



State Universities Civil Service System

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FLSA changes as related to Merit Board Policy Relating to Employee Benefits

- *Merit Board Policy Relating to Employee Benefits*
- *Work Study Committee – develop a committee to explore and to review ideas to change the benefit recommendations. Move to on vacation schedule, provide only base level of vacation and allow more flexibility for employers, etc.*

State Universities Civil Service System

Policy Relating to Employee Benefits

WHEREAS the Civil Service ~~Act~~Statute provides that "the Merit Board shall have the power and duty...

. . . To prescribe the range of compensation for each class or to fix a single rate of compensation for employees in a particular class; and to establish other conditions of employment which an employer and employee representatives have agreed upon as fair and equitable. . . .

[~~To~~] . . . take into account the rate of compensation generally paid for similar work in the locality in which the work is to be performed. . . .

. . . To recommend to the institutions and agencies . . . standards for hours of work, holidays, sick leave, overtime compensation and vacation for the purpose of improving conditions of employment . . . and . . . insuring conformity with the prevailing rate principle.";

WHEREAS ~~administered uniformity in~~ benefits among institutions ~~are is required to adhere to applicable Local, State, or Federal law, collective bargaining agreements, or board of trustee resolution or policy; desirable, and institutional representatives have expressed concurrence with this principle;~~

THEREFORE, BE IT RESOLVED that it is the judgment of the Merit Board that each of the governing boards, institutions, and agencies specified in Section 36e of the ~~Act~~Statute ~~shall~~ould accord fringe benefits to its employees ~~through adoption of the following benefit policies and develop administrative rules and procedures consistent with these provisions for uniform application of these policies throughout its organization.~~

I. HOURS OF WORK

A. Work Schedules

~~Each institution or agency shall report to the Merit Board the classes of employees for which it changes the hours of work week.~~ The Merit Board may recommend to the institutions and agencies standards for hours of work. (Amended and reinstated at Seventy-Third meeting of the Merit Board, September 27, 1977.)

B. Overtime Compensation

~~Consistent with Local, State, and Federal law requirements, e~~Employees non-exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) will be compensated at time and one-half for all time in a work week in excess of the number of hours of work comprising an established full-time ~~daily or weekly work schedule. , whichever is greater, except, that for an employee paid on a prevailing rate basis, the number of hours before daily and/or weekly overtime begins, and the rate of the employee's overtime pay, will depend on the number of hours and the rate being paid locally, pursuant to the appropriate multi-employer area agreement.~~

II. ELIGIBILITY FOR EMPLOYEE BENEFITS

Except as indicated otherwise below for prevailing wage rate groups, employee benefits will be made available to employees in status appointments. Included in this group will be those in appointments designed to qualify employees for status in the class, e.g., intern, learner, trainee, apprentice, and, where appropriate, provisional. Employees in other types of non-status appointments, such as Temporary or Extra Help, will not be extended employee benefits, except as otherwise designated by Executive Order or State/Federal Law.

Eligibility for benefits in relation to work, leave, layoff^[LN1], or absence status shall be determined by each institution or agency. ~~Rules for the uniform administration of each form of employee benefit shall be established by the governing board of each institution or agency or by an official to whom delegation has been made as needed to meet program requirements of the institution or agency.~~

III. HOLIDAYS

A. Employees other than Prevailing Wage Rate Groups

Eligible employees not in prevailing wage rate groups will be excused with full pay, except for necessary operations, on New Year's Day, Martin Luther King, Jr. Birthday, Memorial Day (as determined by the Law of the State of Illinois), Independence Day, Labor Day (first Monday in September), Thanksgiving Day, Christmas Day and on fourfive other holidays designated by the governing board of the institution or agency. These fourfive other holidays may differ between institutions and agencies but shall be of commemorative or other significance as non-work days (e.g., legal holidays in the State of Illinois) ~~and shall result in a reasonable distribution of holidays throughout the year. Days suggested for consideration are Lincoln Day (first Monday in February), Washington Day (third Monday in February), Good Friday, Columbus Day (second Monday in October), Veterans' Day, day after Thanksgiving, full day adjacent to Christmas, full day adjacent to New Year's. Each institution or agency may designate 'floating holidays' as necessary for employees to be excused to observe other holidays of significance.~~

B. Prevailing Wage Rate Groups

Eligible employees in prevailing wage rate groups will be excused from work on the holidays of the institution or agency irrespective of whether the holiday is observed under the appropriate multi-employer area agreement, but will be compensated as follows:

1. If the holiday is recognized for other employers under the appropriate multi-employer area agreement the employee will be compensated in accordance with practice under that agreement.
2. If the holiday is not recognized under the appropriate multi-employer area agreement the employee will be excused without pay.^[LN2]
3. Notwithstanding 1 and 2 above, each prevailing rate employee shall be extended the option of charging any unpaid holiday under 1 or 2 above to earned Vacation or Personal Leave accrued to the employee's credit on the date of the holiday.

C. Holiday Work

In the event that work is required of an employee on any holiday recognized by the employing institution or agency:

1. Employees in prevailing wage rate groups will be compensated in accordance with the Prevailing Wage Act and/or prevailing practice on those holidays designated in the appropriate multi-employer area agreement.
2. Other nonexempt employees, as defined by the Fair Labor Standards Act (including prevailing rate employees for holidays not designated in the appropriate multi-employer area agreement), in addition to regular compensation, will receive additional payment at the rate of time and one-half, or, if mutually agreed to, by time off at the rate of time and one-half.^[LN3]

~~D. Holiday on Non-work Day~~

~~For employees who normally work a Monday through Friday schedule, holidays which fall on a calendar Saturday will be observed on the preceding day, and holidays which fall on a calendar Sunday will be observed on the following day. Employees who normally work other than a Monday through Friday schedule, and who are not scheduled to work on a calendar holiday, will receive, as necessary operations permit, either (1) a scheduled work day off within two weeks of the recognized holiday, or (2) an additional day's pay at the regular rate.~~

IV. PAID LEAVE

A. Initial Probationary Period

That employees' use of earned vacation (either days taken or paid days) during probationary period be permitted. If separation occurs during the probationary period, no penalty is imposed. (Approved by the Merit Board at its Ninety-First meeting, November 10, 1982.)^[LN4]

B. Vacation and Personal Leave

1. Each employee who is nonexempt under the Fair Labor Standards Act, and each employee who is exempt as an executive or administrative employee but who (1) is required to work a fixed shift and (2) receives overtime compensation if required to perform overtime shall earn Vacation and Personal Leave at the rate which is shown opposite the employee's service years in Schedule A.

SCHEDULE A

Years of Service		Rate Earned Per Hour of Pay-Status Service (Exclusive of Overtime)	Approximate Leave Days Earned in One Year
At Least	Not More Than		
0	3	.0462	12
3	6	.0577	15
<6	9	.0692	18
9	14	.0808	21
14		.0962	25

2. Each employee who is (1) an executive, administrative, or professional employee as defined under the Fair Labor Standards Act, (2) not provided with a fixed or rigid daily and weekly schedule, and (3) required to discharge duties, the discharge of which usually requires a certain amount of flexibility in such schedule, shall earn Vacation and Personal Leave at the rate which is shown opposite the employee's service years in Schedule B.

SCHEDULE B

Years of Service		Rate Earned Per Hour of Pay-Status Service (Exclusive of Overtime)	Approximate Leave Days Earned in One Year
At Least	Not More Than		
0	3	.0962	25
3	6	.1000	26
6	9	.1038	27
9		.1077	28

3. Effective July 1, 2017, newly hired employees will be subject to the vacation accrual schedule indicated below in Schedule C. However, current employees, whether exempt or non-exempt under the provisions of the Fair Labor Standards Act, will be subject to, on a transitional basis, the same vacation accrual schedule as indicated below in Schedule C no later than July 1, 2020.

SCHEDULE C

Years of Service		Rate Earned Per Hour of Pay-Status Service (Exclusive of Overtime)	Approximate Leave Days Earned in One Year
At Least	Not More Than		
0	3	.0462	12
3	6	.0651	16
6	9	.0769	20
9	14	.0962	25
14		.1077	28

Transitional Table Example for Schedule C:

Year	YOS	Current Schedule	Proposed Schedule
2017	2	25	25
2018	3	26	25
2019	4	26	25
2020	5	26	28

**In 2017, current exempt employees move to the 9 year level of service for vacation accrual.

**In 2019, existing employees move to the 14 year level of service for vacation accrual. [LN5]

4. Based on mandated changes or compliance with Federal, State, and regulations, such as that contained within the terms of the Fair Labor Standards Act, and as applied to the definition of employees in section IV(B)(1) and (2), Paid Leave, an employer may allow an employee hired prior to the effective date of the mandated change the opportunity to continue accruing vacation on the same accrual schedule prior to the mandated change. (Approved by the Merit Board at its Two-Hundred and First meeting, August 17, 2016.)

54. An employee may accumulate at the employee's then current earning rate an amount of leave equal to that earned in two service years but upon reaching this accumulation will cease to earn leave except as the accumulation is reduced. Employees converting from principal administrative positions to a status civil service position may be allowed to transfer balances greater than the two year accumulation maximum. (Approved by the Merit Board at its Two-Hundred and First meeting, August 17, 2016.)

5. Institutions with present Vacation and Personal Leave plans which differ from the above shall move to these schedules after due notice to employees and shall place each present employee

~~on the service year step of the above schedules that will most nearly preserve the employee's present earning rate of Vacation and Personal Leave.~~

6. Each institution shall issue appropriate rules and administrative procedures to assure that within the total amount of Vacation and Personal Leave accumulated, employer operations permitting, periods ~~of up to one or two days at a time will be granted an employee for personal reasons upon request of the employee and without the need for advance planning. Longer periods~~ of vacation ~~shall~~^{could} be planned and scheduled by the institution after taking into account employee preferences. [LN6]

67. Where there has been a break in service, the service year shall be computed as though all previous State service which qualified for earning of Vacation and Personal Leave benefits is continuous with present service, i.e., service during each separate period of employment, whether institution or other State service, shall be added together to arrive at total service. This provision is effective October 1, 1972. It applies to the future earning rate of eligible employees on the institution's rolls on this effective date as well as to those who enter or reenter institution service after that date. (Amendment approved and added by the Merit Board at its Fifty-Sixth meeting, October 30, 1972.)

C. Sick Leave

1. An eligible employee shall earn credit for Sick Leave with full pay at the rate of one work day for each month ~~(23 days of service)~~ (.0462 per hour for each hour of pay-status service). The amount of leave accumulated at the time when illness or injury begins shall be available in full, and additional leave shall continue to accrue while an employee is using that already accumulated.

2. There shall be no limit in the amount of Sick Leave which may be accumulated.

3. An eligible employee may use accumulated Sick Leave only when an employee is ill or injured or obtaining medical or dental consultation or treatment. Each institution shall reserve the right to require acceptable evidence of disability before allowing the use of Sick Leave.

4. Use of Sick Leave shall be for an illness, injury, or medical appointment of the employee, employee's child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent. The use of sick leave for those listed above, except an employee, may be limited to an amount of what is accrued over a six month period if so listed in the employer's policy. [LN7]

5. A former employee who separates in good standing and returns to employment within two years, shall have former accrued Sick Leave restored. (Paragraphs 4 and 5 approved and added by the Merit Board at its Eighty-Fourth meeting, June 11, 1980.)

D. Funeral Leave

1. Approval, with pay, will be granted to an eligible employee for a leave of up to three work days for the death of a member of the employee's immediate family, household, in-laws, and/or grandparents of immediate family; and of one day to attend the funeral of a relative outside the employee's immediate family or household.
2. Immediate family is defined as: father, mother, sister, brother, spouse, and children. In-laws are defined as: mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, and daughter-in-law. (Amended and approved at the Seventy-Third meeting of the Merit Board, September 27, 1977.)

E. Jury Duty

1. An eligible employee shall be granted a leave of absence without loss of pay when called for Jury Duty service.^[LN8]

F. Military Training

1. Leave of absence with pay shall be granted in accordance with the Military Leave of Absence Act (5 ILCS 325/1) to an eligible employee for military training who is a member of any reserve component of the United States Armed Forces, including the Illinois National Guard. The length of the leave with pay for training will not exceed standards established by federal or state regulations for training activities required to maintain standing in the above military units. During leaves for military training, the employee shall be eligible for compensation and benefit programs in accordance with applicable state and federal regulations.

G. Mobilized to Active Duty

1. Leave of absence with pay shall be granted in accordance with the Military Leave of Absence Act (5 ILCS 325/1) and Section 36g of the State Universities Civil Service Act (110 ILCS 70/36g) to an eligible employee who is a member of any reserve component of the United States Armed Forces, including the Illinois National Guard or Illinois State Militia who is mobilized to active duty. During leaves for active duty, the employee shall be eligible for compensation and benefit programs in accordance with applicable state and federal regulations.^[LN9]

H. Excused Absence

1. Rules providing for excused absence with pay shall be issued by the governing board of each institution or agency or by an official to whom delegation has been made as the institution or agency determines to be in its best interest. Reasonable limitations on such excused absences shall be included.

VI. TRANSFER OF BENEFIT CREDITS

1. A current status employee within the System who is selected for employment by another institution within the System and enters on such employment without break in service will be (1) credited by the hiring institution with that amount of accumulated Sick Leave which the employee had credit on the last day of service with their previous System employer and (2) granted eligibility by the hiring institution to earn future Vacation and Personal Leave benefits based upon the employee's total continuous service to a previous System employer as computed by that employer.

VI. -EDUCATIONAL BENEFITS

1. Tuition and fee waiver shall be granted by each institution to an eligible employee of that institution or of any other institution or agency named in Section 36e of the Civil Service Act Statute who enrolls in courses up to the following maxima^[LN10] in any semester or quarter.

Full-time employee..... 6 hours or 2 courses

3/4-time employee..... 4 hours

1/2-time employee..... 3 hours

2. These maxima^[LN11] are employee benefit limitations and do not apply to enrollment in approved work-related training programs; the purpose of which is to improve University services. The fees which will be waived include registration fees and admission fees, and, in the case of an institution's own employees, no charge will be made for service type fees such as those imposed to secure revenue for bond retirement, etc. These latter (i.e., service type) fees will not be waived for an employee of another institution. ^[LN12] Employees may enroll for class work during regular working hours for only one course and only as approved by their supervisors and then if the course is only offered during working hours. When such permission is granted the employee will make up time (1) working outside of the employee's regularly scheduled hours as approved by the employee's supervisor or (2) deducting the time spent in class from the employee's accumulated Vacation and Personal Leave. A student as defined in Rule 250.70(f)(3) is not eligible for a status appointment and may not be granted tuition or fee waivers as an employee benefit.

VI. TRANSFER OF BENEFIT CREDITS

~~1. A current status employee within the System who is selected for employment by another institution within the System and enters on such employment without break in service will be (1) credited by the hiring institution with that amount of accumulated Sick Leave which the employee had credit on the last day of service with their previous System employer and (2) granted eligibility by the hiring institution to earn future Vacation and Personal Leave benefits based upon the employee's total continuous service to a previous System employer as computed by that employer.~~

The effective date of this Policy shall be July 1, 2017~~1970~~.

Updated July 1, 2017~~August 31, 2016~~

DRAFT 1-24-2017 1st WG Meeting



State Universities Civil Service System

1717 Philo Road, Suite 24
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Act/Rules Review

- *Discussion on proposal provided to local General Assembly members regarding revisions to our Act.*

AN ACT concerning education.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The State Universities Civil Service Act is amended by changing Sections 36b, 36c, 36d, 36e, 36f, 36g, 36g-1, 36h, 36j, 36o, 36p and 36s as follows:

(110 ILCS 70/36b) (from Ch. 24 1/2, par. ____)

Sec. 36b. Creation.

(1) A classified civil service system to be known as the State Universities Civil Service System is hereby created, and is hereinafter referred to as the University System.

(2) The purpose of the University System is to establish a sound program of personnel administration for the Illinois Community College Board, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, University of Illinois, State Universities Civil Service System, State Universities Retirement System, the State

Scholarship Commission, and the Board of Higher Education. All certificates, appointments and promotions to positions in these agencies and institutions shall be made solely on the basis of merit and fitness, to be ascertained by examination, except as specified in Section 36e.

(3) The University System hereby created shall be a separate entity of the State of Illinois and shall be under the control of a Board to be known as the University Civil Service Merit Board, and is hereinafter referred to as the Merit Board.

(110 ILCS 70/36c) (from Ch. 24 1/2, par. ____)

36c. The Merit Board. The Merit Board shall be composed of 11 members, 3 of whom shall be members of the Board of Trustees of the University of Illinois, one of whom shall be a member of the Board of Trustees of Southern Illinois University, one of whom shall be a member of the Board of Trustees of Chicago State University, one of whom shall be a member of the Board of Trustees of Eastern Illinois University, one of whom shall be a member of the Board of Trustees of Governors

Deleted: State Universities Civil Service

Deleted: State Community College of East St. Louis (abolished under Section 2-12.1 of the Public Community College Act),

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State University, one of whom shall be a member of the Board of Trustees of Illinois State University, one of whom shall be a member of the Board of Trustees of Northeastern Illinois University, one of whom shall be a member of the Board of Trustees of Northern Illinois University, and one of whom shall be a member of the Board of Trustees of Western Illinois University. The members of the Merit Board shall be elected by the respective Boards in which they hold membership and they shall serve at the pleasure of the electing Boards.

All members of the Merit Board shall serve without compensation but shall be reimbursed for any traveling expenses incurred in attending meetings of the Merit Board.

The Merit Board shall determine the number necessary for a quorum, elect its own chairman and set up an Executive Committee of its own members which shall have all of the powers of the Merit Board except as limited by the Merit Board.

The Merit Board shall cause to be elected a committee of not less than eleven members to be made up of Civil Service employees, six of

whom shall be nominated by and from the Civil Service employees of the University of Illinois and one of whom shall be nominated by and from the Civil Service employees of each of the other institutions specified in Section 36e, who will function in an advisory capacity to the Merit Board on all matters pertaining to the University System. This Advisory Committee shall meet at least quarterly and members of the Committee shall be reimbursed by their respective employers for time lost from work and for expenses incurred in attending meetings of the Committee.

(110 ILCS 70/36d) (from Ch. 24 1/2, par. ____)

36d. Powers and Duties of the Merit Board. The Merit Board shall have the power and duty –

(1) To approve a classification plan prepared under its direction, assigning to each class positions of substantially similar duties.

The Merit Board shall have power to delegate to its [Executive](#) Director the duty of assigning each position in the classified service to the

Commented [DD1]: Language concerning transition to current board make-up deleted; no longer relevant.

Deleted: The 7 new members required to be elected to the Merit Board by their respective Boards of Trustees shall replace the 2 persons who, until the effective date of this amendatory Act of 1995, served as members of the Merit Board elected from the Board of Governors of State Colleges and Universities and the Board of Regents; and the terms of the members elected to the Merit Board from the Board of Governors of State Colleges and Universities and the Board of Regents shall terminate on the effective date of this amendatory Act of 1995.

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appropriate class in the classification plan approved by the Merit Board.

(2) To prescribe the duties of each class of positions and the qualifications required by employment in that class.

(3) To prescribe the range of compensation for each class or to fix a single rate of compensation for employees in a particular class; and to establish other conditions of employment which an employer and employee representatives have agreed upon as fair and equitable. The Merit Board shall direct the payment of the "prevailing rate of wages" in those classifications in which, on January 1, 1952, any employer is paying such prevailing rate and in such other classes as the Merit Board may thereafter determine. "Prevailing rate of wages" as used herein shall be the wages paid generally in the locality in which the work is being performed to employees engaged in work of a similar character. Each employer covered by the University System shall be authorized to negotiate with representatives of employees to determine appropriate ranges or rates of compensation or other conditions of

employment and may recommend to the Merit Board for establishment the rates or ranges or

other conditions of employment which the employer and employee representatives have agreed upon as fair and equitable. Any rates or ranges established prior to January 1, 1952, and hereafter, shall not be changed except in accordance with the procedures herein provided.

(4) To recommend to the institutions and agencies specified in Section 36e standards for hours of work, holidays, sick leave, overtime compensation and vacation for the purpose of improving conditions of employment covered therein and for the purpose of insuring conformity with the prevailing rate principle.

(5) To prescribe standards of examination for each class, the examinations to be related to the duties of such class. The Merit Board shall have power to delegate to the Director and his staff the preparation, conduct and grading of examinations.

(6) To authorize the continuous recruitment of personnel and to that end, to delegate to the [Executive](#) Director and his staff the power and the duty to conduct open and

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continuous competitive examinations for all classifications of employment.

(7) To cause to be established from the results of examinations registers for each class of positions in the classified service of the [University System](#), of the persons who shall attain the minimum mark fixed by the Merit Board for the examination; and such persons shall take rank upon the registers as candidates in the order of the relative excellence as determined by examination, without reference to priority of time of examination.

(8) To provide by its rules for promotions in the classified service. ↓

(9) To issue subpoenas to secure the attendance and testimony of witness and the production of books and papers in the course of any investigation or hearing conducted pursuant to the ~~Act~~.

(10) To provide by its rules for employment at regular rates of compensation of persons with physical disabilities in positions in which the disability does not prevent the individual from furnishing satisfactory service.

(11) To make and publish rules, to carry out the purpose of the State Universities Civil Service System and for examination, appointments, transfers and removals and for maintaining and keeping records of the efficiency of officers and employees and groups of officers and employees in accordance with the provisions of Sections 36b to 36q, inclusive, and said Merit Board may from time to time make changes in such rules.

(12) To appoint an [Executive Director](#) and such assistants and other clerical and technical help as may be necessary efficiently to administer Sections 36b to 36q, inclusive. To authorize the [Executive Director](#) to appoint an assistant resident at the place of employment of each employer specified in Section 36e and this assistant may be authorized to give examinations and to certify names from the regional registers provided in Section 36k. The enumeration of specific duties and powers that the Merit Board may delegate to the Executive Director in this Section shall not preclude the Merit Board from delegating other duties and powers to the Executive Director

Deleted: State Universities Civil Service

Commented [DD2]: The second sentence of 36d(8) requiring promotions to fill vacancies when practical is deleted here because that requirement is also found in 26j, "Promotions." The final sentence of 36d(8) is simply moved to 36j verbatim.

Deleted: Vacancies shall be filled by promotion whenever practicable. For the purpose of this paragraph, an advancement in class shall be a promotion.

Commented [DD3]: 36d(9) currently refers to a power which is both exclusively and expressly given to the Executive Director in its body, and so is not a power or duty of the Merit Board. Furthermore, the power there given to the Executive Director is duplicated in 36h(2).

Commented [DD4]: The proposed 36d(9) is drawn from the subpoena power currently discussed in 36o concerning "Demotion, removal, and discharge" and 45, "Compelling testimony and production of books and papers." This proposed amendment explicitly sets forth this power, leaving those two sections unchanged.

Deleted: To set a probationary period of employment of no less than 6 months and no longer than 12 months for each class of positions in the classification plan, the length of the probationary period for each class to be determined by the Director.

Commented [DD5]: To eliminate the argument that the powers and duties not specifically delegated to the Executive Director may in fact be delegated to the Executive Director.

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(13) To submit to the Governor of this State on or before November 1 of each year prior to the regular session of the General Assembly a report of the University System's business and an estimate of the amount of appropriation from state funds required for the purpose of administering the University System.

(14) To authorize the creation and use of pilot programs to further the goals of the Act, which may be inconsistent with any rules promulgated by the Merit Board, provided that such programs are of limited duration and do not reduce any rights or benefits of employees subject to the Act.

(110 ILCS 70/36e) (from Ch. 24 1/2, par. ____)

36e. Coverage. All employees of the Illinois Community College Board, Southern Illinois University, Chicago State University, Eastern Illinois University, Governors State University, Illinois State University, Northeastern Illinois University, Northern Illinois University, Western Illinois University, University of Illinois, State Universities Civil Service System, State Universities Retirement

System, the State Scholarship Commission, and the Board of Higher Education, shall be covered by the University System described in Sections 36b to 36q, inclusive, of this Act, except the following persons:

(1) The members and officers of the Merit Board and the board of trustees, and the commissioners of the institutions and agencies covered hereunder;

(2) The presidents and vice-presidents of each educational institution;

(3) Other principal administrative employees of each institution and agency as determined by the Merit Board;

(4) The teaching, research and extension faculties of each institution and agency;

(5) Students employed under rules prescribed by the Merit Board, without examination or certification.

(110 ILCS 70/36f)(from Ch. 24 1/2, par. ____)

36f. Examinations. (a) All examinations given under the University System shall be open to all applicants who are citizens of or residents in the State of Illinois and who can qualify by training

Commented [DD6]: This is a new provision giving statutory authority for pilot programs.

Deleted: State Community College of East St. Louis (abolished under Section 2-12.1 of the Public Community College Act),

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and experience for the position for which
application is made. In examinations for
designated occupational positions as determined

law enforcement officers, and if the Merit Board
allows for such waiver by rule. Additional
positions may have the examination requirement

Deleted: technical

by the Merit Board, the residence requirement

waived where the occupational standards are

Deleted: for which no qualified residents of this State are available

may be waived.

regulated by the Illinois Department of Financial

Commented [DD7]: New provision expanding the ability to recruit from out-of-state.

(b) Examinations may be written, oral, by
statement of training and experience, in the form
of tests of knowledge, skill, capacity, intellect,
aptitude; or, by any other method, which in the
judgment of the Merit Board is reasonable and
practical for any particular classification. The

and Professional Regulation as designated by the
Merit Board and provided for in adopted rules.

Commented [DD10]: These final two sentences add a new provision to allow entry-level police officers and nurses currently employed elsewhere to forego same testing requirements as applicants with no experience or training.

(110 ILCS 70/36g) (from Ch. 24

1/2, par. __)

examinations shall be practical and shall relate
to the classification for which the examination is
given. No question in any examination shall
relate to political or religious affiliation or racial
origins of the examinee.

70/36g. Veterans preference; credit for

service in armed forces

Commented [DD8]: This first sentence is moved verbatim from 36d(5), "Powers and duties of the Merit Board" to here for organizational and logical purposes. 36d(5) grants the exam power and duty to the Merit Board whereas 36f concerns examinations only. This is not new language.

(c) Different examining procedures may be
determined for the examinations in different
classifications but all examinations in the same
classification shall be uniform. The examination
requirement for the initial appointment, entry
level position only, of law enforcement
personnel may be waived if an applicant has
satisfied all the requirements established by the
Illinois Police Training Act for appointment of

36g. Appropriate preference in entrance

examinations shall be granted to qualified

persons who have been members of the armed

forces of the United States or to qualified

persons who, while citizens of the United States,

were members of the armed forces of allies of

the United States in time of hostilities with a

foreign country, and to certain other persons as

set forth in this Section.

Deleted: For the granting of appropriate

Commented [DD9]: This first sentence is also moved verbatim from 36d(5), "Powers and duties of the Merit Board" to here for organizational and logical purposes. 36d(5) grants the exam power and duty to the Merit Board whereas 36f concerns examinations only. This is not new language.

Commented [DD11]: Language in this section added to clarify and for grammatical purposes.

(a) As used in this Section:

(1) "Time of hostilities with a foreign

country" means any period of time in the past,

present, or future during which a declaration of

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war by the United States Congress has been or is in effect or during which an emergency condition has been or is in effect that is recognized by the issuance of a Presidential proclamation or a Presidential executive order and in which the armed forces expeditionary medal or other campaign service medals are awarded according to Presidential executive order.

(2) "Armed forces of the United States" means the United States Army, Navy, Air Force, Marine Corps, Coast Guard. Service in the Merchant Marine that constitutes active duty under Section 401 of federal Public Law 95-202 shall also be considered service in the Armed Forces of the United States for purposes of this Section.

(b) The preference granted under this Section shall be in the form of points added to the final grades of the persons if they otherwise qualify and are entitled to appear on the list of those eligible for appointments.

(c) A veteran is qualified for a preference of 10 points if the veteran currently holds proof of a service connected disability from the United

States Department of Veterans Affairs or an allied country or if the veteran is a recipient of the Purple Heart.

(d) A veteran who has served during a time of hostilities with a foreign country is qualified for a preference of 5 points if the veteran served under one or more of the following conditions:

(1) The veteran served a total of at least 6 months, or

(2) The veteran served for the duration of hostilities regardless of the length of engagement, or

(3) The veteran was discharged on the basis of hardship, or

(4) The veteran was released from active duty because of a service connected disability and was discharged under honorable conditions.

(e) A person not eligible for a preference under subsection (c) or (d) is qualified for a preference of 3 points if the person has served in the armed forces of the United States, the Illinois National Guard, or any reserve component of the armed forces of the United States and the person: (1) served for at least 6 months and has been discharged under honorable conditions or

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(2) has been discharged on the ground of hardship or (3) was released from active duty because of a service connected disability. An active member of the National Guard or a reserve component of the armed forces of the United States is eligible for the preference if the member meets the service requirements of this subsection (e).

(f) The rank order of persons entitled to a preference on eligible lists shall be determined on the basis of their augmented ratings. When the [Executive](#) Director establishes eligible lists on the basis of category ratings such as "superior", "excellent", "well-qualified", and "qualified", the veteran eligibles in each such category shall be preferred for appointment before the non-veteran eligibles in the same category.

(g) A surviving unremarried spouse of a veteran who suffered a service connected death or the spouse of a veteran who suffered a service connected disability that prevents the veteran from qualifying for civil service employment shall be entitled to the same preference to which

the veteran would have been entitled under this Section.

(h) A preference shall also be given to the following individuals: 10 points for one parent of an unmarried veteran who suffered a service connected death or a service connected disability that prevents the veteran from qualifying for civil service employment. The first parent to receive a civil service appointment shall be the parent entitled to the preference.

(110 ILCS 70/36g – 1) (from Ch. 24 1/2, par. ____)

36g – 1. Active military service. Any employee of ~~any institution or agency subject to this Act~~ who is a member of any reserve component of the United States Armed Services, including the Illinois National Guard, and who is mobilized to active military duty as a result of an order of the President of the United States, shall for each pay period beginning on or after ~~such~~ mobilization continue to receive the same regular compensation that he receives or was receiving as an employee of that educational institution or agency at the time he is or was so mobilized to active military duty, plus any

Deleted: i

Deleted: State Community College of East St. Louis (abolished under Section 2-12.1 of the Public Community College Act), Southern Illinois University, the University of Illinois, any university under the jurisdiction of the Board of Regents, or any college or university under the jurisdiction of the Board of Governors of State Colleges and Universities

Commented [DD13]: The proposed language provides protection for all university civil service employees, not just a subset.

Commented [DD12]: This paragraph concerning active military service is moved and abbreviated from this section concerning "Veterans preference" to the next section, "Active military service."

Deleted: on or after August 1, 1990

Deleted: (g) Employees in positions covered by this Act who, while in good standing, leave to engage in military service during a period of hostility, shall be given credit for seniority purposes for time served in the armed forces.¶

Deleted: h

Deleted: August 1, 1990

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health insurance and other benefits he is or was receiving or accruing at that time, minus the amount of his base pay for military service, and shall be given credit for seniority purposes for the duration of his active military service.

In the event any provision of a collective bargaining agreement or any policy of the educational institution covering any employee so ordered to active duty is more generous than the provisions contained in this Section, that collective bargaining agreement or policy shall be controlling.

(110 ILCS 70/36h) (from Ch. 24 1/2, par. ____)

36h. Appointment. (1) Whenever an employer covered by the University System has a position which needs to be filled, this employer shall inform the Executive Director of the Merit Board. The Executive Director shall then certify to the employer the names and addresses of the persons with the 3 highest scores on the register for the classification to which the position is assigned. The employer shall select one of these persons certified for the position and shall notify the Executive Director

of the Merit Board of the selection. If less than 3 scores appear on the appropriate register, the Executive Director shall certify the names and addresses of all persons on the register.

(2) All appointments shall be for a probationary period of no less than 6 months and no longer than 12 months for each class of positions in the classification plan, the length of the probationary period for each class having been determined by the Executive Director, except that persons first appointed to any police department of any university or college subject to this Act shall be on probation for one year.

The service during the probationary period shall be deemed to be a part of the examination. During the probationary period, the employee may be dismissed if the employer determines that the employee has failed to demonstrate the ability and the qualifications necessary to furnish satisfactory service. The employer shall notify the Executive Director in writing of such dismissal. If an employee is not so dismissed during his or her probationary period, his or her appointment shall be deemed complete at the end of the period.

Commented [DD14]: This credit for time during active military service is currently found in 36g(g) concerning veterans preferences and is moved to this section as it actually concerns active military service rather than veterans preference.

Deleted: covered by the University System after the effective date of this amendatory Act of 1979

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(3) No person shall be appointed to any police department of any university or college covered by the University System unless he or she possesses a high school diploma or an equivalent high school education and unless he or she is a person of good character and is not a person who has been convicted of a felony or a crime involving moral turpitude.

(110 ILCS 70/36j) (from Ch. 24 1/2, par. ____)

36j. Promotions. (a) The Merit Board shall by rules provide for promotions on the basis of ability and experience and seniority in service and examination and to provide in all cases where it is practicable that vacancies will be filled by promotion. For the purpose of this section, an advancement in class shall constitute a promotion.

(b) The Merit Board shall by rule fix lines of promotion from such several offices and places to superior offices or places in all cases where, in the judgment of the Merit Board, the duties of such several positions directly tend to fit the incumbent for a superior position.

~~(c)~~ Whenever a superior position in the promotional line in the classified civil service under the University System is to be filled, the Executive Director shall certify to the employer, in the order of their seniority, the names and addresses of the persons with the 3 highest scores on the promotional register for the class or grade to which said position belongs. The employer shall appoint one of those persons whose names were certified by the Executive Director.

(d) Appointments to superior positions in the promotional line shall be on probation for a period of no less than 6 months and no longer than 12 months for each class of positions in the classification plan, the length of the probationary period having been determined by the Executive Director. Persons so appointed may be demoted at any time during the period of probation if, in the opinion of the employer, they have failed to demonstrate the ability and the qualifications necessary to furnish satisfactory service, but shall not be discharged from the superior position if they have previously completed a

Commented [DD16]: This language concerning promotional seniority is simply moved verbatim to later in this section; the beginning of the section concerns promotions, whereas the latter portions concern the effects of promotions.

Deleted: Employees promoted in the promotional line shall have their seniority for the highest position held on the basis of length of service in that classification. For the next lower classification the employee may add his seniority in the higher classification to that in the lower to determine seniority in the lower classification.¶

Commented [DD15]: Moved verbatim from 36d(8).

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probationary period in an inferior position in the promotional line.

(e) Employees promoted in the promotional line shall have their seniority for the highest position held on the basis of length of service in that classification. For the next lower classification the employee may add his seniority in the higher classification to that in the lower to determine seniority in the lower classification.

(f) Whenever a person is promoted to a superior position in the promotional line prior to the completion of the probationary period in any one of the positions in the classified civil service under the University System, total service in the inferior position and in all such superior positions shall be combined to establish certified status and seniority in the inferior position.

(110 ILCS 70/36o) (from Ch. 24 1/2, par. ____)

36o. Demotion, removal, and discharge.

(a) After the completion of his or her probationary period, no employee shall be demoted, removed or discharged except for just cause, upon written charges, and after an

opportunity to be heard in his or her own defense if he or she makes a written request for a hearing to the Merit Board within 15 days after the serving of the written charges upon him or her.

(b) Upon the filing of such a request for a hearing, the Merit Board shall grant such hearing by a hearing board or hearing officer appointed by the Merit Board to commence within 45 days from the date of the service of the Notice of Demotion, removal or the filing of the Written Charges for Discharge notice, which may be continued from time to time.

The members of the hearing board or the hearing officer shall be selected from among the members of a panel established by the Merit Board after consultation with the Advisory Committee provided in Section 36c. The hearing board or hearing officer shall make and render findings of fact on the charges and transmit to the Merit Board a transcript of the evidence along with the hearing board's or hearing officer's findings of fact. The findings of the hearing board when approved by the Merit Board shall be certified to the parties.

Commented [DD17]: This paragraph is language moved verbatim from the beginning of this section for organizational purposes. It concerns the effect of promotion on seniority rather than promotion itself.

Deleted: to be held

Deleted: demotion

Deleted: discharge

Commented [DD18]: The language changes the requirement that the hearing be "held" which suggests to completion, regardless of complexity or need for continuances to "commence" and to allow for continuances.

Deleted: by a hearing board or hearing officer appointed by the Merit Board.

Deleted: employer

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(c) If cause for demotion, removal or discharge is found, the employee shall be immediately ~~demoted, removed or discharged~~ from the service. If cause is not found, the employee shall forthwith be reassigned to perform the duties of a position in his or her classification without loss of compensation.

(d) In the course of the hearing, the Executive Director of the Merit Board shall have power to administer oaths and to secure by subpoena the attendance and testimony of witnesses and the production of books and papers relevant to the inquiry.

(f) The provisions of the Administrative Review Law and all amendments and modification thereof, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Merit Board hereby created. The term "administrative decision" is defined as in Section 3-101 of the Code of Civil Procedure.

(110 ILCS 70/36p) (from Ch. 24 1/2, par. ____)

36p. Nondiscrimination. In the administration of the University System, no applicant shall be denied employment or promotion by the Merit Board or by any employer subject to the Act because of race, color, sex, national origin, religious or political affiliations, ancestry, age, marital status, order or protection status, disability, military status, sexual orientation, pregnancy or unfavorable discharge from the military, as defined in the Illinois Human Rights Act, except that any applicant for employment may be required as a condition of employment, to sign a valid oath attesting his loyalty to the State and the United States.

(110 ILCS 70/36s)(from Ch. 24 1/2, par. ____)

36s. Supported employees.

(a) The Merit Board shall develop and implement a supported employment program.

(b) The Merit Board shall designate a liaison to work with State agencies and departments, any funder or provider or both, and State universities in the implementation of a supported employment program.

Commented [DD19]: Language in the current Act only mentions "separation" which is inconsistent with the language in the rest of the paragraph and inconsistent with demotion.

Deleted: separated

Commented [DD20]: Added to clarify that nondiscrimination is not prohibited only in entry level decisions.

Commented [DD21]: This language expands the protected classes to reflect those recognized in the Illinois Human Rights Act.

Commented [DD22]: This language is removed as it is no longer relevant due to the passage of time.

Deleted: It shall be the goal of the program to appoint a minimum of 10 supported employees to State University civil service positions before June 30, 1992.

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(c) As used in this Section: to cause comparable substantial functional limitation.

(1) "Supported employee" means any individual who:

(2) "Supported employment" means

(A) has a severe physical or mental disability which seriously limits functional capacities, including but not limited to, mobility, communication, self-care, self-direction, work tolerance or work skills, in terms of employability as defined, determined and certified by the Department of Human Services; and

competitive work in integrated work settings:

(A) for individuals with severe disabilities

Deleted: handicaps

for whom competitive employment has not traditionally occurred, or

(B) for individuals for whom competitive employment has been interrupted or intermittent as a result of a severe disability, and who because of their disability, need on-going

Deleted: handicap

(B) has one or more physical or mental disabilities resulting from amputation; arthritis; blindness; cancer; cerebral palsy; cystic fibrosis; deafness; heart disease; hemiplegia; respiratory or pulmonary dysfunction; an intellectual disability; mental illness; multiple sclerosis; muscular dystrophy; musculoskeletal disorders; neurological disorders, including stroke and epilepsy; paraplegia; quadriplegia and other spinal cord conditions; sickle cell anemia; and end-stage renal disease; or another disability or combination of disabilities determined on the basis of an evaluation of rehabilitation potential

support services to perform such work. The term includes transitional employment for individuals with chronic mental illness.

(3) "Participation in a supported employee program" means participation as a supported employee that is not based on the expectation that an individual will have the skills to perform all the duties in a job class, but on the assumption that with support and adaptation, or both, a job can be designed to take advantage of the supported employee's special strengths.

(4) "Funder" means any entity either State, local or federal, or private not-for-profit or for-profit that provides monies to programs that

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provide services related to supported employment.

(5) "Provider" means any entity either public or private that provides technical support and services to any department or agency subject to the control of the Governor, the Secretary of State or the University System.

(d) The Merit Board shall establish job classifications for supported employees who may be appointed into the classifications without open competitive testing requirements. Supported employees shall serve in a trial employment capacity for not less than 3 or more than 12 months.

(e) The Merit Board shall maintain a record of all individuals hired as supported employees. The record shall include:

(1) the number of supported employees initially appointed;

(2) the number of supported employees who successfully complete the trial employment periods; and

(3) the number of permanent targeted positions by titles.

(f) The Merit Board shall submit an annual report to the General Assembly regarding the employment progress of supported employees, with recommendations for legislative action.

Deleted: Civil Service

STATE UNIVERSITIES CIVIL SERVICE SYSTEM

Sunnycrest Center
1717 Philo Road, Suite 24
Urbana, Illinois 61802-6099



James D. Montgomery
Merit Board Chair
Jeff Brownfield
Executive Director

DATE: Tuesday, January 17, 2017

TO: Senator Scott Bennett
HAND-DELIVERED

Representative Carol Ammons
HAND-DELIVERED

FROM: Jeff Brownfield, Executive Director, State Universities Civil Service System

RE: Amendment of the State Universities Civil Service Act

Dear Senator Bennett and Representative Ammons:

Please allow this letter to serve as a summary of language this office, after input from the Merit Board, universities, and exclusive bargaining representatives, of recommended changes to the State Universities Civil Service Act. The Act has undergone very few substantive changes since its inception in 1952. However, in that time, the number of university employees has increased exponentially, and human resource strategies—and demands—have evolved. It is my hope, and that of the Merit Board and universities, that the changes suggested here would allow the system to evolve, consistent with the legislative intent to create a sound program of personnel administration in which appointments to positions are made solely on the basis of merit and fitness, as set forth in the Act.

Based on communications with constituent agencies and universities, and with the concurrence of the Merit Board, I am seeking legislative support on a number of issues to 'bring the Act into the 21st century.' The following is a list of recommended changes that would enhance the abilities of our public universities to maintain excellence in their hiring and employment practices while preserving civil service protections for civil service employees, reflect legislative changes in other arenas, and permit the system the opportunity to try new methods of maintaining excellence while protecting the merit-based approach.

1. Allow for additional out-of-state recruitment. §36f.

Impetus:

The universities have requested the ability to recruit from out of state, there are even examples of universities removing positions from civil service simply because of the residency requirement. This provision only allows for non-residents to test for positions. This would also allow the Merit Board to clarify the specific classifications where non-residents could test. At this time there is nebulous clarification in our Act that refers to 'technical' positions but does not define the elements of a 'technical' position.

2. **Allow the employment of municipal or county law enforcement personnel or other highly regulated professions to obtain employment without being subjected to the same testing process as those with minimal skills or certifications. §36f.**

Impetus:

This request is based on discussions with university police and other highly regulated professions such as medical services, nurses and similar positions and includes their desire to have one more tool to recruit employees including diverse candidates, persons of color, gender, etc. Right now they are at a disadvantage to other state law enforcement agencies and medical facilities who may be competing for the same experienced candidates. The Merit Board will be required to set limitations on the use and number of employees that can be recruited in this fashion.

3. **Allow for the practicalities of scheduling and completing a discharge hearing. §36o.**

Impetus:

Currently, a discharge hearing must “occur” within 45 days of notice to the employee, who in turn has 15 days to demand a hearing, the effect of which is to require a hearing to occur and possibly be completed within 30 days of the demand. 110 ILCS 70/36o. Though there is no call for change, upon completion of a legal review, this change of the deadline is a more manageable timeframe to assure both parties can have their appropriate rights.

4. **Clarify that the Merit Board may delegate its authority to the Executive Director. §36d (12).**

Impetus:

Currently, the Act sets forth over fifteen different duties of the Merit Board, but specifically permits the Board to delegate less than half of those to the Director. Because certain delegations are specified, the legal implication is that the others cannot be delegated. As written, this suggests that the Merit Board cannot delegate the remaining duties to the Executive Director. The Joint Committee on Administrative Rules expressed concern that the System Office was promulgating rules. In addition, legal review reveals that by specifying certain duties may be delegated, the implication is that others may not. Adding language that states clearly that delegation is permitted removes that potential argument.

5. **The Act should be amended to allow for pilot programs. §36d (14) (new paragraph).**

Impetus:

Currently, the Act prohibits test or pilot programs of new human resources principles and ideas in that there is no provision for allowing the relaxation of the act/rules. This is inconsistent with its stated parameters and thus does not allow the introduction of new programs that might be inconsistent with the act/rules limitations.

6. **Make various language changes that eliminate out-of-date, duplicative, or inconsistent language, language that the legislature has indicated is not preferred, or language that is presumably a result of presumed oversight.**

- Change all references to “Director” to “Executive Director” for accuracy, consistency and to avoid possible confusion.
- Change repeated references to the “Civil Service System” or “System” or others and use “University System” which is the phrase chosen by the legislature in §36b (1), for accuracy, consistency and to avoid possible confusion.

- Move language concerning the exams themselves from §36d(5) which establishes the Merit Board's power to offer exams, to §36f which focuses on examinations.
- Move language concerning filling vacancies through promotion from §36d(8) which establishes the Merit Board's duty provide for rules for promotion to §36j which focuses on promotions.
- Move language concerning the activation of employees for military duty from §36g(g) concerning Veterans Preference to §36g-1 which actually concerns the activation of employees for military duty.
- Ensure that the employees of all constituent agencies are protected in the event they are activated for military service in §36g-1, rather than just those of the universities as in the current language by adding those entities to the list of employers.
- Delete language in §36c about the terms of trustees during the transition in 1995 from the Board of Regents and the Board of Governors of State Colleges to the current make-up of the Merit Board.
- Remove language concerning the length of the probationary period and the Executive Director's role in establishing the term from §36d(9) which establishes the Merit Board's duty to set a probationary period, because the time period and Executive Director's role and limits in setting the period is set forth elsewhere, in §§ 36h(2) and j.
- Add language to §36d regarding powers of the Merit Board that it can subpoena witnesses and documents, which is also found in §36o, suggesting that the power is not limited to disciplinary matters, which is the subject of §36o.
- Delete requirements that employers to send information to the System Office, since the System Office may require them by rule.
- Add language to §36p concerning unlawful discrimination to add classes protected since the passage of the Act, using language from the Human Rights Act.
- Change references from "handicapped" to "disabled," and "mental retardation" to "intellectual disability."
- Remove time limiting references, such as references to employees activated for military duty after August 1, 1990 in Section 36g-1.
- Fix Section 360 to allow for demotions. The current language lists demotion as an option in its title but then the language requires removal of the employee if the Merit Board finds just cause, rather than demotion.
- Add paragraph numbering to those sections in which change is otherwise being sought to reflect current statutory drafting principles and ease of reference.



State Universities Civil Service System

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Update and action regarding proposed rulemaking to Section 250.110 of the Code (80 Ill. Adm. Code §250.110) –

- *Update on the status of the proposed rulemaking revisions to the new Section 250.110 of the Code. There has been a formal challenge to JCAR to the rule, details will be provided.*

13504, effective December 1, 2015; amended at 40 Ill. Reg. 3105, effective January 26, 2016; emergency amendment at 40 Ill. Reg. 3772, effective March 1, 2016, for a maximum of 150 days; amended at 40 Ill. Reg. 11192, effective August 4, 2016; amended at 40 Ill. Reg. _____, effective _____.

Section 250.110 Separations and Demotions

a) Resignation. An employee having a nonstatus or status appointment, as described in Sections 250.70 and 250.80, may resign by presenting a signed resignation to his/her employer or by demonstrating to the employer by other means his/her intent to separate from employment. Upon receipt of a signed resignation by the employee or other evidence of intent to separate from employment, the employee will be separated from his/her employer employment. The employer shall maintain all resignations or other documentation of evidence in accordance with the employer's record retention policy. ~~The Executive Director shall be notified promptly by the employer of all resignations.~~

b) Leave of Absence

1) Leave of Absence for Classification Changes. A status employee who accepts a position that represents a promotion in a class outside his/her promotional line shall be granted a leave of absence from a position of his/her former class for the duration of any intern appointment, provisional appointment, and/or probationary period in the new class.

2) Leave of Absence for Disciplinary Actions. An employee placed on a Disciplinary Suspension or on a Suspension Pending Discharge shall be placed on a leave of absence from his/her position without pay.

3) Leave of Absence for Disability Leave

A) If an employee is no longer able to perform the duties and responsibilities of his/her position in the class due to a disability as determined by the employer's medical and/or psychological evaluation procedures, and/or in accordance with State and federal law~~law~~, the employee will be required to take disability leave in accordance with subsection (b)(3)(B).

B) A status employee who becomes eligible for disability benefits to be paid by the employer or, as later determined, by the Illinois State retirement system to which the employee contributed, or becomes eligible for payment benefits as defined by the Workers' Compensation Act [820 ILCS 305], the Illinois Occupational

the employee may request a review of the termination decision pursuant to ~~Section 250.130~~ of this Part. The review is limited to a determination of whether this Section has been properly applied and whether the employer's decision is deemed arbitrary or capricious. In the event a review is not requested within the allotted timeframe, the employee's termination from service shall be effective ~~715~~ days after the original notification.

- 5) The employer shall notify the Executive Director promptly of all terminations of employment, ~~setting forth the reason for the termination.~~

d) Job Abandonment (No Call/No Show)

- 1) An employee who fails to report to work for 3 consecutive regularly scheduled work days will be placed in a no call/no show status and may be terminated at any point following the third day of failing to report to work pursuant to an employer making a reasonable attempt, with supporting documentation, to make contact with the employee using the employee's last known address, phone contact, email or any similar contact information.

- 2) Pursuant to Section 250.130, the employee may request a review of the employer's final notice of termination. The review is limited to a determination of whether this subsection (d) has been properly applied and whether the employer's decision is deemed arbitrary or capricious. In the event a review is not requested within the allotted timeframe, the employee's termination from service shall be effective 7 days after the original notification.

ed) Layoff

- 1) A layoff is defined as a stoppage of work required by management, a discontinuance of employment, or the permanent termination of employment of an employee for business reasons, such as the decision that certain positions are no longer necessary or a business slow-down or interruption in work has occurred.

- 2) The Executive Director shall be notified promptly of all employees on layoff status, together with the dates of the beginning of layoff and of return to employment from layoff status, when the layoff exceeds 30 consecutive work days. A status employee shall receive a written notice, at least 30 calendar days in advance of the effective date of layoff, when the layoff exceeds 30 consecutive work days; however, the effective date



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Trustees
Carlene Enno
Tom Minick
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October 24, 2016

jeffb@sucss.illinois.gov

Jeff Brownfield
Executive Director
State of Illinois
State Universities Civil Service System
1717 Philo Road, Suite 24
Urbana, IL 61802

Re: Comments on Proposed Rulemaking: University Separations and Demotions;

Dear Mr. Brownfield:

This constitutes the comments of AFSCME Council 31 regarding the above proposed rulemaking.

AFSCME respectfully objects that the State Universities Civil Service System (SUCSS) does not possess the statutory authority to issue the proposed rules regarding university separations and demotions, as indicated herein.

Since an administrative agency is created by statute, "its jurisdiction or authority must be found within the provisions of the statute by which it acts." *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2015 IL App (5th) 140092 (5th Dist. 2015 at Para. 35. An administrative agency may adopt a rule or regulate an activity only to the extent that a statute empowers the agency to do so." *J&J Ventures Gaming, LLC v. Wild, Inc.*, 2015 IL App (5th) 140092 (5th Dist., 2015) at Para. 35; *Illinois Bell Telephone Co. v. Illinois Commerce Commission*, 362 Ill.App.3d 652, 656 (4th Dist. 2005). "It is axiomatic that the authority of an administrative agency to adopt rules and regulations is defined by the statute creating the authority, and such rules and regulations must be in accord with the standards and policies set forth in the statute." *Popejoy v. Zagel*, 115 Ill.App.3d 11 (4th Dist. 1983).

Rules promulgated by the State Universities Civil Service System (SUCSS) must be within that statute's authority. AFSCME objects to two of the proposed rule changes. First, at least one of the rules proposed (job abandonment) has already been the subject of negotiation at the university level, and has been incorporated into the current collective bargaining agreements. Second, the proposed definition of "layoff" presupposes the severance of the employment relationship, and does not comport with employee rights under current Sections 250.110(d) 2 through 6.

- I. **The proposal concerning Job Abandonment (No call/No show) appears to conflict with a number of existing collective bargaining agreements**

The proposed rule is inconsistent with the provisions of 110 ILCS 70/36(d), Section (3) which delegates to the Employer (each university), and not to the SUCSS, the authority to negotiate with representatives of employees:

Each employer covered by the University System shall be authorized to negotiate with representatives of employees to determine appropriate ranges or rates of compensation or other conditions of employment and may recommend to the Merit Board for establishment the rates or ranges or other conditions of employment which the employer and employee representatives have agreed upon as fair and equitable.

As is outlined below, existing collective bargaining agreements have dealt with issues addressed in the proposed rule, and the proposed rule is inconsistent with the authority that is statutorily delegated to the universities.

The proposal in section 250.110d adds "Job Abandonment (No call/No show)" language. This language directly conflicts with several AFSCME collective bargaining agreements. For example, at the University of Illinois at Urbana-Champaign, the relevant language for both Local 3700 & Local 698 is:

Absence of an employee for five (5) consecutive workdays without reporting to the Employer or person designated by the Employer to receive such notification may be cause for discharge in the absence of exigent circumstances that prevented them or someone acting on their behalf from being able to contact supervision at any point during that time period. For such absences, the following process will be followed:

- 1) Following the fifth consecutive workday of an absence by an employee without reporting, the Employer shall send notification of their absence to the employee and the Union.*
- 2) Upon receipt of the notification, the employee shall have ten (10) workdays to respond.*
- 3) If no response from the employee is received within the ten (10) workday timeframe, the employee will be considered to have resigned upon their last day of work. However, the University shall allow the employee to be reinstated to their former position if the employee can demonstrate that the employee was unable to provide proper notification of his/her absence to the University due to circumstances beyond his/her control.*

In contrast, the proposed language reads:

An employee who fails to report to work for 3 consecutive regularly scheduled work days will be placed in a no call/no show status and may be terminated at any point following the third day of failing to report to work pursuant to an employer making a reasonable attempt, with supporting documentation, to make contact with the employee using the employee's

last known address, phone contact, email or any similar contact information.

AFSCME opposes the proposed rule in that it explicitly conflicts with at least two existing collective bargaining agreements, and that it usurps the universities' statutory authority to bargain over these matters.

II. AFSCME objects to the proposed new definition of the term "layoff"

The proposed Section 250.110e adds a definition of "layoff" where none existed before:

A layoff is defined as a stoppage of work required by management, a discontinuance of employment, or the permanent termination of employment of an employee for business reasons, such as the decision that certain positions are no longer necessary or a business slow-down or interruption in work.

This definition presupposes an employee's loss of employment status. Under a more accurate definition, a layoff is defined by the employer's decision to either (a) temporarily or indeterminately eliminate positions, or (b) not fund positions. Such an announced intent triggers a set of rights for the employees in the targeted positions. These might include the right to fill vacant positions, the right to bump into previously-held classifications, the right to be placed on a recall list, etc. These types of rights are noted in current Sections 250.110(d) 2 through 6.

For comparison purposes, the following definition of "layoff" is excerpted from the State of Illinois Personnel Rules:

Section 302.507 Definition of Layoff

A layoff is the placement of an employee in non-paid and non-working status without prejudice either temporarily or indeterminately. No agency may lay off, either temporarily or indeterminately, an employee as a means or form of discipline.

Section 302.520 Indeterminate Layoff Procedure

a) An operating agency may request the indeterminate layoff of an employee because of lack of funds, material change in duties or organization or lack of work or the abolition of a position for any of these reasons. Based on class, option, agency, county or other designation, an indeterminate layoff shall be within organizational units justified by operations and approved prior to the layoff by the Director.

The manner in which a layoff is described may have implications as to what employee rights are triggered under the rules or under a collective bargaining agreement. The right to move into a different job, whether a vacancy or a bump of another employee, might arise based on how a

university describes its action. As above, the proposed rule might be inconsistent with existing collective bargaining agreements. There might be other impacts that the System has not considered.

In summary, AFSCME respectfully requests that the proposed rules be withdrawn or modified to comport with the universities' statutory authority to bargain over separation and demotion. The rule must also take into account that the universities and collective bargaining representatives have memorialized language on these issues in their existing collective bargaining agreements. The definition of "layoff" should be modified to focus on employee rights when positions are permanently or temporarily eliminated, and not presuppose that an employee is severed from employment.

To the extent that any rules are adopted, they should be modified to correct and clarify the specific concerns addressed above.

Respectfully submitted,



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