

MAINE STATE LEGISLATURE

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Chapter 63.

Personnel Law.

Sec. 1. Definitions. — Certain words and phrases hereinafter used shall have, for the purposes of this chapter, the following meaning:

I. "Appointing authority" means the officer, board, commission, person or group of persons having the power by virtue of the constitution, a statute or lawfully delegated authority to make appointments.

II. "Board" means the "state personnel board."

III. "Classified service" means all offices and positions of trust and employment in the state service except those placed in the unclassified service by this chapter.

IV. "Director" means the "state personnel director."

V. "Eligible register" means whatever type of book, binder or other record which may be used having thereon the names of persons qualified by examinations to fill positions in the classified service.

VI. "Employee" means any person holding a position subject to appointment by an appointing authority. (R. S. c. 59, § 1.)

Sec. 2. Title.—This chapter and all acts amendatory thereof shall be known and may be cited as the "Personnel Law." (R. S. c. 59, § 2.)

Sec. 3. State personnel board.—The state personnel board, as heretofore established, shall be composed of 5 members. Three members, not more than 2 of whom shall be of the same political party, shall represent the public, and shall be appointed by the governor with the advice and consent of the council. One member of the board shall be designated by the governor as chairman. The term of the public members of the board shall be 4 years and until their successors are appointed and qualified. Vacancies in the public membership of the board shall be filled within 60 days after the vacancy occurred by the governor with the advice and consent of the council for the unexpired portion of the term. The public members of the board shall receive \$10 a day for the time actually spent in the discharge of their duties, and their necessary expenses.

One member, a state employee, shall be duly elected for a 2-year term by the council of the Maine state employees' association. The 5th member of the board shall be elected by the other 4 members of the board from department heads for a 2-year term, and until their successors are elected and qualified. Vacancies in the employees' or department heads' membership of the board shall be filled by the original process of election. Board members representing state employees and department heads shall do so without compensation, except for their necessary expenses. (R. S. c. 59, § 3. 1953, c. 424.)

Sec. 4. Powers and duties; state advisory council.—The board shall have the following powers and duties:

I. To appoint a personnel director in accordance with the provisions of section 5.

II. Upon recommendation of the director and after a public hearing, and subject to the requirements of this chapter, to prescribe or amend rules and regulations relative to:

A. Eligible registers,

B. Classification of positions in the classified service,

C. Compensation plan,

- D. Examination for admission to the classified service,
- E. Promotion in the classified service,
- F. Provisional, emergency, exceptional and temporary appointments,
- G. Probationary period,
- H. Transfer,
 - I. Reinstatement,
 - J. Demotion,
- K. Suspension, layoff and dismissal,
- L. Leave of absence, resignation, hours of service, vacations and sick leave,
- M. Personnel records,
- N. In-service training,
- O. Service ratings, and
- P. Certification of payrolls;

which rules and regulations shall be in effect and have the force of law upon the approval of the governor.

III. To make investigations and report its findings and recommendations in cases of dismissal from the classified service as is provided in section 21.

IV. To make investigations either at the direction of the governor or the legislature, or upon the petition of an employee or a citizen, or of its own motion concerning the enforcement and effect of this chapter.

V. To enforce through the director the observance of the provisions of this chapter and the rules and regulations made thereunder.

VI. To receive, review and transmit to the governor the annual report of the director, provided, however, that the report of the director may be supplemented by any additional comment, criticism or suggestions for the more effectual accomplishment of the purposes of this chapter that the board may care to submit.

VII. To keep full and complete minutes of its proceedings, which shall, subject to reasonable regulations, be open to public inspection.

VIII. In the course of any investigation under the provisions of this chapter, through any member of the board, to have the power to administer oaths and to subpoena and require the attendance of witnesses and the production thereby of books, papers, public records and other documentary evidence pertinent to such investigation.

In case of the refusal of any person to comply with any subpoena issued hereunder or to testify to any matter regarding which he may be lawfully interrogated, the superior court in any county on application of any one of the members of the board or of the director, when authorized by the board, may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

IX. The board shall have authority to select and appoint a state advisory council on personnel, to serve at the pleasure of the board, and consisting of representatives of the following groups—the governor, the executive council, the senate, the house of representatives, department heads, the employees' association, the budget and the public. The principal function of this council shall be to act as a liaison between the particular agency or group they represent and the state personnel board, to the end that a better understanding and appreciation of the objectives of a real civil service system may be brought

about; and as a result of such an understanding, to give counsel and advice to the state personnel board in relation to the over-all administration of the merit system in state government.

No member of said council shall receive per diem pay or salary, but shall be entitled to reimbursement for actual expenses when called together for conferences with the state personnel board.

The council may select one of its members to act as chairman of the group, and arrange for such other internal organization as it may deem proper and for the best interests of the furtherance of the merit system principle. [1947, c. 221]. (R. S. c. 59, § 4. 1947, c. 221.)

Sec. 5. Director of personnel; powers and duties.—The director of personnel shall be, at the time of his appointment, a person thoroughly familiar with the principles and experienced in the methods and techniques of public personnel administration on the merit basis. His tenure of office shall be at the pleasure of the appointing board and he shall receive such compensation as shall be fixed by the board with approval of the governor.

The director shall have the power and duty to administer and make effective the provisions of this chapter and the rules and regulations of the board as herein provided. (R. S. c. 59, § 5.)

Sec. 6. Classified service.—The classified service shall consist of all persons holding offices and employments now existing or hereafter created in the state service, except persons who are holding or shall hold offices and employments exempted by the provisions of section 11.

Appointments to and promotions in the classified service shall be made according to merit and fitness, from eligible lists prepared upon the basis of examinations, which so far as practicable shall be competitive. No person shall be appointed, transferred, promoted or reduced as an officer, clerk or employee or laborer in the classified service in any manner or by any means other than those prescribed in this chapter and in the rules of the board made in pursuance to this chapter.

The classified service shall be separated into the following divisions:

- I. Competitive,
- II. Noncompetitive,
- III. Labor,

in accordance with rules and regulations prescribed by the board. (R. S. c. 59, § 6.)

Sec. 7. Merit award board. — The Maine state employees' merit award board, as heretofore established and hereinafter in sections 7 to 10, inclusive, called the "award board," shall consist of 3 persons, who may be state officers or employees, to be appointed by the governor with the advice and consent of the council. One member of the award board shall be designated by the governor to be the chairman thereof. The term of all members of the award board shall be 4 years and until their successors are appointed and qualified. Vacancies in the membership of the award board shall be filled within 60 days after the vacancy occurs by the governor with the advice and consent of the council for the unexpired portion of the term. The members of such award board shall serve without compensation, but they shall be reimbursed for the expenses actually and necessarily incurred by them in the performance of their duties. The state personnel board shall detail and assign for the use of the award board such personnel and facilities of the state personnel board as the award board may require for the proper performance of its work. The award board may appoint such other employees and assistants as it may require, subject to the requirements of the personnel law, and prescribe their power and duties. The award

board may request and shall receive from any state department such assistance as it may require, and each such department shall make available to the award board, upon its request, any of its personnel and facilities required for the furtherance of the work of the award board. (1949, c. 357, § 1.)

Sec. 8. Powers and duties.—The merit award board shall have power and it shall be its duty:

I. To formulate, establish and maintain a plan or plans to encourage and reward unusual and meritorious suggestions and accomplishments by state employees promoting efficiency and economy in the performance of any function of state government.

II. To appoint departmental or divisional boards or committees to analyze and review suggestions and accomplishments of state employees submitted for consideration under such plan or plans and to make recommendations thereon to the award board.

III. To make and render merit awards to or for the benefit of state employees nominated to receive them in accordance with such plan or plans. (1949, c. 357, § 1.)

Sec. 9. Awards.—The merit award board may determine the nature and extent of the merit awards to be made under the provisions of this chapter which may include, but shall not be limited to, the following:

I. Certificates, medals or other appropriate insignia which shall be in such form and shall be awarded at such times as the award board may fix and determine.

II. Cash awards, which shall be of such amount and shall be payable at such times as the award board may fix and determine.

III. In lieu of or in addition to a cash award, the award board may, by certificate filed with the state personnel director, increase the compensation of the state employee nominated for the award, provided that no such award of increased compensation shall result in increasing the compensation of such employee beyond the maximum salary of the salary grade to which his position is allocated. A state employee receiving an award of increased compensation under the provisions of this chapter shall be deemed to have rendered satisfactory service in the position held by him for the period of time which would otherwise have elapsed before he became entitled to the amount of the annual increment or increments corresponding to the amount of such increased compensation. For the purpose of carrying out the provisions of this subsection, the state personnel director, upon receipt of such certificate, shall immediately file with the proper state officials the certification of payroll provided for by section 26, and payment of such increase is authorized from any appropriation available to such department, institution or other state agency for personal services during the fiscal year in which said award is made, and all such appropriations shall be available for the payment of the additional compensation provided for by this subsection. [1951, c. 266, § 84]. (1949, c. 357, § 1. 1951, c. 266, § 84.)

Sec. 10. Rules and regulations.—The merit award board shall have full power and authority to adopt and promulgate rules and regulations governing the operation of any plan or plans established under the provisions of sections 7 to 10, inclusive, the eligibility and qualifications of state employees participating therein, the character and quality of suggestions and accomplishments submitted for consideration, the method of their submission and the procedure for their review, nominations for merit awards, and the kind, character and value of such awards, and such other rules and regulations as may be deemed necessary or

appropriate for the proper administration of the provisions of sections 7 to 10, inclusive, or for the accomplishment of the purposes thereof. (1949, c. 357, § 1. 1951, c. 266, § 85.)

Sec. 11. Unclassified service.—The unclassified service comprises positions held by officers and employees who are:

- I. Chosen by popular election or appointed to fill an elective office.
- II. Officers who, under the constitution or statutes, are chosen by the legislature.
- III. Heads of departments and members of boards and commissions required by law to be appointed by the governor with the advice and consent of the council, bureau directors, and the official clerk of the public utilities commission and of the state liquor commission.
- IV. Officers and employees in the judicial service of the state.
- V. Officers and employees of the senate and house of representatives of the legislature.
- VI. Officers and enlisted men in the national guard and naval militia of the state.
- VII. The private secretary, assistant secretary and stenographers in the governor's office, and the employees working at the Blaine Mansion.
- VIII. Commissioned officers, noncommissioned officers and patrolmen of the state police, provided that the chief may avail himself of the facilities of the personnel board in the examination of applicants for the position of police officer. The appointment, training, promotion, supervision, dismissal and administration of the state police shall continue to be governed by the provisions of chapter 15.
- IX. Officers and employees of the University of Maine, of the several state normal schools and teachers' colleges and of the unorganized territory school system. (1949, c. 349, § 106)
- X. Wardens of the department of inland fisheries and game, except that the compensation of such wardens shall be determined under the provisions of this chapter. (1949, c. 364, § 4. 1953, c. 372, § 4)
- XI. Wardens of the department of sea and shore fisheries, except that the compensation of such wardens shall be determined under the provisions of this chapter. (1953, c. 372, § 5)
- XII. All officers and employees of the Maine forestry district.
- XIII. Deputy and assistants of the attorney general's department. (R. S. c. 59, § 7. 1947, c. 193. 1949, c. 349, § 106; c. 364, § 4. 1953, c. 372, §§ 4, 5.)

Sec. 12. Eligible registers.—The director shall prepare for each class of positions in the classified service, registers of persons eligible for appointment to positions in each such class. Each eligible register shall consist of a list of all of the persons, who have shown by competitive tests, as provided for in section 16, that they possess the qualifications which entitle them to be considered eligible for appointment to any position in the class for which the eligible register is to be prepared, and of employees who have resigned or been dismissed, laid off or granted leaves of absence and whose names have been restored to the eligible register in accordance with the provisions of this chapter.

The names of all persons attaining the minimum final earned ratings established by the director in advance of the giving of the test shall be placed upon the register in order of their ratings.

All persons competing in any test shall be given written notice of their final

earned ratings, and of their relative standing upon the eligible register, or of their failure to attain a place upon the register. (R. S. c. 59, § 8.)

Sec. 13. Classification plan.—It shall be the duty of the director to ascertain and record the duties and responsibilities of all positions in the service and to establish classes for such positions, in conformity with regulations adopted therefor by the board as provided in section 4. The titles so classified and so established shall be used in all personnel, accounting, budget, appropriation and financial records of all state departments, commissions and institutions. (R. S. c. 59, § 9.)

Sec. 14. Compensation plan.—The director shall, as soon as practicable after the adoption of the classification plan, submit to the board a proposed plan of compensation showing for each class of position in the classified service minimum and maximum salary rates and such intermediate rates as he deems desirable.

When the compensation plan has become effective through its adoption by the board as provided in section 4, it shall constitute the official schedule of salaries for all classes of positions in the classified service. No position shall be assigned a salary greater than the maximum or less than the minimum rates fixed in the compensation plan. Salaries of persons holding positions in the classified service shall not be approved by paying authorities unless such salaries conform to the adopted compensation plan.

Salary advancements within an established range shall not be automatic, but shall be dependent upon specific recommendation of the appointing officer and approval of the director and the board. Such recommendation shall be based upon standards of performance as indicated by merit ratings or other pertinent data. No advancements in salary shall be made until the employee has completed the probationary period. (R. S. c. 59, § 10.)

Sec. 15. Positions in the classified service filled. — Positions in the classified service shall be filled by original appointment, promotion, transfer, reinstatement or demotion in pursuance of rules and regulations established by the board and administered by the director. (R. S. c. 59, § 11.)

Sec. 16. Examinations.—All examinations for positions in the classified service shall relate to those matters which will fairly test the capacity and fitness of the persons examined to discharge the duties of the office or employment sought by them, but due regard shall be shown for the capacity of the applicant for promotion to higher positions in the service.

The director, subject to the approval of the board, shall determine the character, type and content of examination for admission to the classified service; the time and place of holding examinations; the forms of application blanks for admission to the examination to be filed by applicants provided that admission to examinations shall be open only to those who have been legal residents of Maine for at least 1 year except that at the request of the appointing authority the residence requirement may be waived in exceptional or emergency cases in which the board deems such action necessary for the good of the service; the minimum requirements for admission to the examination; and the value for each phase of the tests used in determining the average rating of the applicant.

Public notice of the time, place and general scope or nature of every examination or test shall be given in the manner prescribed by rules drawn up by the director and approved by the board. (R. S. c. 59, § 12.)

Sec. 17. Preference in state employment for veterans. — Hereafter in making appointments to any position on an open competitive basis in the classified service, preference in appointment as hereinafter provided shall be given to honorably discharged male and female veterans and widows of such, and to the wives of disabled veterans who themselves are not qualified but whose

wives are qualified to hold such positions. The classes of veteran preference shall be as follows:

I. Five-point preference is so called because, for this class, 5 points are added to earned qualifying ratings in examination. Any veteran who has performed active duty in any branch of the armed forces of the United States during any war is entitled to 5-point preference upon honorable discharge or release therefrom.

A. Five-point preference is also accorded to unmarried widows of deceased veterans who performed active duty in any branch of the armed forces of the United States during any war, and were honorably discharged or released therefrom.

II. Ten-point preference is a term applying to veteran preference which entitles the holder to an addition of 10 points to earned qualifying ratings in examination. The classes of 10-point preference are as follows:

A. Disability preference applies to honorably discharged veterans who establish by official records the present existence of a service-connected disability, and who are certified by the Veterans Administration to be disabled with a disability rating of more than 0%.

B. When veterans entitled to disability preference on the basis of service-connected disability cannot be directly benefited thereby because of being disqualified for appointment by reason of the physical disability on which the preference is based, 10-point preference may be granted to their wives instead. This constitutes "wife preference."

C. Ten-point preference is accorded to unmarried widows of deceased veterans who died while in the active service of the armed forces during any war, or who died as the result of service-connected disabilities.

The term "veteran" as used in this section shall mean a person, male or female, who served in the active service of the United States' armed forces during a period of war in which the United States has been, or is, engaged; and who has been discharged or released therefrom under honorable conditions.

For the carrying out of the provisions of this section, the following dates of active service in the United States' armed forces shall be:

I. World War I, on or after April 6, 1917, and before November 11, 1918.

II. World War II, December 7, 1941, and before September 2, 1945.

III. Korean campaign, June 27, 1950, until such time as the United States decrees hostilities to have ceased. (1953, c. 174)

In determining qualifications for examination, appointment, promotion, retention, transfer or reinstatement with respect to preference eligibles under this section, the personnel board or other examining agency may waive requirements as to age, height and weight, provided any such requirement is not essential to the performance of the duties of the position for which examination is given. The personnel board or other examining agency, after giving due consideration to the recommendation of any accredited physician, may waive the physical requirements in the case of any veteran, provided such veteran is, in the opinion of the personnel board or other examining agency, physically able to discharge efficiently the duties of the position for which the examination is given.

The provisions of this section shall apply to all examinations for original positions in the state police and in the department of inland fisheries and game. (1945, cc. 360, 377. 1951, c. 157, § 10. 1953, cc. 165, 174.)

Sec. 18. Discrimination.—In carrying out the provisions of this chapter, no discrimination shall be made on account of political or religious opinions or affiliations, sex or marital status. (R. S. c. 59, § 13.)

Sec. 19. Probationary period; permanent appointment.—All original appointments to the classified service shall be for a probationary period. The duration of such probationary period shall be determined by the director, but in no case shall it be for less than 6 months. (R. S. c. 59, § 14.)

Sec. 20. Temporary and provisional appointments.—Whenever it is impossible to certify eligible persons for appointment to a vacancy in the classified service, then, the appointing authority may nominate a person to the director. If such nominee is found by the director to have had experience and training which appear to qualify him for the position, he may be temporarily appointed to fill such vacancy but only until an appropriate eligible register can be established and an appointment made therefrom, provided that the director with the approval of the board may make a provisional appointment to fill a technical or professional position, which requires a specialized knowledge or training to carry out the duties of the position, and cannot be filled from the eligible register. In no event shall a temporary appointment be continued for more than 3 months. Successive temporary appointment of the same person shall not be made; not more than 1 temporary appointment shall be made to any position within any 12-month period. The director may authorize, without requiring competitive tests, the appointment of unskilled laborers or persons engaged in custodial and domestic work in state institutions or departments. (R. S. c. 59, § 15.)

Sec. 21. Dismissal and disciplinary action.—An appointing authority may dismiss, suspend or otherwise discipline a classified employee for cause. In every case of such dismissal, suspension or other disciplinary action, at the request of the employee, the board shall investigate the circumstances relating to the action, and the fairness thereof, and if it shall find the charges unwarranted, the board shall order the immediate reinstatement of the affected employee to his former position with no loss of pay, seniority or other rights and benefits resulting from the dismissal or disciplinary action. At the request of the employee the board may recommend the transfer of the employee to the same or similar class of position in another department or institution, provided that such transfer shall be made to such department or institution only with the approval of the appointing authority thereof.

At the request of the employee, the board shall investigate the circumstances relating to an action of an appointing authority which lays off, demotes or otherwise deprives an employee of rights established by this chapter or by rules prescribed in subsection II of section 4, and if it shall find the action to be contrary to said chapter and rules, the board shall order the immediate reinstatement of the employee to his former position with no loss of pay, seniority or other rights or benefits resulting from such action. (R. S. c. 59, § 16. 1953, c. 160.)

Sec. 22. Personnel records. — Every appointment, transfer, promotion, demotion, dismissal, vacancy, change of salary rate, leave of absence, absence from duty and other temporary or permanent change in status of employees in both the classified service and the unclassified service shall be reported to the director at such time, in such form and together with such supporting or pertinent information as the board shall by rule prescribe.

The director shall maintain a perpetual roster of all officers and employees in the classified and unclassified services, showing for each person such data as the board deems pertinent. (R. S. c. 59, § 17.)

Sec. 23. Training programs.—The director shall devise plans for and cooperate with appointing authorities and other supervising officials in the conduct of employee training programs to the end that the quality of service rendered by persons in the classified service may be continually improved. (R. S. c. 59, § 18.)

Sec. 24. Service ratings.—The director shall establish standards of per-

formance for each class of position and a system of service ratings based upon such standards, which shall be in effect upon their approval by the board as provided in section 4. (R. S. c. 59, § 19.)

Sec. 25. Solicitation of political campaign contributions. — No officer or employee in the classified service of this state shall, directly or indirectly, solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution or political service, whether voluntary or involuntary, for any political purpose whatever from any officer, agent, clerk or employee of the state or from any person. (R. S. c. 59, § 20.)

Sec. 26. Certification of payrolls. — No fiscal officer of the state shall draw, sign or issue, or authorize the drawing, signing or issuing of any warrant or check upon the treasurer of state or other disbursing officer of the state for the payment of a salary or other compensation for personal services, nor shall the treasurer of state or other disbursing officer of the state pay any salary or other compensation for personal services, unless a payroll or account for such salary or other compensation, containing the names of all persons to be paid and the amounts to be paid them, has been certified by the director or a person designated by him.

Any payment, made in violation of the provisions of the compensation plan or the rules pertaining thereto or made to a person appointed or established in his position in a manner contrary to the provisions of this chapter, may be recovered from the appointing authority, the director or any officer or person making such payment, whoever is culpable, or from the sureties on the official bond of such officer or person. Action for such recovery may be maintained by the board or any member thereof, any officer or employee of the state service or any citizen of the state. All moneys recovered under the provisions of this section shall be paid into the state treasury and credited to the general fund. (R. S. c. 59, § 21.)

Sec. 27. Violations.—Any person violating any of the provisions of this chapter or of the rules established in accordance with the provisions of this chapter shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$100. Any person holding a public office or position who is convicted under the provisions of this section shall be deemed to have vacated the office or position and such person shall be incapable of holding public office for a period of 5 years after the date of such conviction. (R. S. c. 59, § 22.)

Sec. 28. Employees in military or naval service; substitutes.—Whenever any employee, regularly employed for a period of at least 6 months by the state or by any department, bureau, commission or office thereof, or by any county, municipality, township or school district within the state, and who has attained permanent status in such employment, shall in time of war, contemplated war, emergency or limited emergency enlist, enroll, be called or ordered, or be drafted in the military or naval service of the United States or any branch or unit thereof, or shall be regularly drafted under federal man power regulations, he shall not be deemed or held to have thereby resigned from or abandoned his said employment, nor shall he be removable therefrom during the period of his service, but the duties of his said employment shall, if there is no other person authorized by law to perform the powers and duties of such employee during said period, be performed by a substitute who shall be appointed for the interim by the same authority who appointed such employee if such authority shall deem the employment of such substitute necessary.

Such employee while in the military or naval service of the United States or still employed after draft under federal man power regulations shall be considered as on leave of absence without pay, and for the purpose of computing time in regard to pension rights and seniority, shall be considered during the period of

his federal service as in the service of the governmental agency by which he was employed at the time of his entry into such federal service. Said interim appointments may be considered permanent if the employee granted the military leave fails to report for duty within a 90-day period from the date of his discharge from the military or naval forces of the United States, and provided further, that such discharge must have been effective not later than 6 months after the state of war ceases between the United States and every foreign government except in cases where a male or female veteran of World War II or the Korean Campaign was receiving treatment in a hospital at the time of his or her discharge, and except in cases where such veteran has not been returned from and discharged from foreign service, in which event his or her status shall be governed by section 2 of chapter 300 of the public laws of 1943.

The provisions of this section shall apply to any such employee entering the armed forces of the United States under the provisions of Public Law 759, 80th Congress (Selective Service Act of 1948) or while said Public Law 759 or any amendment thereto or extension thereof shall be in effect. (R. S. c. 59, § 23. 1949, c. 91. 1951, c. 157, § 20.)