

# Senate Bill 435

Sponsored by Senator EDWARDS, Representative MATTHEWS; Representatives CLEM, READ (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies restoration rights of certain state exempt and management service employees to classified position in state service held prior to appointment to exempt or management service position. Specifies that management service employees serve at pleasure of appointing agency director and may be disciplined or removed subject to certain due process requirements.

## A BILL FOR AN ACT

1  
2 Relating to certain positions in state service; creating new provisions; and amending ORS 240.560  
3 and 240.570.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 240.570 is amended to read:

6 240.570. (1) Positions in the unclassified, **exempt and** management [*and exempt*] services may  
7 be filled by classified employees. After an employee is terminated from the unclassified **service** [*or*  
8 *exempt service or removed from the management service,*] for reasons other than those specified in  
9 ORS 240.555, **or removed from the exempt or management service**, the state agency that em-  
10 ployed the employee **in a classified service position** before the appointment to the unclassified,  
11 exempt or management service may, at the agency's sole discretion, restore the employee to a po-  
12 sition held in the agency before the appointment if:

13 (a) The employee meets the position requirements; **and**

14 (b) **The position to which the employee is restored is a position that the employee held**  
15 **no more than one year prior to the appointment to the unclassified, exempt or management**  
16 **service.**

17 (2) If an employee is restored to a former position, the employee is subject to any applicable  
18 agency collective bargaining agreement.

19 (3) **Restoration rights apply only to an employee's initial appointment to the unclassified,**  
20 **exempt or management service from a classified service position.**

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

24 [(3)] (4) A management service employee is subject to a trial service period established pursuant  
25 to rules of the Personnel Division under ORS 240.250. Thereafter, the management service employee  
26 may be disciplined [*by reprimand, salary reduction, suspension or demotion or removed from the*  
27 *management service if the employee is unable or unwilling to fully and faithfully perform the duties*  
28 *of the position satisfactorily.*] **or removed subject to procedures adopted by the Personnel Divi-**  
29 **sion under ORS 240.250 that are compatible with the requirements of due process of law.**

30 (5) **A management service employee serves at the pleasure of the agency director. If**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 **deemed appropriate by the agency director, principles of progressive discipline may be used**  
 2 **when a management service employee is disciplined. A management service employee may**  
 3 **be disciplined or removed by the agency director subject only to the provisions specified in**  
 4 **subsection (4) of this section.**

5 [(4)] (6) Employees who are [*assigned, reassigned, transferred or removed, as provided in sub-*  
 6 *section (2) of this section, and employees who are*] disciplined or removed from the management ser-  
 7 vice [*for the reasons*] **in the manner** specified in subsection [(3)] (5) of this section may appeal to  
 8 the [*Employment Relations Board in the manner provided by ORS 240.560*] **agency director in the**  
 9 **manner specified in the rules adopted by the Personnel Division under ORS 240.250.**

10 [(5) *Management service employees with immediate prior former regular status in the classified*  
 11 *service may be dismissed from state service only for reasons specified by ORS 240.555 and pursuant*  
 12 *to the appeal procedures provided by ORS 240.560.*]

13 **SECTION 2.** ORS 240.560 is amended to read:

14 240.560. (1) A [*regular*] **classified, unrepresented** employee who is reduced, dismissed, sus-  
 15 pended or demoted[,] shall have the right to appeal to the Employment Relations Board not later  
 16 than 30 days after the effective date of the reduction, dismissal, suspension or demotion. The appeal  
 17 must be in writing. The appeal is timely if it is received by the board or postmarked, if mailed  
 18 postpaid and properly addressed, not later than 30 days after the effective date of the reduction,  
 19 dismissal, suspension or demotion. The board shall hear the appeal within 30 days after the board  
 20 receives the appeal, unless the parties to the hearing agree to a postponement. The board shall  
 21 furnish the **Personnel** Division of the service concerned with a copy of the appeal in advance of the  
 22 hearing.

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

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

27 (4) In all other cases, if the board finds that the action was not taken in good faith for cause,  
 28 it shall order the immediate reinstatement and the reemployment of the employee in the position  
 29 without the loss of pay. In lieu of affirming the action, the board may modify the action by directing  
 30 a suspension without pay for a given period, and a subsequent restoration to duty, or a demotion in  
 31 classification, grade or pay. The findings and order of the board shall be certified in writing to the  
 32 appointing authority and shall be forthwith put into effect by the appointing authority.

33 **SECTION 3.** The amendments to ORS 240.570 by section 1 of this 2013 Act apply to per-  
 34 **sons appointed from the classified service to fill exempt or management service positions on**  
 35 **or after the effective date of this 2013 Act.**

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