

OREGON ADMINISTRATIVE RULES
CHAPTER 115, DIVISION 45 – APPEALS, HEARINGS AND INVESTIGATIONS IN THE
STATE SERVICE UNDER THE STATE PERSONNEL RELATIONS LAW

DIVISION 45
APPEALS, HEARINGS AND
INVESTIGATIONS IN THE STATE
SERVICE UNDER THE STATE
PERSONNEL RELATIONS LAW

Definition of Terms

115-045-0000 As used in these rules, unless the context clearly requires otherwise:

(1) "Appeal" means any request for review of a personnel action.

(2) "Appellant" means a person who requests review of a personnel action.

(3) "Appointing Authority" means an officer or agency having the power to make appointments to positions in the state service.

(4) "Board" means the Employment Relations Board.

(5) "Class" or "Class of Positions" means a group of positions in the state classified service sufficiently alike in duties, authority and responsibilities that the same qualifications may reasonably be required for, and the same schedule of pay can be equitably applied to, all positions in the group.

(6) "Date of Filing" means the date of receipt by the Board.

(7) "Date of Service" means the date of mailing or the date of personal service.

(8) "Day" means a calendar day unless otherwise specified.

(9) "Demotion" means a change of an employee from a position in one class to a position in another class which has a lower maximum salary range number.

(10) "Management Service" means all positions not in the unclassified or exempt service which are "confidential," "managerial" or "supervisory" as defined by ORS 243.650(6), (16) and (23) respectively.

(11) "Personnel Action" means any action taken with reference to an applicant, employee or position.

(12) "Recommended Order" means the order of an Administrative Law Judge or other Board agent consisting of recommended rulings,

findings of fact, conclusions of law, and a proposed order.

(13) "Respondent" means a party against whom action or relief is sought.

(14) "Regular Employee" means an employee who has been appointed to a position in the classified service in accordance with state law after successfully completing a trial service period or has been otherwise granted regular status through specific provisions of law.

Stat. Auth.: ORS 240 & ORS 243

Stats. Implemented: ORS 240.015

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 1-1998, f. & cert. ef. 1-26-98; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01

Computation of Time

115-045-0002 Time is computed by excluding the first day and including the last day unless the last day falls upon any legal holiday or on Saturday in which case the last day also is excluded.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 240.086(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95

Appeals

Filing of Appeals

115-045-0005 Filing of appeals must be in accordance with these rules. An appeal must be in writing and filed not later than 30 days after the effective date of the action being appealed. An appeal shall be considered filed when it is received by the Board or postmarked, if mailed postpaid and properly addressed. Amendments or supplements to appeals will be accepted only on a showing of good cause.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 240.086(1)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-

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04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

Regular Employee Appeals from Suspension, Reduction in Pay, Demotion and Dismissal Actions

115-045-0010 (1) A regular employee who is suspended, reduced in pay, demoted or dismissed may appeal the action to the Board.

(2) The appeal must be in writing and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reasons why appellant believes the action was not in good faith for cause or was taken for political, religious or racial reasons, sex, marital state or age; and

(c) The correction action being requested.

(3) Notice of appeal must be filed with the Board no later than 30 days after the effective date of such action.

Stat. Auth.: ORS 240 & 243

Stats. Implemented: ORS 240.086(1) & 240.560

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

Appeals Concerning Temporary Appointments

115-045-0017 (1) Any employee may file a complaint alleging a violation of ORS 240.309. The complaint must be in writing and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reason complainant believes the action violates ORS 240.309; and

(c) The corrective action being requested.

(2) The complaint must be filed with the Board no later than 30 days after the employee knew or should have known of the action being appealed.

Stat. Auth.: ORS 240.086(3)

Stats. Implemented: ORS 240.086(1) & 240.309

Hist.: ERB 2-1990, f. 11-8-90, cert. ef. 11-19-90; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95

Other Appeals from Other Personnel Actions

115-045-0020 (1) A classified employee may appeal any personnel action affecting the person (including trial service removals) that is alleged to be arbitrary or contrary to law, rule or policy, or taken for political reasons.

(2) The appeal must be in writing, and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reasons why the appellant believes the action was arbitrary, contrary to law, rule or policy, or taken for political reasons; and

(c) The corrective action being requested.

(3) The written appeal must be filed no later than 30 days after the effective date of such action.

Stat. Auth.: ORS 240 & 243

Stats. Implemented ORS 240.086(1)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; Renumbered from 115-045-0015; ERB 1-2001, f. 2-16-01, cert. ef. 7-1-01; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

Dismissal Appeals by Management Service Employees with Immediate Prior Regular Classified Service

115-045-0021 (1) A management service employee with immediate prior regular classified service status who is dismissed from state service may appeal the dismissal to the board.

(2) The appeal must be in writing and must contain a detailed statement specifying:

(a) The action being appealed;

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(b) The reasons why the employee believes the action was not in good faith for cause or was taken for political, religious or racial reasons, sex, marital status or age; and

(c) The corrective action being requested.

(3) The written appeal must be filed with the board no later than 30 days after the effective date of such action

Stat. Auth.: ORS 240 & 243

Stats. Implemented: ORS 240.560

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f.12-1-00, cert. ef. 7-1-01, Renumbered from 115-045-0010; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

Other Management Service Employee Appeals

115-045-0023 (1) Disciplinary Actions. A management service employee who is reprimanded, reduced in pay, suspended, demoted or removed from management service may appeal such action to the Board.

(2) Nondisciplinary actions. A management service employee who is removed from the management service for nondisciplinary reasons, assigned, reassigned or transferred may appeal such action to the Board.

(3) Appeals must be in writing and must contain a statement specifying:

(a) The action being appealed;

(b) The reasons why the appellant believes the action was contrary to ORS 240.570(3) (for disciplinary actions) or ORS 240.570(2) (for nondisciplinary actions); and

(c) The corrective action being requested.

(4) The written appeal must be filed no later than 30 days after the effective date of such action.

Stat. Auth.: ORS 240.086(3) & 243

Stats. Implemented: ORS 240.570

Hist.: ERB 1-1982, f. & ef. 1-19-82; ERB 1-1985(Temp), f. & ef. 8-19-85; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 3-1993, f. &

cert. ef. 12-15-93; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; Renumbered from 115-045-0024; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

Hearings

115-045-0025 (1) The Board agent may investigate and attempt to resolve the dispute with the parties. If the case cannot be resolved within a reasonable time, it will be scheduled for public hearing and an order of the Board.

(2) Time and Place of Hearings. The time and place of hearing will be set by the Board agent. Notice of the hearing shall be served personally or by registered or certified mail on the agency head and all other interested parties at least ten days in advance of the hearing date. For disciplinary actions, the hearing will be set no later than 30 days from the date the appeal was filed, unless the parties to the hearing agree to a postponement.

(3) Postponements. When the parties to a hearing agree to a postponement, they shall promptly submit a written request for postponement to the Board agent. For good cause shown, the Board agent may grant a postponement. A hearing on an appeal under ORS 240.560 will not be postponed beyond 30 days from the date the appeal was filed, unless the parties to the hearing and the Board agent agree to a postponement.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 240.086(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

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Conduct of Hearings

115-045-0030 (1) General Procedure:

(a) The Board agent will open the hearing with a brief introduction of parties and issues;

(b) Parties may make opening statements;

(c) Parties may present evidence in support of their respective positions. Cross-examination of witnesses will be allowed opposing party(ies); and

(d) Parties may make closing arguments.

(2) Conference During Hearings. In any proceeding, the Board agent may, in his/her discretion, call the parties together for a conference prior to the taking of testimony or may recess the hearing for such conference to resolve undisputed or procedural matters. The results of such conference shall be summarized on the record.

(3) Fact Stipulations. The parties to any proceeding or investigation may, by stipulation and subject to approval by the Board or its agent, agree upon the facts or any portion thereof involved in the controversy, such stipulation shall be binding upon the parties thereto and may be used as evidence in the case.

(4) Continuances. If it appears on the motion of a party that further testimony or argument should be received, the Board agent may, in his/her discretion, continue the hearing. The date of such continued hearing may be fixed at the time of hearing or by later written notice to the parties.

(5) Representation. An appellant may be represented by counsel or may, on his/her own, request the issuance of subpoenas, examine and cross-examine witnesses, make statements, summarize testimony, and otherwise conduct his/her own case.

(6) Burden of Proof. In a hearing on an appeal from a disciplinary action under ORS 240.555 or 240.570(3), the respondent shall have the burden of proof and the burden of going forward with the evidence. The appellant shall have the burden of proving affirmative defenses. In all other cases, the appellant shall have the burden of proof and the burden of going forward with the evidence.

(7) Rules of Evidence. See OAR 115-010-0050.

(8) Conduct at Hearing. All parties to hearings, their counsel and spectators shall conduct themselves in a respectful manner. Demonstrations of any kind will not be permitted. Failure to comply with the Board agent's effort to maintain order are grounds for removal from the hearing.

Stat. Auth.: ORS 240 & ORS 243

Stats. Implemented: ORS 240.086(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01

Motions

115-045-0035 All motions shall be typewritten or, if made at the hearing, may be stated orally on the record and shall briefly state the order or relief sought and the grounds for such motion. Written motions shall be filed with the Board agent, together with the proof of service of a copy thereof upon the other parties.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 240.086(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80

Post-Hearing Procedures

115-045-0040 (1) Recommended Order. The Board agent shall prepare and serve on the parties a recommended order consisting of rulings, findings of fact, conclusions of law and a proposed order.

(2) Objections to Recommended Order. The parties shall have 14 days from date of service of the Recommended Order to file specific written objections with the Board. (See also OAR 115-010-0090.)

(3) Board review:

(a) Oral or Written Argument. If objections are filed to the Recommended Order, parties will be given an opportunity to present oral argument to the Board. If a party desires to submit written argument in lieu of oral argument, it must be filed with the Board not less than five days before the date set for argument and the party filing the written

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argument shall serve a copy on all parties of record in the case and provide proof of service to the Board;

(b) Memorandum in Aid of Oral Argument. If parties wish to submit written memoranda in aid of oral argument in addition to argument, it must be filed with the Board not less than five days before the date set for oral argument and copies must be served upon all parties of record. Parties shall provide the Board with proof of service;

(c) Review of Record. Review by the Board of a Board agent's recommended order shall be confined to the record. The Order of the Board shall be in writing and shall be sent to the parties.

(4) Petitions for Reconsideration or Rehearing. Petitions for reconsideration or rehearing may be filed, but not later than 14 days from date of service of the Order. Petitions shall state specifically the grounds for reconsideration or rehearing. The Board may, at its discretion, set such petitions for oral argument.

(5) Service of Documents. All documents shall be served upon named parties unless there is a representative of record, in which case documents may be served on the representative.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 240.086(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01

**OREGON REVISED STATUTES, CHAPTER 240
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SPRL Statute Excerpts

The full State Personnel Relations Law (SPRL) appears in ORS Chapter 240. Most SPRL cases filed with ERB involve those SPRL statutes that are excerpted below.

ADMINISTRATIVE PROVISIONS

240.005 Short title. This chapter shall be known as the State Personnel Relations Law. [Amended by 1979 c.468 §2]

240.010 Purpose of chapter. The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles. [Amended by 1979 c.468 §3]

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240.015 Definitions. As used in this chapter, unless the context clearly requires otherwise:

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(8) "Regular employee" means an employee who has been appointed to a position in the classified service in accordance with this chapter after completing the trial service period.

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240.086 Duties of board; rules. The duties of the Employment Relations Board shall be to:

(1) Review any personnel action affecting an employee, who is not in a certified or recognized appropriate collective bargaining unit, that is alleged to be arbitrary or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct.

(2) Review and enforce arbitration awards involving employees in certified or recognized appropriate collective bargaining units. The awards shall be enforced unless the party against whom the award is made files written exceptions thereto for any of the following causes:

(a) The award was procured by corruption, fraud or undue means.

(b) There was evident partiality or corruption on the part of the arbitrator.

(c) The arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party were prejudiced.

(d) The arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final and definite award upon the subject matter submitted was not made.

(e) There was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the award.

(f) The arbitrators awarded upon a matter not submitted to them, unless it was a matter not affecting the merits of the decision upon the matters submitted.

(g) The award is in violation of law.

(3) Adopt such rules or hold such hearings as it finds necessary to perform the duties, functions and powers imposed on or vested in it by law. [1969 c.80 §35a (enacted in lieu of 240.085); 1971 c.575 §5; 1975 c.605 §14; 1979 c.468 §5]

240.088 Review of arbitration awards after written exceptions filed. (1) If after a hearing on the exceptions filed as provided in ORS 240.086 (2), it appears to the Employment Relations Board that the award should be vacated or modified, the board may by order refer the award back to the arbitrator with proper instructions for correction or rehearing. Upon failure of the arbitrator to follow the instructions, the board shall have jurisdiction over the case and proceed to its final determination by order.

(2) Review of arbitration awards shall be limited exclusively to that provided under ORS 240.086 and this section, except for such judicial review as may be provided for under ORS 183.480. [1979 c.468 §6]

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240.210 Classified service. The classified service comprises all positions in the state service existing on June 16, 1945, or thereafter created and which are not listed in ORS 240.200, 240.205 or 240.212. [Amended by 1955 c.738 §7; 1981 c.409 §2]

240.212 Management service. The management service shall comprise all positions not in the unclassified or exempt service that have been determined to be confidential employees, supervisory employees or managerial employees, as defined in ORS 243.650. [1981 c.409 §6; 1995 c.286 §25]

* * * * *

240.240 Application of chapter to unclassified or management service. (1) The unclassified service or, except as provided in ORS 240.250, the management service shall not be subject to this chapter, except that employees and officers in the unclassified or management service shall be subject to the laws, rules and policies pertaining to any type of leave with pay except as otherwise provided in subsections (4) and (5) of this section, and shall be subject to the laws, rules and policies pertaining to salary plans except as otherwise provided in subsections (3) and (5) of this section.

(2) With regard to any unclassified or management service position for which the salary is not fixed by law, and except as otherwise provided in subsections (3) and (5) of this section, the Personnel Division shall adopt a salary plan which is equitably applied to various categories in the unclassified or management service and is in reasonable conformity with the general salary structure of the state. The division shall maintain this unclassified and management salary plan in accordance with the procedures established for the classified salary plan as provided in ORS 240.235.

(3) The Secretary of State and the State Treasurer, for the purpose of maintaining a salary plan for unclassified and management service positions in their departments, may request the advice and assistance of the division.

(4) With regard to unclassified instructors and teachers under annual teaching contracts for an academic year in the school operated under ORS 346.010, arrangements for leave with pay shall be established by the Department of Education.

(5) With regard to unclassified positions in the Oregon Business Development Department's foreign offices, the salary plan and arrangements for leave with pay shall be established by the Director of the Oregon Business Development Department. [1955 c.738 §5; 1969 c.80 §54; 1971 c.695 §2; 1975 c.427 §4; 1981 c.409 §3; 1985 c.121 §1; 1991 c.149 §4; 1995 c.612 §14; 2007 c.858 §62; 2009 c.562 §18]

240.245 Application of chapter to exempt service. The exempt service shall not be subject to the provisions of this chapter, except that, with regard to any position for which salaries are not fixed by law, the officer authorized by law to appoint or fill such position shall maintain a salary plan equitably applied to the exempt position and in reasonable conformity with the general salary structure of the state. [1955 c.738 §3; 1969 c.80 §55]

240.250 Rules applicable to management service. The Personnel Division shall adopt rules, policies and procedures necessary for the management service. The rules may cover any wages, hours, terms and conditions of employment addressed by this chapter, even if, absent the rule, those wages, hours, terms and conditions would not otherwise apply to the management service. The rules shall further merit principles in the examination, selection and promotion of individuals for the management service. [1981 c.409 §7; 1985 c.121 §2]

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240.307 Procedure for enforcement of ORS 240.309; rules. (1) Any complaint alleging violation of ORS 240.309 shall be filed with the Employment Relations Board.

(2) Any employee may file a complaint with the board alleging violation of ORS 240.309.

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(3) If the employee makes a prima facie case showing that the employer has violated ORS 240.309, then the burden of rebutting the prima facie case is on the employer.

(4)(a) Any employer found to be in violation of ORS 240.309 by the board may be required to pay any affected employee damages for any loss of wages, benefits and rights. The board may also require the agency to discontinue the improper practices.

(b) Any award granted to an affected employee by the board shall be in addition to any penalty imposed under ORS 240.990.

(5) Subject to the requirements of ORS 183.452, the state agency need not be represented by legal counsel in these proceedings before the Employment Relations Board. The board may adopt, by rule, special informal proceedings to review these matters and may, in its discretion, rely on any grievance procedure records developed by the state agency. If the board adopts a rule under this subsection, the employer shall not be required to comply with ORS 183.452 (2)(b) for hearings conducted under the board rule. Any court review of the board's decision under this section shall give special deference to the informality of the proceedings in reviewing the sufficiency of the record. [1990 c.3 §3; 1999 c.448 §7]

240.309 Temporary appointments; limitations; duration; extension; periodic reports; post-audit review; investigation; exceptions. (1) Temporary employment shall be used for the purpose of meeting emergency, nonrecurring or short-term workload needs of the state.

(2) A temporary employee may be given a nonstatus appointment without open competition and consideration only for the purposes enumerated in this section. Temporary appointments shall not be used to defeat the open competition and consideration system.

(3) A temporary employee may not be employed in a permanent, seasonal, intermittent or limited duration position except to replace an employee during an approved leave period.

(4) Employment of a temporary employee for the same workload need, other than for leave, may not exceed six calendar months. The decision to extend the period of employment may be delegated by the Personnel Division of the Oregon Department of Administrative Services to other state agencies. Approval to extend shall be allowed only upon an appointing authority's finding that the original emergency continues to exist and that there is no other reasonable means to meet the emergency. Agency actions under this subsection are subject to post-audit review by the Oregon Department of Administrative Services as provided in ORS 240.311.

(5) Employment of a temporary employee for different workload needs shall not exceed the equivalent of six calendar months in a 12-month period.

(6) A temporary employee shall not be denied permanent work because of the temporary status. Temporary service shall not be used as any portion of a required trial service period.

(7) The Personnel Division of the Oregon Department of Administrative Services shall report the use of temporary employees, by agency, once every six months, including the duration and reason for use or extensions, if any, of temporary appointments. The reports shall be made available upon request to interested parties, including employee organizations. If any interested party alleges misuse of temporary employees, the division shall investigate, report its findings and take appropriate action.

(8) The Department of Justice may use temporary status appointments for student law clerks for a period not to exceed 24 months.

(9) The chief administrative law judge of the Office of Administrative Hearings may use temporary status appointments for student law clerks for a period not to exceed 24 months. Student law clerks appointed under this subsection may not act as administrative law judges or conduct hearings for the Office of Administrative Hearings.

(10) The Public Utility Commission may use temporary status appointments for student law clerks for a period not to exceed 24 months.

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(11) A state agency may use temporary status appointments for a period not to exceed 48 months for student interns who are enrolled in high school or who are under 19 years of age and are training to receive a General Educational Development (GED) certificate. Student interns are not eligible for benefits under ORS 243.105 to 243.285. [1985 c.635 §3; 1990 c.3 §1; 1993 c.98 §5; 1993 c.724 §12; 2001 c.312 §1; 2003 c.75 §20; 2009 c.177 §1]

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240.316 Trial service; regular status; procedures for transfer, demotion and separation of employees. (1)(a) Persons initially appointed to or promoted to a permanent or seasonal position in state service shall be subject to a trial service period.

(b) An appointing authority has the discretion to subject an employee to a trial service period when:

(A) A management service employee or a classified, unrepresented employee transfers to a different agency;

(B) A management service employee or a classified, unrepresented employee transfers back to the same agency after an absence of more than one year;

(C) A former management service employee or former classified, unrepresented employee is reemployed by the same agency after an absence of more than one year; or

(D) A former management service employee or former classified, unrepresented employee is reemployed by a different agency.

(c) Any employee who serves the trial service period designated by the Personnel Division or a delegated operating agency for a given classification or as described in paragraph (b) of this subsection shall be given regular employee status.

(2) Employees who have acquired regular status will not be subject to separation except for cause as defined by ORS 240.555 or lack of work, curtailment of funds, or reorganization requiring a reduction in force.

(3) Procedures shall be established by the division to provide for the layoff and opportunity for reemployment of employees separated for reasons other than cause, which shall take into account the needs of the service, qualifications, quality of performance, relative merit and length of service.

(4) Procedures shall also be established by the division for the transfer, discipline or demotion of employees for the good of the service or separation of employees whose conduct or performance continues to be improper or inadequate after reasonable attempts have been made to correct it, where appropriate. [1979 c.468 §23; 1981 c.155 §1; 1989 c.134 §1; 1989 c.890 §11]

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**REMOVAL DURING TRIAL SERVICE;
SEASONAL EMPLOYEES; MERIT
RATINGS**

240.410 Removals during trial period. At any time during the trial service period, the appointing authority may remove an employee if, in the opinion of the appointing authority, the trial service indicates that such employee is unable or unwilling to perform duties satisfactorily or that the habits and dependability of the employee do not merit continuance in the service. [Amended by 1979 c.468 §15]

240.415 [Repealed by 1979 c.468 §1]

240.420 [Repealed by 1961 c.646 §1]

240.425 Regular seasonal employees. Positions which occur, terminate and recur periodically and regularly regardless of the duration thereof shall be designated by rule, policy or procedure of the Personnel Division as seasonal positions. An employee who satisfactorily serves in a seasonal position the trial service period designated by the division or a delegated operating agency for the classification to which the seasonal position is allocated is entitled to permanent status as a

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regular seasonal employee. [Amended by 1969 c.80 §70; 1981 c.156 §1]

240.430 Merit ratings. In cooperation with appointing authorities, the Personnel Division shall establish a system of merit ratings to determine the quality of performance and relative merit of employees in the classified service. [Amended by 1969 c.80 §71; 1979

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240.555 Suspension, reduction, demotion or dismissal. The appointing authority in any division of the service may suspend, reduce, demote or dismiss an employee thereof for misconduct, inefficiency, incompetence, insubordination, indolence, malfeasance or other unfitness to render effective service. [Amended by 1969 c.80 §77; 1975 c.427 §11; 1979 c.468 §17]

240.560 Appeal procedure. (1) A regular employee who is reduced, dismissed, suspended or demoted, shall have the right to appeal to the Employment Relations Board not later than 30 days after the effective date of the reduction, dismissal, suspension or demotion. The appeal must be in writing. The appeal is timely if it is received by the board or postmarked, if mailed postpaid and properly addressed, not later than 30 days after the effective date of the reduction, dismissal, suspension or demotion. The board shall hear the appeal within 30 days after the board receives the appeal, unless the parties to the hearing agree to a postponement. The board shall furnish the division of the service concerned with a copy of the appeal in advance of the hearing.

(2) The hearing shall be conducted as provided for a contested case in ORS chapter 183.

(3) If the board finds that the action complained of was taken by the appointing authority for any political, religious or racial reasons, or because of sex, marital status or age, the employee shall be reinstated to the position and shall not suffer any loss in pay.

(4) In all other cases, if the board finds that the action was not taken in good faith for cause, it shall order the immediate reinstatement and the reemployment of the employee in the position without the loss of pay. In lieu of affirming the action, the board may modify the action by directing a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in classification, grade or pay. The findings and order of the board shall be certified in writing to the appointing authority and shall be forthwith put into effect by the appointing authority. [Amended by 1957 c.205 §1; 1959 c.689 §6; 1969 c.80 §78; 1971 c.734 §35; 1975 c.427 §12; 1977 c.400 §1; 1977 c.770 §6; 1993 c.778 §24; 2003 c.213 §1]

240.563 Judicial review. Judicial review of orders under ORS 240.560 shall be as provided in ORS chapter 183. [1971 c.734 §31]

240.565 [Amended by 1969 c.80 §79; repealed by 1979 c.468 §1]

240.570 Classified employee filling position in unclassified, exempt or management service. (1) Positions in the unclassified, management and exempt services may be filled by classified employees. After an employee is terminated from the unclassified or exempt service or removed from the management service, for reasons other than those specified in ORS 240.555, the state agency that employed the employee before the appointment to the unclassified, exempt or management service may, at the agency's sole discretion, restore the employee to a position held in the agency before the appointment if the employee meets the position requirements. If an employee is restored to a former position, the employee is subject to any applicable agency collective bargaining agreement.

(2) An appointing authority may assign, reassign and transfer management service employees for the good of the service and may remove employees from the management service due to reorganization or lack of work.

(3) A management service employee is subject to a trial service period established

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pursuant to rules of the Personnel Division under ORS 240.250. Thereafter, the management service employee may be disciplined by reprimand, salary reduction, suspension or demotion or removed from the management service if the employee is unable or unwilling to fully and faithfully perform the duties of the position satisfactorily.

(4) Employees who are assigned, reassigned, transferred or removed, as provided in subsection (2) of this section, and employees who are disciplined or removed from the management service for the reasons specified in subsection (3) of this section may appeal to the Employment Relations Board in the manner provided by ORS 240.560.

(5) Management service employees with immediate prior former regular status in the classified service may be dismissed from state service only for reasons specified by ORS 240.555 and pursuant to the appeal procedures provided by ORS 240.560. [1955 c.738 §6; 1979 c.468 §18; 1981 c.409 §4; 1985 c.121 §3; 1987 c.269 §1; 2005 c.766 §1]

240.572 [1977 c.271 §3; repealed by 1979 c.468 §1]

240.575 [1971 c.542 §2; repealed by 1979 c.468 §1]

240.580 Service credits for service in unclassified service. An employee who is initially appointed to a position in the unclassified service as a member of the Oregon State Police under ORS 181.250 or 181.265, who separates voluntarily from that service and who, within two years after the separation, is appointed to a position in the classified service, whether within a bargaining unit covered by a collective bargaining agreement or not, and acquires regular employee status shall be entitled, for purposes of layoff and opportunity for reemployment after separation for reasons other than cause, to service credit for the service in the unclassified service preceding the service in the classified service. ORS 240.321 (3) does not apply to service credit granted under this section. [1983 c.746 §2]

240.590 Reemployment of employee in exempt service. An employee in the exempt service who has been employed full-time for at least 12 months consecutively in such service may be noncompetitively reemployed in a position for which qualified within two years from the date of separation, if separated from state service in good standing. However, such reemployment shall occur only after current bargaining unit members have exhausted any rights under an applicable collective bargaining agreement. [1985 c.635 §5]

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240.750 When discipline action not to be retained in personnel file. No copy of a personnel discipline action that has been communicated orally or in writing to the employee and subsequently reduced in severity or eliminated through collective bargaining, grievance or personnel process shall be placed or otherwise retained in the personnel file of the employee unless agreed to by the employer and the employee. [1985 c.813 §2]

Note: 240.750 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 240 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

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