

1 **SENATE FLOOR VERSION**

2 April 13, 2023

3 ENGROSSED HOUSE
4 BILL NO. 1794

By: Osburn of the House

and

Pugh of the Senate

5
6
7
8 An Act relating to public finance; amending 62 O.S.
9 2021, Section 34.301, as amended by Section 1,
10 Chapter 243, O.S.L. 2022 (62 O.S. Supp. 2022, Section
11 34.301), which relates to the Civil Service and Human
12 Capital Modernization Act; allowing for additional
13 documentation or witnesses for disciplinary actions
under certain circumstances; providing for the
designation of the status of employees; providing for
powers and duties of the Human Capital Management
Administrator; authorizing promulgation of rules; and
providing an effective date.

14
15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

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

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

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

23 1. Establish and maintain a State Employee Dispute Resolution
24 Program, which may include mediation, to provide dispute resolution

1 services for state agencies and state employees. Actions agreed to
2 through the State Employee Dispute Resolution Program shall be
3 consistent with applicable laws and rules and shall not alter,
4 reduce or modify any existing right or authority as provided by
5 statute or rule;

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

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

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

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

- 20 a. the number of cases, complaints and requests for
21 hearings filed, disposed of and pending with the
22 ~~Division~~ Divisions for each month of the quarter, and
23 b. a numerical breakdown of the methods of disposition of
24 such cases, complaints and requests for hearing.

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

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

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

17 D. Employees filing a complaint with the Civil Service Division
18 shall prove that there was no reasonable basis for the disciplinary
19 action by the state agency. The review of the merits of the
20 complaint shall be limited to the employee disciplinary file
21 directly at issue. In the event documents needed are not maintained
22 in the disciplinary file, or additional witnesses are requested by
23 the parties, the administrative law judge shall have the discretion
24 to allow additional documentation or witnesses regarding the

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

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

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

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

18 H. Nothing in this section shall apply to:

- 19 1. Persons employed by the Governor, Lieutenant Governor,
20 Oklahoma House of Representatives, Oklahoma State Senate,
21 Legislative Service Bureau, or the Legislative Office of Fiscal
22 Transparency;
- 23 2. Elected officials;
- 24 3. Political appointees;

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 status of the employee
9 as state employee or executive management in the State of Oklahoma's
10 Human Resources Information System, maintained by the Human Capital
11 Management Division;

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.

24

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 define statewide
12 minimum standards for human resource business processes, based on
13 industry standards and statewide best practices, to be followed by
14 all executive branch agencies. The Human Capital Management
15 Administrator has the authority to grant exceptions to the statewide
16 minimum standards. Additionally, the Human Capital Management
17 Administrator shall establish and maintain a statewide job catalog
18 and pay structure for executive branch jobs and establish policies
19 and procedures for a market-based pay system, pay-for-performance
20 system, and dispute resolution process for issues that do not rise
21 to a disciplinary action as provided by the Civil Service and Human
22 Capital Modernization Act. The Human Capital Management
23 Administrator shall promulgate rules necessary to carry out the
24 authority set forth in this section.

1 K. The Civil Service Division is authorized to employ attorneys
2 or contract with private attorneys to serve as legal counsel to the
3 Civil Service Division. The attorneys shall be authorized to appear
4 for and represent the Civil Service Division in all litigation that
5 may arise from the discharge of its duties, including the
6 representation of the Civil Service Division when its decisions are
7 appealed to higher courts. Attorneys employed by the Office of
8 Management and Enterprise Services to represent the Civil Service
9 Division shall represent the Civil Service Division notwithstanding
10 its representation of the Office of Management and Enterprise
11 Services in the same or related matters pending before the Civil
12 Service Division or before any court. The Office of Management and
13 Enterprise Services shall establish internal administrative
14 procedures to ensure that all departments within the Office of
15 Management and Enterprise Services are provided independent legal
16 representation, and such simultaneous representation shall not, of
17 itself, be deemed to constitute a conflict of interest.

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

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

22 COMMITTEE REPORT BY: COMMITTEE ON GENERAL GOVERNMENT
23 April 13, 2023 - DO PASS
24