



# **IOWA ADMINISTRATIVE CODE REFERENCE GUIDE**

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## CHAPTER 51 - COVERAGE AND EXCLUSIONS

### 11—51.1(8A) State personnel system

The state personnel system shall include and apply to all positions in the executive branch of state government, except those specifically excluded by law.

### 11—51.2(8A) Merit system

The merit system shall include and apply to those positions in the state personnel system which have been determined by the director to be covered by Iowa Code section 8A.411 as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings, hereinafter referred to as merit system provisions. Whenever the director determines that a position should be covered by or not covered by merit system provisions, the director shall notify the appointing authority in writing of the decision and the effective date.

51.2(1) Exclusion of division administrators and policy-making positions. The appointing authority of each agency shall submit to the director for approval the position number and title of each position referred to in Iowa Code section 8A.412 and proposed for exclusion from coverage by the merit system provisions referred to in Iowa Code section 8A.411(4). Subsequent changes in the number or duties of these positions shall be submitted to the director for exclusion approval.

51.2(2) Exclusion of confidential employees. Confidential employees excluded from coverage by merit system provisions shall be as provided for in 11—Chapter 50.

51.2(3) Other exclusions. For further information regarding exclusions from merit system coverage, refer to Iowa Code section 8A.412.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

### 11—51.3(8A) Confidential collective bargaining exclusion

An appointing authority may request the director to exclude a position in a class covered by a collective bargaining agreement from coverage by that agreement based upon the definition of a confidential employee in these rules. The request shall be submitted to the director in writing and include the reasons why the position should be excluded. The director shall notify the appointing authority of the decision.

Whenever a position in a class covered by a collective bargaining agreement has been excluded by the director under this rule, the employee in the position shall be subject to these rules.

### 11—51.4(8A) Personnel services contracts

Individuals providing services to the state pursuant to an authorized fee-for-services contract, including persons supplied by a temporary employment service, are not employees of the state. Persons providing services under this rule who are determined to have a common law employer-employee relationship with the state may, however, be subject to withholding for certain taxes, social security, Medicare, and federal unemployment taxes under the Federal Unemployment Tax Act.

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapters 19B and 70A.

## CHAPTER 52 - JOB CLASSIFICATION

### 11—52.1(8A) Overall administration

**52.1(1)** The director shall prepare, maintain, and revise a classification plan for the executive branch of state government such that positions determined by the director to be similar with respect to kind and level, as well as skill, effort, and responsibility of duties assigned may be included in the same job classification.

**52.1(2)** The director may add, delete, modify, suspend the use of or subdivide job classifications to suit the needs of the executive branch of state government.

### 11—52.2(8A) Classification descriptions and guidelines

**52.2(1)** Classification descriptions are developed and published by the department as needed. They contain information about the job classification which may include examples of duties and responsibilities assigned, knowledges, abilities and skills required, and qualifications. They may be used by department staff as one of several resources for arriving at position classification decisions.

Classification descriptions are not intended to be all-inclusive. That some duties performed by an incumbent are or are not included in a classification description is in no way to be construed as an indication that a position is or is not assigned to the correct or incorrect job classification. Position classification decisions shall be based upon the preponderance of duties assigned to the position.

**52.2(2)** Position classification guidelines are developed and published by the department as needed. Their purpose is to document information about the duties and responsibilities that may be typically associated with a job classification or a series of job classifications. They may describe the kind and level of duties assigned, as well as the skill, effort, responsibilities and working conditions associated with job performance. Where the job classification being described is one in a series, the position classification guideline may compare and contrast the similarities and differences among levels in the series.

Position classification guidelines are generally intended for use by department staff as one of several resources that may be used in arriving at position classification decisions.

**52.2(3)** Nothing in a classification description or a position classification guideline shall limit an appointing authority's ability to assign, add to, delete or otherwise alter the duties of a position.

**52.2(4)** Changes to the minimum qualifications in a classification description shall have no effect on the status of employees in positions in that class, except where licensure, registration, or certification is changed or newly required.

### 11—52.3(8A) Position description questionnaires

Position description questionnaires shall be submitted to the director and kept current by the appointing authority on forms prescribed by the director for each position under an appointing authority's jurisdiction. The appointing authority shall assign duties to positions and may add to, delete or alter the duties of positions. An updated position description questionnaire shall be submitted to the department by the appointing authority whenever requested by the director or whenever changes in responsibilities occur that may impact a position's classification. Position description questionnaires are a public record.

## 11—52.4(8A) Position classification reviews

**52.4(1)** The director shall decide the classification of all positions in the executive branch of state government except those specifically determined and provided for by law. Position classification decisions shall be based solely on duties permanently assigned and performed.

**52.4(2)** Position classification decisions shall be based on documented evidence of the performance of a kind and level of work that is permanently assigned and performed 50 percent or more of the time and that is attributable to a particular job classification.

**52.4(3)** The director may initiate specific or general position classification reviews. An appointing authority or an incumbent may also submit a request to the director to review a specific position's classification. When initiated by other than the director, position classification review decisions shall be issued within 60 calendar days after the request is received by the department. If additional information is required by the department, it shall be submitted within 30 calendar days following the date it is requested. Until the requested information is received by the department, the 60-calendar-day review period may be suspended by the department.

**52.4(4)** Position classification decision.

*a.* Notice of a position classification review decision shall be given by the department to the incumbent and to the appointing authority.

*b.* The decision shall become final unless the appointing authority or the incumbent submits a request for reconsideration to the department.

*c.* The request for reconsideration shall be in writing, state the reasons for the request and the specific classification requested, and must be received in the department within 30 calendar days following the date the decision was issued.

*d.* The final position classification decision in response to a request for reconsideration shall be issued by the department within 30 calendar days following receipt of the request.

**52.4(5)** The maximum time periods in the position classification review process may be extended when mutually agreed to in writing by the parties.

**52.4(6)** Following a final position classification review decision, any subsequent request for review of the same position must be accompanied by a showing of substantive changes from the position description questionnaire upon which the previous decision was based.

*a.* A new position description questionnaire must be prepared and all new and substantively changed duties must be identified as such on the new questionnaire.

*b.* The absence of a showing of substantive changes in duties shall result in the request being returned to the requester.

*c.* A decision to return a request for failing to show substantive change in duties may be appealed to the classification appeal committee in accordance with 11—52.5(8A).

*d.* The classification appeal committee shall rule only on the issue of whether a substantive change in duties has been demonstrated by the appellant.

*e.* The appellant has the burden of proof to show by a preponderance of evidence that there has been a substantive change in duties.

**52.4(7)** The position classification review process is not a contested case.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

## 11—52.5(8A) Classification appeals

**52.5(1)** If, following a position classification review request, a decision notice is not issued within the time limit provided for in these rules, or the appointing authority or the incumbent does not agree with the department's final position classification review decision, the appointing authority or the incumbent may request a classification appeal committee hearing. The request shall be in writing and shall be submitted to: Classification Appeal Committee Chair, Department of Administrative Services—Human Resources Enterprise, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0150. The classification appeal hearing process is a contested case as defined by Iowa Code chapter 17A.

**52.5(2)** A classification appeal committee shall be appointed by the director.

**52.5(3)** A request for a classification appeal committee hearing must be in writing, state the reasons for the request and the specific classification requested. The request must be received in the department within 14 calendar days following the date the final position classification review decision notice was or should have been issued by the department.

**52.5(4)** Hearings.

- a.* The classification appeal committee shall schedule a hearing pursuant to Iowa Code section 17A.12.
- b.* All exhibits to be entered into evidence at the hearing shall be exchanged between the parties prior to the hearing.
- c.* Hearings will be scheduled and the requester will be notified via mail of the date, time and location.
- d.* The appellant shall carry the burden of proof to show by a preponderance of evidence that the duties of the requested job classification are assigned and carried out on a permanent basis and are performed over 50 percent of the time.
- e.* The committee shall grant or deny the job classification requested, remand the request to the director for further review, or decide whether there has been a substantive change in duties pursuant to an appeal under subrule 52.4(6) or 52.5(6).
- f.* The committee's written decision shall be issued within 30 calendar days following the close of the hearing and the receipt of any posthearing submissions. The written decision of the committee shall constitute final agency action.

**52.5(5)** Requests for rehearing and judicial review of final classification appeal committee decisions shall be in accordance with Iowa Code section 17A.19.

**52.5(6)** Following a final classification appeal committee decision, any subsequent request for review of the same position must be accompanied by a showing of substantive changes from the position description questionnaire upon which the previous decision was based.

- a.* A new position description questionnaire must be prepared, and all new and substantively changed duties must be identified as such on the new questionnaire.
- b.* The absence of such a showing of substantive changes in duties shall result in the request's being returned to the requester.
- c.* A decision to return a request for failing to show substantive change in duties as defined in subrule 52.5(7) may be appealed to the classification appeal committee in accordance with 11—52.5(8A).
- d.* The classification appeal committee shall rule only on the issue of whether a substantive change in duties has been demonstrated by the appellant.
- e.* The appellant has the burden of proof to show by a preponderance of evidence that there has been a substantive change in duties.

**52.5(7)** As it relates to subrules 52.4(6) and 52.5(6), the phrase "substantive change" means that sufficient credible evidence exists, in the form of the deletion or addition to the duties in the requester's present classification, that would cause a reasonable person to believe that the duties of the requested classification are assigned and carried out on a permanent basis and are performed over 50 percent of the time.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

## 11—52.6(8A) Implementation of position classification decisions

**52.6(1)** Position classification changes shall not be retroactive and shall become effective only after approval by the director. Position classification changes approved by the director that are not made effective by the appointing authority within 90 calendar days following the date approved shall be void. Position classification changes that will have a budgetary impact shall not become effective until approved by the department of management. If the appointing authority decides not to implement the change or the department of management does not approve funding for the change, duties commensurate with the current job classification shall be restored by the appointing authority within three pay periods following the date of that decision.

**52.6(2)** Except where licensure, registration or certification is required, an employee shall not be required to meet the minimum qualifications for the new job classification when a reclassification is the result of the correction of a position classification error, a class or series revision, the gradual evolution of changes in the position, legislative action, or other external forces clearly outside the control of the appointing authority.

**52.6(3)** An employee in a position covered by merit system provisions shall be required to meet the qualifications for the new job classification when the reclassification is the result of successful completion of an established training period where progression to the next higher level in the job classification series is customary practice, for reasons other than those mentioned in subrule 52.6(2), or when the reclassification is the result of a voluntary or disciplinary demotion. “Completion of an established training period” shall be the period provided for on the class descriptions for the class. In addition, employees with probationary status must be eligible for certification in accordance with 11—Chapter 58, Iowa Administrative Code.

**52.6(4)** In all instances of reclassification where licensure, certification, or obtaining a passing score on a test is required, that requirement shall be met by the employee within the time limits set forth by the director. If this requirement is not met, the provisions of rule 11—60.3(8A) shall apply.

**52.6(5)** Reserved.

**52.6(6)** If an employee is ineligible to continue in a reclassified position and cannot otherwise be retained, the provisions of 11—Chapter 60, Iowa Administrative Code, regarding reduction in force shall apply.

**52.6(7)** An employee shall not be reclassified from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee’s written consent regarding the change in merit system coverage. A copy of the written consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapters 19B and 70A.

<sup>1</sup> Effective date (1/26/83) of 3.4 and 3.7 delayed 70 days by the Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.

<sup>2</sup> See IAB Personnel Department

## CHAPTER 53 - PAY

### 11—53.1(8A) Pay plan adoption

The director shall adopt pay plans for all classes and positions in the executive branch of state government, except as otherwise provided for in the Iowa Code.

### 11—53.2(8A) Pay plan content

Pay plans shall have numbered pay grades showing minimum and maximum salaries.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

### 11—53.3(8A) Pay plan review and amendment

The director shall review pay plans at least annually and, taking into account the results of collective bargaining and other factors, may adjust pay ranges or reassign classes to different pay grades.

### 11—53.4(8A) Pay administration

**53.4(1) *Employees.*** The director shall assign classes to pay plans and grades and shall assign employees to classes. Employees shall be paid at a rate between the minimum and maximum of the pay grade of the class to which the employee is assigned. Pay decisions shall be at the discretion of the appointing authority unless otherwise provided for in this chapter or by the director.

**53.4(2) *Appointed officials.*** Unless otherwise provided for in the Iowa Code or these rules, the staff of the governor, full-time board and commission members, department directors, deputy directors, division administrators, independent agency heads and others whose appointments are provided for by law or who are appointed by the governor may be granted pay increases of any amount at any time within the pay grade of the class or position to which appointed.

**53.4(3) *Total compensation.*** An employee shall not receive any pay other than that provided for the discharge of assigned duties, unless employed by the state in another capacity or specifically authorized in the Iowa Code, an Act of the general assembly or these rules.

**53.4(4) *Part-time employment.*** Pay for part-time employment shall be proportionate to full-time employment and based on hourly rates.

**53.4(5) *Effective date of changes.*** All pay changes shall be effective on the first day of a pay period, unless otherwise approved by the director. Original appointments, reemployment and reinstatements shall be effective on the employee's first day of work.

**53.4(6) *General pay increases.*** The director shall administer general pay increases for employees that have been authorized by the legislature and approved by the governor. An employee in a position whose pay has been red-circled above the maximum pay rate of the class to which the employee is assigned shall not receive a general pay increase unless specifically authorized by the Acts of the general assembly or otherwise provided for in these rules.

**53.4(7) *Pay corrections.*** An employee's pay shall be corrected if it is found to be in violation of these rules or a collective bargaining agreement. Corrections shall be made on the first day of a pay period.

*a. Retroactive pay.* An employee may receive retroactive pay in the same fiscal year for which the pay should have been paid. A request for retroactive pay must be received and processed no later than August 31 following the close of the fiscal year for which the request is made. Requests for retroactive pay which are not made in a timely fashion must be submitted to the state appeal board.

*b. Overpayment and underpayment.* If an error results in an employee's being overpaid for wages, except for FICA, state and federal income taxes and IPERS contributions shall be collected. Also, premiums for health, dental and life insurance benefits that have been underpaid shall be subject to collection. An employee may choose to repay the amount from wages in the pay period following discovery of the error or have the overpayment deducted from succeeding pay periods not to exceed the number of pay periods during which the

overpayment occurred, or the employee or appointing authority may submit an alternate repayment plan to the director. The repayment plan shall identify the details of the overpayment, the reasons why the department's recouping the amount of overpayment in the same number of pay periods as those during which the overpayment occurred presents a hardship to the employee, and the terms of the alternate repayment plan. The director shall notify the appointing authority of the decision on the alternate repayment plan. If the employee separates from employment, the amount remaining shall be deducted from wages, vacation payout, applicable sick leave payout and any wage correction payback from IPERS. The collection of overpaid wages shall not result in reducing the employee's pay below relevant state and federal minimum wage statutes for each hour actually worked during the pay period in which the collection of overpaid wages occurs.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

## 11—53.5(8A) Appointment rates

An employee shall be paid at the minimum pay rate for the class to which appointed, except in the following instances:

**53.5(1) *Individual advanced appointment rate.*** For new hires and reinstatements, the appointing authority may request pay in excess of the minimum based on education and experience directly related to duties that exceed the minimum qualifications of the class. The appointing authority shall maintain a written record of the justification for the advanced appointment rate. The record shall be a part of the official employee file. All employees possessing equivalent qualifications in the same class and with the same appointing authority may be adjusted to the advanced rate. Individual advanced appointment rates are subject to prior approval by the department.

**53.5(2) *Blanket advanced rate.*** If there is a scarcity of applicants, an appointing authority may submit a written request to the director documenting the economic or employment conditions that make employment at the minimum pay rate for a class unlikely. The director may authorize appointments beyond the minimum rate for the class as a whole or in a specific geographical area. All current employees and new or promoted employees under the same conditions and in the same class shall be paid the higher rate. This rate shall remain in effect until rescinded by the director.

**53.5(3) *Trainee.*** Rescinded IAB 1/28/04, effective 3/24/04.

**53.5(4) *Internship.*** Rescinded IAB 1/28/04, effective 3/24/04.

**53.5(5) *Temporary, seasonal, and internship.*** When an appointment is made to a class on a temporary, seasonal, or internship basis, the employee may be paid at any rate within the pay grade to which the class is assigned. Such employees may be given authorized, noncontract salary, across-the-board adjustments within the minimum and maximum rates of the pay grade. Temporary, seasonal and internship employees are not eligible for within-grade increases based on performance or time in service.

**53.5(6) *Overlap.*** When an appointment is made on an overlap basis, the employee shall be paid in accordance with this chapter.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—53.6(8A) Payroll transactions.

**53.6(1) *Pay at least at minimum.*** If a transaction results in an employee's being paid from a different pay plan or pay grade, the employee shall be paid at least the minimum pay rate of the class to which assigned, except as provided in subrules 53.5(3) and 53.5(4).

**53.6(2) *Pay not to exceed maximum.*** If a transaction results in an employee's being paid from a different pay plan or pay grade, the employee's pay shall not exceed the maximum pay rate of the class to which assigned, except as provided in subrule 53.6(3) or 53.6(13) or rule 11—53.8(8A).

**53.6(3) *Red-circling.*** If the pay of an employee exceeds the maximum pay for the class to which the employee is assigned, the employee's pay may be maintained (red-circled) above the maximum for up to one year. Requests to change the time period or the red-circled rate must first be submitted to the director for approval. If a request is approved, the appointing authority shall notify the employee in writing of any changes in the time period and the pay. If an employee's classification or agency changes, a request to rescind the red-circling may be submitted by the appointing authority to the director for approval. The director may also require



red-circling in certain instances.

**53.6(4) Pay plan changes.** If a transaction results in an employee's being paid from a different pay plan, the employee shall be paid at the employee's current pay rate, except as provided in subrules 53.6(1) and 53.6(2). For demotions, the employee's pay shall be at the discretion of the appointing authority so long as the employee's pay is not greater than it was prior to the demotion. For setting eligibility dates, see subrule 53.7(5).

**53.6(5) Pay grade changes.** If a transaction results in an employee being paid in a higher pay grade, the employee's pay may be increased by up to 5 percent for each grade above the employee's current pay grade, except as provided in subrules 53.6(1) and 53.6(2). The implementation of pay grade changes for employees in contract classes may be negotiated with the applicable collective bargaining representative to the extent required. For setting eligibility dates, see subrule 53.7(5).

**53.6(6) Promotion.** For setting eligibility dates, see subrule 53.7(5).

a. If an employee is promoted, the employee may be paid at any rate in the pay grade of the pay plan to which the employee's new class is assigned, except as provided in subrules 53.6(1) and 53.6(2).

b. Rescinded IAB 7/19/17, effective 7/1/17.

c. Leadworker. If an employee who is receiving additional pay for leadworker duties is promoted, the pay increase shall be calculated using the employee's new base pay.

**53.6(7) Demotion.** If an employee demotes voluntarily or is disciplinarily demoted, the employee may be paid at any pay rate within the pay grade of the pay plan to which the employee's new class is assigned that does not exceed the employee's pay at the time of demotion, except as provided in subrules 53.6(1), 53.6(2) and 53.6(4). For setting eligibility dates, see subrule 53.7(5).

**53.6(8) Transfer.** If an employee transfers under these rules to a different class, the employee shall be paid at the employee's current pay rate, except as provided in subrules 53.6(1), 53.6(2) and 53.6(4).

**53.6(9) Reclassification.** If an employee's position is reclassified, the employee shall be paid as provided for in subrule 53.6(6), 53.6(7) or 53.6(8), whichever is applicable. For setting eligibility dates, see subrule 53.7(5).

**53.6(10) Return from leave.** If an employee returns from an authorized leave, the employee shall be paid at the same pay rate as prior to the leave, including any pay grade, pay plan, class or general salary increases for which the employee would have been eligible if not on leave, except as provided for in subrules 53.6(1) and 53.6(2). For setting eligibility dates, see subrule 53.7(5).

**53.6(11) Recall.** If an employee is recalled in accordance with 11—subrule 60.3(6), the employee shall be paid at the same step or pay rate as when laid off or bumped, including any pay grade, pay plan, class or general salary increases, except as provided in subrules 53.6(1) and 53.6(2). For setting eligibility dates, see subrule 53.7(5).

**53.6(12) Reinstatement.** Rescinded IAB 8/6/14, effective 9/10/14.

**53.6(13) Change of duty station.** If an employee is promoted, reassigned or voluntarily demoted at the convenience of the appointing authority and a change in duty station beyond 25 miles is required, the employee may receive a one-step or up to 5 percent pay increase. The pay may exceed the maximum pay for the class to which assigned. Notice must first be given to the director. Subsequent changes in duty station may result in the additional pay being removed.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—53.7(8A) Within grade increases

**53.7(1) General.** An employee, upon completion of a minimum pay increase eligibility period, may receive a periodic increase in base pay that is within the pay grade and pay plan of the class to which the employee is assigned.

a. *Pay increase eligibility periods.* The minimum pay increase eligibility period for employees shall be 52 weeks, except that it shall be 26 weeks for new hires and employees who receive an increase in base pay as a result of a promotion, reclassification or pay grade change.

b. *Noncreditable periods.* Except for FMLA, workers' compensation, educational, and military leave, periods of leave without pay exceeding 30 calendar days shall not count toward an employee's pay increase eligibility period.



*c. Reduction of time periods.* The director may authorize a reduction in the pay increase eligibility periods for a position where there is an unusual recruitment and retention circumstance.

**53.7(2) Employee pay increases.** An eligible employee may be given any amount of within grade pay increase up to the maximum pay rate for the employee's class. The pay increase shall be at the beginning of the pay period following completion of the employee's prescribed minimum pay increase eligibility period and shall not be retroactive, except as provided for in subrule 53.4(7).

*a. Performance.* Within grade pay increases shall be based on performance, are not automatic, and may be delayed beyond completion of the employee's minimum pay increase eligibility period. The amount of a within grade pay increase shall be determined by policies established by the appointing authority. To be eligible, a within grade pay increase must be accompanied by a current performance evaluation on which the employee received an overall rating of at least "meets job expectations." Time spent on FMLA, workers' compensation, educational, or military leave shall be considered to "meet job expectations."

*b. Lump sum.* When budgetary conditions make it infeasible to grant within grade pay increases, an appointing authority may instead grant a lump sum increase. The increase shall not be added to the employee's base pay and shall be allowed only once in a fiscal year. Lump sum pay increases must be requested in writing from the director.

**53.7(3)** Rescinded IAB 7/19/17, effective 7/1/17.

**53.7(4) Certified teachers.** Within grade pay increases for employees who are required to possess a current valid teaching certificate with appropriate endorsements and approvals by the Iowa department of education shall be based on performance and credentials.

**53.7(5) Eligibility dates.** An employee's pay increase eligibility date shall be set at the time of hire, and if the employee starts on the first working day of the pay period, it shall be the first day of the pay period following completion of the employee's minimum pay increase eligibility period. Otherwise, it shall be the first day of the pay period following the date the employee starts work.

*a. General.* A new eligibility date shall be set when an employee receives an increase in base pay, except when transferring in the same pay grade to a different pay plan. Such date will be set at 52 weeks, except for new hires and employees who receive a pay increase as a result of a promotion, reclassification or pay grade change. The date for such employees shall be 26 weeks following the effective date of the action.

*b. Bumping.* An employee who is recalled to a class from which the employee was bumped shall have a new eligibility date set if the pay increase eligibility period of the class to which recalled is less than the employee's current pay increase eligibility period.

*c. No adjustment for FMLA, workers' compensation, educational, or military leave.* An employee who returns to work from FMLA, workers' compensation, educational, or military leave shall have the employee's eligibility date restored without adjusting for the period of absence.

*d. Adjustments for returning from leave or recall.* An employee who returns to work from a recall list or from an authorized leave of absence shall have the employee's eligibility date restored, but adjusted for the period of absence that exceeds 30 calendar days.

*e. Administrative changes.* The director may change eligibility dates when economic or other pay adjustments are made to the classification plan or pay plans.

**53.7(6) Suspension.** If within grade pay increases are suspended by an Act of the general assembly, the rules that provide for such increases shall also be suspended.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—53.8(8A) Temporary assignments

Requests to provide employees with additional pay for temporary assignments shall first be submitted in writing to the director for review and indicate the reason and period of time required, if applicable. This pay may exceed the maximum for the employee's class. If temporary assignments are terminated or the duties removed, the additional pay shall also end.

**53.8(1) Leadworker.** An employee who is temporarily assigned lead work duties, as defined in rule 11—50.1(8A), may be given additional pay of up to 15 percent of the employee's base pay.

**53.8(2) Special duty.** An employee who is temporarily assigned to a vacant position in a class with a higher

pay grade may be given additional pay equal to that provided in paragraph “a” or “b” of subrule 53.6(6), whichever is applicable.

**53.8(3) *Extraordinary duty.*** An employee or class of employees who are temporarily assigned higher level duties, including supervisory duties, may be given additional pay. The amount of pay must be approved by the director.

**53.8(4) *Effect on within grade increases.*** Temporary assignments shall not affect an employee’s eligibility for within grade pay increases, and the additional pay amount shall be recalculated whenever a within grade pay increase is granted. The class to which the employee is temporarily assigned shall be controlling for purposes of overtime, shift differential, standby and call back pay.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—53.9(8A) Special pay

**53.9(1) *Shift differential.*** If an overtime eligible employee works for an appointing authority whose operations require other than a day shift, the employee shall receive a shift differential if scheduled to work four or more hours between 6 p.m. and 6 a.m. for two or more consecutive workweeks, or is regularly assigned to rotate shifts. The amount of the shift differential shall be determined by the director and paid in cents per hour. There shall be one rate for the 6 p.m. to midnight time period and another higher rate for the midnight to 6 a.m. time period. Employees who work in both time periods shall be paid at the rate applicable to the period in which the majority of their hours are worked. Employees who work equal amounts in both time periods shall be paid at the higher rate. The differential shall be in addition to the employee’s regular base pay and shall be paid for all hours in pay status.

Employees in overtime exempt classes may receive a shift differential if a request is first submitted in writing and approved by the director.

**53.9(2) *Call back.*** If an overtime eligible employee is directed to report to work during unscheduled hours that are not contiguous to the beginning or the end of the employee’s assigned shift, the employee shall be paid a minimum of three hours. These hours shall not count as standby hours if the employee is in standby status. Employees in overtime exempt classes may be eligible for call back pay, if a request is first submitted in writing and approved by the director.

**53.9(3) *Standby.*** If an employee in an overtime eligible class is directed to be on standby after the end of the employee’s shift, the employee shall be paid 10 percent of the employee’s hourly pay rate for each hour in a standby status. If required to be on standby, an employee shall receive at least one hour of standby pay. Time spent working while on standby shall not count in determining standby pay, nor shall standby hours count for purposes of determining overtime. Employees in overtime exempt classes may be eligible for standby pay if a request is first submitted in writing and approved by the director.

**53.9(4) *Discretionary payments.*** A lump sum payment for exceptional job performance may be given to an employee. A written explanation setting forth the reasons shall first be submitted to the director for approval.

**53.9(5) *Recruitment or retention payments.*** A payment to a job applicant or an employee may be made for recruitment or retention reasons. A written explanation shall first be submitted in writing to the director.

As a condition of receiving recruitment or retention pay, the recipient must sign an agreement to continue employment with the appointing authority for a period of time following receipt of the payment that is deemed by the appointing authority to be commensurate with the amount of the payment. If the recipient is terminated for cause or voluntarily leaves state employment, the recipient will be required to repay the appointing authority for the proportionate amount of the payment for the time remaining, and it will be recouped from the final paycheck. When the recipient changes employment to another state agency, then a repayment schedule must be approved by the director. Recoupment will be coordinated with the department of administrative services, state accounting enterprise, to ensure a proper reporting of taxes.

**53.9(6) *Pay for increased credentials.*** An employee who successfully completes a course of study, a certificate program, or any educational program directly related to the employee’s current employment is eligible to receive an increase in base pay at the discretion of the appointing authority. Granting an increase pursuant to this subrule will not affect an employee’s pay increase eligibility date and may not exceed the maximum pay for

the assigned job classification pursuant to subrule 53.6(2).  
[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—53.10(8A) Phased retirement

Rescinded ARC 1568C, IAB 8/6/14, effective 9/10/14.

## 11—53.11(8A) Overtime

**53.11(1) Administration.** Job classes shall be designated by the director as overtime eligible or overtime exempt.

**53.11(2) Eligible job classes.** An employee in a job class designated as overtime eligible shall be paid at a premium rate (one and one-half hours) in accordance with the federal Fair Labor Standards Act.

**53.11(3) Exempt job classes.** An employee in an overtime exempt job class shall not be paid for hours worked or in pay status over 40 hours in a workweek.

**53.11(4) Method of payment.** Payment of overtime for employees shall be in cash or compensatory time. The decision shall rest with the employee, except that the appointing authority may require overtime to be paid in cash. Employees may elect compensatory time for call back, standby, holiday hours and for working on a holiday.

**53.11(5) Compensatory time.** An overtime eligible employee may accrue up to 80 hours of compensatory time before it must be paid off. Compensatory time may be paid off at any time, but it shall be paid off if the employee separates, transfers to a different agency, or moves to a class with a different overtime eligibility designation.

**53.11(6) Holiday hours.** Holiday hours that have already been paid at a premium rate shall not be counted in calculating overtime.

[ARC 1568C, IAB 8/6/14, effective 9/10/14; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—53.12(8A) Years of service incentive program

Rescinded IAB 8/11/10, effective 9/15/10.

## 11—53.13(8A) Appeals

Appeal of the application of these rules must be filed as a grievance pursuant to 11—61.1(8A). The appeal procedures for grievance decisions as addressed in 11—61.2(8A) must be exhausted prior to a petition for judicial review.

These rules are intended to implement Iowa Code chapter 8A, subchapter IV.

## CHAPTER 54 - RECRUITMENT, APPLICATION AND EXAMINATION

### 11—54.1(8A) Recruitment

Classes are closed to application unless specifically opened for recruitment.

**54.1(1) *Open recruitment announcements.*** The director shall give public notice of positions opened for recruitment for a minimum of ten calendar days following the announcement date. Recruitment may be limited to a specific geographic area or a specific selective background area or both. Recruitment announcements shall be posted publicly. Copies may also be sent to newspapers, radio stations, educational institutions, professional and vocational associations, and other recruitment sources. Recruitment announcements may be posted as promotional opportunities for current permanent state employees only.

**54.1(2) *Content of announcements.*** Announcements shall specify the job title, vacancy number, salary range, location, method for making application, closing date for receiving applications, minimum qualifications, and any selective requirements. All announcements must include a statement indicating that the state of Iowa is an affirmative action and equal employment opportunity employer. Announcements for continuous recruitment shall include a statement indicating that applications will be accepted until further notice.

**54.1(3) *Advertising.*** The appointing authority shall send to the director copies of all advertisements announcing employment opportunities that are to be placed in any publication, and any additional information required by the director. The appointing authority shall comply with any policies established by the director regarding advertising.

### 11—54.2(8A) Applications

**54.2(1) *Applicant information.*** Applicant information shall be on forms prescribed by the director unless an alternate method has been authorized. Applicants must supply at least their name, current mailing address, signature and social security number; however, if an applicant requests, a nine-digit number will be assigned by the department to be used in lieu of the social security number. If other than the social security number is requested, it shall be the applicant's responsibility to ensure that all future correspondence directed to the department regarding the applicant's records contains the assigned nine-digit number. All other information requested on the application will assist the department in accurately and completely processing and evaluating the application. Applications that are not complete may not be regarded as an official application and may not be processed. The director may require an applicant to submit documented proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification to satisfactorily perform the essential duties of the job with or without a reasonable accommodation. An applicant shall also disclose in the application whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq.

**54.2(2) *Verifying applicant information.*** The director may at any time verify statements contained in an application and seek further information concerning an applicant's qualifications. If information is obtained which affects or would have affected an applicant's qualifications, standing on an eligible list, or status if already employed, the director may make the necessary adjustment or take other appropriate action, including termination if the applicant has already been employed.

**54.2(3) *Applicant files.*** Applications accepted for processing and necessary related materials will be placed in the applicant files in the department and retained for no less than one year. Applications for jobs which result in the hire of the applicant will be placed in the employee files in the department and retained for no less than the period of employment.

**54.2(4) Application for eligible lists.** Persons may apply to be on eligible lists as follows:

*a. Promotional lists.* Promotional applicants shall meet the minimum qualifications. Promotional applicants may be subject to keyboard examinations, background checks, psychological examinations, and other examinations used for further screening. The following persons may apply to be on promotional eligible lists:

(1) Persons who have attained permanent employee status, including permanent employees of the board of regents;

(2) Persons enrolled in work experience programs who have successfully completed at least 480 hours in the program are eligible to apply for promotional vacancies for a period of one year from the date of the successful completion of the work experience program;

(3) Persons who have been formally enrolled in the department's intern development program for a period of at least 480 hours are eligible to apply for promotional vacancies for a period of one year from the date of the successful completion of the work experience program;

(4) Disabled veterans who are enrolled in a job training program in accordance with the provisions of rule 11—57.9(8A) and have worked a minimum of 160 hours up to a maximum of 780 hours are eligible to apply for promotional vacancies for a period of one year from the date of successful completion of the job training program; and

(5) Employees who have been laid off are eligible to apply for promotional vacancies for a period of one year from the date of layoff.

*b. All-applicant lists.* The following persons may apply to be on all-applicant lists:

(1) Persons laid off and eligible for recall;

(2) Judicial branch employees;

(3) Legislative branch employees;

(4) Probationary or provisional probationary employees;

(5) Permanent employees, including permanent employees of the board of regents;

(6) Temporary employees not on the promotional list and volunteers (including persons enrolled in work experience programs who are not on the promotional list) following 60 calendar days' service with the state;

(7) Nonpermanent employees of the board of regents; and

(8) Former permanent employees who resigned or retired from state employment in good standing.

**54.2(5) Application pending license or graduation.** An applicant who does not meet the minimum education or license requirements, but who is currently enrolled in an education program that will result in meeting such requirements, may be placed on the eligible list with a "pending graduation" or "pending license" status provided the applicant will meet or has a reasonable expectation of meeting, the requirements within the following nine months. The applicant may be selected for employment, but may not be appointed until all qualification requirements are met.

**54.2(6) Disqualification or removal of applicants.** The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

*a.* Does not meet the minimum qualifications or selective requirements for the job class or position as specified in the job class description, vacancy announcement, administrative rules, or law.

*b.* Is incapable of performing the essential functions of the job classification or position and a reasonable accommodation cannot be provided.

*c.* Has knowingly misrepresented the facts when submitting information relative to an application, examination, certification, appeal, or any other facet of the selection process.

*d.* Has used or attempted to use coercion, bribery or other illegal means to secure an advantage in the application, examination, appeal or selection process.

*e.* Has obtained screening information to which applicants are not entitled.

*f.* Has failed to submit the application within the designated time limits.

*g.* Was previously discharged from a position in state government.

*h.* Has resigned in lieu of discharge for cause.

*i.* Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.

j. Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.

k. Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed. Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

**54.2(7) *Qualifications.*** Applicants must meet the qualifications for the class as well as any selective requirements associated with a particular class or position as indicated in the class description. The director shall determine whether or not an applicant meets such qualifications and requirements.

Applicants and employees may, as a condition of the job, be required to have a current license, certificate, or other evidence of eligibility or qualification. Employees who fail to meet and maintain this requirement shall be subject to discharge in accordance with rule 11—57.10(8A) or 11—subrule 60.2(4).

Any fees associated with obtaining or renewing a license, certificate, or other evidence of eligibility or qualification shall be the responsibility of the applicant or employee unless otherwise provided by statute.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14; ARC 2000C, IAB 5/27/15, effective 7/1/15; ARC 3215C, IAB 7/19/17, effective 7/1/17; ARC 4180C, IAB 12/19/18, effective 1/23/19]

## 11—54.3(8A) Examinations

**54.3(1) *Purpose of examinations.*** The director or appointing authority may conduct examinations to assess the qualifications of applicants. Possession of a valid license, certificate, registration, or work permit required by the Iowa Code or the Iowa Administrative Code in order to practice a trade or profession may qualify as evidence of an applicant's basic qualifications.

**54.3(2) *Types of examinations.*** Examinations may include, but are not limited to, written, oral, physical, or keyboard tests, and may screen for such factors as education, experience, aptitude, psychological traits, knowledge, character, physical fitness, or other standards related to job requirements.

**54.3(3) *Background checks.*** Background checks and investigations, including, but not limited to, checks of arrest or conviction records, fingerprint records, driving records, financial or credit records, and child or dependent adult abuse records, constitute an examination or test within the meaning of this subrule and Iowa Code chapter 8A. Confidential documents provided to the director by other agencies in conjunction with the administration of this rule shall continue to be maintained in the documents' confidential status. The director is subject to the same policies and penalties regarding the confidentiality of the documents as any employee of the agency providing the documents.

Background checks shall be conducted only after receiving approval from the director concerning the areas to be checked and the standards to be applied in evaluating the information gathered. Background checks are subject to the following limitations and requirements:

a. Arrest record information, unless otherwise required by law, shall not be considered in the selection of persons for employment unless expressly authorized by the director.

b. The appointing authority shall notify the director of each job class or position that requires applicants to undergo any type of background check. The notification shall document the clear business necessity for the background check and the job relatedness of each topic covered in the inquiry.

c. The appointing authority shall provide a statement that shall be presented to each applicant who is to be investigated under this subrule. This statement shall inform the applicant that the applicant is subject to a background check as a condition of employment and the topics to be covered in the background check. It shall also inform the applicant that all information gathered will be treated as confidential within the meaning of Iowa Code section 22.7, but that all such information gathered shall be available to the applicant upon request through the agency authorized to release such information, unless otherwise specifically provided by law. The statement shall be signed and dated by the applicant and shall include authorization from the applicant for the appointing authority to conduct the background check as part of the application and selection process.



## 11—54.4(8A) Development and administration of examinations

**54.4(1) Examination development.** The director shall oversee the development, purchase, and use of examination materials, forms, procedures, and instructions.

**54.4(2) Examination administration.** The director or appointing authority shall arrange for suitable locations and conditions to conduct examinations. Locations in various areas of the state and out of state may be used. Examinations may be postponed, canceled, or rescheduled.

*a. Examination of persons with disabilities.* Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies for accommodations established by the department.

*b. Retaking examinations.* Applicants may not retake aptitude, psychological, video-based or other examinations for 60 calendar days following the last date the examination was taken except as provided for in rule 11—54.6(8A). Violation of the waiting period for an examination shall result in the voiding of the current examination score and the imposition of an additional 60-calendar-day waiting period.

Keyboard examinations, such as typing, may be retaken at any time without a waiting period.

The most recent examination score shall determine the applicant's qualification for the corresponding eligible lists.

Applicants who are required to take examinations covered by the rules or procedures of other agencies are subject to applicable rules or procedures on retakes for such examinations of that agency.

**54.4(3) Examination materials.**

*a.* All examination materials, including working papers, test booklets, test answer sheets and test answer keys are not public records under Iowa Code chapter 22. All examination materials are the property of the department and shall not be released without the consent of the director.

*b. Removing examination material.* Any unauthorized person who removes examination material from an examination site, who participates in unauthorized distribution of examination materials, who is in unauthorized possession of examination material or who otherwise compromises the integrity of the examination process shall be subject to discipline, up to and including discharge if employed by the state, as well as prosecution.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

## 11—54.5(8A) Scoring examinations

All applicants shall be given uniform treatment in all phases of the examination scoring process applicable to the job class or position and status of the applicant. Applicants may be required to obtain at least a minimum score in any or all parts of the examination process in order to receive a final score or to be allowed to participate in the remaining parts of an examination.

**54.5(1) Adjustment of errors.** Examination scoring errors will be corrected. A correction shall not, however, invalidate any list already issued or any appointment already made and shall not extend the life of the score.

**54.5(2) Points for veterans.** Veterans' points shall be applied to veterans as defined in Iowa Code section 35C.1.

*a.* "Veteran" means a resident of this state who served in the armed forces of the United States at any time during the following dates and who was discharged under honorable conditions:

- (1) World War I from April 6, 1917, through November 11, 1918.
- (2) Occupation of Germany from November 12, 1918, through July 11, 1923.
- (3) American expeditionary forces in Siberia from November 12, 1918, through April 30, 1920.
- (4) Second Haitian suppression of insurrections from 1919 through 1920.
- (5) Second Nicaragua campaign with marines or navy in Nicaragua or on combatant ships from 1926 through 1933.
- (6) Yangtze service with navy and marines in Shanghai or in the Yangtze valley from 1926 through 1927 and 1930 through 1932.
- (7) China service with navy and marines from 1937 through 1939.
- (8) World War II from December 7, 1941, through December 31, 1946.

- (9) Korean conflict from June 25, 1950, through January 31, 1955.
- (10) Vietnam conflict from February 28, 1961, through May 7, 1975.
- (11) Lebanon or Grenada service from August 24, 1982, through July 31, 1984.
- (12) Panama service from December 20, 1989, through January 31, 1990.

(13) Persian Gulf conflict from August 2, 1990, through the date the President or the Congress of the United States declares a cessation of hostilities. However, if the United States Congress enacts a date different from August 2, 1990, as the beginning of the Persian Gulf conflict for purposes of determining whether a veteran is entitled to receive military benefits as a veteran of the Persian Gulf conflict, that date shall be substituted for August 2, 1990.

b. “Veteran” also includes the following:

(1) Former members of the reserve forces of the United States who served at least 20 years in the reserve forces after January 28, 1973, and who were discharged under honorable conditions. However, a member of the reserve forces of the United States who completed a minimum aggregate of 90 days of active federal service, other than training, and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.

(2) Former members of the Iowa national guard who served at least 20 years in the Iowa national guard after January 28, 1973, and who were discharged under honorable conditions. However, a member of the Iowa national guard who was activated for federal duty, other than training, for a minimum aggregate of 90 days and was discharged under honorable conditions or was retired under Title X of the United States Code shall be included as a veteran.

(3) Former members of the active, oceangoing merchant marine who served during World War II at any time between December 7, 1941, and December 31, 1946, both dates inclusive, who were discharged under honorable conditions.

(4) Former members of the women’s air force service pilots and other persons who have been conferred veteran status based on their civilian duties during World War II in accordance with federal Pub. L. No. 95-202, 38 U.S.C. Section 106.

c. Proof of eligibility for points must be provided by the applicant in the form of a certified photocopy of a DD214 Form (Armed Forces Report of Transfer or Discharge) or other official document containing dates of service or a listing of service medals and campaign badges.

d. Applicants who were awarded a Purple Heart, or who have a service-connected disability, or who are receiving disability compensation or pension under laws administered by the U.S. Veterans Administration may request to have a maximum of ten points added to examination scores. Proof of current disability dated within the last 24 months and updated every 24 months after initial application must be submitted for continued eligibility.

e. Veterans’ preference points outlined in Iowa Code section 8A.413(22) shall be applied as a percentage of the grade or score attained in qualifying examinations.

f. The percentage points shall be given only upon a veteran’s passing the examination and shall not be the determining factor in passing. Veterans’ preference percentage points shall be applied once to the final scores used to rank applicants for selection for an interview.

**54.5(3) Preference for Iowa national service corps or AmeriCorps.** State agencies may establish hiring preferences for an applicant who has participated in Iowa national service corps or AmeriCorps in accordance with 2018 Iowa Acts, House File 2420.

## 11—54.6(8A) Review of written examination questions

Applicants may request to review their incorrectly answered questions on department-administered written examinations except that aptitude, psychological, and video-based examinations are not subject to review. An applicant who reviews written examination questions may not retake that examination or an examination with the same or similar content for 60 calendar days following the review. Violation of this waiting period shall result in the voiding of the current examination score and the imposition of an additional 60-calendar-day waiting period.



## 11—54.7(8A) Drug use and drug tests

**54.7(1) Policy.** Employees shall not report to work while under the influence of alcohol or illegal drugs. The unauthorized use, possession, sale, purchase, manufacture, distribution, or transfer of any illegal drug or alcoholic beverage while engaged in state business or on state property is prohibited. Employees who violate this policy are subject to disciplinary action up to and including discharge.

**54.7(2) Definition and applicability.**

*a.* “Drug test” means any blood, urine, saliva, chemical, or skin tissue test conducted for the purpose of detecting the presence of a chemical substance in an individual. These rules authorize only the use of urinalysis tests for this purpose. Other methods of drug testing are prohibited.

*b.* These rules do not apply to drug tests required under federal statutes, drug tests conducted pursuant to a nuclear regulatory commission policy statement, or drug tests conducted to determine if an employee is ineligible to receive workers’ compensation under Iowa Code section 85.16, subsection 2.

**54.7(3) Preemployment drug tests.** A urinalysis drug test may be performed as part of a preemployment physical only for department of corrections correctional officer positions. Application materials for these positions shall include clear notice that a drug test is part of the preemployment physical. Requirements for these tests are as follows:

- a.* A urine sample will be collected during the preemployment physical examination.
- b.* The sample container will include identification for chain of custody purposes that does not include any part of the applicant’s name or social security number.
- c.* The container will be transported directly from the site of the physical examination to a laboratory or other testing facility. Samples may be transported via certified mail or courier service.
- d.* The sample will be tested and retained by the laboratory or other testing facility for a minimum of 30 days. The applicant may have the sample analyzed, at the applicant’s expense, by a laboratory or other testing facility approved in accordance with the administrative rules of the department of public health.
- e.* Each drug test will include an initial screen and a confirmation of positive results. The initial screening test may utilize immunoassay, thin layer, high performance liquid or gas chromatography, or an equivalent technology. If the initial test utilizes immunoassay, the test kit must meet the requirements of the Food and Drug Administration. All confirmation tests will be done by Gas Chromatography - Mass Spectrometry (GC-MS) at a laboratory or other testing facility approved in accordance with the administrative rules of the department of public health.
- f.* At a minimum, tests will screen for marijuana, cocaine, and amphetamines.
- g.* Procedures for obtaining, sealing, identifying, transporting, storing, and retention of samples shall protect the chain of custody and the viability of the sample, and shall comply with department of public health administrative rules.
- h.* The laboratory or other testing facility shall report the results of the drug tests to the appointing authority. The confidentiality of the information shall be protected by all parties.
- i.* The appointing authority shall provide an applicant an opportunity to rebut or explain the results of a positive drug test by administering a pretest questionnaire or arranging a posttest conference with the applicant.
- j.* A positive confirmation drug test will disqualify an applicant from further consideration and hire for department of corrections correctional officer positions.

**54.7(4) Employee drug tests.** Drug testing of employees is prohibited except as provided in subrule 54.7(2), paragraph “b.”

## 11—54.8(8A) Nonmerit hiring procedure

An applicant for employment to a position that is not covered by the merit system shall disclose to the appointing authority, in writing, whether the applicant has filed a registration statement pursuant to the federal Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. §611 et seq.

These rules are intended to implement Iowa Code chapter 8A, subchapter IV.

## CHAPTER 55 - ELIGIBLE LISTS

### 11—55.1(8A) Establishment of eligible lists

The director shall establish and maintain various lists of eligible applicants for use in filling vacant positions. Eligible lists may be by job class or specific position. Eligible lists may be continuous or may be abolished after a vacancy is filled. The following are types of eligible lists:

**55.1(1) Recall lists.** These lists shall consist of the names of permanent employees who were separated by layoff; or who moved to another class or had their work hours reduced in lieu of layoff. Recall shall be in accordance with 11—subrule 60.3(6).

**55.1(2) Promotional lists.** Promotional lists shall consist of the names of permanent employees and those as designated in 11—paragraph 54.2(4) “a” who have applied for a job class and who have met the minimum qualifications and other promotional screening requirements for the class. The length of time of eligibility for promotion from these lists need not be the same as that for appointment from nonpromotional lists.

**55.1(3) All-applicant lists.** All-applicant lists shall consist of the names of all persons who have applied for positions, met the minimum qualifications for the class, and undergone, as necessary, the designated screening for the class. Persons in the certified disability program or any other formal waiver program established by the department shall be identified as such and placed on the all-applicant list.

### 11—55.2(8A) Removal of names from eligible lists

The director may remove names from an eligible list for a particular job class(es) for any of the following reasons in addition to those cited in 11—subrule 54.2(6):

1. Failure by the applicant to maintain a record of current address as evidenced by the return of a properly addressed letter or other similar evidence.
2. Failure by the applicant to respond to a written inquiry from the director or an appointing authority as to availability within five workdays following the date the inquiry was sent.
3. Receipt of a statement that the applicant no longer wants to be on the list for the class.
4. Declination of an appointment or promotion under previously agreed to conditions.
5. Appointment to a job class.
6. Abolition or expiration of an eligible list for a job class(es).
7. In the case of promotional lists, separation from state service.
8. Correction of erroneous placement on a list.
9. Violation of any of the provisions of Iowa Code chapter 8A or these rules. Applicants removed for this reason shall be notified in writing by the director within five workdays following removal. Appeal of removal for this reason shall be in accordance with 11—subrule 61.2(4).

10. Failure by the applicant to maintain contact as instructed by the department concerning current availability, mailing address and telephone number.

[ARC 4053C, IAB 10/10/18, effective 11/14/18]

### 11—55.3(8A) Statement of availability

It shall be the applicant’s responsibility to notify the director in writing of any change in address or other changes affecting availability for employment. The director may at any time verify the availability of applicants. The names of applicants shall be withheld from all eligible lists which do not meet the stated conditions and locations under which the applicants have indicated availability.

These rules are intended to implement Iowa Code sections 8A.401, 8A.402, 8A.411, 8A.413, 8A.417, 8A.418, 8A.453, 8A.455, 8A.456 and 8A.458.

## CHAPTER 56 - FILLING VACANCIES

### 11—56.1(8A) Method of filling vacancies

Vacancies shall be filled through promotion, transfer, demotion, recall, reinstatement or original appointment. The method and order in which vacancies are filled shall be determined by the director, taking into consideration the provisions of collective bargaining agreements and these rules. Vacancies shall be announced before a list of applicants is issued to an appointing authority.

### 11—56.2(8A) List requests

An appointing authority shall submit a request form when filling a vacancy.

### 11—56.3(8A) Types of lists

The following types of lists may be issued.

**56.3(1) Recall list.** The director will provide the names of those persons who are eligible for recall on the date and time issued in accordance with the provisions of 11—subrule 60.3(6) or applicable collective bargaining agreements.

**56.3(2) Promotional list.** The director will provide the names of qualified applicants who are permanent employees and those designated in 11—subrule 54.2(4) who have indicated availability for the conditions and location specified in the vacancy announcement.

**56.3(3) All-applicant list.** The director will provide the names of all qualified applicants who have indicated availability for the conditions and location specified in the vacancy announcement.

### 11—56.4(8A) Selective lists

The director may provide lists of only those eligibles for a position who possess specific education, experience or other selective qualifications required to perform the duties of a position. The director may establish procedures for determining and approving selective qualifications, processing requests and issuing lists with selectives.

### 11—56.5(8A) Expiration of a list

The expiration of a list shall be 120 calendar days following the date of issue unless otherwise approved by the director. All appointments or promotions must be reported to the director before the expiration date of the list. Effective dates of appointments or promotions must be no later than 60 days after the expiration date of the list unless otherwise authorized by the director, except that appointments or promotions “pending graduation” or “pending license” shall be allowed to be effective up to nine months following the expiration date of the list.

[ARC 2267C, IAB 11/25/15, effective 12/30/15]

### 11—56.6(8A) Incomplete lists

If the number of names available on a nonpromotional list is less than six, the appointing authority will be granted provisional appointment authority.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

### 11—56.7(8A) Referral and appointment of “conditional” applicants

The names of applicants who are on the eligible list for a class “pending graduation” or “pending license” are considered to be “conditional.” If a “conditional” applicant is selected, the appointment shall not be effective until the applicant has met the minimum requirements for qualification. Appointments shall be made in accordance with 11—subrule 54.2(5) and rule 11—56.5(8A).

**11—56.8(8A) Adjustment of errors.** An error in the compilation or issuance of a list, if called to the attention of the director prior to the filling of the vacancy, shall be corrected and a new list issued. Except for a recall list, such correction shall not result in the removal of any eligible already certified nor invalidate any appointment already made.

These rules are intended to implement Iowa Code sections 8A.401, 8A.402, 8A.411, 8A.413, 8A.414, 8A.416 to 8A.418, 8A.453, 8A.456 and 8A.458.

## CHAPTER 57 - APPOINTMENTS

### 11—57.1(8A) Filling vacancies

Unless otherwise provided for in these rules or the Iowa Code, the filling of all vacancies shall be subject to the provisions of these rules. No vacant position in the executive branch shall be filled until the position has been classified in accordance with Iowa Code chapter 8A and these rules.

A former employee who has participated in any early retirement or early termination program shall not be eligible for any state employment, except as provided for in the applicable program.

A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

### 11—57.2(8A) Probationary appointment

Probationary appointments may be made only to authorized and established positions unless these rules provide otherwise. Appointments to positions covered by merit system provisions shall be made in accordance with 11—Chapter 56 when applicable.

### 11—57.3(8A) Provisional appointment

If the director is unable to provide at least six applicants for a position, an appointing authority may provisionally appoint a person who meets the minimum qualifications for the class to fill the position pending the person's appointment from an eligible list.

No provisional probationary appointment shall be continued for more than 30 calendar days after the date of original appointment.

Successive provisional appointments shall not be permitted. An employee with provisional status shall not be eligible for promotion, demotion, transfer, or reinstatement to any position nor have reduction in force or appeal rights, but provisional probationary employees shall be eligible for vacation and sick leave and other employee benefits.

An employee shall receive credit for time spent in provisional status that is contiguous to the period of probationary status.

### 11—57.4(8A) Temporary appointment

Persons may be appointed with temporary status to any class. They may be paid at any rate of pay within the range for the class to which appointed.

Temporary appointments may be made to temporary positions or to permanent positions, or on an overlap basis to unauthorized positions, and may be made to any class and at any rate of pay within the range for the class to which appointed.

A temporary appointment shall not exceed 780 work hours in a fiscal year.

A temporary employee shall have no rights to appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits, unless the temporary employee becomes covered by a collective bargaining agreement, in which case the temporary employee may have rights under the collective bargaining agreement.

A person appointed with temporary status shall only be given another temporary type of appointment to the extent that the total number of hours worked in all temporary and seasonal appointments in any agency in a fiscal year does not exceed 780 hours.

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

## 11—57.5(8A) Reinstatement

A permanent employee who left employment for other than just cause may be reinstated with permanent or probationary status to any class for which qualified at the discretion of an appointing authority. Reinstatement shall not require appointment from a list of eligibles. Former employees who retired and applied for retirement benefits under an eligible state retirement system or program are not eligible for reinstatement unless otherwise permitted by law.

A permanent employee who demotes may at any time be reinstated to a position in the class occupied prior to the demotion at the discretion of the appointing authority. Reinstatement shall not require appointment from a list of eligibles.

Former employees who are reinstated shall accrue vacation at the same rate as at the time they separated from state employment, and the employee's previous vacation anniversary date minus the period of separation shall be restored. This paragraph shall be effective retroactive to January 1, 1995.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

## 11—57.6(8A) Internship appointment

The director may authorize an appointing authority to make an internship appointment to an established position, or if funds are available, to an unauthorized position.

**57.6(1)** Internship appointments shall expire upon attainment of a degree.

**57.6(2)** Employees with internship status shall have no rights of appeal, transfer, demotion, promotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits of state employment, nor shall credit be given for future vacation accrual purposes.

**57.6(3)** Successful completion of an internship appointment of at least 480 hours shall authorize the appointee to be on promotional or all-applicant lists. Only persons formally enrolled in the department's intern development program are eligible to be on promotional lists. Successful completion shall be as determined by the director at the time of enrollment.

[ARC 3003C, IAB 3/29/17, effective 5/3/17]

## 11—57.7(8A) Seasonal appointment

The director may authorize appointing authorities to make seasonal appointments to positions. Seasonal appointments may be made to any class and at any rate of pay within the range for the class to which appointed. Seasonal appointments may, however, be made only during the seasonal period approved by the director for the agency requesting to make the appointment and must be concluded by the end of that period. To be eligible to make seasonal appointments, the appointing authority must first submit a proposed seasonal period to the director for approval. Such period shall not exceed six months in a fiscal year; however, the appointment may start as early as the beginning of the pay period that includes the first day of the seasonal period and may end as late as the last day of the pay period that includes the last day of the seasonal period.

Persons appointed with seasonal status shall have no rights to appeal, transfer, promotion, demotion, reinstatement, or other rights of position, nor be entitled to vacation, sick leave, or other benefits, unless the temporary employee becomes covered by a collective bargaining agreement, in which case the temporary employee may have rights under the collective bargaining agreement.

A person appointed with seasonal status shall only be given another temporary or seasonal appointment to the extent that the total number of hours worked in all temporary and seasonal appointments in any agency in a fiscal year does not exceed 780 hours.

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

## 11—57.8(8A) Overlap appointment

When it is considered necessary to fill a position on an overlap basis pending the separation of an employee, the appointment of a new employee may be made in accordance with these rules for a period not to exceed 60 calendar days. An overlap appointment must be in the same class as the authorized position being overlapped, unless otherwise approved by the director. Any overlap appointment for a longer period must first be approved by the director.

## 11—57.9(8A) Noncompetitive appointments for disabled veterans

A disabled veteran who satisfactorily completes a federally funded job training program approved by the United States Department of Veterans Affairs in a state agency may be appointed noncompetitively into a vacant position in the job classification in which the veteran has been trained. A person who satisfactorily completes the program is eligible for a noncompetitive appointment with that agency for a period of one year. The appointment will be made in accordance with 11—subparagraph 54.2(4)“a”(4).

[ARC 1568C, IAB 8/6/14, effective 9/10/14]

## 11—57.10(8A) Rescinding appointments

If, after being appointed, it is found that an employee should have been disqualified or removed as provided for in these rules, the appointing authority may rescind the appointment. An employee with permanent status may file a grievance in accordance with 11—Chapter 61.

## CHAPTER 58 - PROBATIONARY PERIOD

### 11—58.1(8A) Duration

All original full-time or part-time appointments to permanent positions shall require a six-month period of probationary status. Appointments to peace officer positions at the department of public safety require a 12-month probationary period following appointment. Employees with probationary status shall not be eligible for promotion, reinstatement following separation, or other rights to positions unless provided for in this chapter, nor have reduction in force, recall, or appeal rights.

A six-month period of probationary status may, at the discretion of the appointing authority and with notice to the employee and the director, be required upon reinstatement, and all rules regarding probationary status shall apply during that period.

The provisions of this chapter shall apply to all executive branch employees, except employees of the board of regents, unless collective bargaining agreements provide otherwise.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

### 11—58.2(8A) Disciplinary actions

In addition to less severe progressive discipline measures, the appointing authority may demote, suspend, reduce pay within the same pay grade, or discharge an employee during the period of probationary status without right of appeal. The appointing authority shall notify the employee in writing of the effective date of the action, and in the case of a suspension or reduction in pay, the duration of the action. In no case shall suspension extend beyond 30 calendar days, nor beyond the end of the probationary period. A copy of the notice shall be sent to the director by the appointing authority.

Disciplinary demotion during the period of probationary status to a position covered by merit system provisions shall require that the employee meet the minimum qualifications for the class. If demoted, the total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with 11—subrule 53.6(7).

### 11—58.3(8A) Voluntary demotion during the period of probationary status

Voluntary demotion during the period of probationary status to a position covered by merit system provisions shall require that the employee meet the minimum qualifications for the class. The total required period of probationary status shall include the time spent in the higher class. The pay shall be set in accordance with 11—subrule 53.6(7).

### 11—58.4(8A) Promotion during the period of probationary status

A probationary employee who is promoted during the period of probationary status to a position covered by merit system provisions shall be hired in accordance with 11—subrule 56.3(3). The total required probationary period shall include the probationary service in the class from which the employee is promoted. The rate of pay shall be set in accordance with 11—subrule 53.6(6).

[ARC 0401C, IAB 10/17/12, effective 11/21/12]



### 11—58.5(8A) Transfer during the period of probationary status

A probationary employee who is transferred during the period of probationary status by the appointing authority to a position covered by merit system provisions must meet the minimum qualifications required for the class. The total required period of probationary status shall include the probationary time spent in the class from which transferred. The rate of pay shall be set in accordance with 11—subrule 53.6(8).

### 11—58.6(8A) Reclassification during the period of probationary status

An employee who is reclassified during the period of probationary status need only meet the minimum qualifications for the class. The total required period of probationary status shall include the probationary time spent in the previous class. The rate of pay shall be in accordance with 11—subrule 53.6(9).

### 11—58.7(8A) Leave without pay during the period of probationary status

A probationary employee may be granted leave without pay at the appointing authority's discretion in accordance with these rules. When a probationary employee is granted leave without pay, the employee's probationary period shall not be extended by the amount of leave granted unless the leave is for education or training.

### 11—58.8(8A) Vacation and sick leave during the period of probationary status

Probationary employees shall accrue and may be granted vacation and sick leave in accordance with the provisions of these rules.

### 11—58.9(8A) Probationary period for promoted permanent employees

This rule shall only apply to promotion within an appointing authority's department and to positions covered by merit system provisions.

An employee may be required to serve a six-month probationary period in the class to which promoted before the promotion becomes permanent.

At any time during the promotional probationary period the appointing authority may return the employee to the formerly held class. Return under this probationary period rule shall not be considered a demotion and there shall be no right to an appeal. The former salary and pay increase eligibility date shall be restored with credit allowed for the time spent in the higher class.

These rules are intended to implement Iowa Code sections 8A.401, 8A.411, 8A.413, 8A.415 to 8A.418, 8A.453, 8A.456 and 8A.458.

<sup>3</sup> Effective date of 9.1, 9.3, 9.4 and 9.5 delayed 70 days by Administrative Rules Review Committee. Delay lifted by Committee on 2/8/83. See details following chapter analysis.

## CHAPTER 59 - PROMOTION, TRANSFER, TEMPORARY ASSIGNMENT, REASSIGNMENT AND VOLUNTARY DEMOTION

### 11—59.1(8A) Promotion

An appointing authority may promote an employee with permanent status if the employee meets the minimum qualifications and other promotional screening requirements for the position. The employee must be on the list of eligibles for the position and available under the conditions stated on the list request. Vacancies must be filled in accordance with 11—Chapter 56.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

### 11—59.2(8A) Reassignment

An appointing authority may reassign an employee. Reassignments may be intra-agency or interagency. Interagency reassignments require the approval of both the sending and the receiving appointing authorities.

An employee who refuses a reassignment may be discharged in accordance with rule 11—60.2(8A), except as provided in this rule.

If the reassignment of an employee would result in the loss of merit system coverage, an appointing authority may not reassign that employee without the employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

[ARC 0401C, IAB 10/17/12, effective 11/21/12]

### 11—59.3(8A) Temporary assignments

**59.3(1)** An appointing authority may assign a permanent employee to special duty when that employee is temporarily needed in another position. This assignment shall be without prejudice to the employee's rights in or to the regularly assigned position. Unless there is a statutory requirement to the contrary, the employee need not be qualified for the class to which temporarily assigned.

**59.3(2)** An appointing authority may temporarily assign a permanent employee duties that are extraordinary for the employee's class. These duties may be of a level higher than, lower than, or similar to the duties regularly assigned to the employee's class, and may be in addition to or in place of some or all of the employee's regularly assigned duties.

**59.3(3)** Requests shall be submitted to the director in writing for assignments to special duty or extraordinary duty that exceed three complete pay periods and shall explain the need and the period of time requested. Temporary assignments shall not initially be approved for a period longer than one year. Extensions may be requested. Requests shall be submitted on forms prescribed by the director.

**59.3(4)** An appointing authority may make temporary assignments without additional pay for up to three consecutive pay periods in a fiscal year. Approval of temporary assignments without additional pay beyond three consecutive pay periods may be granted by the director.

**59.3(5)** An appointing authority shall provide restricted duty work assignments, without change to an employee's class and regular pay rate, for those employees who have a medical release to return to restricted duty following a job-related illness or injury. The original period of restricted duty shall be the hourly equivalent of 20 workdays (which shall be on a pro-rata basis for part-time employees), or until the employee is medically released for full duty, whichever is less. Extensions to the original period may be requested by the appointing authority for approval by the director. Exceptions to this subrule must be approved by the director.

**11—59.4(8A) Voluntary demotion.** An appointing authority may grant an employee's written request for a demotion to a lower class. If the voluntary demotion involves movement from a position covered by merit system provisions to one that is not, the request must clearly indicate the employee's knowledge of the change in merit system coverage. If the employee objects to the change in coverage, the demotion shall not take effect. Also, no demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being qualified. A copy of the voluntary demotion request shall be sent by the appointing authority to the director at the time of the demotion.

Voluntary demotion may be either intra-agency or interagency, and shall not be subject to appeal under these rules. Vacancies must be filled in accordance with 11—Chapter 56.

[ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—59.5(8A) Transfer

Transfers are restricted to the movement of an employee to a vacant position of the same or different job class in the same pay grade. Transfers may be interagency or intra-agency. To be eligible to transfer, the employee must meet any minimum qualifications and selective requirements for the position. Vacancies must be filled in accordance with 11—Chapter 56.

An employee may request a voluntary transfer. The decision to grant or deny a request for voluntary transfer is made by the receiving appointing authority.

An appointing authority may involuntarily transfer an employee. To do so, any applicable collective bargaining agreement provisions regarding transfer must first be exhausted. Involuntary interagency transfers require the approval of both the sending and the receiving appointing authorities.

If the transfer of an employee would result in the loss of merit system coverage, the transfer shall not take place without the affected employee's written consent to the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

[ARC 3215C, IAB 7/19/17, effective 7/1/17]

These rules are intended to implement Iowa Code sections 8A.401, 8A.402, 8A.411, 8A.413, 8A.414, 8A.417, 8A.418, 8A.439, 8A.453, 8A.456 and 8A.458.

## CHAPTER 60 - SEPARATIONS, DISCIPLINARY ACTIONS AND REDUCTION IN FORCE

### 11—60.1(8A) Separations

**60.1(1)** *Resignation, retirement, phased retirement, early retirement, or early termination.*

a. To resign or retire in good standing, an employee must give the appointing authority at least 14 calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the director by the appointing authority at the same time. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from certification or appointment to that agency for a period of up to two years. Resignation or retirement shall not be subject to appeal under 11—Chapter 61 unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive workdays without proper authorization from the appointing authority may be considered to have voluntarily terminated employment. The appointing authority shall notify the employee of the authority's decision to remove the employee from the payroll. Notification shall be sent to the employee's last-known address, with delivery confirmation required. The appointing authority shall consider requests to review circumstances.

b. Rescinded IAB 8/6/14, effective 9/10/14.

c. Separation from employment for purposes of induction into military service shall be in accordance with 11—subrules 63.6(2) and 63.9(2).

d. A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

**60.1(2)** *Expiration of appointment.* When an employee is separated upon the expiration of an appointment of limited duration, the appointing authority shall immediately report the separation to the department on forms prescribed by the director.

[ARC 8692B, IAB 4/21/10, effective 3/29/10; ARC 8727B, IAB 5/5/10, effective 4/16/10; ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14; ARC 4134C, IAB 11/21/18, effective 12/26/18]

### 11—60.2(8A) Disciplinary actions

Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement, if any. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

**60.2(1)** *Suspension.*

a. *Suspension pending investigation.* An appointing authority may suspend an employee for up to 21 calendar days with pay pending an investigation. A suspension pending investigation may be extended with approval from the director. If, upon investigation, it is determined that a suspension without pay was warranted as provided in subparagraph 60.2(1) "b"(1) below for an employee covered by the premium overtime provisions of the Fair Labor Standards Act, the appointing authority shall recover the pay received by the employee for the imposed period of suspension without pay.

*b. Disciplinary suspension.* An appointing authority may suspend an employee for a length of time considered appropriate not to exceed 30 calendar days as provided in either subparagraph (1) or (2) below. A written statement of the reasons for the suspension and its duration shall be sent to the employee within 24 hours after the effective date of the action.

(1) Employees who are covered by the premium overtime provisions of the federal Fair Labor Standards Act may be suspended without pay.

(2) Employees who are exempt from the premium overtime provisions of the federal Fair Labor Standards Act will not be subject to suspension without pay except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director. Otherwise, when a suspension is imposed on such an employee, it shall be with pay and shall carry the same weight as a suspension without pay for purposes of progressive discipline. The employee will perform work during a period of suspension with pay unless the appointing authority determines that safety, morale, or other considerations warrant that the employee not report to work.

**60.2(2)** Reduction of pay within the same pay grade. An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

**60.2(3)** Disciplinary demotion. A disciplinary demotion may be used to permanently move an employee to a lower job classification. A temporary disciplinary demotion shall not be used as a substitute for a suspension without pay or reduction in pay within the same pay grade. An employee receiving a disciplinary demotion shall only perform the duties and responsibilities consistent with the class to which demoted. An appointing authority may disciplinary demote an employee to a vacant position. In the absence of a vacant position, the appointing authority may effect the same disciplinary result by removing duties and responsibilities from the employee's position sufficient to cause it to be reclassified to a lower class. A written statement of the reasons for the disciplinary demotion shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

No disciplinary demotion shall be made from one position covered by merit system provisions to another, or from a position not covered by merit system provisions to one that is, until the employee is approved by the director as being eligible for appointment. Disciplinary demotion of an employee with probationary status to a position covered by merit system provisions shall be in accordance with rule 11—58.2(8A).

An agency may not disciplinarily demote an employee from a position covered by merit system provisions to a position not covered by merit system provisions without the affected employee's written consent regarding the change in coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement provisions.

**60.2(4)** Discharge. An appointing authority may discharge an employee. Prior to the employee's being discharged, the appointing authority shall inform the employee during a face-to-face meeting of the impending discharge and the reasons for the discharge, and at that time the employee shall have the opportunity to respond. A written statement of the reasons for the discharge shall be sent to the employee within 24 hours after the effective date of the discharge, and a copy shall be sent to the director by the appointing authority at the same time.

**60.2(5)** Termination for failure to meet job requirements. When an employee occupies a position where a current qualification for appointment is based upon the required possession of a temporary work permit or on the basis of possession of a license or certificate, and that document expires, is revoked or is otherwise determined to be invalid, the employee shall either be removed from the payroll for failure to meet or maintain license or certificate requirements, or otherwise appointed to another position in accordance with these rules.

This action shall be effective no later than the pay period following the failure to obtain, revocation of, or expiration of the permit, license, or certificate.

When an employee occupies a position where a current qualification for appointment is based upon the requirement of an approved background or records investigation and that approval is later withdrawn or unobtainable, the employee shall be immediately removed from the payroll for failure to maintain those background or records requirements or may be appointed to another position in accordance with these rules.

**60.2(6)** Appeal of a suspension, reduction of pay within the same pay grade, disciplinary demotion or discharge shall be in accordance with 11—Chapter 61. The written statement to the employee of the reasons for the discipline shall include the verbatim content of 11—subrule 61.2(6).

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—60.3(8A) Reduction in force

A reduction in force (layoff) may be proposed by an appointing authority whenever there is a lack of funds, a lack of work or a reorganization. A reduction in force shall be required whenever the appointing authority reduces the number of permanent merit system covered employees in a class or the number of hours worked, as determined by the “full-time equivalent” funding attributed to the position, by a permanent merit system covered employee in a class, except as provided in subrule 60.3(1).

**60.3(1)** The following agency actions shall not constitute a reduction in force nor require the application of these reduction in force rules:

- a. An interruption of employment for no more than 20 consecutive calendar days, with the prior approval of the director.
- b. Interruptions in the employment of school term employees during breaks in the academic year, during the summer, or during other seasonal interruptions that are a condition of employment, with the prior approval of the director.
- c. The promotion or reclassification of an employee to a class in the same or a higher pay grade.
- d. The reclassification of an employee’s position to a class in a lower pay grade that results from the correction of a classification error, the implementation of a class or series revision, changes in the duties of the position, or a reorganization that does not result in fewer total positions in the unit that is reorganized.
- e. A change in the classification of an employee’s position or the appointment of an employee to a vacant position in a class in a lower pay grade resulting from a disciplinary or voluntary demotion.
- f. The transfer or reassignment of an employee to another position in the same class or to a class in the same pay grade.
- g. A reduction in the number of, or hours worked by, permanent employees not covered by merit system provisions.

**60.3(2)** The agency’s reduction in force shall conform to the following provisions:

- a. Reduction in force shall be by class.
- b. The reduction in force unit may be by agency organizational unit or agencywide. If the agency organizational unit is smaller than a bureau, it must first be reviewed by the director.
- c. The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if the unit(s) is smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in hours, the cutoff date for length of service and performance credits to be utilized in determining retention points, and any other information requested by the director.
- d. The appointing authority shall notify each affected employee in writing of the reduction in force, the reason(s) for it, and the employee’s rights under these rules. A copy of the employee’s retention points computation worksheet shall be furnished to the employee. The official notifications to affected employees shall be made at least 20 workdays prior to the effective date of the reduction in force unless budgetary limitations require a lesser period of time. These official notifications shall occur only after the agency’s reduction in force plan has been approved by the director, unless otherwise authorized by the director.

e. The appointing authority shall notify the affected employee(s), in writing, of any options or assignment changes during the various steps in the reduction in force process. In each instance the employee shall have five calendar days following the date of receipt of the notification in which to respond in writing to the appointing authority in order to exercise the rights provided for in this rule that are associated with the reduction in force.

**60.3(3)** Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and points for performance record. The director, at the request of the appointing authority, may approve specific exemptions from reduction in force where special skills or abilities are required and have been previously documented in the records of the department as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. Length of service and performance credits shall be calculated as follows:

a. Credit for length of service shall be given at the rate of one point for each month of employment, including employment credited to the employee during a probationary period. Any period of 15 calendar days of service in a month will be considered a full month. In computing length of service credit, the appointing authority shall include all continuous merit system covered nontemporary service in the executive branch. If a merit system covered nontemporary employee’s employment is interrupted due to (1) a reduction in force, (2) qualification for long-term disability, or (3) a work-related injury, and the employee is subsequently reinstated to the same class in a different layoff unit or to a different class than that held at the time of separation in accordance with rule 11—57.5(8A), and the reinstatement occurs within two years of the interruption of employment, prior service credit shall be restored. Such credit will be subject to a reduction for the period of separation from state service.

Length of service credit shall not include the following periods:

- (1) Any period of temporary or seasonal employment, if not credited toward the probationary period.
- (2) Any period of suspension without pay of 15 days or more.
- (3) Approved leaves of absence without pay in excess of 15 days.
- (4) Any period of layoff of 15 days or more.
- (5) Any period of long-term disability of 15 days or more.
- (6) Any period of unpaid absence that was not subsequently used to establish or adjust the employee’s date of hire.

b. Credit for the performance record shall be calculated using the results of documented performance evaluations completed in accordance with 11—subrule 62.2(2) as follows:

(1) A performance evaluation period rated overall as “less than competent” or “does not meet expectations” or for which the “overall sum of ratings” is less than 3.00 shall receive no credit.

(2) A performance evaluation period rated overall as “competent” or better, or “meets or exceeds expectations” or for which the “overall sum of ratings” is 3.00 or greater shall receive one retention point for each month of such rated service.

All employees shall be evaluated for performance in accordance with 11—subrule 62.2(2). If the period covered on the evaluation exceeds 12 months, the rating shall apply only to the most recent 12 months of the period. If the period covered by the evaluation exceeds 12 months and the employee’s overall rating mandates the receipt of no credit pursuant to subparagraph 60.3(3) “b”(1), then that overall rating shall apply only to the first 12 months of the period and the remaining months shall be rated as competent. Time spent on FMLA, workers’ compensation, military, or educational leave with or without pay that is required by the appointing authority shall be counted as competent performance.

c. The total retention points shall be the sum that results from adding together the total of the length of service points and the total of the performance record points.

**60.3(4)** Order of reduction in force. Permanent merit system covered employees in the approved reduction in force unit shall be placed on a list in descending order by class beginning with the employee having the highest total retention points in the class in the layoff unit. Reduction in force selections shall be made from the list in inverse order regardless of full-time or part-time status, except as provided in subrule 60.3(3). If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

- a. The employee with the highest total performance record points; and then, if still tied,
- b. The employee with the lower last four digits of the social security number.

**60.3(5)** Bumping (class change in lieu of layoff). Employees who are affected by a reduction in force may, in lieu of layoff, elect to exercise bumping rights.

a. Supervisory employees, with the exception of supervisory employees of the department of public safety, may not bump or replace junior employees who are not being laid off. For purposes of this subrule, “junior” employee means an employee with less seniority or fewer retention points than a supervisory employee.

b. Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force. Bumping shall be limited to positions covered by merit system provisions and positions covered by a collective bargaining agreement.

The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required and have been previously documented in the records of the department of administrative services as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director.

c. When bumping as set forth in paragraph 60.3(5) “b,” the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification, the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

Bumping to a merit-covered position in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points except as provided for in this subrule. If bumping occurs, the employee with the fewest total retention points in the class shall then be subject to reduction in force.

Pay upon bumping shall be in accordance with 11—subrule 53.6(11).

**60.3(6)** Recall. Eligibility for recall shall be for one year following the date of the reduction in force.

a. The following employees or former employees are eligible to be recalled:

- (1) Former employees who have been laid off.
- (2) Employees who have bumped in lieu of layoff.
- (3) Employees whose hours have been reduced, constituting a reduction in force.

b. Current employees who exercised bumping rights in accordance with subrule 60.3(5) and former employees terminated due to layoff in accordance with subrule 60.3(6) shall only be on the recall list for the class and layoff unit occupied at the time of the reduction in force.

c. The following provisions shall apply to the issuance and use of recall lists:

- (1) Recall lists shall be issued for merit system covered positions and contract-covered positions only.
- (2) When one or more names are on the recall list for a class in which a vacancy exists, the agency must fill



that vacancy with a former employee from that list. If no one from a recall list is selected, the agency shall justify that decision to the director before the position may be filled by other methods.

(3) The recall alternatives in (2) above must be exhausted before other eligible lists may be used to fill vacancies.

*d.* Recall shall be by class without regard to an employee's status at the time of layoff (full-time or part-time).

An employee may remain on the recall list for the same status as that held at the time of layoff after having declined recall to a position with a different status. However, the employee will be removed for the status declined.

*e.* One failure to accept appointment to a nontemporary position with the same status as that held prior to the reduction in force shall negate all further recall rights.

*f.* An appointing authority may refuse to recall employees who do not possess the documented special skills or abilities required for a position, with the prior approval of the director.

*g.* Notice of recall shall be sent with delivery confirmation. Employees must respond to an offer of recall within five calendar days following the date the notice was received. A notice that is undeliverable to the most recent address of record will be considered a declination of recall. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

*h.* Vacation accrual and accrued sick leave of recalled employees shall be in accordance with 11—subrule 63.2(2), paragraph “l,” and 11—subrule 63.3(10), respectively.

*i.* An employee who bumps in lieu of layoff or has a work hours reduction, and subsequently leaves employment for any reason, shall be removed from the recall list.

*j.* Employees who are recalled shall be removed from the recall list unless otherwise provided for in these rules.

*k.* Pay upon recall shall be in accordance with rule 11—53.6(8A).

**60.3(7)** Reduction in force shall not be used to avoid or circumvent the provisions or intent of Iowa Code section 8A.413, or these rules governing reclassification, disciplinary demotion, or discharge. Actions alleged to be in noncompliance with this rule may be appealed in accordance with 11—Chapter 61.

[**ARC 8764B**, IAB 5/19/10, effective 4/30/10; **ARC 0401C**, IAB 10/17/12, effective 11/21/12; **ARC 1568C**, IAB 8/6/14, effective 9/10/14; **ARC 3215C**, IAB 7/19/17, effective 7/1/17; **ARC 4134C**, IAB 11/21/18, effective 12/26/18]

These rules are intended to implement Iowa Code section 8A.413.

## CHAPTER 61 - GRIEVANCES AND APPEALS

### 11—61.1(8A) Grievances

The grievance procedure is an informal process. It is not a contested case. All employees shall have the right to file grievances. The right to file a grievance and the grievance procedure provided for in these rules shall be made known and available to employees throughout the agency by the appointing authority through well-publicized means. Employees covered by a collective bargaining agreement may use this grievance procedure for issues that are not covered by their respective collective bargaining agreements.

Grievances shall state the issues involved, the relief sought, the date the incident or violation took place and any rules involved and shall be filed on forms prescribed by the director. Grievances involving suspension, reduction in pay within the same pay grade, disciplinary demotion, or discharge may be filed as appeals in accordance with subrule 61.2(6) and commence with Step 3 of the grievance procedure described in subrule 61.1(1).

#### **61.1(1) *Grievance procedure.***

a. Step 1. The grievant shall initiate the grievance by submitting it in writing to the immediate supervisor, or to a supervisor designated by the appointing authority, within 14 calendar days following the day the grievant first became aware of, or should have through the exercise of reasonable diligence become aware of, the grievance issue. The immediate supervisor shall, within 14 calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules and give a decision in writing to the grievant with a copy to the director.

b. Step 2. If the grievant is not satisfied with the decision obtained at the first step, the grievant may, within 7 calendar days after the day the written decision at the first step is received or should have been received, file the grievance in writing with the appointing authority. The appointing authority shall, within 14 calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules by affirming, modifying, or reversing the decision made at the first step, or otherwise grant appropriate relief. The decision shall be given to the grievant in writing with a copy to the director.

c. Step 3. If the grievant is not satisfied with the decision obtained at the second step, the grievant may, within 7 calendar days after the day the written decision at the second step was received, or should have been received, file the grievance in writing with the director. The director shall, within 30 calendar days after the day the grievance is received, attempt to resolve the grievance and send a decision in writing to the grievant with a copy to the appointing authority. The director may affirm, modify, or reverse the decision made at the second step or otherwise grant appropriate relief. If the relief sought by the grievant is not granted, the director's response shall inform the grievant of the appeal rights in subrule 61.2(5).

d. If the grievant is not satisfied with the decision obtained from the third step, the grievant may file an appeal in accordance with subrule 61.2(5).

#### **61.1(2) *Exceptions to time limits.***

a. If the grievant fails to proceed to the next available step in the grievance procedure within the prescribed time limits, the grievant shall have waived any right to proceed further in the grievance procedure and the grievance shall be considered settled.

b. If any management representative fails to comply with the prescribed time limits at any step in the grievance procedure, the grievant may proceed to the next available step.

c. The maximum time periods at any of the three steps in the grievance procedure may be extended when mutually agreed to in writing by both parties.

**61.1(3) *Group grievances.*** When the appointing authority or the director determines that two or more grievances or grievants address the same or similar issues, they shall be processed and decided as a group grievance.

#### **61.1(4) *Grievance meetings.***

a. When it is determined by a designated management representative or the director that a meeting with the grievant will be held, all reasonable attempts will be made to hold the meeting during the grievant's regularly scheduled hours of work.

b. The grievant may be assisted at a grievance meeting by an employee with the same bargaining status as the grievant. This peer employee may be of the grievant's choosing except where that would constitute a conflict of interest or unreasonably impact the operational efficiency of an appointing authority as determined by the director.

c. The grievant, an employee who is the grievant's peer, and employees authorized to attend the grievance meeting by the appointing authority or the director shall be in paid status for that time spent at and traveling to and from the grievance meeting during their regularly scheduled hours of work. In addition, employees shall, if eligible for overtime compensation, be in paid status for that time spent at and traveling to and from the grievance meeting outside of their regularly scheduled hours of work. In the case of a group grievance, only one of the grievants shall be in paid status. A grievant's peer shall not process or prepare for a grievance during work time except for meal and rest periods.

d. The appointing authority shall not authorize mileage, or the use of a state vehicle for employees to attend or participate in a grievance meeting, except for those employees who are required to attend or participate in the meeting by the appointing authority or the director.

**61.1(5) *Bypassing steps for discrimination grievances.*** A grievance step may be bypassed by the grievant when the grievance alleges discrimination and the respondent at the step is the person against whom the grievance has been filed.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 2000C, IAB 5/27/15, effective 7/1/15; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—61.2(8A) Appeals

### **61.2(1) *Appeal of position classification decisions.***

a. Appeal of a position classification decision shall be in accordance with rule 11—52.5(8A) and the contested case provisions of Iowa Code chapter 17A.

b. The appellant (including all appellants in the case of a group hearing), an employee who is the appellant's representative, and employees directed by the appointing authority to attend the classification appeal hearing by the appointing authority or the director shall be in paid status for the time spent at and traveling to and from the hearing during their regularly scheduled hours of work. In addition, only employees directed by management to attend the hearing shall, if eligible for overtime compensation, be in paid status for the time spent at and traveling to and from the hearing outside of their regularly scheduled hours of work.

c. The appointing authority shall not authorize mileage or the use of a state vehicle for employees to attend or participate in a classification appeal hearing, except for those employees who are directed to attend the hearing by the appointing authority or the director.

### **61.2(2) Reserved.**

**61.2(3) *Appeal of examination rating.*** Following examination, an applicant may file a written appeal to the employment appeal board in the department of inspections and appeals for a review of the rating received on the examination for the sole purpose of assuring that uniform rating procedures were applied consistently and fairly. Right of appeal shall expire unless filed with the board within 30 calendar days following the notice of the examination results.

A rating on an examination may be corrected if it is found by the employment appeal board that a substantial error has been made by the department. The correction of a rating shall not, however, affect any certifications or appointments already made.

**61.2(4) *Appeal of disqualification, restriction, or removal from eligible lists.*** An applicant who has been disqualified or whose name has been restricted or removed from an eligible list in accordance with rule 11—54.2(8A) or 11—55.2(8A), or who has been restricted from certification in accordance with rule 11—56.7(8A) may file a written appeal to the employment appeal board in the department of inspections and appeals for a review of that action. The written appeal must be filed with the board within 30 calendar days following the notice of disqualification, removal from the eligible list, or restriction from certification. The burden of proof to establish eligibility shall rest with the appellant.

When an appeal is generated as the result of an action initiated by the department, the department shall be responsible for representation. When an appeal is generated as the result of an action initiated by an appointing authority through the department, the appointing authority shall pay the costs of the appeal assessed to the department and shall participate in representation as requested by the department.

If the applicant's name is restored to an eligible list, that decision shall not affect any certifications or appointments already made.

**61.2(5) *Appeal of grievance decisions.*** An employee who has alleged a violation of Iowa Code sections 8A.401 to 8A.458 or the rules adopted to implement Iowa Code sections 8A.401 to 8A.458 may, within 30 calendar days after the date the director's response at the third step of the grievance procedure was issued or should have been issued, file an appeal with the public employment relations board. A nontemporary employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, may, if not satisfied with the decision of the director, request an appeal hearing before the public employment relations board within 30 calendar days after the date the director's decision was issued or should have been issued. However, when the grievance concerns allegations of discrimination within the meaning of Iowa Code chapter 216, the Iowa civil rights commission procedures shall be the exclusive remedy for appeal and shall, in such instances, constitute final agency action. In all other instances, decisions by the public employment relations board constitute final agency action.

**61.2(6) *Appeal of disciplinary actions.*** Any nontemporary employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, may bypass steps one and two of the grievance procedure provided for in rule 11—61.1(8A) and may file an appeal in writing to the director for a review of the action within 7 calendar days after the effective date of the action. The appeal shall be on the forms prescribed by the director. The director shall affirm, modify or reverse the action and shall give a written decision to the employee within 30 calendar days after the receipt of the appeal. The time may be extended by mutual agreement of the parties. If not satisfied with the decision of the director, the employee may request an appeal hearing before the public employment relations board as provided in subrule 61.2(5).

**61.2(7) *Appeal of reduction in force.*** An employee who is to be or has been laid off or who has changed classes in lieu of layoff, and who alleges that the reduction in force was used to circumvent the rights of appeal provided for in subrule 61.2(6) or subrule 61.2(1), paragraph "a" or "d," may file an appeal with the director within 30 calendar days following receipt of the notice of reduction in force to the employee from the appointing authority.

**61.2(8) *Remedies.*** All remedies provided in rule 11—61.2(8A) must be exhausted pursuant to Iowa Code section 17A.19, subsection 1, prior to petition for judicial review.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 2000C, IAB 5/27/15, effective 7/1/15; ARC 3215C, IAB 7/19/17, effective 7/1/17]

**11—61.3(8A) *Informal settlement.*** The director or an appellant may request that an informal conference be held to determine if a dispute can be resolved in a manner agreeable to all parties prior to a contested case hearing. If the director and the appellant agree to negotiate a settlement, the various points of the proposed settlement shall be included in a written statement of facts. Negotiations for a settlement shall be completed at least five workdays prior to the date of the contested case hearing, unless additional time is agreed to by the director, the appellant and the public employment relations board, the department of inspections and appeals, or the classification appeal committee, as applicable. The settlement shall not be binding until approved in accordance with the procedures set forth in 2017 Iowa Acts, House File 291, section 51.

[ARC 3215C, IAB 7/19/17, effective 7/1/17]

These rules are intended to implement Iowa Code section 8A.413.

## CHAPTER 62 - PERFORMANCE REVIEW

### 11—62.1(8A) System established

The director shall establish, administer and maintain a uniform system of performance planning and evaluation to be applied to all employees in the executive branch of state government, excluding board of regents employees, and shall prescribe forms and procedures for its use. Such forms and procedures shall be in accordance with the accountable government Act pursuant to Iowa Code section 8E.207, subsection 2. Appointing authorities shall determine and assign the job duties to be performed by employees.

### 11—62.2(8A) Minimum requirements

**62.2(1) *Performance plan.*** The individual employee performance plan shall be based on the responsibilities, strategies or goals assigned during the rating period and shall include the standards or expectations, including action steps, performance criteria, and timetables, required for performance to be considered as meeting job expectations. The individual employee performance plan shall be given to and discussed with the employee at the start of the rating period. Significant changes in responsibilities, standards or expectations that occur during the rating period shall be included in the individual employee performance plan, and a revised copy shall be given to and discussed with the employee.

**62.2(2) *Performance evaluation.*** A performance evaluation shall be prepared for each employee at least every 12 months. Additional evaluations may be prepared at the discretion of the supervisor. Ratings on the evaluation form are to be accompanied by descriptive comments supporting the ratings. The evaluation may also include job-related comments concerning achievements or areas of strength, areas for improvement, and training/development plans. The supervisor or team shall discuss the evaluation with the employee, and the employee shall be given the opportunity to attach written comments. Periods of service during FMLA, workers' compensation, military, or educational leave shall be considered as meeting job expectations.

Exit performance reviews shall be completed by the former supervisor on or before the last day before the movement of an employee to employment in another section, bureau, division or agency of state government. This review shall be for the period between the previous review up to the movement to the other position. A copy shall be forwarded to the new supervisor of the employee.

[ARC 3215C, IAB 7/19/17, effective 7/1/17]

**11—62.3(8A) Copies of records.** The employee shall receive a copy of each individual employee performance plan and evaluation. The originals shall be retained by the employee's agency in accordance with the policies of the department. The performance evaluation and attachments are confidential records within the meaning of Iowa Code section 22.7, subsection 11.

These rules are intended to implement Iowa Code sections 8A.413 and 8E.207.

## CHAPTER 63 - LEAVE

### 11—63.1(8A) Attendance

Appointing authorities shall establish the working schedules, regulations, and required hours of work for employees under their direction. All regulations and schedules shall be made known to the affected employees by appointing authorities. All absences of probationary and permanent employees shall be charged to one of the leave categories provided for in this chapter.

### 11—63.2(8A) Vacation leave

**63.2(1)** Nontemporary employees shall earn vacation for continuous state employment as follows:

- a.* Two unscheduled holidays to be added to the vacation accrual each year.
- b.* Two weeks of vacation during the first and through the fourth year of employment.
- c.* Three weeks of vacation during the fifth and through the eleventh year of employment.
- d.* Four weeks of vacation during the twelfth year and through the nineteenth year of employment.
- e.* Four and four-tenths weeks of vacation during the twentieth year and through the twenty-fourth year of employment.
- f.* Five weeks of vacation during the twenty-fifth and all subsequent years of employment.

**63.2(2)** Vacation is subject to the following conditions:

- a.* Vacation shall be subject to the approval of the appointing authority. The appointing authority shall approve vacation so as to maintain the efficient operation of the agency; take into consideration the vacation preferences and needs of the employee; and make every reasonable effort to provide vacation to prevent any loss of vacation accrual.
- b.* Probationary and permanent part-time employees shall accrue vacation in an amount proportionate to that which would be accrued under full-time employment.
- c.* Vacation shall not accrue during any absence without pay.
- d.* An employee who is transferred, promoted, or demoted from one state agency to another shall be credited with the vacation accrued.
- e.* Employees, including employees who are paid from a pay plan having annual salary rates, who leave state employment for any reason shall be paid, or have payment made according to law, for all accrued vacation. Payment shall be included with the employee's final paycheck and shall be based on the employee's total biweekly regular rate of pay at the time of separation. When other pay is to be included in the calculation, that other pay must have been in effect for at least three pay periods. Vacation shall not be granted after the employee's last day of work.
- f.* An employee may, at the appointing authority's discretion, be required to use all accrued vacation before being granted any leave without pay, except as otherwise provided in these rules.
- g.* Vacation shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's vacation shall not be counted against the employee's accrued vacation.
- h.* In the event of an illness or disability while on vacation, that portion of the vacation spent under the care of a physician shall be switched retroactively to and charged against the employee's accrued sick leave upon satisfactory proof from the physician of the illness or disability and its duration.
- i.* Vacation shall not be used in excess of the amount accrued, and shall not be used until the pay period after it is accrued.
- j.* Vacation shall be cumulative to a maximum of twice the employee's annual rate of accrual, including sick leave conversion. An appointing authority may require an employee to take vacation whenever it would be in the best interests of the agency. The employee shall be given reasonable notice of the appointing authority's decision to require the use of accrued vacation. However, an employee shall not be required to reduce accrued vacation to less than 80 hours.
- k.* One week of vacation shall be equal to the number of hours in the employee's normal, regular workweek.

*l.* Any employee who is laid off, or an employee who separated due to qualification for long-term disability benefits or an on-the-job injury or illness and subsequently returns to state employment within two years following the date of separation, shall have previous continuous service and the period of separation counted toward the vacation accrual rate.

*m.* Reserved.

*n.* Time spent in military service, within the specified time limits of the military training and service Act, shall be considered continuous service for the purpose of computing vacation accrual, provided the employee returns to state service within 90 calendar days following discharge from military duty. Vacation shall not accrue to an employee while on military leave without pay.

*o.* If on June 1 an employee has a balance of 160 or more hours of accrued leave, the employer may, with the approval of the employee, pay the employee for up to 40 hours of the accrued annual leave. This amount will be paid on the payday which represents the last pay period of the fiscal year. Decisions regarding these payments will be made by each department director and are not subject to the grievance procedure provided for in these rules.

[ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—63.3(8A) Sick leave with pay

Probationary and permanent full-time employees, except peace officer employees of the department of natural resources and the department of public safety, shall accrue sick leave as set forth in this paragraph. If the employee's accrued sick leave balance is 750 hours or less, the employee shall accrue one and one-half days of sick leave per month, which is 5.538462 hours per pay period. If the employee's accrued sick leave balance is 1500 hours or less but more than 750 hours, the employee shall accrue one day of sick leave per month, which is 3.692308 hours per pay period. If the employee's accrued sick leave balance is more than 1500 hours, the employee shall accrue one-half day of sick leave per month, which is 1.846154 hours per pay period. Peace officer employees of the department of natural resources and department of public safety shall accrue sick leave at the same rate as the rate provided under the State Police Officers Council collective bargaining agreement. The use of sick leave with pay shall be subject to the following conditions:

**63.3(1)** Accrued sick leave may be used during a period when an employee is unable to work because of medically related disabilities; for physical or mental illness; medical, dental or optical examination, surgery or treatment; or when performance of assigned duties would jeopardize the employee's health or recovery. Medically related disabilities caused by pregnancy or recovery from childbirth shall be covered by sick leave.

**63.3(2)** Sick leave shall not be used as vacation.

**63.3(3)** Sick leave shall not be granted in excess of the amount accrued.

**63.3(4)** There is no limit on the accumulation of sick leave. An employee who has accrued at least 240 hours of sick leave may elect to accrue additional vacation in lieu of the normal sick leave accrual. An employee who has made an election to convert sick leave to vacation will be credited with four hours of vacation for each full month when sick leave is not used during that month. A conversion shall not be made if the accrued sick leave is less than 240 hours in the pay period in which the conversion would be made. The conversion of sick leave shall be prorated for employees who are normally scheduled to work less than full-time (40 hours per week). An employee's maximum vacation accrual may be increased under this subrule up to 96 hours.

**63.3(5)** In all cases when an employee has been absent on sick leave, the employee shall immediately upon return to work submit a statement that the absence was due to illness or other reasons stated in this rule. Where absence exceeds three working days, the reasons for the absence shall be verified by a physician or other authorized practitioner if required by the appointing authority. An appointing authority may require verification for lesser periods of absence and at any time during an absence. In all cases, sick leave shall not be deducted from that accrued until authorized by the appointing authority.

**63.3(6)** Sick leave shall be charged on the employee's workday basis. Officially designated holidays occurring during an employee's sick leave shall not be counted against the employee's accrued sick leave.

**63.3(7)** Sick leave shall not accrue during any absence without pay.



**63.3(8)** Probationary and permanent part-time employees shall accrue sick leave in an amount proportionate to that which would be accrued under full-time employment.

**63.3(9)** An employee who is transferred, promoted, or demoted from one agency to another shall be credited with the sick leave accrued.

**63.3(10)** All accrued sick leave shall be canceled on the date of separation, and no employee shall be reimbursed for accrued sick leave unused at the time of separation except as provided for in Iowa Code section 70A.23, or the applicable collective bargaining agreement. However, if an employee is laid off and is reemployed by any state agency within two years following the date of layoff, or an employee is separated due to an on-the-job injury or illness and is reemployed by any state agency within two years following the date of medical release, the employee's unused accrued sick leave shall be restored, except to the extent that the sick leave hours have been credited to a sick leave bank pursuant to Iowa Code section 70A.23 and the provisions of 11—64.16(8A). Employees participating in the sick leave insurance program who return to permanent employment will not have prior sick leave amounts restored.

**63.3(11)** Employees may also use accrued sick leave, not to exceed a total of 40 hours per fiscal year, for the following purposes:

- a. When a death occurs in the immediate family;
- b. For the temporary care of, or necessary attention to, members of the immediate family.

For purposes of this subrule, “immediate family” means the employee's spouse, children, grandchildren, foster children, stepchildren, legal wards, parents, grandparents, foster parents, stepparents, brothers, foster brothers, stepbrothers, sons-in-law, brothers-in-law, sisters, foster sisters, stepsisters, daughters-in-law, sisters-in-law, aunts, uncles, nieces, nephews, first cousins, corresponding relatives of the employee's spouse and other persons who are members of the employee's household.

This leave shall be granted at the convenience of the employee whenever possible and consistent with the staffing needs of the appointing authority.

**63.3(12)** If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave. Employees shall, upon request, be paid accrued compensatory leave in a lump sum. When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4).

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 1568C, IAB 8/6/14, effective 9/10/14]

## 11—63.4(8A) Family and Medical Leave Act leave

An employee who has been employed for a cumulative total of 12 months or more in the most recent seven-year period and who has worked at least 1,250 hours during the 12-month period immediately preceding the date leave is to begin shall be eligible for family and medical leave in accordance with the federal Family and Medical Leave Act (FMLA) and 29 CFR Part 825, these rules, and the policies of the department. Eligibility determinations shall be made as of the date that the FMLA leave is to begin. The FMLA leave year begins on the first day of each fiscal year. Eligible employees are entitled to FMLA leave subject to the following conditions:

**63.4(1)** It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph “a” or “c” below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous 12 months. Leave may be for one or more of the following reasons:

- a. The birth or placement with the employee of a son or daughter (biological child, adopted child, foster child, stepchild, legal ward or a child to whom the employee stands in loco parentis) for adoption or foster care provided the leave is taken within 12 months following any such birth, adoption or foster placement;
- b. The care of a son or daughter under 18 years of age, or older if incapable of self-care because of a mental or physical disability, or spouse with a serious health condition;



- c. The care of a parent or person who stood in loco parentis to the employee, with a serious health condition;
- d. A serious health condition that makes an employee unable to work at all or perform any one of the essential functions of the employee's position within the meaning of the Americans with Disabilities Act (ADA), as amended, 42 U.S.C. Section 12101 et seq., and the regulations at 29 CFR Section 1630.2(n).
- e. A qualifying exigency, as defined in federal FMLA regulations, arising out of the fact that the employee's spouse, son, daughter or parent is a covered servicemember on covered active duty, or has been notified of an impending call or order to covered active duty, in a foreign country.
- f. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the servicemember, pursuant to the FMLA regulations.

**63.4(2)** Leave may be taken on an intermittent basis or on a reduced work schedule basis where this type of leave is medically necessary. The use of intermittent or reduced work schedule leave for circumstances described in paragraph "a" of subrule 63.4(1) shall be at the discretion of the appointing authority. Approval of intermittent or reduced schedule leave for circumstances described in paragraph "b," "c," "d," "e," or "f" of subrule 63.4(1) is mandatory if certified by a health care provider or proper military authority.

**63.4(3)** Use of sick leave shall be in accordance with rule 11—63.3(8A). When FMLA leave is taken pursuant to paragraph "a," "b," "c," "e," or "f" of subrule 63.4(1), an employee must exhaust all paid vacation before unpaid leave is granted. However, sick leave may be used to the extent authorized by subrule 63.3(11). When an employee takes FMLA leave after the birth of a child and the employee has not received a medical release to return to work, the employee must exhaust all accrued sick leave and vacation before unpaid leave is granted. When the employee's medical provider releases the employee to return to work, the employee is no longer eligible to use paid sick leave; however, the employee may use leave as authorized by subrule 63.3(11) and accrued vacation.

When FMLA leave is taken pursuant to paragraph "d" of subrule 63.4(1), an employee must exhaust all paid sick leave, compensatory leave, and vacation before unpaid leave is granted.

**63.4(4)** An employee shall submit a written request, using forms prescribed by the department, to the appointing authority within 30 calendar days prior to the need for FMLA leave when the need for the leave is foreseeable. In situations involving unforeseeable need for leave and leave involving a birth, adoption, foster placement, or planned medical treatment for an illness, the employee must provide notice as soon as practicable after the employee learns of the need for the leave. Notice may be made orally or in writing. Untimely requests or failure to provide notice or mandatory information to the appointing authority may result in delay or denial of the FMLA leave. The failure to follow mandatory leave policies may result in discipline of the employee.

The appointing authority shall provide the employee with all notices required by the federal Family and Medical Leave Act and the policies of the department. Notices shall be provided to employees within the time frames prescribed by the federal regulations and the policies of the department. The appointing authority shall notify the employee using forms prescribed by the department, or verbally when circumstances prevent delivery of the forms. If verbal notification is made, the appointing authority shall take reasonable steps to deliver written notification to the employee within five workdays.

**63.4(5)** The appointing authority may, at the agency's expense, require a second opinion. The appointing authority will designate the health care provider to furnish the second opinion. In making the designation, the appointing authority shall select a provider that is not employed on a regular basis by the appointing authority. If the second opinion differs from the first, the appointing authority may, at the agency's expense, require a third opinion from a health care provider agreeable to both the employee and the appointing authority. The third opinion shall be final and binding on both parties.

**63.4(6)** During the period of leave, the appointing authority shall pay the state's share of the employee's health, dental, basic life, and long-term disability benefit insurance premiums. Failure by the employee to pay the employee's share of the premiums will result in a loss of coverage. The appointing authority shall provide notice to the employee 15 calendar days prior to any retroactive or prospective cancellation of benefits coverage. Upon return from FMLA leave, employees who have dropped or canceled their health, dental, or life insurance benefits while on FMLA leave will be restored to the same level of benefits as prior to the commencement of leave upon completion of the necessary insurance applications and other forms required by the department.

**63.4(7)** Upon returning from FMLA leave, an employee is entitled to no more rights or benefits than the employee would have received had the leave not been taken. If an employee does not return from leave because of the continuation, reoccurrence or onset of a serious health condition, the appointing authority shall require written certification from the health care provider. If the reason for the employee's failure to return is not a certified serious health condition or other circumstances beyond the control of the employee, the state may recover its share of health and dental benefit insurance premiums paid during the period of leave.

**63.4(8)** The appointing authority may request periodic reports concerning the employee's medical status, and the date the employee may return to work. Requests for periodic reports will be made no more often than necessary depending on the facts and circumstances of each case and shall not exceed one request every 30 days absent extenuating circumstances.

The appointing authority shall require written certification from the health care provider that the employee is able to resume work before allowing an employee with a serious health condition to return from FMLA leave. Upon return from FMLA leave, the employee shall be placed in a position in the same class held prior to the leave, or a class in the same pay grade for which the employee qualifies, with the same pay, benefits, terms and conditions of employment, and geographical proximate location, except that if a reduction in force occurs while the employee is on leave, the employee's right to a position shall be established in accordance with 11—Chapter 60.

**63.4(9)** If an employee unequivocally advises the employer that the employee does not intend to return to work, the employee's entitlement to FMLA leave and associated benefits cease. The failure to return to work upon the expiration of FMLA leave may be considered to be job abandonment.

**63.4(10)** If the employee is unable to perform an essential function of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. The appointing authority's obligations may be governed by the Americans with Disabilities Act.

**63.4(11)** An employee remains a participant in the deferred compensation and dependent care programs while on FMLA leave as authorized by these rules and the policies of the department.

**63.4(12)** FMLA leave runs concurrently with other leave programs administered by the department to the extent the leave qualifies as FMLA leave.

**63.4(13)** FMLA leave runs concurrently with a workers' compensation absence when the workers' compensation absence is one that meets the FMLA criteria.

An employee can be offered "restricted light duty," and if such restricted duty is refused, it may result in the loss of workers' compensation benefits. Under the FMLA, the appointing authority may offer restricted duty; however, if the employee refuses, the employee shall lose workers' compensation benefits but is still protected by the FMLA.

Employees on workers' compensation who are on FMLA leave concurrently and who are unable to return to work after the exhaustion of FMLA leave are subject to state workers' compensation laws and will have no job restoration rights under the FMLA.

**63.4(14)** Retention of vacation leave. Notwithstanding subrule 63.4(3), employees who qualify for FMLA leave are eligible to retain up to two weeks (80 hours) of accrued vacation leave in each fiscal year. An employee must elect, using forms prescribed by the department, to retain vacation by submitting the form to the employer no later than seven calendar days from the date it is determined that the employee's leave is covered by FMLA. An employee will not be permitted to retain more vacation than is in the employee's vacation bank at the time of election. Once the election is made, it cannot be increased; however, it may be reduced, at any time, to less than 80 hours. An employee will not be eligible to retain any donated leave.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 8979B, IAB 8/11/10, effective 9/15/10; ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—63.5(8A) Leave without pay

A permanent or probationary employee, on written request and written approval by the appointing authority, may be granted leave without pay for any reason deemed satisfactory to the appointing authority, subject to the following conditions:

**63.5(1)** Leave without pay shall not originally be granted for more than 12 consecutive months. Accrued leave need not be exhausted before leave without pay is granted except that accrued sick leave must be exhausted if the reason for leave without pay is due to a medically related disability. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority except as provided in subrule 63.5(4). On written request, prior to the expiration of a granted leave, the appointing authority may, in writing, grant an extension of the leave without pay. The approved leave without pay extension may not be for more than an additional 12 consecutive months, unless otherwise approved by the director.

**63.5(2)** Failure by the employee to report back to work on the date specified in the written request shall be considered a voluntary resignation unless otherwise approved by the appointing authority. A written statement accepting the resignation shall be sent to the employee by the appointing authority and a copy sent to the director.

**63.5(3)** Employees who do not supplement workers' compensation with sick leave, vacation or compensatory leave, and who are kept on the payroll in a nonpay status for more than 30 calendar days, shall be placed on leave without pay for purposes of probationary periods and other benefits. A written statement to this effect shall be sent to the employee within three days following the action by the appointing authority.

**63.5(4)** When requested in writing and verified by the employee's physician or other licensed practitioner, an employee shall be granted sick leave for at least an eight-week period when the purpose is to provide recovery from a medically related disability. If the employee's accrued sick leave is exhausted prior to completion of the eight-week period, the employee shall be granted additional leave, paid or unpaid, for the remainder of the period, in accordance with these rules. The appointing authority may grant leave in excess of the eight-week period. Paid leave shall not be granted in excess of that accrued. At any time during the period of leave, the appointing authority may require that the employee submit written verification of continuing disability from the employee's physician or other licensed practitioner. In addition to the reason listed, subrule 63.5(2) shall also apply under the following circumstances:

- a. The employee fails or refuses to supply the requested verification of continued disability.
- b. The verification does not clearly show sufficient continuing reason that would prevent the performance of the employee's regular work duties.
- c. The employee is shown to be performing work which is incompatible with the purpose for which the leave without pay was granted.

**63.5(5)** If an employee applies for leave under the Family and Medical Leave Act, any leave without pay under the Family and Medical Leave Act shall run concurrently with the leave granted under this rule.

[ARC 0401C, IAB 10/17/12, effective 11/21/12; ARC 3215C, IAB 7/19/17, effective 7/1/17]

## 11—63.6(8A) Rights upon return from leave

**63.6(1)** An employee who is on approved leave without pay, disaster service volunteer leave or educational leave must notify the appointing authority from which the employee is on leave of the intent to exercise return from leave rights. Upon return from leave, the employee shall have the right to return to a vacant position in the class held prior to the leave or to a class in the same pay grade for which the employee qualifies. If a vacant position is not available, the reduction in force provisions of 11—Chapter 60 shall apply. An employee on leave without pay, disaster service volunteer leave, or educational leave may request permission from the appointing authority to return to work sooner than the original approved leave expiration date. Employees on leave without pay for more than 30 calendar days, except for military leave, shall have their pay increase eligibility date adjusted to a later date which reflects the period of leave without pay.

**63.6(2)** An employee who elects to separate from employment for purposes of induction into military service shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334. Upon return, the employee's pay increase eligibility date and unused sick leave at the time of separation shall be restored.

**63.6(3)** At the conclusion of a period of military service, an employee who is on approved military service leave must notify the appointing authority of the intent to return to employment. Upon return from military leave, the employee shall have the right to return to employment in accordance with 38 U.S.C. Sections 4301-4334.  
[ARC 8265B, IAB 11/4/09, effective 12/9/09]

## 11—63.7(8A) Compensatory leave

Compensatory leave accrued in accordance with 11—subrule 53.11(5) shall be granted at the request of the employee whenever possible. However, the appointing authority need not grant a request for compensatory leave if granting the leave would cause an undue disruption.

## 11—63.8(8A) Holiday leave

Holidays shall be granted in accordance with statutory provisions to employees who are eligible to accrue vacation and sick leave.

**63.8(1)** The value of a holiday for full-time employees shall be eight hours or the number of hours the employee is scheduled to work on that day, whichever is greater. The value of a holiday that falls on a full-time employee's scheduled day off shall be eight hours. Employees who are normally scheduled to work full-time shall not have their holiday compensation prorated for time on leave without pay during the pay period if the employee meets the conditions of subrule 63.8(3).

Compensation for holidays shall be prorated for employees who are normally scheduled to work less than 80 hours in a pay period. Compensation shall be based on the number of hours in pay status during the pay period in which the holiday falls plus the hours that would normally be scheduled for the holiday which shall be included when determining the number of pro-rata holiday hours.

Leave accrued under Iowa Code section 1C.2 as vacation shall be based on the employee's hours in pay status.

Compensation for holidays under this rule shall be either in pay or compensatory leave. The decision to pay or grant compensatory leave shall be made by the appointing authority.

**63.8(2)** For employees who work Monday through Friday, a holiday falling on Sunday shall be observed on the following Monday and a holiday falling on Saturday shall be observed on the preceding Friday. For all other employees, the designated holiday shall be observed on the day it occurs.

**63.8(3)** To be eligible for holiday compensation an employee must be in pay status the last scheduled workday before and the first scheduled workday after the holiday.

An employee who separates from employment and whose last day in pay status precedes a holiday shall not be eligible for payment for that holiday.

**63.8(4)** When the holiday falls on an overtime-covered employee's scheduled workday, and the employee does not get the day off, the employee shall be compensated for the holiday in accordance with subrule 63.8(1) in addition to a premium rate for time worked. The premium rate shall be paid for hours worked during the 24-hour period from 12 a.m. through 11:59 p.m. on the holiday. However, hours compensated at the premium rate shall not be counted as part of the 40 hours when calculating overtime pay.

When the holiday falls on an overtime-covered employee's day off, the employee shall be compensated for the holiday to a maximum of eight hours.

**63.8(5)** When an overtime exempt employee is required to work on a holiday, the employee may be compensated for the time worked in addition to regular holiday pay at the discretion of the appointing authority. When granted, compensation shall be at the employee's regular rate of pay for all hours worked.

## 11—63.9(8A) Military leave

For purposes of subrules 63.9(1) and 63.9(3) and as applied to nontemporary employees whose regularly scheduled work shift is 16 hours or less, “30 days” means 30 work days. For nontemporary employees whose regularly scheduled work shift is more than 16 hours, “30 days” in subrules 63.9(1) and 63.9(3) shall be defined in accordance with the provisions of Iowa Code section 29A.28.

**63.9(1)** A nontemporary employee who is a member of the uniformed services, when ordered by proper authority to serve in the uniformed services, shall be granted leave without loss of pay for 30 days each calendar year. Absences required for military service shall be in accordance with the rules on vacation, compensatory leave, or leave without pay, 38 U.S.C. Sections 4301-4333, and 20 CFR Part 1002. Military leave may be utilized for up to 30 days in each calendar year. Any amount of military leave taken during any part of an employee’s scheduled workday, regardless of the number of hours actually taken, shall count as one day toward the 30 paid day maximum. If the employee’s work shift crosses two calendar days, only one day shall count toward the 30 paid day maximum. Work schedule changes shall not be made for the purpose of avoiding payment for military leave.

**63.9(2)** A nontemporary employee who is ordered by proper authority to military duty as defined in Iowa Code section 29A.28 may elect to be placed on leave without pay or be separated and removed from the payroll.

**63.9(3)** Nontemporary employees who elect to separate from employment when ordered by proper authority to military duty shall be given 30 days of regular pay in a lump sum with their last paycheck. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

Employees who elect to be placed on leave without pay when ordered by proper authority to military duty shall continue to receive regular pay and benefits for 30 days. Any previous paid leave days granted for military service in the current calendar year shall be deducted from this 30 days.

**63.9(4)** At the conclusion of military service, the employee must notify the employee’s appointing authority of the intent to exercise return rights pursuant to 38 U.S.C. Sections 4301-4344.

**63.9(5)** An employee taking military leave may use any vacation or compensatory leave that was accrued prior to service. Employees who elect to use vacation or compensatory leave shall continue to receive benefits in accordance with the state of Iowa’s benefits program policies and procedures. Upon return to employment, the employee’s accrual rate for vacation shall be at the same rate as if the employee had not taken military leave.

**63.9(6)** An employee may maintain health and dental insurance coverage while on military leave for up to 24 months. The employee is responsible for paying the employee’s share of the health and dental insurance premiums if the period of military service is less than 31 days. If more than 30 days, the employee shall be required to pay 102 percent of the full premium under the plan to maintain coverage. Upon return to employment, the employee may elect to have health and dental insurance coverage become effective either on the first day of the month the employee returns to employment or the first day of the month following the month in which the employee returned to employment. Coverage under the plans will not have an exclusion or waiting period upon return to employment. An exclusion or waiting period may be imposed, however, in connection with any illness or injury determined by the Secretary of the U.S. Department of Veterans Affairs to have been incurred in, or aggravated during, performance of service in the uniformed services.

**63.9(7)** A person reemployed under this rule shall be treated as not having incurred a break in service with the employer by reason of such person’s period of service in the uniformed services.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 3115C, IAB 6/7/17, effective 5/17/17; ARC 3231C, IAB 8/2/17, effective 9/6/17]

## 11—63.10(8A) Educational leave

Educational leave, with or without pay, may be granted at the discretion of the appointing authority for the purpose of assisting state employees to develop skills that will improve their ability to perform their present job responsibilities or to provide training and developmental opportunities for employees that will enable the agency to better meet staffing needs. Education financial assistance shall be in accordance with rule 11—64.10(8A).

**63.10(1) *Length of leave.*** Educational leave shall be requested for a period not to exceed 12 consecutive months. Accrued vacation or compensatory leave need not be exhausted before educational leave is granted. The determination to require the exhaustion of any or all accrued leave shall rest with the appointing authority. The appointing authority may grant an extension of the original leave for an additional 12 months.

**63.10(2) *Selection of applicants.*** While the selection of applicants is at the discretion of the appointing authority, it is the express policy of the state to offer all qualified employees an equal opportunity to be considered for educational leave within the limitations imposed by agency staffing requirements.

**63.10(3) *Educational institutions.*** An employee on educational leave may take course work at any accredited educational institution within the state. Attendance at out-of-state institutions may be approved provided there are geographical or educational considerations which make attendance at institutions within the state impractical.

**63.10(4) *Agency report.*** Rescinded IAB 5/27/15, effective 7/1/15.  
[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 2000C, IAB 5/27/15, effective 7/1/15]

## 11—63.11(8A) Election leave

An employee who is not covered by the federal Hatch Act and who becomes a candidate for paid, partisan elective office shall, upon the employee's request, be granted leave 30 calendar days before a contested primary, special, or general election. The employee may choose to use accrued vacation or compensatory leave, or leave without pay to cover these periods.

An employee who is elected to a paid, partisan office or appointed to an elective paid, partisan office shall, upon written request to the appointing authority, be granted leave to serve in that office, except where prohibited by federal law. The use of accrued vacation or compensatory leave, or leave without pay to cover this period shall be at the discretion of the employee. The leave provided for in this rule need not exceed six years. An employee shall not be prohibited from returning to employment before the expiration of the period for which the leave was granted.

## 11—63.12(8A) Court appearances and jury duty

When in obedience to a subpoena, summons, or direction by proper authority, an employee appears as a witness or a jury member in any public or private litigation in which the employee is not a party to the proceedings, the employee shall be entitled to time off during regularly scheduled work hours with regular compensation, provided the employee gives to the appointing authority any payments received for court appearance or jury service, other than reimbursement for necessary travel or personal expenses. If the employee is directed to appear as a witness by the appointing authority, all time spent shall be considered to be worktime.

**63.12(1)** Hours spent on court or jury leave by an employee outside the employee's scheduled work hours are not subject to this rule, nor shall any payments received for court appearance or jury service be remitted to the appointing authority.

**63.12(2)** The employee shall notify the appointing authority immediately upon receipt of a subpoena, summons, or direction by proper authority to appear.

**63.12(3)** An employee may be required to report to work if there will be at least two hours in the workday, following necessary travel time, during which the employee is not needed for jury service or as a witness.

**63.12(4)** Upon return to work, the employee shall present evidence to the appointing authority of any payments received for court appearance or jury service.

## 11—63.13(8A) Voting leave

An employee who is eligible to vote in a public election in the state of Iowa may request time off from work with regular pay for a period not to exceed three hours for the purpose of voting. Leave shall be granted only to the extent that the employee's work hours do not allow a period of three consecutive hours outside the employee's scheduled work hours during which the voting polls are open.

A request for voting leave must be made to the appointing authority on or before the employee's last scheduled shift prior to election day. The time to be taken off shall be designated by the appointing authority.

## 11—63.14(8A) Disaster service volunteer leave

Subject to the approval of the appointing authority, an employee who is a certified disaster service volunteer for the American Red Cross may, at the request of the American Red Cross, be granted leave with pay to participate in disaster relief services relating to a disaster in the state of Iowa. Such leave shall be only for hours regularly scheduled to work and shall not be for more than 15 workdays in a fiscal year. Employees granted such leave shall not lose any rights or benefits of employment while on such leave. An employee while on leave under this rule shall not be deemed to be an employee of the state for the purposes of workers' compensation or for the purposes of the Iowa tort claims Act.

## 11—63.15(8A) Absences due to emergency conditions

When a proper management authority closes a state office or building or directs employees to vacate a state office or building premises, employees may elect to use compensatory leave, vacation, or leave without pay to cover the absence. Employees may, with the approval of the appointing authority, elect to work their scheduled hours even though the state office or building is closed to the general public. Employees may, with the approval of the appointing authority, be permitted to make up lost time within the same workweek. Employees who are unable to report to work as scheduled or who choose to leave work due to severe weather or other emergency conditions may, with the approval of the appointing authority, use compensatory leave, vacation, or leave without pay to cover the absence.

## 11—63.16(8A) Particular contracts governing

Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreements shall prevail for the employees covered by those agreements.

## 11—63.17(8A) Examination and interviewing leave

**63.17(1)** Employees may be granted leave to take examinations for positions covered by merit system provisions. Employees may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

**63.17(2)** Employees may be granted the use of paid work time to attend interviews during scheduled work hours for jobs within their agency. For agencies that have statewide operations, the appointing authority may restrict the use of paid time to interviews within the central office, institution, county, region, or district office. A reasonable time limit for interviews may be designated by the appointing authority. Employees may be granted leave for interviews outside the agency, central office, institution, county, region, or district office in which case they may elect to use vacation leave, compensatory leave, or leave without pay at the discretion of the appointing authority.

**63.17(3)** Appointing authorities shall post and make known to employees the provisions of this rule.



## 11—63.18(8A) Service on committees, boards, and commissions

State employees who are appointed to serve on committees, boards, commissions, or similar appointments for Iowa state government shall be entitled to regular compensation for such service. Employees shall be paid in accordance with these rules for time spent.

Pursuant to Iowa Code section 70A.1, employees shall not be entitled to additional compensation for such service.

Employees shall have actual and necessary expenses paid.

Employees shall notify the appointing authority at the time of the appointment.

## 11—63.19(8A) Donated leave for catastrophic illnesses of employees and family members

Employees are eligible to donate or receive donated leave hours for catastrophic illnesses of the employee or an immediate family member. Contributions shall be designated as “donated leave” and shall be subject to the rules, policies and procedures of the department.

### **63.19(1) Definitions:**

“*Catastrophic illness*” means a physical or mental illness or injury of the employee, as certified by a licensed physician, that will result in the inability of the employee to work for more than 30 workdays on a consecutive or intermittent basis; or that will result in the inability of the employee to report to work for more than 30 workdays due to the need to attend to an immediate family member on a consecutive or intermittent basis.

“*Donated leave*” means vacation leave (hours) donated to employees as a monetary benefit only. Recipient employees will not accrue vacation or sick leave benefits on donated leave hours.

“*Employee*” means a full-time or part-time executive branch employee who is eligible to accrue vacation.

“*Immediate family member*” means the employee’s spouse, parent, son, or daughter, as defined in the federal Family and Medical Leave Act.

**63.19(2) Program eligibility for employee illness.** In order to receive donated leave for a catastrophic illness, an employee must:

- a. Have a catastrophic illness as defined by subrule 63.19(1); and
- b. Have exhausted all paid leave; and
- c. Not be supplementing workers’ compensation to the extent that it exceeds more than 100 percent of the employee’s pay for the employee’s regularly scheduled work hours on a pay-period-by-pay-period basis; and
- d. Not be receiving long-term disability benefits; and
- e. Be approved for and using or have exhausted Family and Medical Leave Act (FMLA) leave hours if eligible; and
- f. Be on approved leave without pay for medical reasons during any hours for which the employee will receive donated leave.

**63.19(3) Program eligibility for immediate family member illness.** In order to receive donated leave for a catastrophic illness of an immediate family member, the immediate family member must have a catastrophic illness as defined in subrule 63.19(1). The employee must:

- a. Have exhausted all paid leave for which eligible; and
- b. Be approved for and using or have exhausted Family and Medical Leave Act leave hours if eligible; and
- c. Be on approved leave without pay for the medical reasons of an immediate family member during any hours for which the employee will receive donated leave.

**63.19(4) Certification requirements.** The employee shall submit an application for donated leave on forms developed by the department. Appointing authorities may, at their department’s expense, seek second medical opinions or updates from physicians regarding the status of an employee’s or employee’s immediate family member’s illness or injury. If the employee is receiving FMLA leave, a second opinion must be obtained from a physician who is not regularly employed by the state.



**63.19(5) Program requirements.**

a. Vacation hours shall be donated in whole-hour increments; however, they may be credited to the recipient in other than whole-hour increments. All of the recipient's accrued leave must be used before donations will be credited to the recipient. Hours will be credited in increments not to exceed the employee's regularly scheduled work hours on a pay-period-by-pay-period basis. Recipients will not accrue vacation and sick leave on donated leave hours.

b. Approval of use of donated leave shall be for a period not to exceed one year either on an intermittent or continuous basis for each occurrence.

c. Donated leave shall be irrevocable after it is credited to the recipient. Donated hours not credited to the recipient will not be deducted from the donor's vacation leave balance. Donated leave shall be credited on a first-in/first-out basis.

d. Donated leave for catastrophic illness will not restrict the right to terminate probationary employees. The period of probationary status and the pay increase eligibility date, if in excess of 30 days, will be extended by the amount of time the employee received donated leave.

e. Appointing authorities shall post a form developed by the department indicating that the employee is eligible to receive donated leave and the name of the person to contact for the donation. The appointing authority is not responsible for posting outside the employing department; however, donated leave hours can be received from executive branch employees outside the employing department.

f. Leave without pay rules and procedures shall apply to the following benefits: health, dental, life, and long-term disability insurances; pretax; deferred compensation; holiday pay, sick leave and vacation leave accrual, shift differential pay, longevity pay and cash payments. In addition, employees receiving donated leave for catastrophic illness for themselves or their immediate family member will not be eligible for leadworker pay, extraordinary duty pay or special duty pay. If FMLA leave and donated leave for a catastrophic illness are used concurrently, the state is obligated to pay its share of health and dental insurance premiums. The state also maintains an employee's basic life and long-term disability insurances during periods of FMLA leave.

g. Employees may choose to continue or terminate optional deductions (e.g., miscellaneous insurance, savings bonds, charitable contributions, or credit union deductions) while using donated leave. Mandatory deductions are taken from gross pay first, then optional deductions as funds are available and as authorized by the employee. Union dues deductions will continue as long as the employee has sufficient earnings to cover the dollar amount certified to the employer after deductions for social security, federal taxes, state taxes, retirement, health and dental insurance, and life insurance.

h. Contributions to the employee's dependent care account will not be allowed during a period of leave without pay. Claims will not be paid for dependent care while an employee is on leave without pay.

i. If an employee applies for and is approved to receive long-term disability, the employee may continue to receive leave contributions for up to one year on an intermittent or continuous basis or the effective date of the employee's long-term disability, whichever comes first. Donated leave hours not used are not credited to the recipient and are not deducted from the donor's vacation leave balance.

## **11—63.20(8A,70A) Bone marrow and organ donation leave**

Employees, excluding employees covered by a collective bargaining agreement that provides otherwise, shall be granted leave pursuant to Iowa Code section 70A.39. An employee who is granted a leave of absence under Iowa Code section 70A.39 shall receive leave without loss of seniority, pay, vacation time, personal days, sick leave, insurance and health coverage benefits, or earned overtime accumulation. The employee shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. An employee deemed to be on leave under Iowa Code section 70A.39 shall not be deemed to be an employee of the state for purposes of workers' compensation or for purposes of the Iowa tort claims Act. [ARC 8265B, IAB 11/4/09, effective 12/9/09]

These rules are intended to implement Iowa Code section 8A.413 and Iowa Code chapter 70A.

## CHAPTER 64 - BENEFITS

### 11—64.1(8A) Health benefits

The director is authorized by the executive council of Iowa to administer health benefit programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A. The executive council of Iowa shall determine the amount of the state's contribution toward each individual employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in applicable collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 3215C, IAB 7/19/17, effective 7/1/17]

### 11—64.2(8A) Dental insurance

The director is authorized by the executive council of Iowa to administer dental insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

### 11—64.3(8A) Life insurance

The director is authorized by the executive council of Iowa to administer life insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

### 11—64.4(8A) Long-term disability insurance

The director is authorized by the executive council of Iowa to administer long-term disability insurance programs for employees of the state of Iowa who are covered under Iowa Code chapter 509A, except for employees of the board of regents.

Employees who receive loss of time benefits under the state workers' compensation program shall have those benefits, except for benefits designated as medical costs pursuant to Iowa Code section 85.27 and that portion of benefits paid as attorneys' fees approved pursuant to Iowa Code section 86.39, deducted from any state long-term disability benefits received where the workers' compensation injury or illness was a substantial contributing factor to the award of long-term disability benefits. Disability benefit payments will be further reduced by primary and family social security payments as determined at the time social security disability payments commence, railroad retirement disability income, and any other state-sponsored sickness or disability benefits payable.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

### 11—64.5(8A) Health benefit appeals

A member who disagrees with a group health benefit company's decision on the application of group contract benefits may:

1. File a written appeal with the respective company as defined in the group contract, or
2. File a written appeal with the commissioner of insurance at the department of commerce.

## 11—64.6(8A) Deferred compensation

**64.6(1) Definitions.** The following definitions shall apply when used in this rule:

“*Account*” means any fixed annuity contract, variable annuity contract, life insurance contract, documents evidencing mutual funds, variable or guaranteed investments, or combination thereof provided for in the plan.

“*Beneficiary*” means the person or estate entitled to receive benefits under the plan following the death of the participant.

“*Director*” means the director of the Iowa department of administrative services.

“*Employee*” means a nontemporary (permanent full-time or permanent part-time) employee of the employer, including full-time elected officials and members of the general assembly, except employees of the board of regents. For the purposes of enrollment, elected officials-elect and members-elect of the general assembly shall be considered employees. Persons in a joint employee relationship with the employer shall not be considered employees eligible to participate in the plan.

“*Employer*” means the state of Iowa and any other governmental employer that participates in the plan. Effective July 1, 2003, “employer” shall also include any governmental entity located within the state of Iowa that enters into an agreement to allow its employees to participate in the plan.

“*Fiduciary*” means a person or company that manages money or property for another and that must exercise the standard of care imposed by law or contract. For the purpose of these rules, “fiduciary” means the trustee, the plan administrator, investment providers, and the persons they designate to carry out or help carry out their duties or responsibilities as fiduciaries under the plan.

“*Governing body*” means the executive council of the state of Iowa.

“*Group*” means one or more employees.

“*Investment provider*” means a company authorized under this rule to issue an account or administer the records of such an account or accounts under the deferred compensation plan authorized by Iowa Code sections 8A.402 and 509A.12.

“*Normal retirement age*” means 65 years of age, unless an employee declares a different age pursuant to the plan’s catch-up provision. The age cannot be earlier than a year in which the employee is eligible to receive retirement benefits without an age reduction penalty from the employer-sponsored retirement plan.

“*Participating employee*” or “*participant*” means any employee or former employee of the employer who is currently deferring or who has previously deferred compensation under the plan and who retains the right to benefits under the plan.

“*Plan*” means the state of Iowa employee contribution plan for deferred compensation as authorized by Internal Revenue Code Section 457 and Iowa Code sections 8A.434 and 509A.12.

“*Plan administrator*” means the designee of the director who is authorized to administer the plan.

“*Plan year*” means a calendar year.

“*Retirement investors’ club*” means the voluntary retirement savings program for employees designed to increase personal long-term savings. The program contains three plans, the 457 employee contributions plan, the 401(a) employer contribution plan, and the 403(b) tax-sheltered annuity plan.

“*Trust*” means the Iowa state employee deferred compensation trust fund created in the state treasury and under the control of the department.

“*Trustee*” means the director of the Iowa department of administrative services.

**64.6(2) Plan administration.**

*a. Director’s authorization.* The director is authorized by the governing body to administer a deferred compensation program for eligible employees and to enter into contracts and service agreements with deferred compensation investment providers for the benefit of eligible employees and on behalf of the state of Iowa and other eligible employers. This rule shall govern all investment options and participant activity for the funds placed in the program.

*b. Plan modification.* The trustee may at any time amend, modify, or terminate the plan without the consent of the participant (or any beneficiary thereof). The plan administrator shall provide to participating employees and investment providers sufficient notice of all amendments to the plan. No amendment shall deprive participants of any of the benefits to which they are entitled under the plan with respect to deferred amounts

credited to their accounts before the effective date of the amendment. If the plan is curtailed or terminated, or the acceptance of additional deferred amounts is suspended permanently, the plan administrator shall nonetheless be responsible for the supervision of the payment of benefits resulting from amounts deferred before the amendment, modification, or termination. Payment of benefits will be deferred until the participant would otherwise have been entitled to a distribution pursuant to the provisions of the plan.

*c. Location of account documentation.* The investment providers shall send the original annuity policies, contracts or account forms to the plan administrator. Failure to do so may result in termination of an investment provider's contract or service agreement. The plan administrator shall keep all such original documents. Participating employees may review their own documentation during normal work hours at the department, but may not under any circumstances remove the documentation from the premises.

*d. Not an employment contract.* Participation in this plan by an employee shall not be construed to give a contract of employment to the participant or to alter or amend an existing employment contract of the participant, nor shall participation in this plan be construed as affording to the participant any representation or guarantee regarding the participant's continued employment.

*e. Tax relief not guaranteed.* The employer, trustee, and the investment providers do not represent or guarantee that any particular federal or state of Iowa income, payroll, personal property or other tax consequences will result because of the participant's participation in the plan. The participant is obligated to consult with the participant's own tax representative regarding all questions of federal or state of Iowa income, payroll, personal property or other tax consequences arising from participation in the plan.

*f. Investment agents.* The investment providers shall, subject to the trustee's consent, have the power to appoint agents to act for the investment providers in the administration of accounts according to the terms, conditions, and provisions of their contracts or service agreements with the plan. Investment providers are responsible for the conduct of their agents, including their adherence to the plan document and administrative rules. The plan administrator may require an investment provider to remove the authority of any agent to provide services to the plan or plan participants when cause has been shown that the agent has violated these rules or state or federal law or regulation related to the governance of the plan or agent conduct.

*g. Plan expenses.* Expenses incurred by the plan administrator while administering the plan, including fees and expenses approved by the plan trustee for investment advisory, custodial, record-keeping, and other plan administration and communication services, and any other reasonable and necessary expenses or charges allocable to the plan that have been incurred for the exclusive benefit of plan participants and that have been approved by the plan trustee may be charged to the short-term interest that has accrued in the deferred compensation trust fund created by Iowa Code section 8A.434 prior to the allocation of funds to a participant's chosen investment provider. Such expenses may also be funded from fees assessed to eligible employers who choose to offer the plan to their employees.

*h. Time periods.* As necessary or desirable to facilitate the proper administration of the plan and consistent with the requirements of Section 457 of the Internal Revenue Code (IRC), the plan administrator may modify the time periods during which a participating employee or beneficiary is required to make any election under the plan, and the time periods for processing these elections by the plan administrator, including the making or amending of a deferral agreement, the making or amending of investment provider selections, the election of distribution commencement dates or distribution methods.

*i. Supplementary information and procedures.* Any explanatory brochures, pamphlets, or notices distributed by the plan shall be distributed for information purposes only and shall not override any provision of the plan or give any person any claim or right not provided for under the plan. In the event any form or other document used in administering the plan, including but not limited to enrollment forms and marketing materials, conflicts with the terms of the plan, the terms of the plan shall prevail.

*j. Binding plan.* The plan, and any properly adopted amendments, shall be binding on the parties and their respective heirs, administrators, trustees, successors and assignees and on all beneficiaries of the participant.

**64.6(3) Rights of participating employees.**

*a. Exclusive benefit.* The trustee shall hold the assets and income of the plan for the exclusive benefit of the participating employee or the participating employee's beneficiary.

*b. Creditors.* The accounts of a participating employee under the plan shall not be subject to creditors of the participating employee or the participant's beneficiary and shall be exempt from execution, attachment, prior assignment, or any other judicial relief, or order for the benefit of creditors or other third persons.

*c. Designation of beneficiary.* Upon enrollment, a participating employee must designate a beneficiary or beneficiaries. An employee who has an open account with an investment provider that is no longer able to open new accounts may change the employee's designated beneficiary or beneficiaries at any time thereafter by providing the plan administrator with written notice of the change on the form prescribed by the plan administrator. An employee who has an open account with an investment provider that is able to open new accounts may change the employee's designated beneficiary or beneficiaries at any time thereafter by completing the investment provider's beneficiary change form.

*d. Assignment.* Neither a participating employee, nor the participating employee's beneficiary, nor any other designee shall have the right to commute, sell, assign, transfer, borrow, alienate, use as collateral or otherwise convey the right to receive any payments.

**64.6(4) Trust provisions.**

*a. Investment options.* The trustee shall adopt various investment options for the investment of deferred amounts by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

*b. Designation of fiduciaries.* The trustee, the plan administrator, and the persons they designate to carry out or help carry out their duties or responsibilities are fiduciaries under the plan. Each fiduciary has only those duties or responsibilities specifically assigned to fiduciaries under the plan, contractual relationship, trust, or as delegated to fiduciaries by another fiduciary. Each fiduciary may assume that any direction, information, or action of another fiduciary is proper and need not inquire into the propriety of any such action, direction, or information. No fiduciary will be responsible for the malfeasance, misfeasance, or nonfeasance of any other fiduciary, except where the fiduciary participated in such conduct, or knew or should have known of such conduct in the discharge of the fiduciary's duties under the plan and did not take reasonable steps to compel the cofiduciary to redress the wrong.

*c. Fiduciary standards.*

(1) All fiduciaries shall discharge their duties with respect to the plan and trust solely in the interest of the participating employees and their beneficiaries and in accordance with Iowa Code section 633.123. Such duties shall be discharged for the exclusive purpose of providing benefits to the participating employees and beneficiaries and, if determined applicable, defraying expenses of the plan.

(2) The investment providers shall discharge their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims and as defined by applicable Iowa law.

*d. Trustee powers and duties.* The trustee may exercise all rights or privileges granted by the provisions of the plan and trust and may agree to any alteration, modification or amendment of the plan. The trustee may take any action respecting the plan or the benefits provided under the plan that the trustee deems necessary or advisable. Persons dealing with the trustee shall not be required to inquire into the authority of the trustee with regard to any dealing in connection with the plan. The trustee may employ persons, including attorneys, auditors, investment advisors or agents, even if they are associated with the trustee, to advise or assist, and may act without independent investigation upon their recommendations. Instead of acting personally, the trustee may employ one or more agents to perform any act of administration, whether or not discretionary.

*e. Trust exemption.* This trust is intended to be exempt from taxation under IRC Section 501(a) and is intended to comply with IRC Section 457(g). The trustee shall be empowered to submit or designate appropriate agents to submit the plan and trust to the IRS for a determination of the eligibility of the plan under IRC Section 457, and the exempt status of the trust under IRC Section 501(a), if the trustee concludes that such a determination is desirable.

*f. Held in trust.* Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), all amounts of compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the plan. Any trust under the plan shall be established pursuant to a written agreement that constitutes a valid trust under the law of the state of Iowa. All plan assets shall be held under one or more of the following methods:

(1) Compensation deferred under the plan shall be transferred to a trust established under the plan within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, compensation deferred under the plan shall be transferred to a trust established under the plan not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(2) Notwithstanding any contrary provision of the plan, including any annuity contract issued under the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more annuity contracts, as defined in IRC Section 401(g), issued by an insurance company qualified to do business in the state where the contract was issued, for the exclusive benefit of participants and beneficiaries under the plan or held in a custodial account as described in subparagraph (3) below. For this purpose, the term “annuity contract” does not include a life, health or accident, property, casualty, or liability insurance contract. Amounts of compensation deferred under the plan shall be transferred to an annuity contract described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a contract described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

(3) Notwithstanding any contrary provision of the plan, in accordance with IRC Section 457(g), compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in one or more custodial accounts for the exclusive benefit of participants and beneficiaries under the plan or held in an annuity contract as described in subparagraph (2) above. For purposes of this subparagraph, the custodian of any custodial account created pursuant to the plan must be a bank, as described in IRC Section 408(n), or a person who meets the nonbank trustee requirements of Treasury Regulations Section 1.408-2(e)(2) to (6) relating to the use of nonbank trustees.

Amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) within a period that is not longer than is reasonable for the proper administration of the accounts of participants. To comply with this requirement, amounts of compensation deferred under the plan shall be transferred to a custodial account described in IRC Section 401(f) not later than 15 business days after the end of the month in which the compensation would otherwise have been paid to the employee.

**64.6(5) Absolute safeguards of the employer, trustee, their employees, and agents.**

*a. Questions of fact.* The trustee and the plan administrator are authorized to resolve any questions of fact necessary to decide the participating employee’s rights under the plan. An appeal of a decision of the plan administrator shall be made to the trustee, or the trustee’s designee, who shall render a final decision on behalf of the plan.

*b. Plan construction.* The trustee and the plan administrator are authorized to construe the plan and to resolve any ambiguity in the plan and to apply reasonable and fair procedures for the administration of the plan. An appeal of a decision of the plan administrator shall be made to the trustee, or the trustee’s designee, within 30 days of the plan administrator’s decision. The trustee, or the trustee’s designee, shall render a final decision on behalf of the plan.

*c. No liability for loss.* The participating employee specifically agrees that the employer, the plan, the trustee, the plan administrator, or any other employee or agent of the employer shall not be liable for any loss sustained by the participating employee or the participating employee’s beneficiary for the nonperformance of duties, negligence, or any other misconduct of the above-named persons except that this paragraph shall not excuse malicious or wanton misconduct.

*d. Payments suspended.* The trustee, plan administrator, investment providers, their employees and agents, if in doubt concerning the correctness of their actions in making a payment of a benefit, may suspend the payment until satisfied as to the correctness of the payment or the identity of the person to receive the payment, or until the filing of an administrative appeal under Iowa Code chapter 17A, and thereafter in any state court of competent jurisdiction, a suit in such form as they consider appropriate for a legal determination of the benefits to be paid and the persons to receive them.

*e. Court costs.* The employer, the plan, the trustee, the plan administrator, their employees and agents are hereby held harmless from all court costs and all claims for the attorneys' fees arising from any action brought by the participating employee, or any beneficiary thereof, under the plan or to enforce their rights under the plan, including any amendments of the plan.

**64.6(6) Eligibility.** Except employees of the board of regents, any nontemporary executive, judicial or legislative branch employee, or employee of a governmental employer that enters into an agreement to join the plan, who is regularly scheduled for 20 or more hours of work per week or who has a fixed annual salary is eligible to defer compensation under this rule. An elected official-elect and elected members-elect of the general assembly are also eligible provided that deductions meet the requirements set forth in the plan. Final determination on eligibility shall rest with the plan administrator.

**64.6(7) Communications.**

*a. Forms.* All enrollments, elections, designations, applications and other communications by or from an employee, participant, beneficiary, or legal representative of any such person regarding that person's rights under the plan shall be made in the form and manner established by the plan administrator and shall be deemed to have been made and delivered only upon actual receipt by the person designated to receive such communication. The employer or the plan shall not be required to give effect to any such communication that is not made on the prescribed form and in the prescribed manner and that does not contain all information called for on the prescribed form.

*b. Notices mailed.* All notices, statements, reports, and other communications from the plan to any employee, participant, beneficiary, or legal representative of any such person shall be deemed to have been duly given when delivered to, or when mailed by first-class mail to, such person at that person's last mailing address appearing on the plan records.

**64.6(8) Disposition of funds while employed.**

*a. Unforeseeable emergency.* A participating employee may request that the plan administrator allow the withdrawal of some or all of the funds held in the participating employee's account based on an unforeseeable emergency. Forms must be completed and returned to the plan administrator for review in order to consider a withdrawal request. The plan administrator shall determine whether the participating employee's request meets the definition of an unforeseeable emergency as provided for in federal regulations. In addition to being extraordinary and unforeseeable, an unforeseeable emergency must not be reimbursable:

- (1) By insurance or otherwise;
- (2) By liquidation of the participating employee's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or
- (3) By cessation of deferrals under the plan.

Upon the plan administrator's approval of an unforeseeable emergency distribution, the participating employee will be required to stop current deferrals for a period of no less than six months.

A participating employee who disagrees with the initial denial of a request to withdraw funds on the basis of an unforeseeable emergency may request that the trustee or the trustee's designee reconsider the request by submitting additional written evidence of qualification or reasons why the request for withdrawal of funds from the plan should be approved. All such requests must be in writing and be received by the trustee, or the trustee's designee, within 30 calendar days of the date of the initial denial. Requests received after 30 days will be rejected as untimely, and the initial denial shall become final agency action.

*b. Voluntary in-service distribution.* A participant who is an active employee of an eligible employer shall receive a distribution of the total amount payable to the participant under the plan if the following requirements are met:

(1) The total amount payable to the participant under the plan does not exceed \$5,000 (or the dollar limit under IRC Section 411(a)(11), if greater);

(2) The participant has not previously received an in-service distribution of the total amount payable to the participant under the plan;

(3) No amount has been deferred under the plan with respect to the participant during the two-year period ending on the date of the in-service distribution; and

(4) The participant elects to receive the distribution.

The plan administrator may also elect to distribute the accumulated account value of a participant's account without consent, if the above criteria are met.

This provision is available only once in the lifetime of the participating employee. If funds are distributed under this provision, the participating employee is not eligible under the plan to utilize this provision at any other time in the future.

*c. Transfers under domestic relations orders.*

(1) To the extent required under a final judgment, decree, or order (including approval of a property settlement agreement) made pursuant to a state domestic relations law, any portion of a participating employee's account may be paid or set aside for payment to a spouse, former spouse, or child of the participating employee. The plan will determine whether the judgment, decree, or order is valid and binding on the plan and whether it is issued by a court or agency with jurisdiction over the plan. The judgment, decree or order must specify which of the participating employee's accounts are to be paid or set aside, the valuation date of the accounts and, to the extent possible, the exact value of the accounts. Where necessary to carry out the terms of such an order, a separate account shall be established with respect to the spouse, former spouse, or child who shall be entitled to choose investment providers in the same manner as the participating employee. Unless otherwise subsequently suspended or altered by federal law, all applicable taxes shall be withheld and paid from this lump sum distribution. The provisions of this subparagraph shall not be construed to authorize any amount to be distributed under the plan at a time or in a form that is not permitted under IRC Section 457.

(2) A right to receive benefits under the plan shall be reduced to the extent that any portion of a participating employee's account has been paid or set aside for payment to a spouse, former spouse, or child pursuant to these rules or to the extent that the employer or the plan is otherwise subject to a binding judgment, decree, or order for the attachment, garnishment, or execution of any portion of any account or of any distributions therefrom. The participating employee shall be deemed to have released the employer and the plan from any claim with respect to such amounts in any case in which:

1. The department, the retirement investors' club, or the plan has been served with legal process or otherwise joined in a proceeding relating to such amounts,

2. The participating employee has been notified of the pendency of such proceeding in the manner prescribed by the law of the jurisdiction in which the proceeding is pending for service of process or by mail from the employer or a plan representative to the participating employee's last-known mailing address, and

3. The participating employee fails to obtain an order of the court in the proceeding relieving the employer and the plan from the obligation to comply with the judgment, decree, or order.

(3) The department, the retirement investors' club or the plan shall not be obligated to incur any cost to defend against or set aside any judgment, decree, or order relating to the division, attachment, garnishment, or execution of the participating employee's account or of any distribution therefrom.

**64.6(9) Investment providers.**

*a. Participation.* The investment providers under the plan are authorized to offer new accounts and investment products to employees only if awarded a contract or service agreement through a competitive bid process. A list of active investment providers shall be provided, upon request, to any employee or other interested party. Inactive investment providers shall participate to the extent necessary to fully discharge their duties under the applicable federal and state laws and regulations, the plan, their service agreements or contracts with the employer, and their investment accounts or contracts with participating employees.



*b. Investment products.* Investment products shall be limited to those that have been approved by the plan administrator. No new accounts shall be available to employees for life insurance under the plan.

*c. Reports and consolidated statements.* The investment providers will provide various reports to the plan administrator as well as consolidated statements, newsletters, and performance reports to participants as specified in the service agreements or contracts with investment providers.

*d. Dividends and interest.* The only dividend or interest options available on policies or funds are those where the dividend or interest remains within the account to increase the value of the account.

*e. Minimum contract requirements.* In addition to meeting selection requirements, an investment provider must meet and maintain the requirements set forth in its contract or service agreement with the state of Iowa.

*f. Removal from participation.* Failure to comply with the provisions of these rules, the investment provider contract or service agreement with the employer, or the terms and conditions of the investment provider account with the participating employee may result in termination of an investment provider contract or service agreement, and all rights therein shall be exercised by the employer.

**64.6(10) Marketing and education.**

*a. Orientation and information meetings.* Employers may hold orientation and information meetings for the benefit of their employees during normal work hours using materials developed and approved by the plan administrator. Active investment providers may make authorized presentations upon approval of individual agency or department authorities during nonwork hours. There shall be no solicitation of employees by investment providers at an employee's workplace during the employee's working hours, except as authorized in writing by the plan administrator.

*b. General requirements for solicitation.*

(1) An active investment provider may solicit business from participants and employees through representatives, the mail, or direct presentations.

(2) Active investment providers and representatives may solicit business at an employer's work site only with the prior permission of the agency director or other appropriate authority.

(3) Investment providers or representatives may not conduct any activity with respect to a registered investment option unless the appropriate license has been obtained.

(4) An investment provider or representative may not make a representation about an investment option that is contrary to any attribute of the option or that is misleading with respect to the option.

(5) An investment provider or representative may not state, represent, or imply that its investment options are endorsed or recommended by the plan administrator, the employing agency, the state of Iowa, or an employee of the foregoing.

(6) An investment provider or representative may not state, represent, or imply that its investment option is the only option available under the plan.

*c. Disclosure.*

(1) Enrollment. When soliciting business for an investment product, an active investment provider or representative shall provide each participating employee or eligible employee with a copy of the approved disclosure for that option. If a variable annuity product has several alternative investment choices, the participant must receive disclosures concerning all investment choices. An active investment provider shall notify the plan administrator in writing if the investment provider will be marketing its investment options through representatives. The notification must contain a complete identification of the representatives who will be marketing the options. Every representative and agent who enrolls eligible employees in the plan and is authorized by the investment provider to sign plan forms must be included on this notification.

(2) Disbursement methods and account values. When discussing distribution methods for an investment option, investment providers or representatives shall disclose to each participating employee or eligible employee all potential distribution methods and the potential income derived from each method for that option.

*d. Approval of a disclosure form.*

(1) An investment provider shall complete and submit to the plan administrator a disclosure form for each approved investment product. If a variable annuity product has several investment choices, the plan administrator must receive all disclosures related to those investment choices. An investment provider shall complete a disclosure form on each investment product that has participating employee funds (including those no longer offered).

(2) If changes occur during the plan year, any changes must be submitted to the plan administrator for approval prior to their implementation. Disclosure forms will be updated quarterly. Even if no changes occur, an investment provider shall resubmit its disclosure form to the plan administrator for approval every year.

(3) If an investment provider or representative materially misstates a required disclosure or fails to provide disclosure, the plan administrator may sanction the investment provider or bind the investment provider to the disclosure as stated on the form.

*e. Confidentiality.* The plan administrator may provide to all active investment providers any information that can be made available under the department's rules. Notwithstanding any rule of the department to the contrary, the plan administrator shall make available to all active investment providers the names and home addresses of all state employees. The plan administrator may assess reasonable costs to the active investment providers to defray the expense of producing any requested information. All information obtained under the plan shall be confidential and used exclusively for purposes relating to the plan and as expressly contemplated by the service agreement or contract entered into by the investment provider.

*f. Number of investment providers.* Only investment providers that are selected through a competitive bid process, that are subsequently awarded a contract or service agreement, and that are authorized to do business in the state of Iowa may sell annuities, mutual funds or other approved products under the plan, and then only if the investment providers agree to the terms, conditions, and provisions of the contract or service agreement.

**64.6(11) Investment option removal/replacement.** The plan administrator may determine that an investment option offered under the plan is no longer acceptable for inclusion in the plan. If the plan administrator decides to remove an investment option from the plan as the result of the option's failure to meet the established evaluation criteria and according to the recommendations of consultants or advisors, the option shall be removed or phased out of the plan. Employees newly enrolling in the plan shall be informed in writing that investment options that do not meet the evaluation criteria are not open to new enrollments.

*a. Notice to participant.* Any participating employees already deferring to the investment option being phased out shall be informed in writing that they need to redirect future deferrals from this option to an alternative investment option offered under the plan by notifying the investment provider, unless otherwise directed, of their new investment choice.

*b. Automatic transfer.* If any participating employee has failed to move a remaining account balance from the investment option being phased out, the plan administrator shall instruct an investment provider to automatically move that participating employee's account balance into another designated alternative investment option offered under the plan.

*c. Reexamination.* At any time during this process, the plan administrator may reexamine the performance of the investment option being phased out and the recommendations of consultants and advisors to determine if continued inclusion of the investment option in the plan is justified.

**64.6(12) Demutualization of investment providers.**

*a. Ballots.* An investment provider that is a mutual company and that provides any annuity product or life insurance product held under the plan shall provide the plan administrator with a ballot(s) for official vote registration. The ballot(s) shall be completed and returned to the company according to the specified deadline in the instructions. The ballot(s) shall include the owner's name, policy numbers of affected contracts, name of annuitant or insured, number of shares anticipated, and the control number for the group of shares.

*b. Policyholder booklet.* The company shall provide the plan administrator with a policyholder booklet, as well as instructions and guide information, prior to or in conjunction with the delivery of the ballot(s). Notices of progress, time frames and meetings will also be provided to the plan administrator as such information becomes available.

*c. Method of compensation.* Compensation will be provided in cash according to the terms of the demutualization plan. In the event that stocks are issued in lieu of cash, the company shall provide a listing which includes participants' names, social security numbers, policy numbers, and number of shares pro rata.

*d. Liquidation of stock.* An arrangement will be entered into between the plan administrator and a stockbroker as soon as administratively possible in order to liquidate the stock for cash. The broker shall retain commission fees according to the arrangement entered into from the value obtained at the time of sale. The employer will not realize a tax liability nor will the participating employees.

*e. Deposit of proceeds.* The proceeds of the sale of the stock, less the broker commission, and any dividends issued prior to the sale of the stock, shall be made payable to the plan. Cash shall be deposited into the plan's trust fund until payment instructions are received from the participant or the participant's beneficiary.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 1568C, IAB 8/6/14, effective 9/10/14; ARC 4053C, IAB 10/10/18, effective 11/14/18]

## 11—64.7(8A) Dependent care

The director administers the dependent care flexible spending account plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. The plan is also a dependent care assistance plan under IRC Section 129. Administration of the plan shall comply with all applicable federal regulations, the Plan Document, and the Summary Plan Description. For purposes of this rule, the plan year is a calendar year.

**64.7(1) Employee eligibility.** All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the dependent care flexible spending plan. Temporary employees are not eligible to participate in this plan.

**64.7(2) Enrollment.** An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing dependent care deduction amounts during the plan year provided that they have a qualifying change in family status as defined in the Plan Document and the Summary Plan Description. To continue participation, employees shall reenroll each year during the open enrollment period.

**64.7(3) Termination of participation in the plan.** An employee may terminate participation in the plan provided that the employee has a qualifying change in status as defined in the Summary Plan Description. Employees who terminate state employment and are rehired within 30 days must resume their participation in the plan. Employees who terminate state employment and are rehired more than 30 days after termination may reenroll in the plan.

## 11—64.8(8A) Premium conversion plan (pretax program)

The director administers the premium conversion plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. Pursuant to IRC Section 105, the plan is also an insured health care plan to the extent that participants use salary reduction to pay for health or dental insurance premiums. In accordance with IRC Section 79, the plan is also a group term life insurance plan to the extent that salary reduction is used for life insurance premiums. Administration of the plan shall comply with all federal regulations and the Plan Document. For purposes of this rule, the plan year is January 1 to December 31 of each year.

**64.8(1) Employee eligibility.** All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the pretax conversion plan. Temporary employees are not eligible to participate in the plan.

**64.8(2) Enrollment.** An enrollment and change period, as designated by the director, shall be held for employees who wish to make changes in their current pretax status. New employees will automatically be enrolled in the plan after satisfying any waiting period requirements for group insurance unless an election form is submitted. Employees also may change their existing pretax status during the plan year if they have a qualifying change in status as defined in the Plan Document.

**64.8(3) Termination of participation in the plan.** An employee may terminate participation in the plan during an open enrollment period. Otherwise, an employee may terminate participation if the employee has a qualifying change in status as defined in the Plan Document.

## 11—64.9(8A) Interviewing and moving expense reimbursement

**64.9(1) *Interviewing expenses.*** If reimbursement is approved by the appointing authority, a person who interviews for state employment shall be reimbursed for expenses incurred in order to interview. Reimbursement shall be at the same rate at which an employee is reimbursed for expenses incurred during the performance of state business.

**64.9(2) *Moving expenses for reassigned employees.*** A state employee who is reassigned at the direction of the appointing authority shall be reimbursed for moving and related expenses in accordance with the policies of the department of administrative services or the applicable collective bargaining agreement. Eligibility for reimbursement shall occur when all of the following conditions exist:

- a. The employee is reassigned at the direction of the appointing authority;
- b. The reassignment requires a permanent change in duty station beyond 25 miles;
- c. The employee must change the employee's place of personal residence beyond 25 miles unless the department of administrative services has given prior written approval; and
- d. The reassignment is for the primary benefit of the state.

**64.9(3) *Moving expenses for newly hired or promoted employees.*** If reimbursement is approved by the appointing authority, a person newly hired or promoted may be reimbursed for moving and related expenses. Reimbursement shall be at the same rates used for the reimbursement of a current employee who has been reassigned. Reimbursement shall not occur until the employee is on the payroll.

**64.9(4) *Temporary living expenses.*** An employee may be reimbursed for up to 90 days of temporary living expenses. Such reimbursement shall be included as part of the total amount reimbursable under the relocation policy.

**64.9(5) *Repayment.*** As a condition of receiving reimbursement for moving expenses, the recipient must sign an agreement to continue employment with the appointing authority for a period following the date of receipt of reimbursement that is deemed by the appointing authority to be commensurate with the amount of reimbursement received. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority a proportionate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

## 11—64.10(8A) Education financial assistance

Education financial assistance may be granted for the purpose of assisting employees in developing skills that will improve their ability to perform job responsibilities. Assistance may be in the form of direct payment to the organization or institution or by reimbursement to the employee as provided for in subrule 64.10(4).

**64.10(1) *Employee eligibility.*** Any nontemporary employee may be considered for education financial assistance.

**64.10(2) *Workshop, seminar, or conference attendance.*** The appointing authority may approve education financial assistance for an employee attending a workshop, seminar, or conference conducted by a professional, educational, or governmental organization or institution when attendance by the employee would not require a reduction in job responsibilities.

a. Assistance for meeting continuing education requirements may be approved when the assistance is applied toward maintaining a professional registration, certification, or license and the workshop, seminar, or conference is related to the duties and responsibilities of the employee's position.

b. Payment of registration fees and other costs, such as lodging, meals, and travel, shall be in accordance with the policies and procedures of the department of administrative services.

c. If attendance is outside the state of Iowa, travel must be authorized by the head of the employee's department pursuant to Iowa Code section 8A.512A(2) "a."

**64.10(3) Educational institution coursework.** Education financial assistance to an employee taking academic courses at an educational institution, with or without educational leave, shall require the preapproval of the appointing authority and the director. Requests for reimbursement shall be on forms prescribed by the director.

*a.* An employee may take academic courses at any accredited educational institution (university, college, area community college) within the state. Attendance at an out-of-state institution may be approved provided that there are geographical or educational considerations which make attendance within the state impractical.

*b.* Reimbursement requests shall be made to the director before the employee takes the courses. If the director does not approve the request, the employee shall not be reimbursed.

*c.* Reimbursement may be approved for courses taken to meet continuing education requirements when necessary to maintain a professional registration, certification, or license when the courses relate to the duties and responsibilities of the employee's position.

*d.* An employee receiving other financial assistance, such as scholarship aid or Veterans Administration assistance, shall be eligible to receive education financial assistance only to the extent that the total of all methods of reimbursement does not exceed 100 percent of the payment of expenses.

*e.* In order for the employee to be reimbursed, the employee's department shall submit to the department of administrative services the employee's original paid receipt from the educational institution, the approved education financial assistance form, and proof of the employee's successful completion of the courses as follows:

(1) Undergraduate courses shall require at least a "C-" grade.

(2) Graduate courses shall require at least a "B-" grade.

(3) Successful completion of vocational or correspondence courses or continuing education courses shall require an official certificate, diploma or notice.

**64.10(4) Repayment.** As a condition of applying for reimbursement for education expenses, the recipient must sign an agreement to continue employment with the appointing authority. The agreement must be signed prior to approval and will stipulate the period of time deemed by the appointing authority to be commensurate with the amount of reimbursement received. The period of time commences upon successful completion of the course. In the event that the recipient leaves the department of the appointing authority for any reason, the recipient will repay to the appointing authority an appropriate fraction of the amount received for each month remaining in the period provided for in the agreement. If the recipient continues employment with the state, then the repayment will be subject to a repayment schedule approved by the director. If the recipient leaves state government, then the repayment will be recouped out of the final paycheck. Recoupment must be coordinated with the accounting enterprise of the department of administrative services to ensure proper tax reporting.

**64.10(5) Annual report.** Rescinded IAB 11/21/18, effective 12/26/18.

[ARC 8265B, IAB 11/4/09, effective 12/9/09; ARC 2267C, IAB 11/25/15, effective 12/30/15; ARC 3041C, IAB 4/26/17, effective 5/31/17; ARC 4134C, IAB 11/21/18, effective 12/26/18]

## 11—64.11(8A) Particular contracts governing

Where provisions of collective bargaining agreements differ from the provisions of this chapter, the provisions of the collective bargaining agreement shall prevail for employees covered by the collective bargaining agreements.

## 11—64.12(8A) Tax-sheltered annuities (TSAs)

**64.12(1) Administration.** The director is authorized by 2003 Iowa Code Supplement section 8A.402 to administer a tax-sheltered annuity program for eligible employees.

**64.12(2) Definitions.** The following definitions shall apply when used in this rule:

"Company" means any life insurance company or mutual fund provider that issues a policy under the tax-sheltered annuity plan authorized under Iowa Code section 8A.438.

"Employee" means an employee of the state of Iowa, including employees of the board of regents administrative staff on the centralized payroll system, or an employee of a participating employer.

*“Employer”* means the state of Iowa, a public school district in the state of Iowa, an area education agency in the state of Iowa, or a community college in the state of Iowa.

*“Participating employee”* means an employee participating in the plan.

*“Participating employer”* means an employer that has elected to join the state’s tax-sheltered annuity plan.

*“Plan”* means the tax-sheltered annuity plan authorized in Iowa Code section 8A.438.

*“Plan administrator”* means the designee of the director who is authorized to administer the tax-sheltered annuity plan.

*“Plan year”* means a calendar year.

*“Policy”* means any retirement annuity, variable annuity, family of mutual funds or combination thereof provided by IRC Section 403(b) and Iowa Code section 8A.438.

*“Salary reduction form”* means the tax-sheltered annuity form signed by the participating employee to begin or change payroll deductions.

**64.12(3) Eligibility.**

*a. Initial eligibility.* Any employee who works for the department of education, the board of regents administrative office, or a participating employer is eligible to participate in this plan. Participating employers may establish different eligibility requirements, as long as the requirements conform to IRC Section 403(b) and the applicable federal regulations. Final determination on eligibility shall rest with the plan administrator.

*b. Eligibility after terminating reduction of compensation.* Any employee who terminates the reduction of compensation may choose to reenroll in the plan in accordance with paragraphs 64.12(4) “a” and “b” and 64.12(6) “a.”

**64.12(4) Enrollment and termination.**

*a. Enrollment.* State employees may enroll in the plan at any time. Participating employers may establish different enrollment periods, as long as the periods conform to IRC Section 403(b) and the applicable federal regulations. The salary reduction form must be submitted to the employing agency’s personnel assistant or payroll office for approval.

*b. Forms submission.* State personnel assistants shall provide the plan administrator with the salary reduction form in a timely manner.

*c. Termination of salary reductions.* A participating employee may terminate salary reductions by providing to the employing agency’s personnel assistant or payroll office written notification on a form required by the plan administrator.

*d. Availability of forms.* It is the responsibility of each employee interested in participating in the plan to obtain the necessary forms from the investment provider.

**64.12(5) Tax status.**

*a. FICA and IPERS.* The amount of compensation reduced under the salary reduction form shall be included in the gross wages subject to FICA and IPERS until the maximum taxable wages established by law have been reached.

*b. Federal and state income taxes.* The amount of earned compensation reduced under the form is exempt from federal and state income taxes until such time as the funds are paid or made available as provided in IRC Section 403(b).

**64.12(6) Reductions from earnings.**

*a. Salary reduction amount changes.* Participating employees may increase or decrease their salary reduction amount by providing to their personnel assistant or payroll office written notice on a form required by the plan administrator. Salary reduction amounts may be changed to permit a one-time lump sum contribution from the last paycheck due to termination of employment.

*b. Maximum salary reduction limits.* Employees’ salary reductions may not exceed the maximum limit set forth in federal law.

*c. Minimum salary reduction amount.* Participating employers may establish a minimum amount as long as the minimum conforms to IRC Section 403(b) and the applicable federal regulations.

**64.12(7) Companies.**

*a. Time of payment.* Participating employers shall transmit amounts within 15 business days after the end of the calendar month.

*b. Cooperation with third-party administrator.* Companies are required to cooperate with the plan's third-party administrator, including the provision of daily account information as well as any other data or information required for administration of the plan.

*c. Annual status report.* Each company shall provide to the participating employee at the employee's home address an annual status report stating the value of each participant's policy. This practice shall be continued even after the participating employee terminates or stops contributions to the plan. These annual reports are required as long as a value exists in the contract or any activity occurs during the year.

*d. Crediting of accounts.* Companies must minimize crediting errors and provide timely and reasonable credit resolution.

*e. Solicitation.* There shall be no solicitation of employees by companies at the employees' workplace during employees' work hours, except as authorized by the plan administrator or participating employer.

*f. Dividends.* The only dividend options available on cash value policies are those where the dividend remains with the company to increase the value of the policy.

*g. Removal from participation.* Failure to comply with the provisions of these rules will result in permanent removal as a participating company and may require that the monthly ongoing deferrals to existing contracts be discontinued, as determined by the director.

**64.12(8) Disposition of funds.**

*a. Distribution eligibility.* An employee is eligible for a distribution of funds based upon any of the following circumstances: severance of employment; reaching age 59½; becoming disabled; qualifying for a financial hardship; or becoming eligible for a reservist distribution. Distribution will be made in accordance with applicable IRS regulations.

*b. Financial hardship.* A participating employee may request to withdraw some or all of the salary reduction contributions to the policy, but not the income earned thereon, based on a financial hardship and in accordance with 401(k) regulations. New contributions to the plan will not be allowed after the receipt of a distribution based on financial hardship until such time as allowed by law.

*c. Federal and state withholding taxes.* It is the company's responsibility, when making payments to an employee, to withhold the required federal and state income tax, to timely remit the tax to the proper government agency, and to file all necessary reports as required by federal and state regulations, including IRS Form 1099-R.

*d. Federal penalties.* Under IRC Section 72(t), an additional tax of 10 percent of the amount includable in gross income applies to early withdrawal for qualified plans as defined in IRC Section 4974(c). An IRC Section 403(b) contract is a qualified plan for these purposes.

**64.12(9) General.**

*a. Orientation and information meetings.* Employers may hold orientation and information meetings for the benefit of their employees using materials developed or approved by the plan administrator, but there shall be no solicitation of employees by companies allowed at such meetings without employer approval.

*b. Company changes.*

(1) If a participating employee wishes to redirect contributions to another company, the employee shall submit a form to the personnel assistant or payroll office in accordance with paragraph 64.12(6) "a."

(2) The funds accumulated under the old policy may be transferred in total to the new policy or to another existing policy, if allowed under the participating employer's plan elections, in accordance with the plan's policies and applicable IRC Section 403(b) provisions.

*c. Deferred compensation or tax-sheltered annuity participation—maximum contribution.* State employees who, under the laws of the state of Iowa, are eligible for both deferred compensation and tax-sheltered annuities shall be allowed to contribute to one plan or the other, but not to both at the same time.

*d. Direct transfer/rollover.*

(1) Effective January 1, 2002, a former employee may request a direct transfer/rollover to an eligible retirement plan as defined in IRC Section 402(c)(8)(B). Eligible rollover amounts that are received by a former employee are subject to mandatory federal and state withholding as required by law.

(2) An employee may request a trustee-to-trustee transfer of funds to a defined benefit governmental plan for the purchase of permissive service credit.



**64.12(10) Forfeiture.** IRC Section 403(b)(1)(C) provides that an employee's interest in an IRC Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

**64.12(11) Nontransferability.** The employee's interest in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

[ARC 8265B, IAB 11/4/09, effective 12/9/09]

## 11—64.13(8A) Health flexible spending account

The director administers the health flexible spending account plan for employees of the state of Iowa. The program is permitted under IRC Section 125. Administration of the plan shall comply with all applicable federal regulations and the Plan Document. To the extent that the provisions of the Plan Document or administrative rule conflict with IRC Section 125, the provisions of IRC Section 125 shall govern. For purposes of this rule, the plan year is a calendar year.

**64.13(1) Employee eligibility.** All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the health flexible spending account plan. Temporary employees are not eligible to participate in this plan.

**64.13(2) Enrollment.** An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing health flexible spending account salary reduction amounts during the plan year, provided they have a qualifying change in status as defined in the Plan Document, and as permitted under IRC Section 125. To continue participation, employees shall reenroll each year during the open enrollment period.

**64.13(3) Modification or termination of participation in the plan.** An employee may modify or terminate participation in the plan, provided the employee has a qualifying change in status as defined in the Plan Document, and as permitted under IRC Section 125. Employees who have terminated state employment and are rehired within 30 days must resume their participation in the plan. Employees who terminate state employment and are rehired more than 30 days after termination may reenroll in the plan.

**64.13(4) Continuation of coverage.** The health flexible spending account plan shall provide the opportunity to continue coverage as required by applicable state and federal laws.

**64.13(5) Eligible health care expenses.** The types of expenses eligible for reimbursement shall be consistent with medical expenses as defined under IRC Section 213.

**64.13(6) Acceptable proof of eligible expense.** Only those expenses for which appropriate documentation is submitted shall be eligible for reimbursement. Such documentation shall include the date upon which the expense was incurred; sufficient evidence that the expense is an eligible health care expense; evidence that the expense has been incurred and will not be reimbursed under an otherwise qualified health plan authorized by IRC Sections 105 and 106; and the amount of such expense.

**64.13(7) Appeal process.** In the event that a participant disagrees with a determination as to reimbursement from the health flexible spending account plan, a formal appeals mechanism is hereby provided. The participant may submit a formal appeal in writing to the director (or designee). Such appeal must be accompanied by a previous written request for favorable consideration to the designated administrator of the plan, along with evidence as to an unfavorable determination in response to this request. Upon receipt of a qualified appeal, the director (or designee) shall provide a written determination within 30 days of receipt. Such determination shall be final and binding. This appeal process is not a contested case proceeding as defined by Iowa Code chapter 17A.

**64.13(8) Third-party administrator.** The director may contract with a third-party administrator to perform such actions as are reasonably necessary to administer the health flexible spending account plan.

[ARC 3215C, IAB 7/19/17, effective 7/1/17]



## 11—64.14(8A) Deferred compensation match plan

The director is authorized by the governing body to administer a deferred compensation match plan for employees of the state of Iowa and employees of other eligible participating governmental employers. The plan shall be qualified under IRC Section 401(a) and Iowa Code section 509A.12. The assets and income of the plan shall be held in trust for the exclusive benefit of the participating employee or the participating employee's beneficiary. The trustee shall be the director of the department of administrative services. The director shall adopt various investment options for the investment of plan funds by participating employees or their beneficiaries and shall monitor and evaluate the appropriateness of the investment options offered by the plan.

The plan shall match eligible participant contributions to the deferred compensation plan with contributions by the employer. Eligibility of participants and the rate of employer matching contributions shall be subject to determination by the trustee and the governing body. The only voluntary contributions by participants that the plan shall accept are eligible rollover contributions.

## 11—64.15(8A) Insurance benefit eligibility

**64.15(1)** Full-time and part-time employees with probationary or permanent status who work 20 or more hours a week are eligible for health and dental insurance coverage. For employees working 20 to 29 hours per week, the state's share of the premium is one-half the amount paid for full-time employees (30 to 40 hours per week). Temporary employees are not eligible for health or dental insurance.

**64.15(2)** Full-time employees with probationary or permanent status who work 30 or more hours a week are eligible for life and long-term disability insurance coverage. Temporary employees are not eligible for life and long-term disability insurance.

**64.15(3)** The surviving spouse and each surviving child of an eligible peace officer or fire fighter, as defined in 2018 Iowa Acts, House File 2502, are eligible for the continuation of existing, or reenrollment in previously existing, health insurance coverage.

[ARC 4136C, IAB 11/21/18, effective 12/26/18]

## 11—64.16(8A) Sick leave insurance program

The director is authorized to establish a sick leave insurance program (program) for employees. The program shall allow eligible employees to convert a portion of their sick leave balance at retirement into a sick leave bank with which the state will pay the state's share of retiree health insurance. Employees of the department of natural resources or department of public safety who are classified as peace officers and are not covered by a collective bargaining agreement shall receive benefits at retirement consistent with the provisions of the negotiated collective bargaining agreement with the State Police Officers Council. The benefits for sick leave banks earned by all department of public safety peace officer employees shall be administered by the department of public safety.

**64.16(1)** To be eligible to participate in the program, the employee must be employed on or after July 1, 2006, and must retire under a retirement system in the state maintained in whole or in part by public contributions or payment prior to reaching Medicare eligibility.

*a.* Participation in the program ceases when any one of the following occurs:

- (1) The employee's sick leave balance is exhausted;
- (2) The employee reaches Medicare eligibility;
- (3) The employee terminates participation in the state's group insurance program;
- (4) The employee returns to permanent employment with the state;
- (5) The employee fails to pay any required amount; or
- (6) The employee dies.

*b.* A deceased employee's sick leave bank is not transferable to another person, including a spouse.

**64.16(2)** Upon a participating employee's termination of employment, the employee's sick leave hours are multiplied by the employee's regular hourly wage. The employee receives up to \$2,000 of this amount on the employee's final paycheck. The remainder is multiplied by a conversion factor, and that amount is placed into the employee's sick leave bank. The conversion factors are as follows: If an employee has up to 750 hours, the rate is 60 percent; if an employee has over 750 hours and up to 1,500 hours, the rate is 80 percent; and if the employee has more than 1,500 hours, the rate is 100 percent. The employee's sick leave balance before payment of up to \$2,000 is used to determine the number of hours an employee has for conversion purposes. The amounts placed into the employee's sick leave bank have no cash value, other than for purposes of paying the state's share of retiree health insurance premiums under this program. The value of sick leave hours for peace officer employees of the department of natural resources and the department of public safety shall be calculated in the same manner as for those employees covered by the collective bargaining agreement with the State Police Officers Council.

**64.16(3)** Rescinded IAB 5/27/15, effective 7/1/15.

**64.16(4)** To participate in the program, an employee must complete a sick leave insurance program enrollment form upon retirement. Upon commencement of participation in the program, the employee may choose to continue the employee's current health insurance plan selection or may choose any other state group health plan whose total cost is the same or lower than the total cost of the current plan selection. Except for employees eligible for benefits negotiated consistent with the collective bargaining agreement negotiated with the State Police Officers Council, employees may not apply the sick leave balance to a private insurance plan.

[ARC 2000C, IAB 5/27/15, effective 7/1/15; ARC 3215C, IAB 7/19/17, effective 7/1/17]

These rules are intended to implement Iowa Code sections 8A.402, 8A.433 to 8A.438, and 8A.454 and Iowa Code chapter 509A.

## CHAPTER 65 - POLITICAL ACTIVITY

### 11—65.1(8A) Political activity of employees

All employees have the right to express their opinions as individuals on political issues and candidates. Such expressions may be either verbal or demonstrative in the form of pictures, buttons, stickers, badges, pins, or posters. Employees' rights to express their opinions on political matters in this form or manner shall not be restrained while on duty unless:

**65.1(1)** It is a violation of the law; or

**65.1(2)** The display of such items would cause or constitute a real and present safety risk or would substantially and materially interfere with the efficient performance of official duties; or

**65.1(3)** The employee has substantial contact with the public and the level of trust and confidence associated with the employee's position is perceived to be such that political expressions in any form, while on duty, might influence the public.

### 11—65.2(8A) Restrictions on political activity of employees

All employees are prohibited from:

**65.2(1)** Using the influence of their positions, public property, or supplies to secure contributions or to influence an election for any political party or any person seeking political office.

**65.2(2)** Soliciting or receiving anything of value in excess of the limits in Iowa Code section 68B.5 as a political contribution or subterfuge for a contribution from any other person for any political party or any person seeking political office during scheduled working hours, while on duty, when using state equipment, or on state property.

**65.2(3)** Promising or using influence to secure public employment or other benefits financed from public funds as a reward for political activity.

**65.2(4)** Discriminating in favor of or against any employee or applicant on account of their political contributions or permitted political activities.

Employees of the alcoholic beverages division of the department of commerce, in addition to the foregoing subrules, are subject to the prohibitions set forth in Iowa Code section 123.13. All employees are further subject to the provisions of Iowa Code chapter 721.

[ARC 4053C, IAB 10/10/18, effective 11/14/18]

### 11—65.3(8A) Application of Hatch Act

In addition to the restrictions set forth in rules 11—65.1(8A) and 11—65.2(8A), employees occupying state positions wholly funded by federal "grant-in-aid" or other specific federal funding are subject to the provisions of the federal Hatch Act. Where compliance with the political restrictions of the Hatch Act is required for the receipt of federal funds, the appointing authority shall identify those state positions so covered. The employees under those further political activity restrictions shall be made aware of the additional restrictions by posting or other written notification from the appointing authority.

Persons found by proper authority to have violated the provisions of the federal Hatch Act are subject to summary discharge.

[ARC 2000C, IAB 5/27/15, effective 7/1/15]

These rules are intended to implement Iowa Code sections 8A.413, 8A.416 and 8A.418.

## CHAPTER 66 - CONDUCT OF EMPLOYEES

### 11—66.1(8A) General

Employees shall fulfill to the best of their ability the duties and responsibilities of the position to which appointed. In carrying out their official job duties, employees shall work for the appointing authority's efficient and effective delivery of services. Employees shall perform assigned responsibilities in such a manner as neither to endanger their impartiality nor to give occasion for distrust or question of their impartiality.

### 11—66.2(68B) Selling of goods or services

Rescinded IAB 11/10/04, effective 10/20/04. See rules 351—6.10(68B) to 351—6.12(68B) and 11—1.7(68B).

### 11—66.3(68B) Outside employment or activity

Rescinded IAB 3/11/09, effective 4/15/09.

### 11—66.4(8A) Performance of duty

Employees shall, during scheduled hours of work, devote their full time, attention and efforts to assigned duties and responsibilities subject to the Iowa Code and the Iowa Administrative Code. Continued employment is dependent upon the satisfactory performance of assigned duties and responsibilities, i.e., “meets job expectations,” as well as appropriate conduct as provided for in these rules and the work rules of their agency of employment. This rule shall not be interpreted to prevent the separation or reduction of employees because of the lack of funds or work, reorganization done in accordance with these rules, or the provisions of the Iowa Code or a collective bargaining agreement.

### 11—66.5(8A) Prohibitions relating to certain actions by state employees

**66.5(1)** Employees shall not be prohibited from disclosing any information to members or employees of the general assembly, or to any other public official or law enforcement agency if the employee believes the information is evidence of the violation of a law, rule, mismanagement, a gross abuse of funds, an abuse of authority, or a substantial and specific danger to public health or safety. An employee need not inform the appointing authority about such disclosure unless the employee presented the information as the official position of the appointing authority.

*a.* This subrule does not apply to the disclosure of information prohibited by statute.

*b.* Agencies are prohibited from any reprisals in the form of a disciplinary action or failure to appoint or promote an employee who discloses information, fails to inform the appointing authority of the disclosure of information, or who declines to contribute to a charity or organization. Reprisals for disclosing information shall be subject to civil action.

**66.5(2)** Employees may contact the office of ombudsman to report violations of this rule.

[ARC 4053C, IAB 10/10/18, effective 11/14/18]

These rules are intended to implement Iowa Code sections 8A.413 and 68B.4.

## CHAPTER 68 - EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

### 11—68.1(19B) Definitions

The following definitions shall be applied to the rules in this chapter.

*“Affirmative action”* means action appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity.

*“Availability”* means the extent to which protected class members are qualified or qualifiable to be employed in classes within state and local government job categories.

*“Disabled person”* means any person who has a physical or mental impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

*“EEO-4 income bracket”* means the annual salary ranges as defined by the Equal Employment Opportunity Commission. Where employees are paid on other than an annual basis, their regular earnings shall be expanded and expressed in terms of an annual income.

*“EEO-4 report”* means the annual state employment data report as required by the federal Equal Employment Opportunity Commission.

*“Equal employment opportunity”* means equal access to employment or training opportunities regardless of race, creed, color, religion, sex, age, national origin or physical or mental disability.

*“Organizational unit”* means those agency units which lend themselves to the most reasonable system of grouping for analysis even though they may not necessarily coincide with the agency’s administrative divisions.

*“Protected class”* means racial or ethnic minorities, sex, age, creed, color, national origin, religion, mental and physical disability.

*“Racial or ethnic minorities”* means Black, Hispanic, Asian and Pacific Islander, American Indian and Alaskan natives.

*“Relevant labor force”* means that group of persons in the general population of a specified geographic area who are qualified to perform a particular type of work.

*“Sexual harassment”* means persistent, repetitive, or highly egregious conduct directed at a specific individual or group of individuals that a reasonable person would interpret as intentional harassment of a sexual nature, taking into consideration the full context in which the conduct occurs, which conduct threatens to impair the ability of a person to perform the duties of employment, or otherwise function normally within an institution responsible for the person’s care, rehabilitation, education, or training. *“Sexual harassment”* may include, but is not limited to, the following: (1) unsolicited sexual advances by a person toward another person who has clearly communicated the other person’s desire not to be the subject of those advances; (2) sexual advances or propositions made by a person having superior authority toward another person within the workplace or institution; (3) instances of offensive sexual remarks or speech or graphic sexual displays directed at a person in the workplace or institution, who has clearly communicated the person’s objection to that conduct, and where the person is not free to avoid that conduct due to the requirements of the employment or the confines or operations of the institution; (4) dress requirements that bear no relation to the person’s employment responsibilities or institutional status.

*“State and local government job categories”* means officials and administrators, professionals, technicians, protective service workers, paraprofessionals, administrative support workers, skilled craft workers and service maintenance workers, as defined by the federal Equal Employment Opportunity Commission guidelines.

*“Utilization”* means the extent to which minorities, females, and persons with disabilities are represented within an agency’s work force as compared to their availability in the relevant labor force.

*“Work force”* means an agency or organizational unit’s full-time employees and other than full-time employees.

[ARC 4121C, IAB 11/21/18, effective 10/25/18; ARC 4244C, IAB 1/16/19, effective 2/20/19]

## 11—68.2(19B) Plans, policies and records

**68.2(1)** Each agency or an entity approved by the director shall prepare and implement a written affirmative action plan with goals and timetables which conform to the requirements of Iowa Code chapter 19B.

**68.2(2)** Each agency shall adhere to the provisions of the “State of Iowa Equal Opportunity, Affirmative Action and Anti-Discrimination Policy for Executive Branch Employees,” and the “Policy Prohibiting Sexual Harassment for Executive Branch Employees.”

**68.2(3)** Each agency shall keep records as required by the director. These records shall, at a minimum, include tracking of the composition of applicant groups, their movement through steps in the hiring processes, and the impact of personnel actions on various group members when records are not otherwise available in centralized information systems. Each agency shall submit to the director, as requested, timely, complete, and accurate reports related to required records in accordance with rule 11—68.5(19B).

[ARC 4121C, IAB 11/21/18, effective 10/25/18; ARC 4244C, IAB 1/16/19, effective 2/20/19]

## 11—68.3(19B) Planning standards

Each affirmative action plan shall include, but not be limited to, the following standards:

**68.3(1)** *Affirmative action statement.* The affirmative action statement shall include, but not be limited to, the following:

*a. Policy statement.* The policy statement shall be a clear and unambiguous declaration of commitment to the principles of equal employment opportunity and affirmative action in the application of all personnel rules, policies, and practices. It shall contain the following or similarly worded language.

(1) The agency prohibits discrimination in its employment policies and practices on the basis of race, creed, color, religion, national origin, sex, age, or mental and physical disability.

(2) The agency is an equal employment opportunity and affirmative action employer.

*b. Administration statement.* The administration statement shall be a declaration of how the agency’s affirmative action policy is to be implemented. It shall contain the following:

(1) The name, job title, and work location of the responsible equal employment opportunity or affirmative action official.

(2) The internal system for auditing and reporting.

*c. Signature.* The affirmative action statement shall be signed and dated by the appointing authority.

**68.3(2)** *Work force analysis.* A work force analysis shall show the numerical and percentile breakdown of the agency’s full-time employees, and other than full-time employees, separately by racial or ethnic minorities, sex, and disability. Full-time and other than full-time employees shall be arrayed according to the state and local government job categories with further census occupational subcategory breakdowns as required by the director. For the purposes of confidentiality, disability figures shall be totaled only by an organizational unit covered by an individual affirmative action plan or the department as a whole.

*a. Exemptions.* The work force analysis shall not include elected officials; such officials’ immediate secretary, administrative, legislative, or other immediate or firstline aides; and such officials’ legal advisor.

*b. Organizational unit.* An agency with a large number of employees may be required to conduct a separate work force analysis for each of its organizational units. The organizational units may be determined by the agency based on the size, geographic dispersion and administrative lines of authority of its work force.

*c. Confidentiality.* An agency may suppress work force data which is likely to identify specific employees and violate their confidentiality.

*d. Analysis report.* The work force analysis shall be reported on forms available from the department. An agency may request approval of a similar report required by another regulatory agency as part of its work force analysis.

**68.3(3)** *Availability analysis.* An availability analysis shall show the percentile breakdown by racial or ethnic minorities and sex of the relevant labor force arrayed according to their state and local government job categories and relevant subcategories. The analysis shall include an assessment of the relevant available labor force by using the geographic area from which work force recruitment can reasonably occur for each state and local

government job category. The geographic area will usually be larger for high-paid or high-ranked classifications for recruitment purposes. The labor force availability of disabled persons shall be based on census reports of persons with a work disability residing in the most relevant geographic area defined by the census bureau.

*a. Organizational unit.* An availability analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 68.3(2), paragraph “b.”

*b. Analysis report.* The availability analysis shall be reported in a format prescribed by the department. In lieu of completing all parts of the availability analysis form, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, as part of its availability analysis, if approved by the department.

**68.3(4) Quantitative utilization analysis.** A quantitative utilization analysis shall compare work force analysis with availability analysis to show the numerical and percentile underrepresentation in the agency’s work force, if any, by racial or ethnic minorities, sex, and disability.

*a. Rounding.* All partial numerical figures for state and local government job categories that contain .5 or more shall be rounded upward and .49 or less shall be rounded downward to the nearest whole number.

*b. Organizational unit.* A quantitative utilization analysis shall be conducted for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 68.3(2), paragraph “b.”

*c. Analysis report.* The quantitative utilization analysis shall be reported in the format prescribed by the department. In lieu of completing all parts of the quantitative utilization analysis format, an agency may submit a similar report required by another regulatory agency, such as a federal funding agency, if approved by the department.

**68.3(5) Qualitative utilization analysis.** A qualitative utilization analysis shall show whether and where an agency’s employment policies and practices do or tend to exclude, disadvantage, restrict or result in adverse impact on the basis of age, sex, disability, and racial or ethnic minorities. It shall also show whether and where effects of prior illegal discrimination are left uncorrected. The analysis may include, but not be limited to, the following areas:

- a.* Recruitment efforts and methods.
- b.* Applicant flow characteristics study.
- c.* Interview, selection, appointment, and placement policies and practices.
- d.* Policies and practices affecting transfers, promotions, and reallocations.
- e.* Selection of employees for training.
- f.* Policies and practices in demotion, discipline, termination, and reduction in force.
- g.* Laws, policies, and practices external to the agency that discourage effective results in affirmative action.

**68.3(6) Goals and timetables.** An agency’s affirmative action goals and timetables shall specify the appropriate actions and time frames in which problems identified under subrules 68.3(4) and 68.3(5) are targeted to be remedied.

*a. Appropriate action.* In setting goals, an agency may consider, but not be limited to, the following:

(1) Devising a recruitment program in conjunction with the state recruitment coordinating committee authorized under the department.

(2) Validating the selection instruments in conjunction with the department.

(3) Revising and improving other personnel policies and practices.

(4) Providing affirmative action training internally or externally through organizations such as the Iowa management training system.

(5) Devising a plan so that agency personnel who impact EEO and affirmative action can have part or all of their performance evaluated on their contribution to meeting the established goals and timetables.

*b. Timetable.* Each agency shall determine the timetable in which it expects to meet its goals. In setting timetables, an agency should consider, but not be limited to, the following:

(1) Anticipated vacancies and positions.

(2) Work force turnover rate.

*c. Organizational unit.* Goals and timetables shall be prepared for each organizational unit by an agency which conducted a separate work force analysis pursuant to subrule 68.3(2), paragraph “b.”



*d. Numerical goals.* Numerical goals shall be established by each agency to remedy any underrepresentation identified in subrule 68.3(4). When setting numerical goals, agencies shall utilize the following procedure:

(1) Underutilized classes in which women represent more than 70 percent of the relevant available labor force for that occupational subcategory are exempt from this procedure when setting goals for women.

(2) Annual goals for hires shall be based on underutilization analysis and projected vacancies and set at a percentage rate that is equal to or greater than the labor force availability rate established in subrule 68.3(3).

(3) The percentage rate established in subparagraph (2) of this paragraph shall be multiplied by the projected number of openings anticipated in the following year by occupational subcategory to establish the actual numerical hiring goals for each underutilized subcategory.

(4) Goals established for each occupational subcategory shall be totaled to establish goals for each state and local government job category.

(5) Where projected goals indicate that a period greater than five years is required to remedy any underrepresentation, agencies may be required to revise their goals established in subparagraph (2) of this paragraph.

(6) Goals shall not be rigid and inflexible quotas. They must be targets reasonably attainable through good faith effort and must not cause any group of applicants to be excluded from the hiring process.

**68.3(7) Consolidation.** An agency may consolidate the racial or ethnic minorities and state and local government job categories into broader groupings in conducting its analysis under subrules 68.3(2) to 68.3(6) with department prior approval.

*a. Applicability.* Consolidation is applicable when the agency or organizational unit work force has been analyzed according to all the racial or ethnic minorities or occupational categories, and the resultant figures are determined to be too small for significant statistical analysis.

*b. Racial or ethnic minorities.* The minority racial or ethnic groups may be consolidated into one single group.

*c. Occupational categories.* The occupational categories may be consolidated into one or more groups.

**68.3(8) Comparable plan.** An agency plan which is consistent with 41 Code of Federal Regulations, Chapter 60, Revised Order No. 4, Affirmative Action Guidelines, issued by the Office of Federal Contract Compliance Programs, shall be considered to be in compliance with the aforementioned planning standards if the plan is approved as meeting the requirements of subrules 68.3(2), 68.3(5), and 68.3(6).

## 11—68.4(19B) Dissemination

Each agency shall have an internal and external system for disseminating its affirmative action plan.

**68.4(1) Affirmative action plan.** The plan shall be distributed to agency employees charged with the responsibility for its implementation and be made available to other agency employees and the public upon request.

**68.4(2) Affirmative action statement.** The statement shall be disseminated in, but not limited to, the following manner:

*a.* A copy shall be given to all agency employees.

*b.* It shall be posted on bulletin boards and other conspicuous places throughout the agency.

*c.* It shall be distributed to the agency's recruiting sources.

## 11—68.5(19B) Reports

**68.5(1)** Each agency shall annually submit an affirmative action report and plan for approval to the department at the time specified by the department that shall conform to the standards specified in these rules.

**68.5(2)** Each agency may be required to submit progress reports in accordance with the due dates and procedures established by the director.



## 11—68.6(19B) Discrimination complaints, including disability-related and sexual harassment complaints

The director shall have the authority to investigate practices prohibited under the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” and the “Policy Prohibiting Sexual Harassment for Executive Branch Employees,” adopted in accordance with Iowa Code section 19B.12. The director shall investigate any complaint pertaining to the policies specified in this rule unless directed by the governor to be investigated by another agency or entity.

**68.6(1) Confidentiality.** Complaints and records related to complaints, regardless of where the records are located, are confidential. These confidential records include, but are not limited to, all information gathered in the course of an investigation and investigative reports. Confidential records shall not be released unless ordered by a court of competent jurisdiction. This rule does not supersede the remedies provided under Iowa Code chapter 216.

**68.6(2) General procedures.**

*a.* Any person who feels that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” or the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” is encouraged to make a complaint pursuant to the complaint procedure outlined in the respective policies.

*b.* An agency shall immediately report all complaints pertaining to the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” or the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” to the department.

**68.6(3) Sexual harassment complaint procedures.** All employees shall have access to internal grievance procedures as authorized by Iowa Code section 19B.12 for reporting complaints of sexual harassment as set forth in the “Policy Prohibiting Sexual Harassment for Executive Branch Employees.”

*a.* Any employee who believes that he or she has been subjected to, or who witnesses or has knowledge of, a violation of the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” is encouraged to bring a complaint to:

- (1) The employee’s immediate supervisor;
- (2) The next higher supervisor; or
- (3) The agency director or the employee identified by the agency to receive complaints of sexual harassment.

*b.* A complaint, including those concerning senior agency officials or agency directors, may be made directly to the department or the office of the governor without reporting the matter internally to the agency.

**68.6(4) Complaint investigation procedures.** The department shall investigate all complaints arising under the “Equal Opportunity, Affirmative Action, and Anti-Discrimination Policy for Executive Branch Employees” and the “Policy Prohibiting Sexual Harassment for Executive Branch Employees” unless directed by the governor to be investigated by another agency or entity. All executive branch employees must cooperate fully with any investigation and may be subject to discipline up to and including termination of employment for failure to cooperate with an investigation. The department shall submit findings for an investigation conducted under this rule to the applicable agency or the office of the governor.

*a.* A complaint may be submitted on the form prescribed by the department or through other means, either orally or in writing. The complaint should at least contain the following:

- (1) The name and contact information of the person submitting the complaint;
- (2) The name(s) and contact information, if known, of the alleged harasser;
- (3) A statement of the allegations, including dates, if known, constituting the alleged discriminatory or harassing conduct; and
- (4) Any witnesses or persons to whom the allegations were reported.

*b.* Upon receipt or referral of a complaint, the department shall acknowledge the receipt of the complaint to the person submitting the complaint within five business days of receipt.

*c.* The investigation shall be initiated within ten days of the receipt of the complaint.

*d.* The investigation shall be completed within 30 days of the receipt of the complaint unless good cause can be shown that additional time is required. Reasons for additional time to complete the investigation beyond

30 days shall be documented in the investigation file. Extensions beyond 60 days must have prior approval by the director.

*e.* The investigation report shall include at least the following:

- (1) Background of the complaint;
- (2) Allegations;
- (3) Persons interviewed;
- (4) Analysis and findings; and
- (5) Conclusion.

*f.* Upon completion of the investigation, written correspondence regarding the conclusion of the investigation shall be sent to all parties interviewed during the course of the investigation.

**68.6(5) Retaliation prohibited.** Any form of retaliation against an employee for resisting discriminatory or harassing behavior, reporting a complaint of discriminatory or harassing behavior, assisting a complainant who reports discriminatory or harassing behavior, or who cooperates in an investigation regarding discriminatory or harassing behavior is prohibited. Executive branch employees who engage in retaliatory behavior shall be subject to discipline up to and including termination of employment. An employee who experiences retaliation prohibited under this subrule may report the retaliation through any of the avenues identified in this rule.

[ARC 4121C, IAB 11/21/18, effective 10/25/18; ARC 4244C, IAB 1/16/19, effective 2/20/19]

## 11—68.7(19B) Training

The department shall provide training to all executive branch state employees relating to sexual harassment awareness, prevention and reporting. Executive branch state employees shall complete sexual harassment training on an annual basis as provided by the department.

[ARC 4244C, IAB 1/16/19, effective 2/20/19]

These rules are intended to implement Iowa Code chapter 19B.