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**TITLE 260. OFFICE OF MANAGEMENT AND ENTERPRISE SERVICES CHAPTER 130.
CIVIL SERVICE AND HUMAN CAPITAL MODERNIZATION RULES**

SUBCHAPTER 1. GENERAL PROVISIONS

260:130-1-1. Purpose

The rules in this Chapter are the administrative rules of Human Capital Management of the Office of Management and Enterprise Services (Human Capital Management) which govern complaints and associated processes as required by the Civil Service and Human Capital Modernization Act, Section 34.301 of Title 62 of the Oklahoma Statutes. These rules establish procedures and standards necessary for the Civil Service Division to perform its duties and functions. The Administrator of Human Capital Management of the Office of Management and Enterprise Services has adopted the rules in this Chapter.

(1) **Authority.** The authority for these rules is the Civil Service and Human Capital Modernization Act, Section 34.301 of Title 62 of the Oklahoma Statutes.

(2) **Legal cites.** Some of these rules may restate language from statutes. Italic type means the language repeats language from statutes and the specific statutory reference will appear in brackets following the language in italics.

260:130-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning:

"Act" means the Oklahoma Civil Service and Human Capital Modernization Act.

"Action" or **"disciplinary action"** means issuing a written reprimand, punitively transferring an employee, suspending an employee without pay, involuntarily demoting an employee, or terminating an employee. The action is taken by providing a document in person that specifically states the type of action taken against the employee. In the event the Appointing Authority is unable to provide the document to the employee in person, the Appointing Authority may utilize acceptable electronic means, and the action will be complete upon receipt by the employee.

"Action occurred" means the date the action was taken.

"Administrative Law Judge" or **"ALJ"** means a person appointed by the Civil Service Division and empowered to preside over prehearing conferences and hearings with power to administer oaths, take testimony, rule on questions of evidence and make final decisions. All ALJs shall be licensed to practice law in the State of Oklahoma and in good standing with the Oklahoma Bar Association.

"Administrative Procedures Act" or **"APA"** means the Oklahoma Administrative Procedures Act set forth at Section 250 et seq. of Title 75 of the Oklahoma Statutes.

"Administrator" means the Director of the Office of Management and Enterprise Services. As the term is used in the Civil Service and Human Capital Modernization Rules, the term includes employees and the Administrator of Human Capital Management of the Office of Management and Enterprise Services to whom the Administrator has lawfully delegated authority to act on his or her behalf.

"Affidavit" means a sworn written statement, made voluntarily, and taken before a person with authority to administer an oath or affirmation.

"Affidavit of service" means a sworn written statement certifying that a motion, request or other document has been provided to other persons.

"Agency" means any office, department, board, commission or institution of the executive branch of state government.

"Allegation" means the claims of a party.

"Allege" means to state, assert or charge; to make an allegation.

"Allocation" or **"Position allocation"** means the process by which a position is assigned to an established job profile. A position is allocated on the basis of duties, authority, responsibilities, and other appropriate factors.

"Appointing Authority" means the chief administrative officer of an agency. As the term is used in the Rules, the term includes employees of an agency to whom the Appointing Authority has lawfully delegated authority to act on his or her behalf.

"Burden of proof" means the obligation of a party to establish alleged fact(s) by a preponderance of evidence.

"Civil Service Division" means the division within Human Capital Management that is responsible for receiving and hearing complaints as described in the Civil Service and Human Capital Modernization Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes.

"Civil Service Division Director" means the person designated by Human Capital Management to take action on behalf of the Civil Service Division.

"Complainant" means the state employee filing the complaint.

"Complaint" means, as a verb, the filing of a complaint petition, or as a noun, the procedure that takes place after a complaint petition is filed. **"Consolidation"** means the combining of complaints containing the same or similar issues but filed by two (2) or more complainants into a single complaint.

"Continuance" means a postponement of a matter scheduled by Human Capital Management or the mediator to a date certain.

"Demotion" means the reduction in salary of an employee with or without a change in job profile. Demotion may be voluntary or involuntary.

"Deny" means to refuse to grant or accept.

"Disciplinary file" means the record of all disciplinary actions leading up to a written reprimand, punitive transfer, suspension without pay, demotion, or termination, the final action taken, and all relevant supporting documents.

"Dismiss" means to close without further consideration.

"Evidence" means relevant documents or testimony offered to prove or disprove the existence or non-existence of a fact.

"Exempted employee" means an employee to whom the provisions of the Act do not apply. Exempted employees must be designated in the central system of record by the employing executive branch agency. Exempted employees are:

(A) Persons employed by the Governor, Lieutenant Governor, Oklahoma House of Representatives, Oklahoma State Senate, Legislative Service Bureau, or the Legislative Office of Fiscal Transparency;

(B) Elected officials;

(C) Political appointees;

(D) District attorneys, assistant district attorneys or other employees of the district attorney's office;

(E) The state judiciary or persons employed by the state judiciary; or

(F) Not more than five percent (5%) of an agency's employees designated as executive management as determined by the agency director. The number of employees shall be determined by the number of active position identification numbers an agency has.;

(G) Temporary employees employed to work less than one thousand (1,000) hours in any twelve-month period; (H) Seasonal employees employed to work less than one thousand

six hundred (1,600) hours in any twelve-month period;

(I) Employees in a trial period; or

(J) State employees whose employment status is otherwise provided by law.

"Exhibit" means items offered as evidence.

"Ex-parte communication" means communications by anyone with an ALJ or the Civil Service Division Director on the merits of a complaint which could affect its outcome.

"File" or **"Filing"** means submitting a complaint or other documents on the Civil Service Division's on-line filing system, or any acceptable means determined the Civil Service Division or the receipt of documents by the Civil Service Division.

"Grant" means to give or permit.

"Hearing" means an open, formal proceeding conducted by an ALJ. The proceeding is to provide each party with an opportunity to present evidence in support of their side of the case. The hearing is governed by the Oklahoma Administrative Procedures Act, Sections 309 through 316 of Title 75 of the Oklahoma Statutes.

"Human Capital Management" or **"HCM"** means Human Capital Management of the Office of Management and Enterprise Services.

"Initial appointment" or **"original appointment"** means the act of an Appointing Authority hiring a person for the first time as a state employee.

"Job code" means an identifying code that:

(A) corresponds to a job profile, including, but not limited to, the basic purpose, typical functions performed, and the knowledge, skills, abilities, education, and experience required, and

(B) does not include FLSA status or pay rate type, and

(C) identifies the suggested pay range.

"Job family" means:

(A) jobs which require similar core skills and involve similar work, and

(B) a logical progression of roles in a specific type of occupation in which the differences between roles are related to the depth and breadth of experience at various levels within the job family and which are sufficiently similar in duties and requirements of the work to warrant similar treatment as to title, typical functions, knowledge, skills, abilities, education, and experience required.

"Job level" or **"level"** means a role in a job family having distinguishable characteristics such as knowledge, skills, abilities, education, and experience.

"Job profile" means a level in a job family.

"Joinder" means the combining of two (2) or more complaints of one complainant.

"Jurisdiction" means the authority of the Civil Service Division to complete its duties and responsibilities.

"Jurisdictional limitations" means the statutory restrictions on the scope, time limits, and type of appeals which may be considered by the Civil Service Division.

"Mediator" means a person who assists and facilitates the parties involved in a complaint to come to a resolution.

"Minimum qualifications" means the requirements of education, training, experience and other basic qualifications for a job.

"Moot" means no longer in dispute because issues have already been decided or when rendered, a decision could not have any practical effect on the existing dispute.

"Motion" means a request for a ruling to be made by a ALJ or the Civil Service Division Director.

"New position" means a position not previously existing.

"Office of Management and Enterprise Services" means the Human Capital Management Division of the Office of Management and Enterprise Services.

"Order" means a command or directive given by an ALJ or the Civil Service Division Director.

"Party" means a complainant or respondent.

"Position" means a group of specific duties, tasks and responsibilities assigned by the Appointing Authority to be performed by one person; a position may be part time or full time, temporary, occupied or vacant.

"Prehearing conference" means a proceeding conducted by an ALJ with the parties to identify the issues, documents, witnesses and motions which will guide the ALJ in the conduct of the hearing.

"Preponderance of evidence" means information or evidence which is more convincing or believable than the information or evidence offered in opposition.

"Punitive transfer" means a transfer that is directed at and affects only one employee employed by the Appointing Authority. A punitive transfer must relocate the affected employee to a new worksite that is fifty (50) or more miles from the employee's previous worksite. A transfer that results from a closure of a worksite location or building or affects two or more employees does not qualify as a punitive transfer.

"Reallocation" or **"Position reallocation"** means the process of reassigning an established position, occupied or vacant, from one job profile to another.

"Reassignment" means the process of changing an employee from one job family to another job family or from one job level to another job level in the same job family, resulting in a change in the employee's assigned job profile.

"Regular and consistent" means, in connection with an employee's work assignments, the employee's usual and normal work assignments, excluding incidental, casual, occasional tasks, and activities the employee assumes without direction to do so. Temporary work assignments of less than sixty (60) days in any twelve (12) month period are not considered regular and consistent.

"Reinstatement" means the reappointment of a former employee and does not trigger the trial period.

"Relevant" means directly related to the issue or issues being examined.

"Remedy" means corrective action sought by or afforded to a party.

"Representative" means the designated attorney of record, who shall be licensed to practice law in the state of Oklahoma identified in the complaint petition or through an entry of appearance or other written means, acting on behalf of a party. An individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator or ALJ.

"Resignation" means an employee's voluntary termination of his or her employment with the state.

"Respondent" or **"Responding agency"** means the state agency which the complaint has been filed against.

"Rules" means the Civil Service and Human Capital Modernization Rules.

"State employee" or **"employee"** means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] in state service afforded the protections under the Act set forth at Section 34.301 of Title 62 of the Oklahoma Statutes and these Rules.

"Stipulation" means a voluntary admission of fact.

"Subpoena" means an order to appear at a certain time and place to give testimony.

"Subpoena Duces Tecum" means an order requiring the production of books, papers and other documents.

"Supervisor" means an employee [within the executive branch, excluding employees within The Oklahoma State System of Higher Education] who has been assigned authority and responsibility for evaluating the performance of other state employees.

"Sustain" means to grant a request; to grant a complaint.

"Testimony" means statements given by a witness under oath or affirmation.

"Trial period" means a working test period lasting for a period of one year following the initial hiring of a state employee into state service, the hiring of an employee who is transferring from one state agency to another state agency, or the hiring of an employee returning to state service following a break in service. The Appointing Authority has the authority to waive the trial period at any time at their discretion.

"Veteran" means any person who served the full obligation for active duty, reserves or National Guard service in the military, or received an early discharge for a medical condition, hardship or reduction in force; and has been separated or discharged from such service honorably or under honorable conditions.

260:130-1-3. State employees to aid and comply

All state employees under the Act shall conform to, comply with, and aid in carrying out the provisions of the Act, the Rules, and all other applicable state and federal law.

260:130-1-4. Severability clause

The provisions of the Rules are severable and if any part or provision is held void by the decision of a court, this shall not affect or impair any of the remaining parts or provisions of these Rules.

260:130-1-5. Compliance with federal standards, rules, or regulations

Any of the Rules which conflict with, or are inconsistent with, federal rules, regulations or standards governing the grant of federal funds to any agency or department, is not applicable to such agency or department.

260:130-1-6. Request for promulgation, amendment, or repeal of a rule

(a) Any person may request Human Capital Management to adopt, amend or repeal a rule in this chapter. The request shall be made in writing and shall include an explanation to support the request. A request shall also include:

- (1) the name, address and telephone number of the person making the request;
- (2) the name, address and telephone number of the agency or organization the person represents, if any;
- (3) the number used to identify the rule if the request is to amend or repeal an existing rule; and
- (4) the proposed language if the request is to amend an existing rule or adopt a new rule.

(b) It is Human Capital Management's policy to respond to such requests within a reasonable time.

SUBCHAPTER 3. STATE EMPLOYEE DISPUTE RESOLUTION PROGRAM

260:130-3-1. Purpose, use and scope of State Employee Dispute Resolution Program

(a) **General.** The Civil Service Division shall establish and maintain a State Employee Dispute Resolution Program, which may include mediation, to provide dispute resolution services to state agencies and state employees [62:34.301(B)(1)]. When the Civil Service Division is contracted with the Early Settlement Mediation Program through the Administrative Office of the Courts, the State Employee Dispute Resolution Program is subject to the laws and protections of the Dispute Resolution Act found at Title 12, Sections 1801-1813 of the Oklahoma Statutes and rules promulgated thereunder.

(b) **Purpose.** The purpose of the State Employee Dispute Resolution Program is to provide an economical means and access to effective alternative dispute resolution services to all state agencies and state employees. The State Employee Dispute Resolution Program affords the parties to a complaint the same equity and impartiality as the hearing process while offering faster, less costly and more flexible ways to resolve disputes.

(c) **Use and Scope.** Complaints relating to written reprimands shall only be administered through mediation. Complaints relating to punitive transfer must first go through mediation before proceeding to a hearing if the mediation is unsuccessful. Mediation may also be available for suspensions without pay, involuntary demotions, and terminations.

260:130-3-2. Mediation

(a) **General.** Mediation provides an opportunity for the parties to present and discuss settlement with each other and a mediator in order to resolve the issues of a complaint. The parties may discuss, negotiate and settle any differences or issues to reach a resolution to the complaint. The Civil Service Division will assign a mediator to the complaint as set forth in 260:130-3-4.

(b) **Party responsibility.** Each party shall be present and on time. Complainant's failure to do so may result in dismissal of the complaint unless good cause is shown. Each party is expected to negotiate in good faith, without time constraints, and put forth his or her best efforts with the intention to settle, if possible. Even if the parties do not reach a complete settlement, they may reach agreement on various issues.

(1) The complainant shall speak for himself or herself or with the assistance of a Representative.

(2) The Appointing Authority shall send one person to speak and act on behalf of the Appointing Authority with full settlement authority and a Representative.

(3) Each party attending mediation shall have knowledge and the ability to discuss the facts around the action.

(c) **Party submissions.** At the mediation, each party shall provide to the mediator a copy of a mediation statement, which may include a proposed settlement offer.

(d) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, accompany him or her to the mediation. Representatives will be expected to take an active role in mediation, but will not be allowed to interrogate or question any party. As set forth above in 260:130-1-1, an individual other than an attorney licensed to practice law in the state of Oklahoma may act as the representative of the party if approved by the mediator or ALJ.

(e) **Mediator.** The mediator shall:

(1) take an active role in the mediation to aid the parties in the discussion of settlement and resolution of the complaint;

(2) have the flexibility to adapt the mediation to the situation at hand;

(3) have the authority to require any party to produce documents, limited to the disciplinary file as defined within these Rules, for review at the mediation if to do so will aid in the discussion of settlement and resolution of the complaint. Documents produced and reviewed at the mediation shall not become part of the complaint record at that time; and

(4) terminate the mediation because of the disruptive behavior or conduct of a party or representative.

(f) **Mediation.** The mediation shall be informal, structured by the mediator, and not open to the public. The mediation shall be a confidential procedure and shall not be filmed or taped.

(1) **Notice.** At least seven (7) calendar days before the scheduled mediation, the mediator shall notify the parties of the date, time and location of the mediation.

(2) **Location.** The mediation shall be held at the appointing authority office or any other location determined appropriate by the mediator.

- (3) **Witnesses.** Witnesses shall not appear or give testimony at the mediation.
- (4) **Caucus.** The mediator may call a caucus at any stage of the mediation.
- (5) **Continuance.** A request for continuance shall be submitted to the mediator in writing no less than three (3) calendar days before the mediation date. The mediator shall follow the requirements of OAC 260:130-5-13 and shall reschedule the mediation ensuring the timing requirements of OAC 260:130-5-13 are followed.

(g) **Agreement.** If agreement between the parties is reached, it shall be reduced to writing and signed by each party and the mediator. The agreement shall be reviewed and approved by the Civil Service Division Director or his or her designee for complaints arising from termination, suspension without pay, involuntary demotion, or punitive transfer before dismissal of the complaint shall be entertained. The agreement shall become part of the complaint record. All mediation agreements are enforceable by a court of competent jurisdiction.

(h) **Conclusion.** The mediator shall end the mediation when an agreement is reached and reduced to writing. If an agreement is not reached, the mediator shall end the mediation when he or she determines settlement is not possible, unless sooner terminated for just cause. If agreement is not reached:

- (1) a complaint arising from termination, suspension without pay, involuntary demotion, or punitive transfer shall continue on for a prehearing conference and hearing.
- (2) a complaint arising from written reprimand will be considered closed and the agency's action will stand.

260:130-3-3. State Employee Dispute Resolution Program Mediators

The Civil Service Division shall be responsible for offering mediation training and certifying all mediators available through the State Employee Dispute Resolution Program. The Civil Service Division will maintain a list of all available mediators. Mediators will be state employees who have completed the Civil Service Division-approved program and applied to the Civil Service Division to be mediators within this program. State employees will not receive additional compensation for working as mediators. Serving as a mediator will be included within the employees' job duties. An employee must have had satisfactory performance ratings, must obtain written approval from his or her supervisor before applying to be a mediator, and submit such approval with his or her application. In the event the Civil Service Division does not have an adequate pool of mediators to assign to complaints and ensure the complaints are mediated within enough time to either resolve the complaint or have the hearing take place within the thirty (30) business day requirement set forth in 62 O.S. Section 34.301, the Civil Service Division may utilize other methods of obtaining mediators.

260:130-3-4. Assignment of mediators

The Civil Service Division will assign a mediator to every complaint regarding written reprimand and punitive transfer. The Civil Service Division will assign a mediator to complaints regarding termination, suspension without pay, and involuntary demotion if mediation is requested by the complainant in the complaint. A mediator that is a current or former employee of the employing agency named in the complaint will not be assigned. The Civil Service Division may approve a mediator who is a former employee of the employing agency if the former employee has not worked for the employing agency for a period of twenty (20) years and has no knowledge of or relationship to the parties involved in the complaint.

SUBCHAPTER 5. JURISDICTION, RIGHTS AND PROCESSES

260:130-5-1. Location for information and filing

All complaints and all other documents will be filed with the online filing system developed and maintained by the Civil Service Division or any acceptable means determined by the Civil Service Division. The process for filing will be published on the website maintained by the Civil Service Division. Every Appointing Authority must designate an agency representative(s) to receive notice of complaints filed. The Appointing Authority shall be responsible for keeping the Civil Service Division informed of the current agency representative and his or her up-to-date contact information.

260:130-5-2. Time

Complaints shall be filed with the Civil Service Division within ten (10) business days of the date of when the termination, suspension without pay, involuntary demotion, written reprimand, or punitive transfer occurred. The action occurs when the employee receives the written notice of the disciplinary action either in person or via acceptable electronic means.

260:130-5-3. Jurisdiction

The Civil Service Division's jurisdiction to assign cases to hearing or review by the ALJ is limited to complaints arising from termination, suspension without pay, involuntary demotion, and punitive transfer. The review of the merits of the complaint shall be limited to the employee disciplinary file directly at issue [62:34.301(D)]. The Civil Service Division will accept complaints arising from written reprimand and punitive transfer and will assign such complaints to mediation.

260:130-5-4. Notice of complaint

Upon receipt of a complaint petition, the Civil Service Division shall send a notice of the complaint to the appointing authority's designated representative(s). The Civil Service Division may order a person or agency added as a party of record and that person or agency shall be sent a notice of the complaint.

260:130-5-5. Notice of complaint rights

When a state employee receives a written reprimand, punitive transfer or is suspended without pay, involuntarily demoted, or terminated, the state employee shall be provided:

- (1) notice of the right to file a complaint with the Civil Service Division, the time limits for receipt of the complaint and the method and location for filing a complaint
- (2) a citation of the statute, rule, policy, employee handbook, procedure or practice under which the action was taken; and
- (3) a copy of the Civil Service Division's complaint petition.

260:130-5-6. Complaint petition

(a) A complaint petition shall contain the following information:

- (1) the name, address and telephone number of the complainant. The complainant shall maintain a current address with the Civil Service Division throughout the complaint process. Failure to do so shall be cause for dismissal of the complaint.
- (2) the name of the agency against whom the complaint is filed;
- (3) the date the action (written reprimand, punitive transfer, suspension without pay, involuntary demotion, or termination) occurred;
- (4) if the action taken did not occur in person, a description of how the state employee was provided notice of the action;
- (5) the basis for the complaint stating the facts.
- (6) a statement of the remedy the complainant is seeking;
- (7) the name, address and telephone number of the complainant's representative, if any;
- (8) signature of the complainant and representative, if any.

(b) Failure to provide any of the above listed information may result in immediate dismissal of the complaint.

(c) Complaints shall not exceed twenty (20) pages inclusive of exhibits.

260:130-5-7. Consolidation and joinder of complaint

The Civil Service Division, on its own initiative or upon written request of a party, may order the consolidation or joinder of complaints if to do so will expedite the processing of the complaints and not adversely affect the interest of the parties.

260:130-5-8. Settlement of complaints

Settlement discussions are appropriate and encouraged at any stage of the complaint process. The parties may elect to enter into settlement discussions on their own. Any settlement agreement shall be submitted to the Civil Service Division and shall be reviewed and approved before dismissal of the complaint will be entertained. All settlement agreements are enforceable by a court of competent jurisdiction. All settlement agreements will be treated as confidential.

260:130-5-9. Dismissal of complaints

(a) A complaint petition, or an issue in the complaint petition, may be dismissed if:

- (1) it is moot or the complainant has not provided evidence to support the allegations;
- (2) the complainant fails to provide any of the information listed in 260:130-5-6;
- (3) the complainant fails or refuses to appear for a scheduled meeting;
- (4) the complainant refuses to accept a settlement offer which affords the relief he or she could reasonably expect if he or she prevailed in the complaint; or
- (5) it is not timely filed or is not within the Civil Service Division's jurisdiction or authority.

(b) The Civil Service Division Director may order a person or agency dismissed as a party of record.

260:130-5-10. Complaint record

(a) **Content.** A complaint record shall be limited to:

- (1) the complaint petition, notices, motions, and intermediate rulings;
- (2) evidence considered in making a final decision;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections and rulings thereon;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing;
- (7) any proposed or final orders issued by the Civil Service Division; and
- (8) all other evidence or data submitted to a ALJ in connection with his or her consideration of the complaint.

(b) **Transmission to reviewing court.** Within sixty (60) calendar days after proper service of a petition for review or equivalent process upon it, or within such further time as the reviewing court may allow, the Civil Service Division shall transmit to the reviewing court a certified copy of the complaint record under review.

260:130-5-11. Transcripts

(a) Hearings shall be recorded by digital recordings. The Civil Service Division's recording will serve as the official recording for purposes of creating an official written transcript. The Civil Service Division shall prepare a written transcript of the recording only upon written request and receipt of a deposit of cash or cashier's check in an amount determined to be appropriate to cover the costs associated with the transcription, except as prohibited by statute.

(b) Upon application, the Civil Service Division shall pay transcription costs on behalf of an indigent respondent if the respondent establishes indigent conditions through execution of an *in*

forma pauperis affidavit upon a form approved by the Civil Service Division. Should the indigent respondent receive a financial recovery, the respondent shall reimburse the Civil Service Division from those proceeds.

(c) Any party desiring to have a hearing recorded by a court reporter shall request approval by the ALJ before initiating such action. The party making the request shall bear the associated expenses and costs and shall provide a copy of the written transcript to the Civil Service Division at no cost.

260:130-5-12. Motions and requests

Oral motions may be made during a prehearing conference or hearing. All other motions and requests shall be filed in writing and shall state the reason for the motion or request and shall include an affidavit of service to all other parties. Any response to a motion or request shall be filed within the time frame set by the ALJ at the prehearing conference. The ALJ shall ensure that the time frame set for the filing of motions, requests, and responses does not extend past the thirty (30) business day limit as set forth in Section 62 O.S. Section 34.301(C).

260:130-5-13. Continuances

A request for continuance shall be filed in writing and shall include the cause for the request and a statement of agreement or disagreement by the other party(s). A prehearing conference or hearing may be continued or adjourned by the Civil Service Division or the ALJ. A continuance shall be granted only in those instances where extraordinary circumstances exist and have been shown. If granted, a continuance shall be made to a date certain. A request for continuance that extends the hearing or mediation past the thirty (30) business day limit as set forth in 62 O.S. Section 34.301(C) will not be granted.

(1) If granted on behalf of the Civil Service Division or the responding agency, and the complainant is subsequently sustained in the complaint, back pay and other benefits shall be awarded for the entire judgment as determined appropriate by the ALJ.

(2) If granted on behalf of the complainant and he or she is subsequently sustained in the complaint, back pay and other benefits shall be awarded only for the period of time that the complainant did not delay the complaint as determined appropriate by the ALJ.

260:130-5-14. Ex-parte communication

Ex-parte communications are communications by anyone with an ALJ or the Civil Service Division Director on the merits of a complaint which could affect its outcome. Ex-parte communications are prohibited from the time a complaint is filed until a final decision is issued.

260:130-5-15. Judicial review

Within thirty (30) calendar days after exhausting all remedies under the Administrative Procedures Act, either party may appeal an adjudicated complaint to a higher court of competent jurisdiction.

260:130-5-16. Stay of enforcement

A petition for judicial review shall not automatically stay enforcement of the original decision.

SUBCHAPTER 7. HEARING PROCESS

260:130-7-1. Prehearing conference

(a) **Purpose.** The Civil Service Division may schedule a prehearing conference on any complaint set for hearing. The conference provides an opportunity for the parties to clarify, isolate and dispose of procedural matters prior to the hearing.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Complainant's failure to do so may result in dismissal of the complaint unless extraordinary circumstances exist and are shown. Prior to the prehearing conference each party shall file with the Civil Service Division and provide to each other party and the ALJ a copy of:

- (1) a brief statement of his or her respective case, to include a list of stipulations and requested remedy;
- (2) the names of the witnesses allowed at the hearing and their contact information; and;
- (3) a description of the documents and exhibits allowed at the hearing and copy of each document and exhibit to be offered.

(c) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, to speak and act on his or her behalf.

(d) **ALJ responsibility.** The ALJ shall:

- (1) consider, facilitate and rule on settlement;
- (2) consider any matters which will aid in the fair and prompt resolution and disposition of the complaint;
- (3) hear and rule on pending requests or motions;

(e) **Conference.** The conference shall be informal, structured by the ALJ and not open to the public. The ALJ shall record the conference by digital recording.

(1) **Notice.** Each party shall be notified of the date, time and location at least seven (7) calendar days prior to the scheduled conference.

(2) **Location.** The conference shall be conducted at the Human Capital Management offices or any other location determined appropriate by the ALJ.

(3) **Witnesses.** Witnesses shall not appear or present evidence at the conference.

(4) **Continuance.** A request for continuance shall be filed in accordance with OAC 260:1305-13 no less than three (3) calendar days prior to the scheduled conference. The ALJ, or in his or her absence, the Civil Service Division, shall rule on the request in accordance with OAC 260:130-5-13.

(f) **Conclusion.** The ALJ shall end the conference when preparation for the hearing is complete, unless sooner terminated as a result of settlement or for other just cause.

260:130-7-4. Hearing

(a) **Purpose.** The hearing provides each party the opportunity to present witnesses and evidence as allowed by these Rules in support of his or her respective case for decision by an ALJ. Hearings shall be conducted in accordance with the Act, the Administrative Procedures Act and the Rules in this chapter.

(b) **Party responsibility.** Each party shall be present, on time and prepared. Complainant's failure to do so may result in dismissal of the complaint unless extraordinary circumstances exist and are shown.

(c) **Representation.** Each party to the complaint may have a Representative, as defined within these Rules, to speak and act on his or her behalf.

(d) **ALJ responsibility.** The ALJ shall rule on questions of admissibility of evidence, competency of witnesses and any other matters or questions of law.

(e) **Process.** The hearing shall be formal, structured by the ALJ and open to the public. Parts of a hearing may be ordered closed when evidence of a confidential nature is to be introduced or where to do so would be in the best interests of a party, witness, the public or other affected persons. The ALJ shall record the hearing by digital recording and such recording shall constitute the official recording of the hearing.

(1) **Notice.** Each party shall be notified of the date, time and location at least seven (7) calendar days prior to the scheduled hearing.

(2) **Location.** The hearing shall be held at the Civil Service Division offices or any other location determined appropriate. At the prehearing conference any party may request

the hearing be changed to a more convenient location. The ALJ shall rule on the request and may change the location when to do so is in the best interests of the Civil Service Division and parties.

(3) **Witnesses.** The ALJ shall administer an oath or affirmation to each witness.

(4) **Continuance.** A request for continuance shall be filed in accordance with OAC 260:1305-13 no less than three (3) calendar days prior to the scheduled hearing. The ALJ, or in his or her absence, the Civil Service Division, shall rule on the request in accordance with OAC 260:130-5-13.

(f) **Witnesses allowed at the hearing.** The witnesses allowed at the hearing shall be limited to

(1) the Human Resources Director or designee;

(2) the supervisor;

(3) the employee bringing the complaint;

(4) additional witnesses approved by the ALJ;

(g) **Documents allowed at the hearing.** The documents allowed at the hearing shall be limited to the documents contained in the disciplinary file.

(h) **Burden of proof.** The following burden of proof shall apply to all hearings under the jurisdiction of the Civil Service Division (termination, involuntary demotion, suspension without pay, or punitive transfer). The burden of proof shall be upon the complainant who must prove his or her case by a preponderance of the evidence that there was no reasonable basis for the disciplinary action by the state agency.

(1) If the Complainant fails to prove that there was no reasonable basis for the disciplinary action by the state agency, the ALJ shall dismiss the complaint;

(2) If the Complainant proves that there was no reasonable basis for the disciplinary action by the state agency, an ALJ may order the reinstatement of the employee, with or without back pay and other benefits. An ALJ may also order that documentation of the disciplinary action be expunged from any and all of the employee's personnel records and disciplinary file.

(3) An ALJ who orders reinstatement with back pay and other benefits under (2) above, may consider the deduction of any income the employee may have received for the period of time the employee was not performing his or her duties.

260:130-7-5. Methods of testimony

(a) This section shall not limit the authority of the Civil Service Division to compel witnesses allowed by these Rules to appear and offer testimony. Upon written request and approval by the ALJ, an affidavit, video conference, electronic communication, and telephone communication may be used when a witness or party is unable to attend or testify because of good reason.

(b) The parties to any action before the Civil Service Division are responsible for ensuring that the technology is available to all participants for conducting a video conference.

260:130-7-6. Closing the record

The record shall be closed when each party has had an opportunity to be heard and present evidence. Once the record is closed, no additional evidence or arguments shall be considered.

260:130-7-7. Decisions

The Civil Service Division delegates the authority to issue the final order to the ALJ. The ALJ shall prepare the final order and submit it to the Civil Service Division within ten (10) calendar days after the record is closed. The final order shall include findings of fact and conclusions of law, written in clear and concise language.

(1) The Civil Service Division shall issue the final order to each party, by personal service or certified mail and by submission on the online filing system, within five (5) calendar days after receipt from the ALJ.

(2) The determination of the ALJ shall be final and conclusive except as provided in the Administrative Procedures Act.

260:130-7-8. Petition for rehearing, reopening or reconsideration of the final decision

The final decision of the Civil Service Division shall be subject to rehearing, reopening, or reconsideration. A petition for rehearing, reopening, or reconsideration must be filed by the aggrieved party within ten (10) days from the date of the entry of the final decision. Such petitions and the resolution of such petitions must be in accordance with 75 O.S. Section 317 of the Administrative Procedures Act. In accordance with 75 O.S. Section 317(d), the Civil Service Division will send the petition for rehearing, reopening, or reconsideration to an ALJ to act as the hearing examiner. The hearing examiner will review the petition for rehearing, reopening, or reconsideration and any other evidence and data submitted by the parties. The hearing examiner will not permit oral arguments. If the petition for rehearing, reopening, or reconsideration is granted by the hearing examiner, the hearing examiner will order the matter referred to the same presiding ALJ or another ALJ, separate and apart from the hearing examiner, for further consideration of the matter on those grounds upon which the petition for rehearing, reopening, or reconsideration was granted.

SUBCHAPTER 9. ATTORNEY FEES AND COSTS

260:130-9-1. Award

- (a) **General.** The ALJ of any hearing may order payment of reasonable attorney fees and costs to the prevailing party if the position of the non-prevailing party was without reasonable basis or was frivolous.
- (b) **Burden of proof.** The prevailing party shall bear the burden of proof that he or she is entitled to an award of attorney fees and costs by a preponderance of the evidence.
- (c) **Showing of proof.** To be entitled to an award of attorney fees and costs, the prevailing party shall be deemed to have prevailed if he or she received all or a significant part of the relief sought through the complaint. Attorney fees shall not be awardable for non-attorney pro-se representation.
- (d) **Standards.** The without reasonable basis or frivolous standard includes, but is not limited to:
 - (1) where the non-prevailing party's action was clearly without merit or was wholly unfounded;
 - (2) where the non-prevailing party initiated an action against the prevailing party in bad faith, including where the action was brought to harass or intimidate the prevailing party;
 - (3) where the non-prevailing party committed a gross procedural error which prolonged the proceeding or severely prejudiced the prevailing party; and
- (e) **Decision.** The decision to award attorney fees is solely within the discretion of the ALJ.

260:130-9-2. Reasonable costs

Reasonable costs shall be determined primarily through costs associated with the defense of the specific action before the Civil Service Division.

260:130-9-3. Reasonable attorney fees

Hours devoted to the complaint multiplied by a reasonable hourly billing rate. Reasonable attorney fees may be determined by looking at fees awarded the attorney in the past.

- (1) The prevailing community rate is considered a reasonable hourly rate.
- (2) The fee agreement between an attorney and a party to the complaint or any organization, or association representing a party, establishes a presumption that the amount agreed upon is the maximum reasonable amount.

(3) The actual rate of pay for a state attorney representing a party shall be the base pay of the attorney.

260:130-9-4. Request

A request for the award of attorney fees or costs shall be filed with the Civil Service Division within ten (10) calendar days after the issue date of the final decision and shall include an affidavit of service to all other parties.

(1) **Grounds.** The request shall specifically state why an award of attorney fees or costs should be made and shall be supported by evidence to substantiate the request and evidence to determine whether or not the amount claimed is reasonable.

(2) **Evidence.** Evidence submitted with the request shall include, as a minimum:

(A) adequate time records so the reasonableness of the claimed fee can be ascertained;

(B) a copy of any fee agreement between the attorney and the client or any fee agreement between the attorney and any organization, or association representing the client;

(C) the attorney's customary billing rate for similar work, provided the attorney has a billing practice to report;

(D) evidence of the prevailing community rate sufficient to establish a market value for the services rendered;

(E) specific evidence of the prevailing rate for similar work of attorneys of comparable experience and reputation; and

(F) specific detailed documentation identifying the actual costs associated with the request.

(3) **Response.** Any party may file a response in opposition to the request within ten (10) calendar days after the date the request is filed with Human Capital Management. The response shall include an affidavit of service to all other parties.

(4) **Rejection.** Requests and responses which are not timely filed or do not meet the requirements of this section shall be rejected by The Civil Service Division.

260:130-9-5. Frivolous complaints

Any party may be assessed attorney fees and costs if the Civil Service Division or the ALJ determines a complaint is frivolous. A request for attorney fees and costs of processing a complaint shall comply with the provisions of this section.

SUBCHAPTER 11. CONFIDENTIAL WHISTLEBLOWER PROGRAM

260:130-11-1. Confidential whistleblower program

The Civil Service Division will act as the central repository for all whistleblower complaints. All whistleblower complaints will be maintained as confidential and be routed to the appropriate party for review and disposition. Whistleblower complaints will be limited to agency or employee mismanagement and the misuse of state funds or property.

SUBCHAPTER 13. POSITION ALLOCATION AND JOB CATALOG AND CODE SYSTEM

260:130-13-1. Purpose

The purpose of the rules in this Subchapter are to establish a job catalog and code system for all employees under the administration of Human Capital Management.

260130-13-2. Job catalog and codes

Human Capital Management will establish and maintain a master catalog of all state employment jobs. Each job profile will be assigned a code. Agencies will work with Human Capital Management to ensure all jobs are organized into the master catalog and code structure.

SUBCHAPTER 15. SALARY AND PAYROLL UNIFORM STRUCTURE

260:130-15-1. Purpose and general provisions

The purpose of the rules in this Part is to establish a uniform structure for salary and pay and pay increases.

260:130-15-2. Pay range and pay increase catalog and codes

Human Capital Management will establish and maintain a master catalog of all state pay ranges and reasons for pay increases. Each reason for pay increase will be assigned a code. Human Capital Management will provide guidance, assistance, and information regarding the pay range and pay increase catalog and codes.

SUBCHAPTER 17. RECRUITMENT AND SELECTION

260:130-17-1. Purpose

The purpose of the rules in this Subchapter is to establish policies and procedures for the recruitment of qualified persons, for the referral of capable candidates for vacancies and the employment of individuals on other types of appointments as necessary and for impartial consideration of applicants for employment.

260:130-17-2. Selection procedures

(a) Selection procedures may consist of written tests; ratings of training and experience; performance tests; physical, educational, and work experience requirements; interviews; oral examinations; application forms and any other type of examination.

(b) When a job requires a test, the Appointing Authority shall administer tests in accordance with the Americans with Disabilities act to applicants or employees with disabilities that impair sensory, manual, or speaking skills in formats that do not require the use of the impaired skill, if the applicant or employee notifies the Appointing Authority before the test is administered.

(c) Before appointment, applicants may be required to pass a physical examination specified by the Appointing Authority when requirements of the job demand specific physical condition or capabilities. Such physical examinations shall be uniform in nature and applied to all persons in that job within the agency. The responsibility for administering the physical examinations lies with the Appointing Authority.

260:130-17-3. Applications

An application for a posted job shall be made on a form prescribed by the Administrator. The application form solicits information from the applicant regarding residence, education, training, experience and other eligibility information. The form may also ask for demographic information, such as race, sex, ethnicity, and disability for statistical analysis and state and federal record keeping and reporting requirements. The form may also ask for veteran status. Information provided by applicants shall be subject to verification. All applications shall be signed in writing or by electronic signature by the applicant certifying the truth of all statements he or she made in the application. Applications must be filed with the Human Capital Management Division on or before the closing date specified in the announcements.

260:130-17-4. Establishment of qualifications

Minimum and preferred qualifications will be determined by the Appointing Authority and HCM.

260:130-17-5. Testing

The Appointing Authority and HCM will collaborate to develop testing requirements for positions and job families.

260:130-17-6. Posting jobs

All posted jobs shall be posted through the central system of record established and maintained by Human Capital Management. Human Capital Management shall grant Appointing Authorities an exception to this Rule based on documented business needs.

SUBCHAPTER 19. EMPLOYEE ACTIONS
PART 1. GENERAL PROVISIONS

260:130-19-1. Purpose

The purposes of the rules in this Subchapter are to establish policies and procedures for trial periods of employment transfers, promotions, demotions, and separations, while protecting employees from arbitrary dismissal or unfair treatment.

260:130-19-2. Agency personnel records

Each agency shall maintain an adequate set of applicant and employee personnel records. These records shall include: performance evaluations, promotional forms, attendance records, the employee disciplinary file, and any other documents that affect an individual's employment status with the agency.

260:130-19-3. Reports of personnel changes

All personnel changes shall be recorded in the system of record provided by OMES.

260:130-19-4. Review of agency personnel files

Each employee shall have the right to review his or her individual personnel records in the system of record.

260:130-19-5. Voluntary demotion

An Appointing Authority may approve the employee's request for voluntary demotion provided the employee voluntarily makes such a request in writing and meets the current minimum qualifications for the job family level to which demotion is requested.

260:130-19-6. Method of resignation

- (a) To resign in good standing, an employee must give the Appointing Authority, or designee, at least fourteen (14) calendar days prior notice unless the Appointing Authority, or designee, agrees in writing to permit a shorter period of notice. The Appointing Authority, or designee, will supply the employee written confirmation of any shorter period of notice that is allowed.
- (b) Verbal resignations may be accepted by the Appointing Authority and implemented at his/her discretion.
- (c) An employee who is absent from work without prior approval and who has not contacted his/her supervisor or agency representative within three working days is deemed to have resigned from state service.

260:130-19-7. Detail to special duty

(a) When the services of a state employee are temporarily needed in a job profile other than the one to which the incumbent is regularly assigned, the employee may be detailed to special duty, at the discretion of the Appointing Authority, to perform the duties of the job to which temporarily assigned.

(b) A detail to special duty in no way shall affect the status, title or job profile held before the detail.

(c) An employee shall not be placed on detail to special duty more than twelve (12) months in any thirty-six (36) month period.

(d) Detail to special duty is not required when an employee is temporarily assigned duties of another job for a period of less than sixty (60) days in any twelve (12) month period. Detail to special duty is also not required when an employee is temporarily performing such duties as part of a return-to-work program as a result of a work-related illness or injury, regardless of whether that period exceeds sixty (60) days in any twelve (12) month period. Such temporary placement related to a return-to-work program shall not exceed six (6) months.

260:130-19-8. Suspension with pay

(a) An Appointing Authority may suspend a state employee from duty with pay for internal investigatory purposes or to require the employee to undergo a fit-for-duty examination to determine whether the employee is capable of performing the essential functions of the position in which employed. The Appointing Authority may require the employee to remain available during specified working hours to meet with investigators or other agency officials as required. A notice of suspension with pay, stating the beginning and ending dates and times and specifying any reporting requirements shall be issued to the employee in writing.

(b) If the employee was suspended with pay for investigatory purposes and is cleared, the Appointing Authority shall fully clear the employee's records in the custody of the agency and shall make every reasonable effort to fully clear any such records which are not in the custody of the agency. If the charges against the employee are confirmed, in whole or in part, a suspension with pay in accordance with this Section shall not preclude an Appointing Authority from taking disciplinary action in accordance with Oklahoma law and these Rules.

PART 3. EMPLOYEES IN A TRIAL PERIOD

260:130-19-30. Trial period

Appointing Authorities may require an employee to be in a trial period for up to one year for individuals who have been initially hired as a state employee, employees who are transferring from one state agency to another state agency, or employees returning to state service following a break in service. The Appointing Authority may not extend the trial period but may adjust the trial period due to extended absence. The length of the trial period shall be made known to the employee at the time of entry on duty and at the time of any adjustment or waiver of the trial period.

260:130-19-31. Disciplinary action during trial period

The employment of any state employee may be terminated at any time during the trial period without the right of complaint as set forth in and these Rules. The employee may also be disciplined at any time during the trial period without the right of complaint.

260:130-19-32. Adjustment of the trial period

If a trial employee is absent from work in excess of thirty (30) non-continuous working days, the trial period shall be adjusted by the number of working days the trial employee was absent. The employee shall be notified at the earliest date that the trial period is to be adjusted. Upon the employee's return to work, notification of such adjustment shall be provided to the employee and HCM and shall include the adjusted date of the final working day of the trial period.

PART 5. EMPLOYEE GUIDELINES

260:130-19-50. Conduct of employees

- (a) Every employee shall fulfill to the best of his or her ability the duties of the office or position conferred upon the employee and shall behave at all times in a manner befitting the office or position the employee holds. In performing official activities, the employee shall pursue the common good, and not only be impartial, but act so that there can be no question of impartiality.
- (b) An employee shall not engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible, or in conflict with his or her duties as an employee or with the duties, functions or responsibilities of the Appointing Authority by which the person is employed.
- (c) Each Appointing Authority shall determine and prescribe those activities within applicable laws, which, for employees under its jurisdiction, will be considered inconsistent, incompatible or in conflict with their duties as employees. In making this determination, the Appointing Authority shall give consideration to employment, activity or enterprise which:
- (1) involves the use for private gain or advantage of state time, facilities, equipment and supplies; or the badge, uniform, prestige or influence of one's state office or employment, or
 - (2) involves receipt or acceptance by the employee of any money or other consideration from anyone, other than the state, for the performance of an act which the employee would be required or expect to render in the regular course or hours of state employment or as a part of the duties as a state employee, or
 - (3) involves the performance of an act which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement by such employee.
- (d) Each employee shall devote full time, attention and effort to the duties and responsibilities of his or her position during assigned hours of duty.

SUBCHAPTER 21. PERFORMANCE EVALUATION AND CAREER ENHANCEMENT PROGRAMS

PART 1. GENERAL PROVISIONS

260:130-21-1. Purpose

The purposes of the rules in this Subchapter are to establish policies and procedures pertaining to employee performance appraisal systems, the state personnel interchange program, and the state internship program.

PART 3. EMPLOYEE PERFORMANCE MANAGEMENT SYSTEM

260:130-21-30. Employee performance management system

(a) Human Capital Management shall make available one standard performance management system that will be used by all agencies to complete employee performance evaluations. The purpose of this employee performance management system is to evaluate the performance of each employee in the executive branch of state government.

- (b) The employee performance management system shall provide for the following:
 - (1) An objective evaluation by the immediate supervisor of the performance of the employee within the assigned duties of the job. The evaluation shall contain the date of review and employee identification number;
 - (2) A mid-term interview with the immediate supervisor for the purpose of discussing the progress of the employee in meeting the performance criteria upon which the employee will be evaluated;
 - (3) A final interview with the employee by the immediate supervisor who shall provide the employee with a copy of the performance evaluation; and
 - (4) The opportunity for the employee to submit written comments regarding the performance evaluation.
- (c) The immediate supervisor shall hold a meeting with the employee at least three times during a 12-month evaluation period.
 - (1) One meeting shall take place at the beginning of the evaluation period in order to communicate the criteria upon which the employee will be evaluated. A copy shall be provided to the employee.
 - (2) One meeting shall take place during the rating period for the purpose of discussing the progress of the employee in meeting the criteria upon which the employee will be evaluated.
 - (3) One meeting shall take place at the end of the review period to provide the final evaluation. A copy of the evaluation shall be provided to the employee, and the employee shall have the opportunity to provide written comments.
- (d) The agency may use the performance evaluations of current or former state employees in decisions regarding promotions, appointments, demotions, performance pay increases, and discharges.
- (e) The agency shall retain a copy of the performance evaluation for each employee of the agency. A copy of the performance evaluation shall be retained in the employee's personnel file.

PART 5. STATE PERSONNEL INTERCHANGE PROGRAM

260:130-21-50. Purpose

The purpose of the rules in this Part is to implement the State Personnel Interchange Program.

260:130-21-51. State personnel interchange agreements and contracts

Employee interchanges made in accordance with the Act and these Rules shall be executed by mutual agreement or contract by the sending agency, the receiving agency and the participating employee, subject to the following conditions and provisions:

(1) The agreement or contract shall be in the standard format and on the standard form provided by the Human Capital Management Division. Both the personnel interchange agreement and the personnel interchange contract contain information regarding the terms and conditions of the interchange and are signed by the Appointing Authority of the sending and receiving agencies and by the participating employee. Employee interchanges shall be by agreement if the receiving agency does not reimburse the sending agency and by contract if the receiving agency reimburses the sending agency.

(2) The agreement or contract shall be signed voluntarily by the sending agency, the receiving agency, and the participating employee.

(3) The receiving agency shall submit an original agreement or contract signed by the Appointing Authorities of the sending and receiving agencies and the participating employee to the Human Capital Management Division. The Administrator shall review and approve each agreement or contract before the effective date of the interchange.

PART 7. STATE INTERNSHIP PROGRAM

260:130-21-70. Purpose

The rules in this Part establish policies and procedures to implement the State Internship Program.

260:130-21-71. State Internship Program

(a) **Eligibility.** The State Internship Program consists of temporary part-time or full-time positions for students enrolled in institutions of higher education working toward an undergraduate degree, which shall include associate's degrees or certifications by the Oklahoma Department of Career and Technology Education, or a graduate degree.

(b) **Conditions of employment.** Participants in the State Internship Program who receive internship appointments shall:

(1) be granted leave benefits commensurate with regular state employees, if they qualify for leave benefits;

(2) be enrolled in the state health insurance and retirement benefits programs, if expected to work one thousand (1,000) or more hours per year; and

(3) continue to make progress toward his or her degree until completion of all undergraduate and graduate degree requirements.

(c) **Internal Appointing Authority unpaid internship programs.** Nothing in this Rule shall limit an Appointing Authority from developing and offering internal unpaid internship programs.

260:130-21-72. Application form and procedure

(a) **Application form.** The State Internship Program application is available from Human Capital Management. Applicants may apply at any time.

(b) **Communication with the Human Capital Management Division.** Interested persons may direct communications to HCM with attention to the State Internship Program.

(c) **Application procedure.** Applicants for the internship program shall provide the following information to the Human Capital Management Division for review and determination of eligibility: A completed on-line application form as prescribed by Human Capital Management; Transcript(s) of coursework from accredited higher education institutions; Verification of current enrollment.

(d) **Notification.** Human Capital Management shall notify applicants if the documents they submit are sufficient for eligibility. A notice of eligibility does not mean the applicant will be employed as an intern.

(e) **Length of eligibility.** Applicant information on file at the Human Capital Management Division shall remain active if eligible applicants submit verification of current enrollment and an updated transcript each semester. If applicants fail to provide updated information within 90 days after the end of the previous semester, they will no longer be eligible for employment as an intern and their names will be removed from the list of eligible applicants made available to state agencies.

(f) **Appointment.** Human Capital Management shall provide a list of all eligible applicants for the State Internship Program to state agencies periodically and at an agency's request. An agency may request an eligible applicant list and copies of individual eligible intern files at any time.

(g) **State employees.** State employees may apply to participate in the State Internship Program. Employees who receive internship appointments may request leave without pay from their permanent or regular employment in accordance with the leave of absence without pay rules. Trial employees and employees with less than 12 months continuous service shall resign before entry-on-duty as an intern.

(h) **State employees; continuation of benefits.** State employees leaving positions in state government in order to take an internship shall continue to receive all fringe benefits they would have received in their previous positions.

260:130-21-73. General conditions of employment

(a) **No expectation of continued employment.** An intern has no right or expectation of continued employment in any position with the state because of participation in the State Internship Program.

(b) **Compensation plan for interns.** The employing agency shall establish compensation plans that include rates of pay for State Internship Program positions which are consistent with positions having like duties and responsibilities within the agency. Human Capital Management may establish job descriptions for interns in accordance with these Rules. State interns who are not exempt from the provisions of the Fair Labor Standards Act(29U.S.C. 201 et seq.) are subject to its overtime provisions. Salary adjustments may be made in accordance with these Rules.

(c) **Report of work performance to educational institution.** The Appointing Authority or designee of the employing agency shall provide the internship faculty member with information necessary to evaluate the intern's work experience for academic purposes at the faculty member's request.

260:130-21-74. Termination of internship

The agency, the intern, or the Administrator may terminate the internship agreement at any time without notice. The agency may separate the intern with or without cause.

PART 9. MANDATORY SUPERVISORY TRAINING

260:130-21-90. Purpose

The rules establish policies and procedures necessary to implement supervisory training requirements.

260:130-21-91. Definitions

The following words and terms, when used in this Part shall have the following meaning, unless the context clearly indicates otherwise:

"One hour of training" means one (1) hour of learner interaction with the content of the learning activity, which includes classroom, self-paced instruction, assignments, or assessments that support the stated learning outcome. The Administrator shall develop a standard for assessing and assigning hours to learning content.

"Online learning format" means any live or self-paced learning content delivered remotely using online technology.

"Supervisory training" means courses or training related to the effective performance of an agency manager or supervisor.

"Twelve hours of training" means twelve (12) hours of learner interaction. Twelve (12) hours of training are also equivalent to 1.2 continuing education units (CEUs).

"Twenty-four hours of training" means twenty-four (24) hours of learner interaction. Twenty-four (24) hours of training are also equivalent to 2.4 continuing education units (CEUs).

260:130-21-92. Supervisory training requirements

All supervisors shall complete twelve (12) hours of supervisory training according to this Part each year. Persons appointed to supervisory positions shall complete twenty-four (24) hours of supervisory training according to this Part within twelve (12) months before or after assuming a supervisory position. Supervisors shall complete training courses in the State of Oklahoma Performance Management Process and progressive discipline within the first twelve (12) months of being appointed to a supervisory position. The appointing authority of each agency shall make sure each supervisory employee is notified and scheduled to attend required supervisory training and shall make time available for each supervisory employee to complete the training. Training courses conducted by employing agencies, public and private schools, and colleges and universities may count toward supervisory training requirements if the coursework meets the definition for supervisory training in 260:130-21-91.

260:130-21-93. Supervisory training reporting requirements

Employing agencies shall keep records of the training of all supervisory employees and shall submit reports of supervisory training to the Human Capital Management Division at the request of the Administrator of the Human Capital Management Division. Agencies shall record employee training in the system of record for evaluating statewide learning and reporting purposes.

260:130-21-94. Reporting of training compliance

Each spring, the Administrator will notify agencies of the method for reporting their level of compliance with these requirements for the previous calendar year. The Administrator shall provide a summary of the reports to the Governor, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate.

PART 11. CERTIFIED PUBLIC MANAGER PROGRAM

260:130-21-110. Purpose

The rules in this Part establish policies and procedures to implement the Certified Public Manager Program®. The Program is administered by the Office of Management and Enterprise

Services. It is the purpose of the Certified Public Manager Program® to develop the management skills of public sector employees and to assist state agencies and other public sector organizations in the identification and development of future leaders.

260:130-21-111. Definitions

In addition to words and terms defined in OAC 260:130-1-2, the following words and terms when used in this Part shall have the following meaning, unless the context clearly indicates otherwise.

"Organizations" means municipalities, counties, Indian Nations, and the federal government.

"Program" means the Certified Public Manager Program®.

"Training cohort" means a group of participants who complete the program in the same period of time.

260:130-21-112. Program description

(a) **Eligibility.** Employees of state agencies in all branches of state government who are nominated by the Appointing Authority or designee may apply to participate in the Program.

(b) **Nomination procedure.** Within the process of administration of the program by the Office of Management and Enterprise Services, each agency or organization can determine their nominees. The nomination form solicits information about the nominee and the nominating agency or organization and shall be submitted by the nominee's supervisor or the agency's Appointing Authority or designee or the organization's chief administrative officer or designee. The information booklet provides information about the nomination process, a description of the Program, competencies required to complete the Program, and the role of Higher Education in the Program. The agency or organization may nominate an employee for participation in the Program during designated enrollment periods by submitting a completed nomination form to the Certified Public Manager Program® at the Human Capital Management Division prior to the end of the enrollment period.

(c) **Enrollment in the Program.** The Administrator shall enroll an employee in the Certified Public Manager Program® who has successfully completed the enrollment process, outlined in the information booklet.

(d) **Communication with the Human Capital Management Division.** Interested persons may direct communications to the attention of the Oklahoma Certified Public Manager Program®.

(e) **Experience credit.** Graduation from the Program as a "Certified Public Manager®" shall substitute for one (1) year of professional experience in business or public administration on any job class requiring such experience as part of the minimum qualifications.

260:130-21-113. Program requirements for candidates

(a) **Graduation requirements.** To graduate from the Program as a "Certified Public Manager®", a candidate shall complete all of the following graduation requirements offered during the twelve (12) month training cohort:

(1) Complete all scheduled courses, project sessions, and learning events prescribed by the Human Capital Management Division and specified in the information packet.

(2) The remaining hours shall be in program pre-work requirements and other assignments.

(3) Make-up work will be provided for all in-person classes. Candidates should not consistently be more than twenty-five (25) percent overdue at any time within the program. Even if all makeup work is completed, but the candidate has failed to attend at least seventy-five (75) percent of the required scheduled sessions, they are eligible to be removed from the training cohort.

(4) Pay the Program fees described in 260:130-21-115 in full before graduation. The Human Capital Management Division will establish the payment schedule for the fees and publish it on the OMES CPM website.

(b) **Withdrawal from the Program.** The candidate, nominating agency, or organization and the Administrator shall have the right to remove a candidate from the Program. An acknowledgment from the candidate, agency representative, and CPM administrators will be completed for any candidate withdrawal from the program, including removal from the program.

260:130-21-114. Program requirements for nominating agency or organization

The nominating agency or organization shall:

(1) Provide time for the candidate, during his or her work day, to attend training courses, including the Capstone, prepare class assignments, study for examinations, and work on Program projects.

(2) Allow candidates to use agency or organization challenges for classroom, project, and portfolio assignments; Provide financial support to agency candidates, as required by the Program.

(3) Review and approve employee absences for scheduled cohort dates prior to sending the nomination to HCM.

(4) Allow managers to participate in the employee's involvement in the program for activities such as attending project presentations, answering survey questions or providing employee assessments.

260:130-21-115. Program fees

The fee for participation shall be established by the Administrator. Should the fee structure change during the course of an employee's participation in the program, fees shall remain consistent with the fee assessed at the time of enrollment.

PART 13. HUMAN RESOURCES PROFESSIONALS TRAINING REQUIREMENTS

260:130-21-130. Purpose

The rules in this Part prescribe the continuing training and certification of personnel professionals in the executive branch of state government, excluding institutions within The Oklahoma State System of Higher Education. These rules establish policies and procedures necessary to implement human resources professionals training requirements.

260:130-21-131. Definitions

The following words and terms, when used in this Part shall have the following meaning, unless the context clearly indicates otherwise:

"Annual training requirements" means a curricula approved by the Administrator for certified human resources professionals to maintain certification.

"Certification" means the successful completion of the course curricula or service as an instructor for the course curricula, and the successful completion of the examination established by the Administrator for testing competency in professional human resources practices.

"Certified Human Resources Professionals" means employees who have achieved and maintained certification.

"Human resources professional" means an employee in state service, who on a regular and consistent basis as an integral part of his or her normal work assignment and job family descriptor, performs professional duties developing or implementing human resources administration policies, practices and procedures. The Administrator may waive the training requirements for personnel professionals whose primary assigned duties are in the areas of

benefits, payroll, training, affirmative action/equal employment opportunity, retirement, safety, workers compensation, or employee assistance programs, according to 260:130-23-136.

260:130-21-132. Human resources professionals training requirements

All employees assigned to professional human resources positions in the executive branch, excluding employees within The Oklahoma State System of Higher Education, shall attend training in professional human resources administration conducted and determined by the Human Capital Management Division, and successfully complete an examination prescribed by the Administrator in order to attain certification as a human resources professional. In lieu of training conducted by the Human Capital Management Division, a professional certification in the Human Resources field that is nationally recognized may qualify. Employees appointed to human resources professional positions shall attend the training and successfully complete the examination within one (1) year of appointment. Employees who have been certified as human resources professionals by the Administrator shall thereafter annually complete training conducted and determined by the Human Capital Management Division in professional human resources administration to maintain certification. The Administrator may approve training that is not conducted by the Human Capital Management Division as meeting the annual training requirements. The Appointing Authority of each agency with an employee assigned to a professional human resources position shall ensure the employee is notified and scheduled to attend required human resources professionals training and shall make time available for the employee to complete the training.

260:130-21-133. Course approval of annual training requirements

To request approval of training not conducted by the Human Capital Management Division as meeting the annual training requirements, the Appointing Authority shall submit the following course information to the Administrator for review: Course title and a brief description; Classroom hours or Continuing Education Units (CEUs); and Course outline. The Administrator shall maintain lists of courses approved as meeting the annual training requirements and may withdraw his or her approval of courses by notifying employing agencies. Certified Human Resources Professionals who complete approved training courses shall submit proof of completion that is acceptable to the Administrator.

260:130-21-134. Application for waiver of training requirements

The Administrator may waive the human resources professional training requirements for employees: Whose primary assigned duties are in the areas of benefits, payroll, training, affirmative action/equal employment opportunity, retirement, safety, workers compensation, or employee assistance programs; and, whose primary assigned duties do not include classification, compensation, recruitment, or selection. Employees who are eligible for a waiver according to Subsection (a) of this Section, may apply by submitting a written request signed by the Appointing Authority, along with a position description, job family descriptor, or a description of the employee's primary assigned duties, to the Human Capital Management Division. The Administrator shall be responsible for granting or denying waivers under this Section. The decision of the Administrator to grant or deny such a waiver shall be final.

260:130-21-135. Human resources professionals training fees

The fee for participation shall be established by the Administrator.

PART 17. STATE WORK INCENTIVE PROGRAM

260:130-21-170. Purpose

(a) The rules in this Part establish policies and procedures to implement the State Work Incentive Program.

(b) The State Work Incentive Program is aimed at employing participants in the Temporary Assistance to Needy Families Program in Oklahoma and vocational rehabilitation clients of the Department of Rehabilitation Services in entry-level positions within state service. [74:840-5.16]

260:130-21-171. Eligibility and length of appointment

To be eligible for hire under the State Work Incentive Program, a person must be certified as a participant in the Temporary Assistance to Needy Families Program by a State Work Incentive Referral Form issued by the State of Oklahoma Department of Human Services, or be certified as an eligible individual by a State Work Incentive Program Certificate issued by the Department of Rehabilitation Services. A copy of the required certification will be provided to the Human Capital Management Division at the time of appointment. Agencies may employ eligible persons in the State Work Incentive Program for up to 2 years in full-time or part-time status.

260:130-21-172. Conditions of employment

(a) **No right of continued employment.** Employees hired under the State Work Incentive Program shall have no right or expectation of continued employment in any position because of participation in the State Work Incentive Program.

(b) **Eligibility for leave and benefits.** Employees hired under the State Work Incentive Program are eligible for leave and other benefits of state employment available to regular employees. Employees hired under the State Work Incentive Program must meet any other eligibility requirements established for such benefits

(c) **Leave without pay.** Employees hired under the State Work Incentive Program may be granted leave of absence without pay from the agency. Leave without pay in excess of a total of 5 working days shall extend the employee's two (2) years of eligibility under the State Work Incentive Program by the number of working days the employee is on leave without pay.

(d) **Eligibility for promotion.** Employees hired under the State Work Incentive Program may be reassigned or promoted while they are participating in the program

(e) **Performance evaluation.** Appointing Authorities shall evaluate the performance of employees hired through the State Work Incentive Program.

260:130-21-173. Conversion

Persons employed under the State Work Incentive Program shall be eligible for conversion to regular state employment status bypassing the trial period at the discretion of the Appointing Authority if the employee has:

- (1) completed two (2) years of continuous participation in the State Work Incentive Program, not including periods of leave without pay,
- (2) performed satisfactorily as evidenced by performance evaluations conducted, and
- (3) met the minimum requirements for the position.

SUBCHAPTER 23. OFFICE OF VETERANS PLACEMENT

260:130-23-1. Office of Veterans Placement

The Office of Veterans Placement is created within Human Capital Management of the Office of Management and Enterprise Services. Services of the Office of Veterans Placement shall include employment counseling, assistance in identifying transferable military skills, qualifications and career assessment, assistance in drafting competitive resumes, instruction in developing

comprehensive job search strategies and job placement assistance. Veterans who utilize the Office of Veterans Placement shall be guaranteed a reasonable offer of an interview for qualifying state service positions. Questions regarding reasonable interview offers will be reviewed by the Office of Veterans Placement. Such veterans will only be granted an interview for those jobs that the Office of Veterans Placement have determined to be an appropriate match for each veteran. The veteran will be required to present a letter from Oklahoma's Office of Veterans Placement to the hiring agency evidencing this requirement. Program eligible veteran complaints regarding an agency's hiring practices will be reviewed by the Office of Veterans Placement. After attempting to resolve these complaints at the lowest level possible, the complaints will be sent to that agency's human resources director, with a copy sent to the agency director, for review. This section shall not apply to special disabled veterans who are considered for employment under the provisions of Sections 401 through 404 of Title 72 of the Oklahoma Statutes. Provided, said veterans may elect instead to be considered for employment according to the procedures set out in this section.

SUBCHAPTER 25. WORKFORCE PLANNING

260:130-25-1. Workforce Planning

Human Capital Management of the Office of Management and Enterprise Services provides workforce planning to assist state agencies in analyzing the workforce, determining future workforce needs, and implementing solutions that may include but not be limited to workforce plans, succession strategies, and other employee-related interventions and programs so that agencies may accomplish their missions.

SUBCHAPTER 27. DISCIPLINARY ACTIONS

260:130-27-1. General

Each appointing authority is responsible for developing and maintaining a safe and productive work environment. Each appointing authority and each supervisor is responsible for promptly applying discipline when necessary that is equitable and suitable for the offense considering the circumstances.

260:130-27-2. Purpose

The rules in this subchapter provide the framework for developing standards and guidelines for applying prompt, equitable and suitable discipline.

260:130-27-3. Progressive discipline

Progressive discipline is a system designed to ensure not only the consistency, impartiality and predictability of discipline, but also the flexibility to vary penalties if justified by aggravating or mitigating conditions. Each employee has a duty and responsibility to comply with the agency's progressive discipline policy.

260:130-27-4. Records

(a) The Appointing Authority shall maintain documentation of discipline in the employee's agency disciplinary file as defined within these Rules consistent with the General Records Schedule of the Oklahoma Department of Libraries, Office of Archives and Records.

(b) An employee shall be given a copy of any disciplinary action document when it is placed in his or her agency disciplinary file.

(c) Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes, Oklahoma Open Records Act, shall govern access to disciplinary documents.

(1) An employee shall have a right to review disciplinary documents in his or her agency personnel record.

(2) The Civil Service Division, because of statutory responsibility, shall have a right of access to disciplinary documents.

(d) The Appointing Authority may specify procedures in the agency's progressive discipline plan for the review and removal of disciplinary documents from the employee's agency disciplinary record. Any such procedures shall be applied consistently and uniformly.

260:130-27-5. Progressive Discipline standards

The Civil Service Division shall establish and maintain standards of progressive discipline that shall be followed by all Appointing Authorities unless the Appointing Authority has received an exemption from the Civil Service Division from the standards. In order to request an exemption from the standards, the Appointing Authority must provide the Civil Service Division with a progressive discipline plan the Appointing Authority will follow in lieu of the standards. The Civil Service Division will review the exemption request and notify the requesting Appointing Authority in writing whether the request has been approved or denied. The standards can be found on the website maintained by the Civil Service Division. The progressive discipline standards shall not be required for employee separations that occur as a result of voluntary buy outs or reductions-in-force as set forth in the applicable Oklahoma statutes.