

1 STATE OF OKLAHOMA

2 1st Session of the 59th Legislature (2023)

3 HOUSE BILL 1794

By: Osburn

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5
6 AS INTRODUCED

7 An Act relating to public finance; amending 62 O.S.
8 2021, Section 34.301, as amended by Section 1,
9 Chapter 243, O.S.L. 2022 (62 O.S. Supp. 2022, Section
10 34.301), which relates to the Civil Service and Human
11 Capital Modernization Act; providing for powers and
12 duties of the Human Capital Management Administrator;
13 authorizing promulgation of rules; and providing an
14 effective date.

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
services for state agencies and state employees. Actions agreed to

1 through the State Employee Dispute Resolution Program shall be
2 consistent with applicable laws and rules and shall not alter,
3 reduce or modify any existing right or authority as provided by
4 statute or rule;

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

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

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

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

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

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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. Complaints relating to punitive transfers shall
22 be administrated through mediation first and shall only proceed to a
23 hearing if mediation is unsuccessful. Employees who were offered a
24 relocation incentive as set forth in administrative rule shall not

1 be deemed as being subject to a punitive transfer. Complaints
2 relating to written reprimands shall be administered through
3 mediation exclusively. Mediation may also be available for other
4 disciplinary actions.

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

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

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

14 H. Nothing in this section shall apply to:

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

19 2. Elected officials;

20 3. Political appointees;

21 4. District attorneys, assistant district attorneys or other
22 employees of the district attorney's office;

23 5. The state judiciary or persons employed by the state
24 judiciary;

1 6. Not more than five percent (5%) of an agency's employees
2 designated as executive management as determined by the agency
3 director;

4 7. Temporary employees employed to work less than one thousand
5 (1,000) hours in any twelve-month period;

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

8 9. Employees in a trial period; or

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

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

16 ~~J. Under the administration and oversight of the Human Capital~~
17 ~~Management Division as set forth in subsection I of this section,~~
18 ~~state agencies shall continue to be responsible for developing and~~
19 ~~conducting policies and procedures for human resource activities,~~
20 ~~including, but not limited to, recruitment, retention, promotion,~~
21 ~~market-based pay analysis, training and development. In addition,~~
22 ~~state agencies shall develop procedures for screening, hiring and~~
23 ~~disciplinary actions of state employees subject to guidance and~~
24 ~~approval by the Division. In consultation with the executive branch~~

1 agencies, the Human Capital Management Administrator shall be
2 responsible for coordinating, managing, and implementing all human
3 resource activities for executive branch agencies. The Human
4 Capital Management Administrator shall establish and enforce minimum
5 mandatory standards for recruitment, retention, promotion, training,
6 development, market-based pay system, pay for performance system,
7 and dispute resolution for issues that do not rise to a disciplinary
8 action as provided by the Civil Service and Human Capital
9 Modernization Act. The Human Capital Management Administrator shall
10 promulgate rules necessary to carry out the authority set forth in
11 this section.

12 K. The Civil Service Division is authorized to employ attorneys
13 or contract with private attorneys to serve as legal counsel to the
14 Civil Service Division. The attorneys shall be authorized to appear
15 for and represent the Civil Service Division in all litigation that
16 may arise from the discharge of its duties, including the
17 representation of the Civil Service Division when its decisions are
18 appealed to higher courts. Attorneys employed by the Office of
19 Management and Enterprise Services to represent the Civil Service
20 Division shall represent the Civil Service Division notwithstanding
21 its representation of the Office of Management and Enterprise
22 Services in the same or related matters pending before the Civil
23 Service Division or before any court. The Office of Management and
24 Enterprise Services shall establish internal administrative

1 procedures to ensure that all departments within the Office of
2 Management and Enterprise Services are provided independent legal
3 representation, and such simultaneous representation shall not, of
4 itself, be deemed to constitute a conflict of interest.

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

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

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10 59-1-5057 LRB 12/28/22

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