

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 59th Legislature (2023)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1794

By: Osburn of the House

and

Pugh of the Senate

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9 COMMITTEE SUBSTITUTE

10 An Act relating to public finance; amending 62 O.S.
11 2021, Section 34.301, as amended by Section 1,
12 Chapter 243, O.S.L. 2022 (62 O.S. Supp. 2022, Section
13 34.301), which relates to the Civil Service and Human
14 Capital Modernization Act; providing for powers and
15 duties of the Human Capital Management Administrator;
16 authorizing promulgation of rules; and providing an
17 effective date.

18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 62 O.S. 2021, Section 34.301, as
20 amended by Section 1, Chapter 243, O.S.L. 2022 (62 O.S. Supp. 2022,
21 Section 34.301), is amended to read as follows:

22 Section 34.301 A. This act shall be known and may be cited as
23 the "Civil Service and Human Capital Modernization Act".

24 B. The Human Capital Management Division and the Civil Service
Division of the Office of Management and Enterprise Services shall:

1 1. Establish and maintain a State Employee Dispute Resolution
2 Program, which may include mediation, to provide dispute resolution
3 services for state agencies and state employees. Actions agreed to
4 through the State Employee Dispute Resolution Program shall be
5 consistent with applicable laws and rules and shall not alter,
6 reduce or modify any existing right or authority as provided by
7 statute or rule;

8 2. Establish rules pursuant to the Administrative Procedures
9 Act as may be necessary to perform the duties and functions of this
10 act, including creating an Office of Veterans Placement to offer
11 counseling, assessment and assistance to veterans seeking state
12 employment;

13 3. Receive and only act on complaints by state employees
14 arising from disciplinary action;

15 4. Use administrative law judges as independent contractors or
16 administrative law judges provided by the Office of the Attorney
17 General to exercise the provisions of this act;

18 5. Submit quarterly reports on workload statistics to the
19 Governor, the Speaker of the Oklahoma House of Representatives and
20 the President Pro Tempore of the Oklahoma State Senate containing
21 the following information:

22 a. the number of cases, complaints and requests for
23 hearings filed, disposed of and pending with the
24 ~~Division~~ Divisions for each month of the quarter, and

1 b. a numerical breakdown of the methods of disposition of
2 such cases, complaints and requests for hearing.

3 Quarterly reports shall be submitted within thirty (30) days
4 following the last day of the month of the appropriate quarter; and

5 6. Create a confidential whistleblower program and serve as the
6 chief administrator of such program whereby a state employee may
7 confidentially report claims of agency or employee mismanagement as
8 well as criminal misuse of state funds or property. Mismanagement
9 includes fraudulent activity or abuse or violation of a well-
10 established, articulated, clear, and compelling public policy. The
11 Office of the Attorney General shall have the authority to
12 investigate and determine whether to prosecute such whistleblower
13 claims. The Attorney General shall also have the power to refer
14 such claims to the appropriate district attorney.

15 C. Complaints shall be filed with the Civil Service Division
16 within ten (10) business days of the date of when such action
17 occurred and hearings shall take place within thirty (30) business
18 days from the filing of the complaint.

19 D. Employees filing a complaint with the Civil Service Division
20 shall prove that there was no reasonable basis for the disciplinary
21 action by the state agency. The review of the merits of the
22 complaint shall be limited to the employee disciplinary file
23 directly at issue. Complaints relating to punitive transfers shall
24 be administrated through mediation first and shall only proceed to a

1 hearing if mediation is unsuccessful. Employees who were offered a
2 relocation incentive as set forth in administrative rule shall not
3 be deemed as being subject to a punitive transfer. Complaints
4 relating to written reprimands shall be administered through
5 mediation exclusively. Mediation may also be available for other
6 disciplinary actions.

7 E. Claimants shall be permitted to secure and utilize
8 representation during the adverse action process.

9 F. The presiding officer of any proceeding before the Civil
10 Service Division may require payment of reasonable attorney fees and
11 costs to the prevailing party if the position of the nonprevailing
12 party was without reasonable basis or was frivolous.

13 G. For purposes of this section, "disciplinary actions" means
14 termination, suspension without pay, involuntary demotion, punitive
15 transfers or written reprimand.

16 H. Nothing in this section shall apply to:

17 1. Persons employed by the Governor, Lieutenant Governor,
18 Oklahoma House of Representatives, Oklahoma State Senate,
19 Legislative Service Bureau, or the Legislative Office of Fiscal
20 Transparency;

21 2. Elected officials;

22 3. Political appointees;

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1 4. District attorneys, assistant district attorneys or other
2 employees of the district attorney's office, and the District
3 Attorneys Council;

4 5. The state judiciary or persons employed by the state
5 judiciary;

6 6. Not more than five percent (5%) of an agency's employees
7 designated as executive management as determined by the agency
8 director and the agency shall designate the employee's status as
9 state employee or executive management in the State of Oklahoma's
10 Human Resources Information System, maintained by Human Capital
11 Management;

12 7. Temporary employees employed to work less than one thousand
13 (1,000) hours in any twelve-month period;

14 8. Seasonal employees employed to work less than one thousand
15 six hundred (1,600) hours in any twelve-month period;

16 9. Employees in a trial period; or

17 10. State employees whose employment status is otherwise
18 provided by law.

19 I. Except as provided by subsection H of this section,
20 effective January 1, 2022, all state employee positions shall be
21 administered by the Human Capital Management Division of the Office
22 of Management and Enterprise Services, without reference to prior
23 classified or unclassified status.

1 J. ~~Under the administration and oversight of the Human Capital~~
2 ~~Management Division as set forth in subsection I of this section,~~
3 ~~state agencies shall continue to be responsible for developing and~~
4 ~~conducting policies and procedures for human resource activities,~~
5 ~~including, but not limited to, recruitment, retention, promotion,~~
6 ~~market-based pay analysis, training and development. In addition,~~
7 ~~state agencies shall develop procedures for screening, hiring and~~
8 ~~disciplinary actions of state employees subject to guidance and~~
9 ~~approval by the Division.~~ In collaboration with executive branch
10 agencies, and their Human Resources personnel, the Human Capital
11 Management Administrator shall establish and enforce minimum
12 mandatory standards, policies and procedures for recruitment,
13 retention, promotion, training, development, market-based pay
14 system, pay for performance system, and dispute resolution for
15 issues that do not rise to a disciplinary action as provided by the
16 Civil Service and Human Capital Modernization Act. The Human
17 Capital Management Administrator shall promulgate rules necessary to
18 carry out the authority set forth in this section.

19 K. The Civil Service Division is authorized to employ attorneys
20 or contract with private attorneys to serve as legal counsel to the
21 Civil Service Division. The attorneys shall be authorized to appear
22 for and represent the Civil Service Division in all litigation that
23 may arise from the discharge of its duties, including the
24 representation of the Civil Service Division when its decisions are

1 appealed to higher courts. Attorneys employed by the Office of
2 Management and Enterprise Services to represent the Civil Service
3 Division shall represent the Civil Service Division notwithstanding
4 its representation of the Office of Management and Enterprise
5 Services in the same or related matters pending before the Civil
6 Service Division or before any court. The Office of Management and
7 Enterprise Services shall establish internal administrative
8 procedures to ensure that all departments within the Office of
9 Management and Enterprise Services are provided independent legal
10 representation, and such simultaneous representation shall not, of
11 itself, be deemed to constitute a conflict of interest.

12 L. The Civil Service Division shall be exempt from the
13 requirements set forth in Section 20i of Title 74 of the Oklahoma
14 Statutes when carrying out the duties and functions of this act.

15 SECTION 2. This act shall become effective November 1, 2023.

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17 COMMITTEE REPORT BY: COMMITTEE ON GOVERNMENT MODERNIZATION AND
18 TECHNOLOGY, dated 02/22/2023 - DO PASS, As Amended and Coauthored.

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