

# NOTICES OF EXEMPT RULEMAKING

The Administrative Procedure Act requires the *Register* publication of the rules adopted by the state's agencies under an exemption from all or part of the Administrative Procedure Act. Some of these rules are exempted by A.R.S. §§ 41-1005 or 41-1057; other rules are exempted by other statutes; rules of the Corporation Commission are exempt from Attorney General review pursuant to a court decision as determined by the Corporation Commission.

## NOTICE OF EXEMPT RULEMAKING

### TITLE 2. ADMINISTRATION

#### CHAPTER 5. DEPARTMENT OF ADMINISTRATION STATE PERSONNEL SYSTEM

*Editor's Note: The following Notice of Exempt Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 730.)*

[R13-42]

#### PREAMBLE

- 1. Articles, Parts, or Sections Affected (as applicable)**

<u>Articles, Parts, or Sections Affected (as applicable)</u>	<u>Rulemaking Action</u>
R2-5A-301	Amend
R2-5A-307	Amend
R2-5A-402	Amend
R2-5A-501	Amend
R2-5A-B602	Amend
R2-5A-B604	Amend
R2-5B-102	Amend
R2-5B-205	Amend
R2-5B-602	Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statutes (specific), and the statute or session law authorizing the exemption:**

Authorizing statute(s): A.R.S. §§ 41-703(3), 41-743(B)(3) and 41-771  
Implementing statute(s): A.R.S. §§ 38-611, 41-742, 41-745, 41-747, 41-748, 41-749 and 41-772  
Statute or session law authorizing the exemption: Laws 2012, Ch. 321, § 170
- 3. The effective date of the rules and the agency's reason it selected the effective date:**

The effective date of the rules is April 13, 2013. Because the rules impact state agencies and state employees, the Department selected April 13, 2013, as the effective date to coincide with the State payroll calendar. It is anticipated the rules will be published in the *Arizona Administrative Register* on April 12, 2013. April 13, 2013, is the beginning of the pay period following the anticipated publication date.
- 4. A list of all previous notices appearing in the Register addressing the exempt rules:**

Notice of Public Information: 19 A.A.R. 204, February 8, 2013
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Christine Bronson, Manager  
Address: Arizona Department of Administration  
100 N. 15th Ave.  
Phoenix, AZ 85007  
Telephone: (602) 542-5482  
Fax: (602) 542-2796  
E-mail: [Christine.Bronson@azdoa.gov](mailto:Christine.Bronson@azdoa.gov)
- 6. An agency's justification and reason why rules should be made, amended, repealed, or renumbered to include an explanation about the rulemaking:**

Laws 2012, Ch. 321 consolidated seven different personnel systems within the executive branch, including the ADOA Human Resources System, into the State Personnel System and transitioned a majority of the State workforce to at will uncovered status. The Department was granted authority to adopt rules relating to personnel and personnel

Notices of Exempt Rulemaking

administration for both covered and uncovered employees in the State Personnel System. The rules for the State Personnel System were implemented effective September 29, 2012. In this rulemaking, the Department amends several rules in A.A.C. Title 2, Chapter 5 to improve clarity and understandability of the rules.

**7. A reference to any study relevant to the rules that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rules, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

The agency did not review or rely on any study for this rulemaking.

**8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**9. The summary of the economic, small business, and consumer impact, if applicable:**

Laws 2012, Ch. 321, § 170 authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, for the purposes of establishing rules to implement the provisions of the legislation until April 30, 2013. As a result, this rulemaking is exempt from the requirements of the Administrative Procedures Act and no economic, small business, and consumer impact statement is required.

**10. A description of any changes between the proposed rulemaking, including any supplemental proposed rulemaking, and the final rulemaking package (if applicable):**

Not applicable

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments, if applicable:**

The Department provided public notice and at least two opportunities for comment on the rulemaking.

On February 7, 2013, the Department notified every affected state agency via e-mail that the Department was considering changes to several rules in A.A.C. Title 2, Chapter 5 and had filed a Notice of Public Information (NPI) to initiate the first opportunity for public comment. The NPI was published in the *Arizona Administrative Register* on February 8, 2013, and included a listing of the rules the Department anticipated revising, notification that the Department intended to have the rule revisions finalized by April 13, 2013, and the address to the Department's web site for links to the NPI and a fillable comment form. During the initial comment period, the Department received several inquiries and comments relating to the NPI published on February 8, 2013. The Department considered the comments that were submitted; however, most of the comments were of relatively narrow focus, were inconsistent with A.R.S. § 41-742, and would have contradicted the Legislative intent of personnel reform. As such, no substantive changes were identified based on the comments received during this initial comment period.

In addition, on February 19, 2013, and on February 26, 2013, at agency Human Resources managers' meetings, the Department reminded attendees that the Department was in the process of revising several rules to improve clarity and understandability. Attendees were also advised of the web site information and the Department's anticipated time-frame.

On February 27, 2013, the Department posted the draft rule revisions to its web site to provide an opportunity to comment on the draft rules, initiating the second opportunity for public comment. On this same date, the Department notified every affected state agency via e-mail that the draft rule revisions had been posted to the Department's web site and provided the web site address for links to the draft rule revisions to view the draft language of the anticipated revisions and to a fillable comment form. The e-mail reiterated that the Department intended to finalize the rule revisions by April 13, 2013.

Throughout the process, the Department continually updated its web site to provide links to rulemaking documents, draft rule revisions, and links and fillable forms for submitting comments. Although Laws 2012, Ch. 321, § 170 authorizes exemption from the rulemaking requirements of A.R.S. Title 41, Chapter 6, and no response to comments is required, the Department did make minor, non-substantive changes based on the inquiries and comments.

**12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules. When applicable, matters shall include, but not be limited to:**

**a. Whether the rules require a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Not applicable

**b. Whether a federal law is applicable to the subject of the rules, whether the rules are more stringent than the federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not applicable

**c. Whether a person submitted an analysis to the agency that compares the impact of the rules of the competitiveness of business in this state to the impact on business in other states:**

Not applicable

**13. A list of any incorporated by reference material and its location in the rules:**

Notices of Exempt Rulemaking

None

**14. Whether the rules were previously made, amended, repealed or renumbered as emergency rules. If so, the agency shall state where the text changed between the emergency and the exempt rulemaking packages:**

The rules were not previously made, amended, repealed or renumbered as emergency rules.

**15. The full text of the rules follows:**

**TITLE 2. ADMINISTRATION**

**CHAPTER 5. DEPARTMENT OF ADMINISTRATION  
STATE PERSONNEL SYSTEM**

**SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES  
ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT**

Section  
R2-5A-301. General  
R2-5A-307. Appointment

**ARTICLE 4. COMPENSATION SYSTEM**

Section  
R2-5A-402. Salary Administration

**ARTICLE 5. CONDITIONS OF EMPLOYMENT**

Section  
R2-5A-501. Standards of Conduct

**ARTICLE 6. LEAVE**

**PART B. PAID LEAVE**

Section  
R2-5A-B602. Annual Leave  
R2-5A-B604. Administrative Leave

**SUBCHAPTER B. COVERED EMPLOYEES**

**ARTICLE 1. GENERAL**

Section  
R2-5B-102. Applicability

**ARTICLE 2. EMPLOYMENT STATUS**

Section  
R2-5B-205. Change from Covered to Uncovered Service

**ARTICLE 6. REDUCTION IN FORCE**

Section  
R2-5B-602. Reduction in Force Procedures

**SUBCHAPTER A. COVERED AND UNCOVERED EMPLOYEES  
ARTICLE 3. RECRUITMENT, SELECTION AND APPOINTMENT**

**R2-5A-301. General**

An agency head shall follow the ~~guidelines~~ requirements outlined in this Article to identify and appoint qualified candidates to fill vacancies. The Director shall establish and maintain a centralized employment system that includes a job board for announcing vacancies in state employment, applicant tracking and candidate identification. The Director shall establish procedures for state agencies to request approval for transportation or other travel expenses or moving expenses provided by A.R.S. § 35-196.01 for out of state candidates.

Notices of Exempt Rulemaking

**R2-5A-307. Appointment**

- A. General. Except as provided in A.R.S. Title 41, Chapter 4, Articles 4 and 5, all appointments shall be at will uncovered. An agency head may appoint a current state employee who accepts a change in assignment or an external candidate in accordance with these rules and the procedures established by the Director.
- B. Types of Appointment.
  - 1. A regular appointment may be:
    - a. Full-time employment;
    - b. Part-time employment;
    - c. Subject to funding availability, such as federal or grant funding; or
    - d. To a trainee position.
  - 2. A temporary appointment may be made for a recurring period of time up to a maximum of 1500 hours in any one position per agency each calendar year. A temporary appointment employee may work full time for a portion of the year, intermittently, on a seasonal basis, or on an as needed basis. An employee in a pool classification is considered a temporary appointment.
  - 3. An agency head may place an employee on special assignment within the agency. A special assignment may be made non-competitively and for up to 6 months with the concurrence of ~~the employee~~, the agency head of the employing agency and the Director. A special assignment shall not exceed 6 months unless extended by the Director. An agency head shall not make successive special assignments of the same person to the same class.

**ARTICLE 4. COMPENSATION SYSTEM**

**R2-5A-402. Salary Administration**

- A. General. The Director shall develop procedures for salary administration for use by all agencies when setting the salary of an employee. In setting an employee's salary, an agency head shall consider such factors as the employee's education, experience, skills, performance, and current or former salary, as well as the current salaries of employees in the same class in the agency and the relative experience and performance of those employees.
- B. Classes. The Director shall assign each class to a salary range and to a grade.
- C. Salary. The base salary of an employee shall be not less than the minimum nor more than the maximum of the salary range of the class to which the employee's position is allocated, except as provided by these rules.
- D. Salary adjustment. The salary used to compute a salary adjustment is the employee's base salary. Following an adjustment to the base salary, an agency shall add to the new rate of pay any special pay supplement still valid.
- E. New hire starting rate. An agency head may offer a salary to a new hire within the salary range of the class to which the employee is being appointed in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
- F. Promotion. An employee who has a change in assignment from a position in one class to a position in another class having a higher grade shall receive a salary increase as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
- G. Demotion.
  - 1. An employee who has a change in assignment from a position in one class to a position in another class having a lower grade, whether voluntary or involuntary, shall receive a salary decrease as determined by the agency head in accordance with the procedures and guidelines published by the Director, unless an exception is approved by the Director.
  - 2. ~~If the employee's demotion is involuntary, the~~ A demoted employee shall not be eligible for a salary ~~an~~ increase to base salary for six months after the effective date of the demotion to the new position, other than a salary increase that is legislatively mandated. After six months, the employee may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.
- H. Lateral transfer. An employee who has a change in assignment from a position in one class to a position in another class having the same grade shall receive no increase in salary, unless an exception is approved by the Director. The Director may approve a salary increase based upon documentation of recruitment difficulties to fill the position, specific needs identified by the agency, or the employee's qualifications. Transferred employees are not eligible for increases to base salary during their first six months in the new job unless approved by the Director. An employee who transfers to another agency may become eligible for a salary increase only after a performance evaluation in the new position for which the employee received an overall rating of "meets expectations" or higher.
- I. Reversion of covered employee. A covered employee who is reverted under the rules in Subchapter B shall be paid the same salary as that paid prior to the promotion, plus the percentage or dollar amount of increase of an intervening general salary adjustment for which the employee was eligible.
- J. Job reallocation.
  - 1. The base salary of an employee in a position that is reallocated to a class in a higher pay range may receive a salary increase in accordance with the procedures and guidelines published by the Director. If increasing the base salary of

Notices of Exempt Rulemaking

an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.

2. The base salary of an employee in a position that is reallocated to a class with the same or lower pay range shall remain the same provided that the employee's salary is within the pay range of the position. If the employee's salary is less than the minimum of the salary range or greater than the maximum salary of the new pay range, the employee's salary shall be the minimum salary or the maximum salary of the new pay range, respectively.

**K. Job regrade.**

1. The base salary of an employee in a class that is reassigned to a higher grade shall be adjusted by the amount determined by the Director. If adjusting the base salary of an employee would result in a salary level that is less than the minimum or greater than the maximum salary of the pay range, the employee's salary shall be the minimum or the maximum salary of the pay range, respectively.
2. The base salary of an employee in a class that is reassigned to a lower grade shall remain the same provided that the employee's salary is at or above the minimum salary of the new pay range of the class, and may be greater than the maximum salary of the pay range. If the employee's salary is greater than the maximum, the employee is not eligible for an increase to base pay until the employee's salary is less than the maximum salary of the new pay range.

**L. Merit increases.**

1. The Director shall establish guidelines for merit increases to base pay.
2. Merit increases shall be available:
  - a. To uncovered employees.
  - b. To covered employees only if such increases are legislatively appropriated.
3. Subject to the guidelines established by the Director:
  - a. Merit increases may be implemented at the discretion of the agency head.
  - b. Merit increases are subject to the availability of funding and must be within an agency's appropriation unless otherwise legislatively appropriated.
4. An agency head shall report to the Director on the utilization of merit increases pursuant to the reporting requirements in the guidelines established by the Director.

**M. Legislatively-appropriated salary adjustments.** Subject to legislative appropriation, the Director shall determine employee eligibility and criteria for salary adjustments.

**ARTICLE 5. CONDITIONS OF EMPLOYMENT**

**R2-5A-501. Standards of Conduct**

**A. Required conduct.** A state employee shall at all times:

1. Comply with federal and state laws and rules, statewide policies and employee handbook, and agency policies and directives;
2. Maintain high standards of honesty, integrity, and impartiality, free from personal considerations, or favoritism;
3. Be courteous, considerate, and prompt in interactions with and serving the public and other employees; and
4. Conduct himself or herself in a manner that will not bring discredit or embarrassment to the state.

**B. Prohibited conduct.** A state employee shall not:

1. Use his or her official position for personal gain, or attempt to use, or use, confidential information for personal advantage;
2. Permit himself or herself to be placed under any kind of personal obligation that could lead a person to expect official favors;
3. Perform an act in a private capacity that may be construed to be an official act;
4. Accept or solicit, directly or indirectly, anything of economic value as a gift, gratuity, favor, entertainment, or loan that is, or may appear to be, designed to influence the employee's official conduct. This provision shall not prohibit acceptance by an employee of food, refreshments, or unsolicited advertising or promotional material of nominal value;
5. Directly or indirectly use or allow the use of state equipment or property of any kind, including equipment and property leased to the state, for other than official activities unless authorized by written agency policy or as otherwise allowed by these rules;
6. Inhibit a state employee from joining or refraining from joining an employee organization; or
7. Take disciplinary or punitive action against another employee that impedes or interferes with that employee's exercise of any right granted under the law or these rules.

**C. Consequences of non-compliance.** An employee who violates the standards of conduct requirements listed in subsection (A) or (B) may be disciplined or separated from state employment. Any such actions involving a covered employee shall be in accordance with the rules in Subchapter B, Article 3.

**Notices of Exempt Rulemaking**

**ARTICLE 6. LEAVE**

**PART B. PAID LEAVE**

**R2-5A-B602. Annual Leave**

**A. Definitions.** For the purposes of this Section:

1. "Annual leave" means a period of approved absence with pay that is not chargeable to another category of leave.
2. "Hire date" means the employee's first day of work upon hire or, if the employee has a break in service, rehire.

**B. Accrual.**

1. All employees, except temporary and part-time employees shall accrue annual leave as follows:
  - a. Covered employees shall accrue annual leave in accordance with the following schedule:

Credited Service	Hours Bi-weekly
Fewer than 3 years	3.70
3 years but fewer than 7 years	4.62
7 years but fewer than 15 years	5.54
15 years or more	6.47

- b. Except as provided in subsection (B)(1)(c), uncovered employees shall accrue leave based on the following schedule:

Credited Service	Hours Bi-weekly
Fewer than 3 years	4.00
3 years but fewer than 9 years	5.54
9 years or more	6.47

- c. An uncovered employee shall accrue annual leave at the rate of 6.47 hours bi-weekly if:
        - i. The employee's hire date is prior to September 29, 2012, the employee has remained employed without a break in service since that date, and the employee either was uncovered prior to September 29, 2012 or became uncovered in accordance with A.R.S. Title 41, Chapter 4, Article 4; or
        - ii. The employee is in a position listed in A.R.S. § 41-742(F).

2. Temporary employees shall not accrue annual leave.
3. Part-time employees who:
  - a. Work 1/4 time, 1/2 time, or 3/4 time shall accrue a proportional amount of annual leave;
  - b. Work a percentage of full-time other than 1/4 time, 1/2 time, or 3/4 time shall accrue annual leave at the next lower rate;
  - c. Work less than 1/4 time shall not accrue annual leave.
4. Except as provided by R2-5A-D602 for an employee on industrial leave, an eligible employee accrues annual leave each bi-weekly pay period if the employee is in pay status for at least one-half of the employee's scheduled work hours in that pay period.
5. An annual leave accrual is credited on the last day of the bi-weekly pay period in which the accrual is earned and is available for use on the first day of the following pay period.
  - a. Annual leave accrued during the last pay period that begins in a calendar year is not subject to forfeiture under subsection (D).
  - b. An employee who is separating from state employment is compensated in accordance with subsection (I) for annual leave accrued through the employee's last date of employment.
6. The effective date for change in the accrual rate is the first day of the pay period immediately following the attainment of the required credited service.

**C. Credited service.**

1. Credited service shall be calculated from the first day of the first complete pay period worked.
2. Credited service shall include:
  - a. A period of service as an employee of a state budget unit before a break in service of less than two years;
  - b. A period of leave without pay of 240 hours or less;
  - c. Family and Medical Leave Act (FMLA) leave;
  - d. Military leave taken under A.R.S. §§ 26-168, 26-171, or 38-610; and

Notices of Exempt Rulemaking

- e. Active military service of an employee who is restored to state employment under A.R.S. § 38-298.
- D. Accumulation.**
- 1. Except as provided in subsections (D)(2) and (3), an employee shall forfeit annual leave in excess of the accumulation limit as of the last day of the last pay period that begins in a calendar year. The accumulation limit is:
    - a. 240 hours for a covered employee.
    - b. 320 hours for an uncovered employee.
  - 2. An agency head may request an exception to the accumulation limit contained in subsection (D)(1) for an employee in an individual case.
    - a. An agency head seeking an exception shall submit a written request to the Director that contains a plan to use the excess hours during the following calendar year, pay the employee for the excess hours, or a combination of both.
    - b. The Director may approve, modify, or deny the request.
  - 3. Annual leave earned for working on a day on which a state holiday is observed is not included in the accumulation limit specified in subsection (D)(1) and shall not be forfeited.
- E. Use of annual leave.**
- 1. An employee may take annual leave at any time approved by the agency head.
  - 2. An agency head shall not advance annual leave to an employee.
- F. Donation of annual leave.**
- 1. Definitions. For the purposes of this subsection:
    - a. *“Immediate family” means the recipient employee’s parent, spouse, or child, whether natural, adopted, foster, or step.* A.R.S. § 41-748(B)(1)
    - b. *“Family” means spouse, natural child, adopted child, foster child, stepchild, natural parent, stepparent, adoptive parent, grandparent, grandchild, brother, sister, sister-in-law, brother-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, nephew, or niece.* A.R.S. § 41-748(B)(2)
    - c. *“Disability that is caused by pregnancy or childbirth” means, as certified by a licensed health care practitioner:*
      - i. An employee is unable to work due to the employee’s pregnancy, childbirth, or medical care associated with the pregnancy or childbirth; or
      - ii. A member of the employee’s immediate family requires assistance to perform regular daily activities due to the immediate family member’s pregnancy, childbirth, or medical care associated with the pregnancy or childbirth.
    - d. *“Extended” means a period of at least three consecutive weeks.*
    - e. *“Seriously incapacitating” means a licensed health care practitioner certifies that an illness, injury, or disability that is caused by pregnancy or childbirth:*
      - i. Involves in-patient care, or
      - ii. Involves continuing treatment.
  - 2. Eligibility to receive donation of annual leave. An employee who has exhausted all available leave balances is eligible to receive donations of annual leave if, as certified by a licensed health care practitioner:
    - a. The employee is unable to work due to:
      - i. A seriously incapacitating and extended illness or injury, or
      - ii. A seriously incapacitating and extended disability that is caused by pregnancy or childbirth, or
    - b. The employee needs to care for a member of the employee’s immediate family who has:
      - i. A seriously incapacitating and extended illness or injury, or
      - ii. A seriously incapacitating and extended disability that is caused by pregnancy or childbirth.
  - 3. Eligibility to donate annual leave. An employee may donate annual leave to another employee who has exhausted all available leave balances if:
    - a. The recipient employee is employed in the same state agency as the donating employee, or
    - b. The recipient employee is a family member of the donating employee and employed in another state agency.
  - 4. Exhaustion of available leave. Before using donated annual leave, a recipient employee:
    - a. Who has a qualifying illness, injury, or disability caused by pregnancy or childbirth shall exhaust all available sick leave, compensatory leave, annual leave earned for working on a day on which a state holiday is observed and accrued annual leave; or
    - b. Whose immediate family member has a qualifying illness, injury, or disability caused by pregnancy or childbirth shall exhaust sick leave granted in accordance with R2-5A-B603(A)(4), if available, and all available compensatory leave, annual leave earned for working on a day on which a state holiday is observed and accrued annual leave.
  - 5. Calculation of hours donated. An agency head shall adjust the number of hours of annual leave donated in proportion to the hourly rate of pay of the donating employee and the recipient employee. To calculate the number of hours of donated annual leave:
    - a. Multiply the actual number of hours donated by the donating employee’s hourly rate of pay, and

Notices of Exempt Rulemaking

- b. Divide the result by the recipient employee's hourly rate of pay.
  - 6. Maximum duration. A recipient employee is limited to using donated annual leave to allow the employee to be absent from work for a maximum of six consecutive months, or if the leave is intermittent, 1040 hours (the employee's available leave plus leave donated to the employee) for each qualifying occurrence. If the recipient employee has a seriously incapacitating and extended illness or injury, or a seriously incapacitating and extended disability that is caused by pregnancy or childbirth and the employee applies for Long-term Disability (LTD) by the end of the fifth month of the employee's leave, the recipient employee may continue to use donated annual leave for up to 60 additional days or until LTD benefit payments begin, whichever is sooner.
  - 7. Unused donated leave. If the recipient employee separates from state employment, recovers before using all donated leave, attains the maximum donation of annual leave as permitted under subsection (F)(6), or the need for the donated annual leave is otherwise abated, the agency head shall return unused donated leave to employees who donated leave on a pro-rata basis.
- G. Payment of annual leave. Subject to funding availability:**
- 1. An agency head may pay an employee at any time at the employee's current rate of pay for all or any portion of the employee's annual leave that was earned as the result of working on a day on which a state holiday is observed.
  - 2. An agency head may ~~request and the Director may~~ approve pay to a non-separating employee for all or any portion of the employee's accumulated and unused annual leave at the employee's current rate of pay subject to the following:
    - a. Agency procedures. Before ~~requesting approval to pay~~ **paying** an employee under this subsection, an agency head shall develop written standards and procedures that provide for equal consideration of all employees similarly situated. The agency head shall submit proposed standards and procedures and any subsequent changes to the Director for approval. The agency's procedures shall include at minimum:
      - i. Request and approval procedures;
      - ii. Documentation required to support the request for payment;
      - iii. Any limitations, as applicable, including, but not limited to: the maximum number of times an employee may receive payment under this subsection; the maximum number of hours an employee may be paid per occurrence; the minimum number of hours of annual leave an employee must have used in the previous 12 months; and the minimum balance an employee is required to maintain after payout, if any.
    - b. Restrictions. ~~The agency head shall obtain the employee's concurrence~~ **If if the** payment would reduce the employee's annual leave balance to fewer than:
      - i. ~~240 hours for a covered employee;~~ **240 hours for a covered employee.**
      - ii. ~~320 hours for an uncovered employee.~~ **320 hours for an uncovered employee.**
- H. Movement.**
- 1. To another state agency. If an employee moves from one agency to another state agency, the employee's accumulated and unused annual leave shall be transferred to the employee's annual leave account in the new state agency, unless:
    - a. The provisions of subsection (H)(2) apply; or
    - b. The employee's leave exceeds the accumulation limit contained in subsection (D)(1). An agency head may pay an employee who transfers to another state agency for all excess annual leave at the time of the transfer. An agency head may transfer part or all of the employee's excess annual leave accumulated by the employee who transfers to another agency with the gaining agency's concurrence. If the gaining agency does not concur, the losing agency shall pay all of the unused excess annual leave that the gaining agency will not accept.
  - 2. To an employment status ineligible for leave accrual. If an employee becomes ineligible for accrual of annual leave under R2-5A-A601(B), the agency head or the agency head of the losing agency if the employee moves to another state agency, shall pay the employee for all unused and unforfeited annual leave at the employee's current rate of pay immediately before the change in status.
- I. Separation.** An agency head shall pay an employee who separates from state employment for all unused and unforfeited annual leave at the employee's current rate of pay.

**R2-5A-B604. Administrative Leave**

- A. General.** An agency head may authorize an employee to be absent with pay on administrative leave during a state of emergency declared by the Governor or:
- 1. In other emergency situations such as extreme weather conditions, fire, flood, or malfunction of publicly-owned or controlled machinery or equipment.
  - 2. To relieve an employee of duties temporarily during the investigation of alleged wrongdoing by the employee or during a disciplinary or dismissal process, subject to the requirements outlined in subsections (B) and (C).
- B. Reporting administrative leave.** If an employee's administrative leave totals 80 consecutive hours, the agency head shall submit a report to the Director and for each week thereafter, until the employee's administrative leave is terminated. The report shall include:
- 1. The name of the agency,
  - 2. The employee identification number (EIN) of the employee,
  - 3. The name of the employee,

Notices of Exempt Rulemaking

4. The employment status of the employee,
  5. The date the employee was placed on administrative leave,
  6. The number of hours the employee has been on administrative leave as of the date of the report, and
  7. A brief description as to why the employee is on administrative leave.
- C. Approval of Director. If an employee's administrative leave is anticipated to exceed 240 consecutive working hours, the agency head shall obtain the approval of the Director.
1. An agency head requesting approval to continue an employee's administrative leave for more than 240 working hours shall submit a request to the Director for approval at least five business days before the employee's administrative leave will total 240 working hours. If circumstances beyond the agency's control do not permit at least five business days' notice, the agency head shall submit the request as soon as the agency head is aware of the necessity for the request. The request shall include all of the information listed in subsection (B), the reason the administrative leave will extend beyond 240 working hours and the anticipated date the administrative leave will be terminated.
  2. The Director shall review the request and approve, modify or deny the request within three business days of receipt.

**SUBCHAPTER B. COVERED EMPLOYEES**

**ARTICLE 1. GENERAL**

**R2-5B-102. Applicability**

- A. The rules in this Subchapter are applicable to covered positions, applicants for covered positions and covered employees in the State Personnel System.
- B. Covered service is limited to the following:
1. An employee who was in the state service as either a probationary or permanent status employee, was not required to become at will uncovered in accordance with A.R.S. Title 41, Chapter 4, Article 4, and who does not:
    - a. Voluntarily elect to become uncovered at will.
    - b. Voluntarily accept a change in assignment to a position in the uncovered service.
    - c. Have a break in service.
  2. A newly hired employee who is appointed or a current uncovered employee who voluntarily accepts a change in assignment to:
    - a. A position in the Arizona Department of Corrections that is classified as a Correctional Officer I, Correctional Officer II, Correctional Officer III, or a Community Corrections Officer; or
    - b. A position in any state agency that requires certification as a full authority peace officer by the Arizona Peace Officer Standards and Training Board, provided the position is not in the uncovered service.

**ARTICLE 2. EMPLOYMENT STATUS**

**R2-5B-205. Change from Covered to Uncovered Service**

- A. Voluntary election. A covered employee may voluntarily elect to become an at will uncovered employee without a change in assignment. Such an election is subject to the approval of the head of the employing agency and the Director. If approved, the effective date of the employee's change to uncovered service shall be the first day of the pay period immediately following the Director's approval.
- B. Change in assignment. Except for a special assignment, a covered employee who voluntarily accepts a change in assignment to a position that is not in the covered service, regardless of whether the voluntary change in assignment is a promotion, demotion, or lateral transfer, is an at will uncovered employee. The effective date of the employee's change to uncovered service shall be the same as the effective date of the change in assignment. A special assignment is not a change in assignment.
- C. Return to state employment. A covered employee who has a break in service and returns to employment in an agency in the State Personnel System in any capacity shall be an at will uncovered employee, unless the appointment is to a position in the covered service.

**ARTICLE 6. REDUCTION IN FORCE**

**R2-5B-602. Reduction in Force Procedures**

- A. General.
1. An agency head shall submit to the Director a proposal to conduct a reduction in force if required for one or more of the following reasons:
    - a. Lack of funds or work,
    - b. Abolition of one or more covered positions,
    - c. Material change in job duties or agency organization, or
    - d. Introduction of a cost reduction initiative.
  2. An agency head shall submit the proposal for a reduction in force at least 30 business days before the proposed effective date of the reduction in force. If circumstances beyond the agency's control do not permit at least 30 business days' notice, the agency head shall submit the proposal as soon as the agency head is aware of the necessity for a

Notices of Exempt Rulemaking

- reduction in force.
3. An agency head shall include all of the following in the proposal for a reduction in force:
    - a. The reason for the reduction in force;
    - b. The proposed scope of the reduction in force, which shall be limited to either:
      - i. The agency,
      - ii. An organizational unit of the agency, or
      - iii. Agency operations within a geographic area,
    - c. Each specific covered position proposed for elimination and an organization chart identifying each position, and
    - d. The proposed effective date of the reduction in force.
  4. An agency head shall submit a proposal that is consistent with A.R.S. § 41-772 and this Section.
  5. An agency head shall not approve a personnel action that would have an effect on the reduction in force after the agency head has submitted a proposal for a reduction in force.
  6. An agency head shall not re-establish a position that was abolished as a result of a reduction in force for two years if the position was filled when the reduction in force occurred, unless the position was abolished due to fiscal constraints, legislative action, or court order.
- B.** Administration of reduction in force. The Director shall review and approve, modify or deny a reduction in force within 20 business days of receipt. Upon approval of the Director to conduct a reduction in force:
1. An agency head shall separate a covered employee who is not a permanent status employee in the class affected by the reduction in force in the following order before any reduction in force action is taken that affects a permanent status employee, provided the separation of the non-permanent status employee will accomplish, or assist in accomplishing, the purpose of the reduction in force:
    - a. Temporary employee,
    - b. Original probationary employee, and
    - c. Limited appointment employee.
  2. An agency head shall use retention points to identify a permanent status employee within a class series affected by a reduction in force for retention in the employee's current position, transfer, reduction, or separation based on the employee's relative standing on the retention point list.
  3. An agency head shall base retention points upon performance calculated in accordance with the instructions in subsections (C) and (D).
  4. An employee on promotional probation or special assignment shall compete for retention in the employee's permanent status class.
  5. An employee in an underfill position shall compete for retention in the employee's permanent status class.
  6. A permanent part-time employee shall compete for retention against another permanent part-time employee in the same class.
- C.** Calculation of retention points. An agency head shall compute the average score of a maximum of the three most recent performance evaluations in the 24 months concluded before the date of proposal for a reduction in force. An employee's average score shall be the employee's retention points. If an employee has not had a performance evaluation in the past 24 months, the employee shall receive ~~3.0~~ 2.0 retention points.
- D.** Resolution of ties. An agency head shall break any tie in total retention points in the following manner and order:
1. The employee with the highest most recent performance evaluation shall be given preference.
  2. If a tie continues to exist, the agency head shall break the tie by lot.
- E.** Offer of position.
1. An agency head shall provide written notice at least five business days in advance to each employee identified for transfer, reduction, or separation. If circumstances beyond the agency's control do not permit at least five business days' notice, the agency head shall provide notice as soon as the agency head is aware of the necessity to transfer, reduce, or separate the employee.
  2. The notice shall include:
    - a. The reason for and effective date of the action;
    - b. A job offer, if any, including the salary, location of the position, and supervisor's name;
    - c. The availability of reduction in force procedures and records for review, with references to relevant statutes and rules; and
    - d. The employee's right to request a review of the determination as provided in R2-5B-603.
  3. An agency head shall offer a position to an employee identified for transfer, reduction, or separation with the highest number of points on the retention point list in descending order as follows:
    - a. If a vacant covered position exists and an employee possesses the required qualifications for the position, an agency head shall make the single best offer, in terms of pay range, within the agency of:
      - i. A regular position at the same or lower pay range in the same class series as the employee's present permanent status position;
      - ii. A regular position at the same or lower pay range in any class series in which the employee has held perma-

**Notices of Exempt Rulemaking**

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- nent status during the past five years; or
- iii. If both positions described in subsections (E)(3)(a)(i) and (ii) are available, the position described in subsection (E)(3)(a)(i).
  - b. If the offer under subsection (E)(3)(a) is a position at a lower pay range, the agency head shall provide the employee the option of accepting a vacant covered:
    - i. Funded, regular position at the employee's present pay range in a class series in which the employee has never held permanent status for which the employee is qualified; or
    - ii. Temporary or part-time position at the employee's present pay range for which the employee is qualified.
  4. An employee shall possess the qualifications required when the position was last filled, unless the Director grants an exception.
  5. Any job offer shall contain a time period of not less than three business days in which the employee may accept the offer. Failure of an employee to reply in writing within the stated time period, or failure to accept the job offer, shall constitute a resignation. An employee may accept a job offer and retain the right to request a review of the determination.
  6. If no position exists, the agency head ~~shall~~ may separate ~~an~~ the employee ~~without prejudice~~.