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MEMORANDUM

To: Madam Chair Lynn and members of the Senate Committee on Commerce
From: Charles Reimer, Asst. Revisor
Date: 3/31/2015
Re: HB 2391

HB 2391 amends K.S.A. 2014 Supp. 75-2935, which defines generally the division for state employees between the classified and the unclassified services.

Generally, classified employees are entitled to certain rights and procedures regarding demotion, dismissal or suspension. Appeals may be taken to the state civil service board.

Unclassified employees do not have such constitutional property rights in their employment.

The Kansas civil service statutory scheme governing both classified and unclassified employees is found at Chapter 75, Article 29 of the Kansas Statutes Annotated.

Section 1.

1. Positions may be designated as unclassified by an agency for new hires, rehires, and voluntary transfers

New language in Section 1, amending K.S.A. 2014 Supp. 75-2935, which sets forth basic divisions between unclassified and classified positions, provides that at the discretion of the appointing authority (the agency), the unclassified service may include positions held by persons who are in newly hired positions or rehired, voluntarily transferred, voluntarily promoted or voluntarily demoted into a position so designated. Pg. 3.

2. An agency may designate any vacant position as an unclassified position.

Section 1 permits the appointing authority to make any vacant position within the classified service into an unclassified position. Pg. 4. This authority is provided “notwithstanding” a long list of statutes pertaining to specific agencies or boards that designate classified and unclassified positions within the particular agency or board. Pg. 4.

3. Agencies that must meet federal employment policy standards are permitted to do so.

Section 1 has language to address federal law requiring federally prescribed merit-based employment standards for certain employees in certain agencies that utilize federal funding and administer federal programs. Pg. 4-5. Those agencies could implement binding policies to meet the federal requirements if they hire an individual into an unclassified position.

The House Committee of the Whole amended “may” to “shall” at page 5, line 2.

Federal Office of Personnel Management regulations provide these standards are applicable to:

“those State and local governments that are required to operate merit personnel systems as a condition of eligibility for Federal assistance or participation in an intergovernmental program. Merit personnel systems are required for State and local personnel engaged in the administration of assistance and other intergovernmental programs, irrespective of the source of funds for their salaries, where Federal laws or regulations require the establishment and maintenance of such systems.”

5 C.F.R. § 900.602. (See also 42 U.S.C.A. § 4728.)

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The standards are:

“(a) Recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

“(b) Providing equitable and adequate compensation.

“(c) Training employees, as needed, to assure high quality performance.

“(d) Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected.

“(e) Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, status as parent, labor organization affiliation or nonaffiliation in accordance with chapter 71 of title V, or any other non-merit-based factor, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and with proper regard for their privacy and constitutional rights as citizens. This “fair treatment” principle includes compliance with the Federal equal employment opportunity and nondiscrimination laws.

“(f) Assuring that employees are protected against coercion for partisan political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.”

Section 2

REMOVED BY HOUSE COMMITTEE

Section 2 originally provided that executive branch employees eligible to receive a longevity bonus would only receive the bonus if the legislature appropriated money in appropriations acts.

Section 3

REMOVED BY HOUSE COMMITTEE

Section 3 originally limited the provision authorizing state employees to share medical leave to situations involving a life threatening medical condition.

The bill if passed becomes effective July 1, 2015.

There is a fiscal note.