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## State of Oregon LEGISLATIVE BRANCH PERSONNEL RULES

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### Legislative Branch Personnel Rule 1: General Provisions

(1) **General application of rules.** Unless otherwise stated in a specific rule, the Legislative Branch Personnel Rules apply to all members and employees of the Legislative Assembly, the Secretary of the Senate's Office, the Chief Clerk of the House of Representative's Office, Legislative Administration, the Legislative Counsel Office, the Legislative Fiscal Office, the Legislative Revenue Office, the Legislative Commission on Indian Services, the Legislative Policy and Research Office and the Legislative Equity Office.

(2) **Policy.** It is the intent of the Legislative Assembly for the Legislative Branch Personnel Rules to encourage a high level of competence and professional capability by providing an orderly, efficient and equitable plan of personnel administration. In the development and application of these rules, continuing recognition must be given to the unique political and administrative requirements of the legislative process and the distinctive relationships among the various units of the Legislative Branch. The Legislative Branch Personnel Rules are intended to serve as uniform procedures that reflect current Legislative Branch employment practices.

(3) **Process for modifying personnel rules.**

(a) Prior to the adoption, amendment or repeal of any personnel rule by the Legislative Administration Committee, the Legislative Administrator shall provide a copy of the changes to all agency heads, parliamentarians and leadership chiefs of staff at least 30 days prior to the rule's effective date.

(b) Each member and employee of the Legislative Branch shall be made aware of and given access to the personnel rules and any subsequent change, rescission or addition to the rules. Each member and employee is expected to review and become familiar with the rules.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, the President of the Senate and the Speaker of the House of Representatives may establish an alternative procedure for considering modifications to personnel rules, except that no modification to a personnel rule may be made without notice and deliberation before committees of the Senate and the House or a joint committee of both houses.

(4) **Exempt service and at-will employment.**

(a) ORS 240.200 specifies that all officers and employees of the Legislative Branch are exempt service employees and are not generally subject to State Personnel Relations Law. Positions in the exempt service are not subject to the provisions of the rules and policies of the Oregon Department of Administrative Services, Chief Human Resources Office. However, ORS 240.245 provides that a salary plan for the exempt service must be equitably applied to the exempt position and in reasonable conformity with the general state salary structure.

(b) Each Legislative Branch employee serves at the will of the employee's appointing authority. As a result, an employee may be terminated at the discretion of the appointing authority or designee.

(c) Nothing in the personnel rules and related policies is intended to:

(A) Create any type of employment contract, whether express or implied;

(B) Provide any type of cause standard for evaluation of continued employment;

or

(C) Give an employee the right to be employed for any specific period of time.

(d) Notwithstanding an employee's at-will employment status, corrective action may be taken as a mechanism for notifying an employee of performance deficiencies with an opportunity to make correction, as described in LBPR 9.

(e) An agreement between an appointing authority and an employee may not be construed as an entitlement to continued employment.

**(5) Application of certain labor laws.**

(a) The Legislative Branch Personnel Rules constitute rules of proceedings of the Legislative Assembly and may take precedence over conflicting provisions of state law to the extent that the rules expressly provide for such precedence. Section 4, *Mason's Manual of Legislative Procedure* (2010 ed.).

(b) All employees of the Legislative Branch, other than legislative librarian positions, are exempt from the Fair Labor Standards Act (FLSA). The state of Oregon's wage and hour laws are applicable to positions in the Legislative Branch entitled to the payment of overtime as determined by Employee Services and as outlined in LBPR 4(12).

**(6) Authority.**

(a) The authority for the personnel rules is derived from Article IV, section 11, of the Oregon Constitution, and, where otherwise not in conflict with the rules, ORS 173.005, 173.007, 240.200 and 240.245.

(b) The personnel rules shall be known and may be cited as the Legislative Branch Personnel Rules, the personnel rules or LBPR.

(c) The Legislative Administrator is responsible for the administration of the Legislative Branch personnel system.

(d) At the direction of the Legislative Administrator, the Human Resources Director shall prepare, maintain and administer the personnel rules, related policies, a classification system, a compensation plan and recruitment and selection procedures.

(e) Agency heads and parliamentarians are responsible within their respective agencies or offices for the exercise of appointing authority, for the supervision of agency or office operations and for the equitable administration of the personnel rules and related policies.

(f) Agency heads and parliamentarians, consistent with the personnel rules and related policies, are responsible for the selection, appointment and retention of division directors and unit managers.

(7) **Time records.** Payroll shall maintain an official set of employee time records. The employee and the employee's supervisor, or the designee of the employee's supervisor, shall approve the employee's time record. Information for time records shall be recorded by Payroll for each employee, after which the time records will become the basis for the payroll. An employee's time record maintained under this rule shall include the following information:

- (a) Hours worked by nonexempt employees who are eligible for overtime as provided by LBPR 4 (12) and (13);
- (b) Vacation leave used;
- (c) Sick leave used;
- (d) Any other paid leave used; and
- (e) Unpaid leave used.

(8) **Interpretation.** To promote consistency in the interpretation of the personnel rules throughout the Legislative Branch, the appointing authority is encouraged to consult with Employee Services or with the Labor & Employment Section of the Department of Justice. Senate Rule 16.05 and House Rule 16.05 do not apply to requests for assistance made under this paragraph.

(9) **Separation of powers.**

(a) Unlike the United States Constitution which establishes separation of powers only by implication, the Oregon Constitution contains a specific requirement dividing state government into three separate branches: the Legislative, the Executive and the Judicial. The Oregon Constitution further provides that no person charged with official duties under one of these branches shall exercise any of the functions of another, except as otherwise expressly provided in the Constitution. *See* Article III, section 1, Oregon Constitution.

(b) Article III, section 1 prohibits:

- (A) Employees of one branch from undertaking a duty or function that belongs in another branch;
- (B) Employees of one branch, in performing a duty to appropriate to that branch from doing so in a way that unduly interferes with the operation of another branch's function; and
- (C) The same person from simultaneously performing duties as an affiliate of more than one branch.

(c) Due to Article III, section 1, employees may not work for more than one branch of government simultaneously.

(d) For the purpose of subsection (9) of this rule, volunteering does not constitute working.

(10) **Exceptions to LBPRs.** The Legislative Administrator is responsible for establishing and administering the LBPRs affecting the operations of the branch. Because it is impossible to anticipate every circumstance or contingency which might arise in the application of the rules, the Administrator or the Administrator's designee, if any, may grant exceptions to temporarily suspend the application of such rules as are necessary under the specific circumstances and timeframe being addressed. Exceptions may apply to all LBPRs except for provisions within those rules specifically required by law or other rule. The exception process is as follows:

- (a) An appointing authority shall submit a written request for an exception to the

Administrator or designee. The request should include but is not limited to:

- (A) Reference to the rule;
- (B) A description of the specific exception requested, including to whom the exception applies;
- (C) Options explored prior to requesting the exception;
- (D) Reasons for the exception request and an explanation of the specific circumstances requiring an exception; and
- (E) An explanation indicating how the exception will comply with all applicable statutes, contracts and rules.

(b) The Administrator or designee shall review the exception request and provide a written approval or denial within 30 days of the date the request was received. The approval or denial may be based on the following criteria:

- (A) If the exception will result in a cost savings or cost avoidance;
- (B) If the exception will enable the hiring of an exceptional candidate into a difficult to fill position;
- (C) If the exception will minimize liability to the branch; or
- (D) If the exception will maintain consistency with applicable statutes and other rules.

(c) In the event of an emergency or critical time constraints, the Administrator or designee may authorize general exceptions to the LBPRs. Any action by the Administrator or designee may not be contrary to administrative rule or law.

(d) If the Administrator or designee determines to approve the exception, the written approval must state the specific rule(s) and duration of the exception or that the exception is to be applied until otherwise modified. The written approval must also identify to whom or what the exception applies.

(e) A notice for an exception that impacts either a classification, multiple classifications, specific agencies, the assembly or the entire branch will be sent electronically and then posted on the Human Resources section on the Legislative Intranet for the duration of the exception. All documentation related to any exception shall be maintained by Employee Services.

Approved: DRAFT