of time and who are eligible to accrue vacation.

This rule is also amended to clarify that student workers are not covered by the vacation provisions of these rules. It has been the intent of the Department of Personnel to exclude student workers in the past. However, the Department became aware that this intent was not explicit in the rules. To make the intent clear, specific language excluding student workers appointed after January 1, 1980, is being added. The January 1, 1980, date was chosen because it is the target date for enactment of these rules. It is reasonable that student workers not be eligible for vacation. Many of them are earning academic credits for their work experience; all of them are clearly not permanent employees. Other non-permanent employees do not receive vacation; non-tenured laborers, temporary and emergency employees are already excluded.

This rule is also amended to clarify that interns are not covered by the vacation provisions of these rules. Interns are not state employees; they are on contract with the state. In that capacity, they have never been eligible to accrue vacation. The specific exclusion is being added to the rules to make this information more readily accessible to managers, supervisors and employees.

The term "non-managerial" has been deleted from the second paragraph of the rule. The Commissioner has authority pursuant to Minn. Stat. § 43.127, subd. 6, attached as Exhibit A, to establish fringe benefits for managers. The reference in the rules to exclusion of managers prompted questions as to which schedule in the rules applied to managers. The Commissioner has promulgated the management plan pursuant to Minn. Stat. § 43.127, subd. 6, and has distributed it to all affected parties. Reference to managers in the rules is unnecessary, because affected parties have been notified of the management plan. The deletion of the reference should curtail questions from non-affected parties.

The term "earn" has been replaced by "accrue" to attain consistent wording in the rules.

The vacation accrual chart is amended to clarify the exact number of vacation hours accrued by an employee who works an hourly increment between, for example, 19 and 20 hours. The fractions in the chart have been changed to decimals, because the new payroll system uses decimals, not fractions. This change is intended to ease utilization of the new payroll system.

2 MCAR § 2.135 is amended to change the vacation accrual rates. The change is reasonable in that it brings the rates into conformity with the rates negotiated for the vast majority of employees covered by collective bargaining agreements (see collective bargaining agreements attached as Exhibits I, J, K, L, M, N, O, between AFSCME, Council No. 6, the Independent Minnesota Association of Government Employees, and the International Union of Operating Engineers, Local No. 49 and list of appropriate number of employees represented by each exclusive representative, attached as Exhibit P).

This change will provide for consistent vacation accrual rates for all state employees except managers, certain medical doctors, department heads and deputies, highway patrol troopers, and certain faculty employees.

This change is also necessary in that in certain collective bargaining agreements, reference is made to the personnel rules regarding vacation. This practice has developed to avoid rewriting in the labor agreement the detailed language covering administration of the vacation benefit. As a result, it has also been customary to indicate to the exclusive representative what the rules will provide in terms of accrual rates and total hour accumulation. Agreement was reached with several exclusive representatives on the basis of the rates as set forth in the proposed language (see collective bargaining agreement between the State and the Minnesota Conservation Officers' Association, attached as Exhibit S).

The accrual changes are reasonable in that they provide for less accrual to new employees, and more accrual for long-term employees. This change is in the best interests of the state in terms of job attractiveness to long term employees. It is also not expected to deter recruitment of new employees.

The rule is also amended to provide that certain medical doctors shall accrue vacation at a different rate. The letter from Dr. Ronald Young, Medical Director, Department of Public Welfare, attached as Exhibit Q, addresses the reasonableness of this amendment.

The striking of the term "eligible" in the paragraph following the doctors' accrual chart was unintentional. The Department proposes to reinsert it.

The third paragraph after the accrual charts contains three grammatical changes. No substantive change is intended by any of them.

The rule is also amended to clarify that the beginning of the period of continuous service for purposes of determining the vacation accrual rate is the date of hire; except for intermittent employees it is the date on which the 100 day requirement is fulfilled. This change is necessary to clarify the current practice for managers, supervisors and employees the current practice; and to implement the new practice regarding intermittent employees.

A reference has been added to the vacation rule regarding vacation accrual for employees transferring to state service from another jurisdiction. This subject is currently covered in 2 MCAR § 2.091, and is being added to this rule because it is more accessible here to managers, supervisors and employees who are likely to look for provisions regarding vacation in the vacation rule.

The terms "department or agencies" have been replaced by the term "appointing authority". This change is intended to achieve uniform reference throughout this rule to the management representative responsible for taking the designated action or making the designated decision.

The rule is also amended to increase the total number of accumulated vacation hours allowed from 224 to 240. As with the accrual rates, this change is necessary to provide for uniform treatment for the vast majority of state employees. It is also necessary to reward the long term employee who, in many cases out of job dedication, has not utilized his/her vacation.

The rule is also amended to provide that an employee who becomes ill or disabled while on vacation shall, upon notice, and with a medical statement if requested, have vacation leave changed to sick leave. This change is necessary to make clear to managers, supervisors and employees that this procedure is allowed by the rules. To force an ill or disabled employee to continue to use vacation leave, merely because he/she became ill/disabled while on vacation is patently unfair.

New language is proposed that would require the liquidation by cash payment of an intermittent employee's accrued but unused vacation leave at the end of each fiscal year.

An intermittent employee, as defined in 2 MCAR § 2.216 B, is "an employee who works whenever needed on a schedule which cannot be predicted in advance." The use of an intermittent employee is intended for the purpose of assisting full time employees during periodic peak work loads; filling in for

regular employees who are on vacation or are ill; etc. Therefore, the concept of vacation, to absent oneself from the job for the purpose of relaxation and rejuvenation, is not applicable to intermittent employees. However, because eligible intermittent employees do receive a prorated vacation benefit, a procedure needs to be established whereby intermittent employees may receive the vacation benefit in a manner appropriate to their working conditions.

From the employer's perspective, this proposal serves two purposes. First, administrative bookkeeping procedures are simplified. This is a cost effective measure. The employer need not process all the forms to return the employee to the job and then place on leave.

Secondly, the intermittent employee receives vacation pay generally at the approximate rate of pay at which it was earned. Unlike full time employees who utilize their vacation accrual on a year around basis, intermittent employees tend to save their vacation time. As a result, rates of pay may increase several times over a span of time and the vacation payment is at a much higher level than earned.

The concept of liquidating fiscal liabilities periodically is not new. Under the provisions of the Overtime Standards Plan issued by the Commissioner of Personnel pursuant to 2 MCAR § 2.130, and attached as Exhibit I, all accumulated but unliquidated overtime to the credit of exempt employees must be liquidated prior to any promotion, demotion, leave of absence, layoff or salary increases except cost-of-living increases and other economic adjustments.

The term "employee's" has been deleted from the next paragraph, as it was redundant.

The vacation leave provisions for department heads and deputies have been amended. Minn. Stat. 1978, § 43.127, subd. 6 was amended by laws of 1979, ch. 332, § 39 to provide for the extension of managerial benefits to unclassified managers and to department heads and deputies whose salaries are established in Minn. Stat. § 15A.081, subds. 1 & 5.

2 MCAR § 2.135 is proposed to be revised to allow eligible department heads and deputies to accrue vacation leave at the same rate as managerial employees after five years of continuous state service and at the same rate after twelve years of continuous state service. Vacation leave accrual at the rate of six hours per full payroll period for the first five years of continuous state service is proposed so that eligible department heads and deputies not suffer a reduction in vacation leave accrual rates.

The current vacation leave accrual rate of six hours per full payroll period for eligible department heads and deputies is inequitable. Managerial employees would accrue vacation leave at a higher rate after five years of state service (eight hours per full payroll period) than an eligible department head or deputy (six hours per full payroll period). An eligible department head or deputy with more than five years of continuous state service and no previous classified service would be penalized since an eligible department head or deputy with previous classified service would accrue vacation leave in accordance with the schedule established for managers.

28. 2 MCAR § 2.136 Sick Leave.

2 MCAR § 2.136 is amended to exclude intermittent employees from the sick leave provisions of these rules until they have worked 100 working days in any 12 month period. This change is reasonable because an intermittent employee is one who works on-call, as needed. An intermittent employee has no obligation to work a particular schedule; he/she may be unavailable on any particular day, at his/her own choosing. This type of employee should not be eligible for sick leave. In fact, the concept of sick leave does not work for a true intermittent employee. What if the employee has not been called in on a particular day, but happens to feel sick? Can he/she call the employer and ask for a day's pay because of illness? Or should the intermittent employee just hope he/she is called on the day he/she is ill, just so that he/she can inform the employer of the illness, and collect the sick leave pay?

However, in some situations, an intermittent employee may be frequently called to work, and may work as much as half-time, or even full-time. When it becomes evident that a particular employee is working frequently, which is defined as working 100 working days in any 12 month period, it is reasonable to treat him/her equitably with other employees who work the same amount of time and who are eligible to accrue sick leave.

The term "earned" has been changed to "accrued" to provide for consistent terminology throughout the rules.

This rule is also amended to clarify that student workers are not covered by the sick leave provisions of these rules. It has been the intent of the Department of Personnel to exclude student workers in the past. However, the Department became aware that this intent was not explicit in the rules. To make the intent clear, specific language excluding student workers appointed after January 1, 1980, is being added. The January 1, 1980, date was chosen because it is the target date for enactment of these rules. It is reasonable that student workers not be eligible for sick leave. Many of them are earning academic credit for their work; all of them are clearly not permanent employees. Other non-permanent employees do not receive sick leave: non-tenured laborers, temporary and emergency employees are already excluded.

This rule is also amended to clarify that interns are not eligible for sick leave accrual. Interns are not state employees; they are on contract with the state. In that capacity, they have never been eligible to accrue sick leave. The specific exclusion is being added to the rules to make this information more readily available to managers, supervisors and employees.

The sick leave accrual chart is amended to clarify the number of sick leave hours earned by an employee who works an hourly increment between, for example, 19 and 20 hours. The fractions in the chart have been changed to decimals, because the new payroll system uses decimals, not fractions. This change is intended to ease utilization of the new payroll system.

The second paragraph after the accrual chart has been reworded to provide clarity. No substantive change is intended.

The rule is also amended to clarify the number of sick leave hours credited to the employee's sick leave balance and sick leave bank. The current rule does not specify how many hours are credited to the bank if an employee has a sick leave balance of 899 hours. The Department of Personnel has interpreted the rule as allowing for a maximum credit of two hours per pay period to the bank. However, this interpretation was not explicitly clear. The new language is intended to clarify this interpretation.

The rule is also amended to clarify the use of sick leave for the birth or adoption of a child. No substantive change is intended; the intent of the change is to make clear the prior intent that the appointing authority has the discretion to limit the leave to less than three days.

The rule is also amended to provide that an employee who incurs an on-the-job injury shall be paid for the remainder of the work shift, and shall not go on sick leave until the first scheduled work day following the injury. This policy is easy to administer and is not subject to disparities in interpretation. For those reasons, the proposed amendment is the most reasonable method of dealing with payment.

The changes in the last four paragraphs of the rule are for clarification; no substantive changes are intended. In the last paragraph, the provision regarding sick leave for employees transferring from another jurisdiction has been changed to conform with the related provisions in 2 MCAR § 2.091 (Transfers); 2 MCAR § 2.097 (Duration of Probationary Period) and 2 MCAR § 2.135 (Vacation). The issue of whether the jurisdiction from which the transfer occurs must be a merit system is dealt with in 2.091 of the proposed rule changes.

29. 2 MCAR § 2.138 Other leaves with pay.

2 MCAR § 2.138 A is amended to provide that compensation for an employee who is on jury duty shall be the employee's regular base rate of pay less the fee received for jury duty. The employee is entitled to retain any expense reimbursements received from the court. This is reasonable because to do otherwise provides extra compensation to an employee while on jury duty in that he/she would receive a state payroll check for normal earnings, and also a check from the court for jury duty.

The rule is also amended to provide for assigning an employee to the day shift during jury duty. This is reasonable in that it would be unjust to require that an employee serve on jury duty during the day and report to work at night. It is also amended to provide that when only on-call, an employee on jury duty must report to work. A prospective juror may not be impaneled on a jury, and may not be required to be at the court house awaiting a call to a jury. It is not the intent of the Department of Personnel to release such an employee from work and pay for jury duty until such time as the employee is actually required to appear for jury duty. If the employee was then called in for actual jury duty, he/she would be released from work, and would receive jury duty pay.

B. Court appearance leave has been amended to limit pay to appearance in response to subpoena or other direction by proper authority for job related purposes other than those instituted by the employee or his/her exclusive representative.

It is reasonable that court appearance leave should be paid only when the appearance is for a job related purpose. If the employee is subpoenaed as a private citizen in a matter totally unrelated to his/her job, the state should not have to pay the employee for the time away from work.

The rule is also amended to provide that compensation for an employee on court appearance leave shall be the employee's regular base rate of pay less the fee received for the court appearance. The employee is entitled to retain any expense reimbursements received from the court. This is reasonable because to do otherwise provides extra compensation to an employee while on court appearance leave, in that he/she would receive a state payroll check for normal earnings, and also a check from the court for jury duty.

The rule is also amended to conform to Laws of 1979, ch. 208, § 1, attached as Exhibit 4, regarding leave to prepare for Pan Am or Olympic games.

30. 2 MCAR § 2.141 Maternity/Paternity or adoption leave of absence without pay.

The title of the current rule has lead to a very generous interpretation by some employees who wish to take a six-month leave to rear their child, when the child is well-beyond the infant stage. The new title and revision of the first sentence make it very clear that the leave must be related to the birth or adoption of a child.

31. 2 MCAR § 2.181 Expense allowances.

This rule is given a proposed title for the first time. Since the rule discussed is reimbursement for mileage, meals, and lodging, as well as other expenses, the proposed title is appropriate.

The title of part 2 of subd. A is changed to reflect the fact that reimbursement is available for the use of several types of vehicles, not just automobiles.

The reimbursement rates for the use of an automobile are raised to 19¢ when a motor pool vehicle is not available and 14¢ when a motor pool vehicle could have been obtained. These rates are not meant to reimburse the employee for insurance, depreciation and licenses. The intent is to pay for basic "gas and oil" types of costs. The proposed rates appear to be adequate for that purpose. The average total cost per mile for an intermediate size car is about 34¢ per mile. The 19¢ rate provides about 55% reimbursement of the total cost of operating the vehicle.

A new type of reimbursement is proposed for those employees having handicaps which prohibit the use of state-owned automobiles. These employees cannot leave their wheelchair to operate any vehicle. The vehicles involved are specially equipped to provide access for a wheelchair and to permit operation from the wheelchair. The proposed rate of 31¢ per mile provides about 55% reimbursment of the cost of operating the vehicle. (See memo from Taum Ulrich to Jim Lee, attached as Exhibit V.)

The escalator clause for reimbursement has been deleted. This formula has been in use for four years and has resulted in very few changes in rates. If changes in rates are necessary because of unexpected increases in the price of gasoline, the rule may be revised. The formula was slow to respond to price changes and many employees view the formula as inadequate when it does not compensate for a 2¢ increase at the neighborhood service station. The new mileage rates are generous and should remain adequate for a longer period of time than the old rates.

The reimbursement rate for the use of private aircraft is proposed to be raised to 31¢ per mile in response to documentation received from the Department of Education. (See attached as Exhibit W.)

Part 4 is revised by the addition of a sentence authorizing reimbursement for bus fare, in an effort to encourage the use of mass transit as an energy-saving device.

The reimbursement rate for the use of a motorcyle is raised to 10¢ per mile, the same increase in cents per mile as the increase in the automobile rate. This rate has not been changed since it was first established, four years ago and has not kept pace with inflation.

In subd. B, the maximum reimbursement for meals has been raised and the escalator clause has been removed. Again, the formula has resulted in very few changes in the past four years. The proposed meal rates are high enough to remain realistic for a considerable period of time without adjustment. These rates are consistent with the rates negotiated in collective bargaining agreements.

At the end of subd. B, we propose to add a sentence authorizing the appointing authority to reimburse employees for the cost of rental housing, where the State would realize a cost savings compared to the cost of a hotel or motel room. When an employee is away from home for several months, living in a motel room is expensive and uncomfortable compared to using a house, apartment, or townhouse. The use of rental housing would provide the employee with more comfortable quarters at a savings to the state.

Part 2 of subd. C should be revised to delete two paragraphs of material not appropriate for inclusion in the Personnel Rules. The paragraphs contained instructions on the use of telephones and the simple declaration that some employees may be eligible for a state telephone credit card. Information of this nature is found in the state telephone directory, and does not belong in the rules where it only adds to the length of the rule, making it more difficult to find relevant material.

Part 2 is also amended by rewriting the remaining paragraph to make it clear that reimbursement is available for work-related long-distance calls, and to make the rule easier to understand by restructuring sentences. There is no change in substance.

Part 3 of subd. C should be amended to raise the maximum reimbursement allowance for dry cleaning and laundry when the employee is away from the permanent work station for more than one week. The current rates of $3.50 per week for laundry and $2.00 per week for dry cleaning have not been adjusted in four years. At the present time it would cost approximately $4.00 to dry clean one suit, if the employee were to deliver it to the dry cleaning establishment and pick it up when cleaned. The rate of $6.00 recognizes that a hotel will charge a higher rate for laundry and dry cleaning services provided to registered guests. (See Exhibit X.)

Subd. E of this rule is amended to recognize the fact that not all appointing authorities are department heads.

Subd. G has been amended by deleting the requirement that the appointing authorities require proof of automobile liability insurance in the minimum amount required by law before approving travel involving private automobile mileage allowance. This provision is unnecessary and requires a duplication of effort, since the Department of Public Safety requires proof of liability insurance in the same amount before issuing a license plate or tabs. The last sentence of subd. G is amended to delete the reference to the automobile with regard to proof of insurance while retaining the proof of insurance requirement for aircraft. (See Exhibit Y.)

32. 2 MCAR § 2.182 Relocation expenses.

Subd. B, part 1 of this rule is amended to increase the travel status period from 60 to 90 calendar days when an employee has been transferred or reassigned at the convenience of State service. Travel status entitles the employee to reimbursement for meals mileage and lodging. The length of the travel status period should be increased to recognize the fact that it has become more difficult to find housing in many locations of the state and the 60 day travel status period has been insufficient in a number of cases. In view of recent changes in the housing market state-wide, we feel that 90 days is a more reasonable period of time.

Part 4 of subd. B is amended to increase the maximum reimbursement for miscellaneous expenses from $250 to $350. This change recognizes the effects of inflation upon the cost of services related to the relocation of a household.

Part 6 of subd. B is revised so that the sentence revised will make sense. The current sentence contains a typographical error; i.e., the word "to" is used erroneously where the word "the" should appear. Further, the amendment is intended to establish that the change in residence must be completed within six months of the effective date of the appointment to the new position, unless an extension of time is approved by the appointing authority. In the past, individual employees have taken as long as one or two years to complete their relocation. It is reasonable to expect that the usual relocation shall be completed within six months. The appointing authority is given discretion to extend that limitation if necessary due to extenuating circumstances in a particular case. The failure of some employees to relocate on a timely basis has caused operational problems within state agencies, because these employees were not able to carry out all of the duties required of them in the geographical area of the state to which they were assigned.

33. 2 MCAR § 2.201 "Agency."

We have proposed amending the definition of the word "agency" to conform to the definition of "agency" located in 2 MCAR § 2.276, the Code of Ethics Chapter. 2 MCAR § 2.201 uses the word "division" while 2 MCAR § 2.276 uses the word "commission". We have proposed deleting the word "division" and inserting the word "commission" instead. 2 MCAR § 2.276 appears to more accurately reflect the statutory meaning of "agency" located in Minn. Stat. § 15.02. The use of the word "division" is inappropriate, as a division is really a part of an agency. This definition of "agency" differs from the definition of "agency" found in § 2.276 because the Code of Ethics applies to only Executive Branch agencies, while the remainder of the rules may apply to agencies in the other branches of state government.

34. 2 MCAR § 2.202 Agency promotional list.

Minn. Stat. § 43.19, subds. 1 and 4 were amended by Laws of 1979, ch. 332, § 43 to provide that all persons holding positions in the "executive branch of the state civil service, or the legislative branch of the state civil service and classified positions on the staff of the legislative auditor, Minnesota state retirement system and teacher's retirement association" are eligible to compete in promotional examinations. 2 MCAR § 2.202, defining agency promotional list, should be amended to correspond to this statutory change by deleting reference to "permanent or probationary" status, since those terms relate only to classified employees and unclassified employees are now equally eligible to compete.

The second change proposed to this rule is the addition of "al" to the term "organization" unit. This change is merely to correct a grammatical or typographical error.

The last proposed change in this definition is designed to clarify the fact that appointment from an agency promotional list is but one of a number of ways that an employee may be promoted, not the only way. Hence the term "are" is changed to the more appropriate "may be", since a promotion may also be made from other types of lists.

35. 2 MCAR § 2.203 Allocation.

2 MCAR § 2.203 is amended to delete all references to the reassignment of an occupied position to a different class. This rule now deals only with the definition of assignment of a new or vacant position to an appropriate class.

This change is reasonable in that it provides for a better organizational structure of the rules (see discussion under 2.018).

This change is also reasonable in that it puts the definition of "allocation" in line with the statutory definition of the same term in Minn. Stat. § 43.01, subd. 13, attached as Exhibit A.

36. 2 MCAR § 2.226 Open competitive list.

A revision in the definition of open competitive list is proposed to clarify the existing language which might be interpreted to mean that only original appointments can be made from a list of eligibles resulting from an open competitive examination. Since current employees may apply and qualify in open competitive examinations, promotional appointments may also be made from competitive lists. Changing the term "are" to "may be" will prevent possible misunderstandings.

37. 2 MCAR § 2.232 "Permanent employee".

This rule has been amended to make it clear that a permanent employee may serve a probationary period after promotion without losing certain appeal rights he has acquired as a permanent employee. The current rule implies that any permanent employee who has been promoted and is serving another probationary period has become a probationary employee and enjoys only those rights and benefits of probationary status. Any permanent employee who has been promoted and is serving a promotional probationary period maintains the rights and benefits of a permanent employee for several purposes in the law and rules, whereas the probationary employee who is serving the initial probationary period does not enjoy those rights.

38. 2 MCAR § 2.240 Reallocation.

2 MCAR § 2.240 is amended to change the title from "reallocation" to "reclassification", and to define that term as the reassignment of an occupied position to a new class by one of two methods: reallocation or change in allocation.

A reallocation is a reclassification that takes place over a period of time due to gradual changes in job duties. A change in allocation is a reclassification that occurs because of changes in job duties, abruptly or because of changes in the organizational structure in the agency. A reclassification is also considered a change in allocation if it is the result of assignment of new job duties to the incumbent of a position in a manner so as to bypass the selection process. This terminology is part of the current 2 MCAR § 2.039. (See 2 MCAR § 2.039 C.2.) The Department of Personnel has proposed the deletion of the language in 2 MCAR § 2.039, and its reinsertion in 2 MCAR § 2.240.

This change is reasonable in that it provides for a better organizational structure of the rules (see discussion under 2 MCAR § 2.018).

This change is also reasonable in that it puts the definition of reclassification in line with the statutory definition in Laws of 1979, ch. 332 § 13.

39. 2 MCAR § 2.241 Reemployment list.

A revision is proposed to this definition so that it conforms with the changes proposed in 2 MCAR § 2.061 to permit return to a former class via the reemployment process, not only for employees who resign or were laid off, but also for those who accept voluntary demotions.

40. 2 MCAR § 2.244 Statewide promotion list.

A change is proposed in the title of this definition, adding "al" to "promotion". This change is a grammatical improvement and parallels the language used to define agency promotional list in 2 MCAR § 2.202.

The terms "permanent and probationary" should be deleted, since they limit eligibility for promotional examinations to classified employees and the recent statutory change (Laws of 1979, ch. 332, § 43) now makes unclassified employees equally eligible.

The rest of the proposed change is designed to clarify the fact that a statewide promotional list may be used for filling positions in any and all state agencies including the one in which the eligible is employed. The previous language seemed to indicate that the employee could only be appointed from such a list to a position in another department, not his own. This has never been the intent of the rule and it is necessary to correct this language to prevent such a misconception.

Documentary Evidence

Memo from Commissioner of Administration to Commissioner of Personnel dated March 30, 1977 regarding Automobile Liability Insurance.

Legislative Audit Commission Report on the Department of Personnel dated May 19, 1978

Memo from Norm Dybdahl, Deputy Commissioner of Finance to Donn Escher, Assistant Commissioner of Personnel dated May 17, 1979 regarding the personal aircraft mileage reimbursement rate and two attached memos.

Attorney General's opinion dated January 4, 1963 on scoring of examinations.

Copy of Federal Register dated February 16, 1979 regarding standards for a Merit System of Personnel Administration.

Memo from Taum Ulrich, Handicapped Coordinator to Jim Lee, Personnel Representative dated August 14, 1979 regarding mileage rates.

Memo from Tom Growe, Personnel Director of Veteran's Home to Nancy McClure, Department of Personnel, dated August 8, 1979.

Mandatory Retirement and Age Discrimination Rules, published by Commerce Clearing House, Inc.

Labor Agreements between State of Minnesota and Independent Minnesota Association of Government Employees (Supervisory and Non-Supervisory agreements)

Labor Agreements between St. Cloud State University, Cambridge State Hospital, Moose Lake State Hospital, Willmar State Hospital and the International Union of Operating Engineers Local 49.

Labor Agreement between the Department of Natural Resources and the Conservation Officers' Association

Supervisory and Non-Supervisory Labor Agreements between the State of Minnesota and AFSCME, Council 6

Endorsement of Personnel Rule changes from members of the Personnel Advisory Committee dated August 13, 1979

Memo from William O'Neil, Personnel Director, Department of Revenue to Jim Lee, Personnel Representative dated August 17, 1979 regarding laundry and dry cleaning reimbursement rates.

Statutory Evidence

Minn. Stat. § 43 as amended by Laws, 1979, ch. 332.

Minn. Stat. § 299D.03, Subd. 2.

Minn. Laws 1979, ch. 208

Minn. Laws 1979, ch. 40

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

RECEIVED
AUG 17 1979
OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED
AMENDMENT OF RULES OF THE
DEPARTMENT OF PERSONNEL
REGARDING PERSONNEL ADMINISTRATION.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in Room 83, State Offuce Building, St. Paul, Minnesota 55155 on September 12, 1979 commencing at 8:30 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.

Barbara L. Sundquist
BARBARA L. SUNDQUIST
Commissioner of Personnel

Dated: 8-17-79

Dept Exhibit No. 3
File No. PERSL-80-001-GB
Date 9-12-79

STATE OF MINNESOTA

DEPARTMENT OF PERSONNEL

RECEIVED
AUG 17 1979
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Amendment of Rules of the Department of Personnel regarding Personnel Administration

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 8th day of August, 1979, 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 M.S. 15.0412.

3) That on the 8th day of August, 1979, 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 8 day of August, 1979.

Christine F Goodwill
Notary Public

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

Dept Exhibit No. 5
File No. PERSL-80-001-GB
Date 9-12-79

COST OF THIS COPY PAID BY MINNESOTA TAXPAYERS

State of Minnesota



DEPARTMENT OF PERSONNEL
3rd Floor Space Center
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2616
(612) 296-8366

November 2, 1979

The Honorable Warren Spannaus
Attorney General
State of Minnesota
Room 102, State Capitol
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Amendment of the Rules of the Department of Personnel Governing Personnel Administration.
PERSL-80-001-GB

Dear Attorney General Spannaus:

A rule hearing was conducted on the above-captioned rules on September 12, 1979. The Chief Hearing Examiner has completed his review and we are now submitting these rules to you for review as to form and legality.

Your prompt attention would be very much appreciated.

Sincerely,

Barbara L. Sundquist

Barbara L. Sundquist
Commissioner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ANDREA KIRCHER
Special Assistant
Attorney General

DATE: November 12, 1979

FROM : JUDITH WEHRWEIN
Legal Assistant

PHONE: 296-4347

SUBJECT: Proposed Amendment of the Rules Governing Personnel Administration

This rule is being returned to you for resubmission to this office because of missing documents. I respectfully draw your attention to A.G. Rule 302, which requires that three copies of the listed documents be submitted. However, in the interests of economy, only one copy of the Secretary of State's list is necessary. Specifically, I draw your attention to the need to provide complete copies of the rule as adopted since the complete rule is necessary for filing with the Secretary of State.

Please feel free to call me if I may help with any questions you have regarding the number and nature of copies required by this office.

JW/bw
cc: Duane Harves
Marshall Whitlock

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STATE OF MINNESOTA

DEPARTMENT OF THE ATTORNEY GENERAL

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF PERSONNEL REGARDING PERSONNEL ADMINISTRATION.

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General, Andrea Mitau Kircher, 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 29, 1979

AM Kircher

ANDREA MITAU KIRCHER
Special Assistant Attorney General