

# Senate Concurrent Resolution 207

Sponsored by Senator COURTNEY (Presession 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 Legislative Branch Personnel Rules to align rules with existing statutory or regulatory requirements. Conforms rules to changes made in other personnel rules made in prior session. Repeals rule pertaining to documents required for employment.

## CONCURRENT RESOLUTION

### Be It Resolved by the Legislative Assembly of the State of Oregon:

That Legislative Branch Personnel Rule 7, as amended and in effect for the Eightieth Legislative Assembly, is repealed, and Legislative Branch Personnel Rules 1, 2, 4, 6, 8, 14, 16, 17, 28, 29 and 30, as amended and in effect for the Eightieth Legislative Assembly, be further amended as follows:

#### Legislative Branch Personnel Rule 1: General Provisions

(1) General application of rules. Unless otherwise stated in a specific rule, the Legislative Branch Personnel Rules (LBPR) 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, *[and]* 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 *[among legislative staff]* 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** *[give notice of the intended action:]*

*[(A) At least 30 days before the effective date of the change in rule;]*

*[(B) To all agency heads, parliamentarians and leadership chiefs of staff; and]*

*[(C) By providing 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.

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

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

7       (a) ORS 240.200 specifies that all officers and employees of the Legislative Branch are exempt  
 8 service employees and are not generally subject to State Personnel Relations Law. Positions in the  
 9 exempt service are not subject to the provisions of the rules and policies of the Oregon Department  
 10 of Administrative Services, [*Personnel Division*] **Chief Human Resources Office**. However, ORS  
 11 240.245 provides that a salary plan for the exempt service must be equitably applied to the exempt  
 12 position and in reasonable conformity with the general state salary structure.

13       [*(b) Legislative Branch employees are at-will employees.*]

14       [*(c)*] **(b)** Each Legislative Branch employee serves at the will of the employee's appointing au-  
 15 thority. As a result, an employee may be terminated at the discretion of the appointing authority  
 16 or designee.

17       [*(d)*] **(c)** Nothing in the personnel rules and related policies is intended to:

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

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

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

21       [*(e)*] **(d)** Notwithstanding an employee's at-will employment status, corrective action may be  
 22 taken as a mechanism for notifying an employee [*in a continuing status position*] of performance de-  
 23 ficiencies with an opportunity to make correction, as described in LBPR 9.

24       [*(f) A personnel rule or related policy may not be construed as setting forth procedural or sub-*  
 25 *stantive provisions that entitle an employee to continued employment.*]

26       [*(g)*] **(e)** An agreement between an appointing authority and an employee may not be construed  
 27 as [*setting forth procedural or substantive provisions that entitle an employee*] **an entitlement** to  
 28 continued employment.

29       (5) Application of certain labor laws.

30       (a) The Legislative Branch Personnel Rules constitute rules of proceedings of the Legislative  
 31 Assembly and **may** take precedence over conflicting provisions of state law to the extent that the  
 32 rules expressly provide for such precedence. Section 4, *Mason's Manual of Legislative Procedure*  
 33 (2010 ed.).

34       [*(b) As provided by 29 U.S.C. 203(e)(2)(C), all Legislative Branch employees, except legislative li-*  
 35 *brary employees, are exempt from the Fair Labor Standards Act (29 U.S.C. 201 et seq.). These rules*  
 36 *may modify state laws implementing the Fair Labor Standards Act to the extent that those laws apply*  
 37 *to Legislative Branch employees.*]

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

42       (6) Authority.

43       (a) The authority for the personnel rules is derived from Article IV, section 11, of the Oregon  
 44 Constitution, and, where otherwise not in conflict with the rules, ORS 173.005, 173.007, 240.200 and  
 45 240.245.

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

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

5 (d) At the direction of the Legislative Administrator, the Human Resources Director shall pre-  
6 pare, maintain and administer the personnel rules, related policies, a classification system, a com-  
7 pensation plan and recruitment and selection procedures.

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

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

13 (7) Time records. [*The*] Payroll [*administrator*] shall maintain an official set of employee time  
14 records. The employee and the employee's supervisor, or the designee of the employee's supervisor,  
15 shall approve the employee's time record. Information for time records shall be recorded by [*the*]  
16 Payroll [*administrator*] for each employee, after which the time records will become the basis for the  
17 payroll. An employee's time record maintained under this rule shall include the following informa-  
18 tion:

19 (a) Hours worked by nonexempt employees who are eligible for overtime as provided by LBPR  
20 4 [(7)] **(12) and (13)**;

21 (b) Vacation leave used;

22 (c) Sick leave used;

23 (d) Any other paid leave used; and

24 (e) Unpaid leave used.

25 (8) Interpretation. [*The interpretation of a personnel rule by an agency head or parliamentarian*  
26 *is final and binding on the legislative agency or parliamentary office and the employees supervised by*  
27 *an agency head or parliamentarian.*] To promote consistency in the interpretation of the personnel  
28 rules throughout the Legislative Branch, [*an agency head or parliamentarian is*] **appointing au-**  
29 **thorities are** encouraged to consult with **Employee Services or with the Labor and Employment**  
30 **Section of the Department of Justice** [*the Legislative Counsel or the Human Resources Director*].  
31 **Senate Rule 16.05 and House Rule 16.05 do not apply to requests for assistance made under**  
32 **this subsection.**

33 **(9) Separation of powers.**

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

40 (b) **Article III, section 1, prohibits:**

41 (A) **Employees of one branch from undertaking a duty or function that belongs in an-**  
42 **other branch;**

43 (B) **Employees of one branch, in performing a duty appropriate to that branch, from do-**  
44 **ing so in a way that unduly interferes with the operation of another branch's function; and**

45 (C) **The same person from simultaneously performing duties as an affiliate of more than**

1 **one branch.**

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

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

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

13 **(a) An appointing authority shall submit a written request for an exception to the ad-**  
14 **ministrator or designee. The request must include, but is not limited to:**

15 **(A) Reference to the rule;**

16 **(B) A description of the specific exception requested, including to whom the exception**  
17 **applies;**

18 **(C) Options explored prior to requesting the exception;**

19 **(D) Reasons for the exception request and an explanation of the specific circumstances**  
20 **requiring an exception; and**

21 **(E) An explanation indicating how the exception will comply with all applicable statutes,**  
22 **contracts and rules.**

23 **(b) The administrator or designee shall review the exception request and provide a writ-**  
24 **ten approval or denial within 30 days of the date the request was received. The approval or**  
25 **denial may be based on the following criteria:**

26 **(A) If the exception will result in a cost savings or cost avoidance;**

27 **(B) If the exception will enable the hiring of an exceptional candidate into a difficult to**  
28 **fill position;**

29 **(C) If the exception will minimize liability to the branch; or**

30 **(D) If the exception will maintain consistency with applicable statutes and other rules.**

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

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

38 **(e) A notice for an exception that impacts a classification, multiple classifications, spe-**  
39 **cific agencies, the assembly or the entire branch shall be sent electronically and then posted**  
40 **on the Human Resources section on the Legislative Intranet for the duration of the excep-**  
41 **tion. All documentation related to any exception shall be maintained by Employee Services.**

42  
43 **Legislative Branch Personnel Rule 2: Definitions**

44 **APPLICABILITY:** This rule applies to members of the Legislative Assembly and all employees  
45 **of the Legislative Branch.**

1 The following definitions apply to the Legislative Branch Personnel Rules unless otherwise  
2 noted in a specific rule:

3 (1) "Agency head" means the Legislative Administrator, the Legislative Counsel, the Legislative  
4 Fiscal Officer, the Legislative Revenue Officer, [or] the Executive Director of the Legislative Com-  
5 mission on Indian Services, **the Legislative Policy and Research Director or the Legislative**  
6 **Equity Officer.**

7 (2) "Appointing authority" means the person who has authority in the interest of the employer  
8 to hire, transfer, suspend, lay off, recall, promote, discharge or discipline an employee. "Discharge"  
9 includes dismissal and termination.

10 (3) "At-will employee" means an employee who may be terminated without cause at the dis-  
11 cretion of the appointing authority or designee. All Legislative Branch employees are at-will em-  
12 ployees throughout their service, regardless of the duration of the position or the funding for the  
13 position, including service during an introductory period.

14 (4) "Caucus leader" means the Democratic or Republican Leader of the Senate or the Demo-  
15 cratic or Republican Leader of the House of Representatives.

16 (5) "Caucus office" means the office of the Democratic or Republican Leader of the Senate or  
17 the office of the Democratic or Republican Leader of the House of Representatives.

18 (6) "Class," "classification" or "class of positions" means a group of positions sufficiently alike  
19 in duties, authorities and responsibilities that similar qualifications and schedules of compensation  
20 may be applied to the group of positions.

21 (7) "Class specifications" means a document setting forth, for each class, a class title, distin-  
22 guishing features, characteristic duties and necessary knowledge, skills and abilities.

23 (8) **"Compensation" means wages, salary, bonuses, benefits, fringe benefits and equity-**  
24 **based compensation. Compensation does not mean tips or reimbursement for any actual**  
25 **costs incurred including, but not limited to, relocation reimbursements, mileage and out-of-**  
26 **pocket expenses.**

27 [(8)] (9) "Compensation plan" means the schedule of rates of pay for the various classes and ti-  
28 tles in legislative service.

29 [(9)] (10) "Compensatory time" means paid time off instead of cash payment for overtime worked.

30 [(10)] (11) "Continuing status" means a position of indefinite, ongoing duration as opposed to a  
31 session-only status position or other position with the Legislative Branch that is filled on a tempo-  
32 rary or limited duration basis.

33 [(11)] (12) "District office" means any office facility operated for more than 30 days for the  
34 benefit of one or more members of the Legislative Assembly that is not located within the physical  
35 structure of the State Capitol building.

36 [(12)] (13) "Employee" **means an individual appointed to a position in the Legislative**  
37 **Branch. This definition also** includes officers elected by the Legislative Assembly but does not  
38 include officers elected by popular vote **or independent contractors. This definition also includes**  
39 **interns and temporary status employees, when noted in rule.**

40 [(13)] (14) "Employee Services" means the division of Legislative Administration charged with  
41 employment and human resources administration for the Legislative Branch. The manager of Em-  
42 ployee Services is the Human Resources Director.

43 (15) **"Equal pay analysis" means an evaluation process to assess and correct wage dis-**  
44 **parities among employees who perform work of comparable character. A branch-wide anal-**  
45 **ysis shall be performed at least once every three years.**

1 [(14)] (16) “Flexible work schedule” means a work schedule that varies from a regular work  
2 schedule in the number of hours worked, the number of days worked or the starting or stopping  
3 times of work.

4 [(15)] (17) “Human Resources Director” means the manager of Employee Services.

5 [(16)] (18) “Introductory period” means the **six month** period following the initial appointment  
6 to a position in the Legislative Branch, a change in positions within the Legislative Branch or an  
7 appointment to a **permanent** position in the Legislative Branch that follows a break in legislative  
8 service of at least 12 months’ duration. **Limited duration or temporary appointments do not**  
9 **serve an introductory period.**

10 [(17)] (19) “Leadership chiefs of staff” means the Chief of Staff of the Office of the Senate  
11 President and the Chief of Staff of the Office of the Speaker of the House of Representatives.

12 [(18)] (20) “Leadership office” means the Office of the Senate President[,] **or** the Office of the  
13 Speaker of the House of Representatives.

14 [(19)] (21) “Legislative agency” means Legislative Administration, the Legislative Counsel Of-  
15 fice, the Legislative Fiscal Office, the Legislative Revenue Office [*or*], the Legislative Commission  
16 on Indian Services, **the Legislative Policy and Research Office or the Legislative Equity**  
17 **Office.**

18 [(20)] (22) “Legislative Branch” means members and employees of the Legislative Assembly, the  
19 parliamentary offices, Legislative Administration, the Legislative Counsel Office, the Legislative  
20 Fiscal Office, the Legislative Revenue Office [*and*], the Legislative Commission on Indian Services,  
21 **the Legislative Policy and Research Office and the Legislative Equity Office.**

22 [(21)] (23) “Limited duration status” means an employment status that terminates at the end of  
23 a specified period, and that exists to complete work of certain or limited duration or when position  
24 reduction is anticipated.

25 [(22)] (24) “Member of the Legislative Assembly” or “member” means a Senator or Represen-  
26 tative.

27 [(23)] (25) “Mobile work” means work performed on a regular basis at a work site other than  
28 the employee’s regular work location.

29 [(24)] (26) “Parliamentarian” means the Secretary of the Senate or the Chief Clerk of the House  
30 of Representatives.

31 [(25)] (27) “Parliamentary office” means the Office of the Secretary of the Senate or the Office  
32 of the Chief Clerk of the House of Representatives.

33 [(26)] (28) “Personal staff” means an employee working directly for a legislative member and  
34 paid from the member’s services and supply budget.

35 [(27)] (29) “Presiding officers” means the Senate President and the Speaker of the House of  
36 Representatives.

37 [(28)] (30) “Reclassification” means a classification change based on a significant change of po-  
38 sition duties, authority and responsibilities, but with continuation of the same general knowledge  
39 and skills.

40 [(29)] (31) “Recognized service date” means the date reflecting an employee’s initial appointment  
41 to state service[, *and that is*] used to determine the employee’s vacation accrual rate.

42 [(30)] (32) “Red-circled” means, when a position is allocated to a lower classification, retention  
43 of the employee’s salary rate at the higher classification if the salary rate is above the maximum  
44 of the new, lower classification, **or when an equal pay analysis finds that an employee’s salary**  
45 **is inequitable to the employee’s favor and is frozen until equity is established by work of a**

1 **comparable character. A red-circled salary does not receive cost of living increases.**

2 [(31)] (33) “Regular work schedule” means a work schedule of eight hours per day, 40 hours per  
3 week.

4 [(32)] (34) “Salary eligibility date” means the date on which an employee is eligible for consid-  
5 eration for a merit increase.

6 [(33)] (35) “Session-only status” means an employment position that occurs during a period that  
7 begins on or after December 1 preceding a regular session and ends on or before the end of the  
8 month following the month in which that regular session adjourns sine die.

9 [(34)] (36) “Telecommuting” or “performing mobile work” means performing the employee’s work  
10 on a regular basis at a work site other than the employee’s regular work location.

11 [(35)] (37) “Temporary status” means a noncompetitive employment status established to cope  
12 with short-term or unexpected workload demands when the establishment of a permanently funded  
13 position is inappropriate or unfeasible.

14 [(36)] (38) “Underfill” means employment of a person in a classification lower than the allocated  
15 level of the position, when there is a reasonable expectation that the employee will meet minimum  
16 qualifications of the allocated level within 24 months of appointment.

17 [(37)] (39) “Work out of class” means a temporary assignment of an employee to assume essen-  
18 tially all of the duties, authorities and responsibilities of a position classified at a higher salary  
19 level, for a period of 10 or more days.

20  
21 Legislative Branch Personnel Rule 4: Compensation and Salary Administration

22 **APPLICABILITY:** This rule applies to all employees of **the Legislative Branch and does not**  
23 **apply to** *[legislative agencies and parliamentary offices, except that:]*

24 *[(a) Subsections (3)(e) and (12) of this rule apply to all Legislative Branch employees who are*  
25 *not] members of the Legislative Assembly, **unless noted otherwise. Subsections (1), (3)(a), (4)(a),***  
26 ***(5), (6), (10), (11), (12)(a), (b), (d) and (e), (13), (14)(a) and (19) of this rule apply to temporary***  
27 ***status employees.]***

28 *[(b) Subsection (15) of this rule applies to members of the Legislative Assembly and all Legislative*  
29 *Branch employees; and]*

30 *[(c) Subsections (1) to (14) and (16) of this rule do not apply to temporary status employees.]*

31 (1) Purpose. The purpose of *[the]* **this rule is to provide an equitable** compensation *[plan is to*  
32 *provide a uniform]* system for establishing and assigning salary levels and administering pay to re-  
33 cruit and retain a high-quality workforce. **Any salary-based decision an employee or appointing**  
34 **authority believes is inequitable may be appealed as outlined in subsections (6) or (7) of this**  
35 **rule.**

36 (2) Preparation of compensation plan.

37 **(a) Each compensation plan shall comply with the equal pay and salary history require-**  
38 **ments of ORS 652.220 and 659A.357.**

39 **(b)** For each class of work, a minimum and maximum pay *[rate, and intermediate rates as neces-*  
40 *sary,]* **range** shall be established*]. The rates assigned to each class must reflect]* **reflecting** the dif-  
41 ferences in the duties, authorities and responsibilities of the class.

42 **(c) Each compensation plan must be based on market data, to the extent the data is**  
43 **available.** Data considered as part of compensation analysis may include, but need not be limited  
44 to, rates paid by other public and private employers for comparable work*], Legislative Branch poli-*  
45 *cies and financial conditions, unusual recruitment and retention circumstances and other relevant sal-*

1 ary and economic data]. **An employee may not be hired at less than minimum wage.**

2 [(3) Salary administration.]

3 [(a) Entrance salary hiring range. An employee may not be hired at less than the current Oregon  
4 minimum wage.]

5 [(A) An employee shall normally be appointed at a step that is in the bottom half of the salary  
6 range for a class.]

7 [(B) An appointing authority may hire an applicant at up to the top step in the salary range for  
8 a class if:]

9 [(i) The applicant's current or most recent relevant salary and benefits are higher than the Legis-  
10 lative Branch's first step;]

11 [(ii) The applicant brings education or experience to the job that will substantially enhance the  
12 employee's immediate contribution; or]

13 [(iii) Unusual or difficult recruitment conditions exist.]

14 [(C) The appointing authority shall document and retain the reasons for hiring above the bottom  
15 half of the applicable class.]

16 [(b) Part-time employees.]

17 [(A) A part-time employee may not be hired at less than the current Oregon minimum wage.]

18 [(B) Any employee hired to work less than full time (40 hours per week) is a part-time employee.  
19 A part-time employee may be scheduled to work for only one of the following percentages of full-time  
20 work:]

21 [(i) 20 percent;]

22 [(ii) 25 percent;]

23 [(iii) 40 percent;]

24 [(iv) 50 percent;]

25 [(v) 60 percent;]

26 [(vi) 75 percent;]

27 [(vii) 80 percent;]

28 [(viii) 90 percent; or]

29 [(ix) 95 percent.]

30 [(c) Hiring bonus. With the approval of the agency head or parliamentarian, a lump sum payment  
31 may be given to an employee at the time of hiring, promotion or lateral transfer when there is a difficult  
32 recruitment situation and the payment is needed in order to fill the position. Documentation of the  
33 specifics of the payment must be retained in the recruitment file.]

34 [(d) Moving expenses. An appointing authority may reimburse actual moving expenses for a newly  
35 hired employee, not to exceed a total of \$5,000. A condition of moving expense reimbursement is  
36 agreement to repay any moving expense reimbursement in an amount equal to the amount of moving  
37 expenses reimbursed multiplied by the percentage of the 24-month commitment not served by the em-  
38 ployee. The employee is not responsible for repayment of moving expense reimbursement if the employee  
39 is terminated at the discretion of the appointing authority under terms of at-will employment.]

40 [(e) Branch-wide changes to compensation plan. The presiding officers may, at such times as the  
41 presiding officers deem appropriate and subject to the availability of resources, adjust the compensation  
42 plan. Adjustments may be made in each step of each salary range and may not result in employee  
43 movement from one step to another. All employees who are on step are eligible for adjustment of steps.  
44 Employees that are off step will receive a salary adjustment only at the request of the appointing au-  
45 thority via personnel action.]



1        *[(f) Introductory period.]*

2        *[(A) During an introductory period, an employee is trained and oriented to the employee's position*  
 3 *in the Legislative Branch. In general, an employee is not eligible for a raise or promotion during an*  
 4 *introductory period. An introductory period lasts for six months but may be extended by the appointing*  
 5 *authority.]*

6        *[(B) After completion of an introductory period, an appointing authority shall review the perform-*  
 7 *ance of an employee and may authorize a minimum one-step salary increase within the employee's*  
 8 *salary range if the increase would not cause the employee's salary to exceed the maximum rate for the*  
 9 *range. Any step increase awarded upon the completion of an employee's introductory period is entirely*  
 10 *at the discretion of the appointing authority. If granted, the increase becomes effective on the first day*  
 11 *of the month following successful completion of the introductory period. The salary eligibility date is*  
 12 *one year after the employee's most recent increase.]*

13        *[(g) Annual merit increase.]*

14        *[(A) The appointing authority of a limited duration status employee or an employee in a continuing*  
 15 *status position may grant, postpone or deny an annual merit increase to the employee on the employee's*  
 16 *salary eligibility date if the employee's base rate of pay does not equal or exceed the maximum rate for*  
 17 *the employee's salary range. If awarded, an annual merit increase is one step.]*

18        *[(B) At any time during the year following the postponement or denial of an annual merit increase,*  
 19 *the appointing authority may grant the increase. Withholding of an annual merit increase does not*  
 20 *change an employee's salary eligibility date.]*

21        *[(C) For each period of leave without pay that is in excess of 15 consecutive calendar days, the*  
 22 *employee's recognized service date shall be permanently adjusted by adding to the salary eligibility*  
 23 *date the number of calendar days absent, thereby making the eligibility date later than it would have*  
 24 *been if leave without pay had not been taken. This subsection does not apply to unpaid leave authorized*  
 25 *under LBPR 15.]*

26        *[(h) Promotional increases.]*

27        *[(A) Upon promotion, an employee may receive an increase in pay equivalent to one step, unless*  
 28 *additional steps are required to compensate the employee at the first step of the classification to which*  
 29 *the employee is promoted.]*

30        *[(B) Under unusual circumstances and after consultation with the Human Resources Director, an*  
 31 *employee may be offered an increase in pay beyond the first step of the new range. Unusual circum-*  
 32 *stances include, but are not limited to, the employee's education or experience that will substantially*  
 33 *enhance the employee's immediate contribution, and the existence of documented unusual or difficult*  
 34 *recruitment conditions. Such an increase may not cause the employee's new base rate of pay, excluding*  
 35 *differentials, to exceed the maximum rate of pay for the higher-level classification. The appointing au-*  
 36 *thority shall inform the Human Resources Director of the increase and document and retain the reasons*  
 37 *for granting the increase.]*

38        *[(C) An employee who is promoted may receive a step increase following the promotional intro-*  
 39 *ductory period. The salary eligibility date is one year after the increase.]*

40        **(3) Salary administration - general.**

41        **(a) New hire.**

42        **(A) A prospective employee shall not be asked about current or past salary history at**  
 43 **any time during the hiring process.**

44        **(B) A prospective employee may not be initially offered compensation based on current**  
 45 **or past compensation. An employee shall be appointed at a rate that complies with the equal**

1 pay requirements of ORS 652.220 and 659A.357.

2 (C) Employee Services shall complete an equal pay analysis within two business days af-  
3 ter a request is received.

4 (D) An offer including salary may not be extended until Employee Services completes the  
5 equal pay analysis.

6 (b) Hiring bonus. With the approval of the appointing authority and after Employee Ser-  
7 vices completes an equal pay analysis, a lump sum payment may be given to an employee at  
8 the time of hire, promotion or lateral transfer when there is a difficult recruitment situation  
9 and the payment is needed to fill the position. Documentation of the specifics of the payment  
10 must be retained in the recruitment file or, if hired, the employee's personnel record.

11 (c) Introductory period.

12 (A) During an introductory period, an employee is trained and oriented to the employee's  
13 position in the Legislative Branch. In general, an employee is not eligible for a raise during  
14 an introductory period. An introductory period lasts for six months but may be extended by  
15 the appointing authority.

16 (B) After completion of an introductory period, an employee normally receives a one-step  
17 salary increase as long as the increase does not cause the employee's salary to exceed the  
18 maximum rate in the range. The increase becomes effective on the first day of the month  
19 following successful completion of the introductory period. The salary eligibility date is one  
20 year after the employee's most recent increase.

21 (C) If an appointing authority extends an introductory period due to performance issues,  
22 the employee may not receive a step increase unless and until the employee's performance  
23 is satisfactory.

24 (D) An appointing authority must provide the employee with performance feedback prior  
25 to denying any step increase and document the feedback in the employee's personnel record.

26 (E) An appointing authority shall not withhold a salary increase due to budgetary reasons  
27 unless a branch-wide salary freeze is in effect.

28 (d) Annual merit increase.

29 (A) A limited duration status employee or an employee in a continuing status position  
30 normally receives an annual one-step merit increase on the employee's salary eligibility date  
31 when the employee's base rate of pay does not equal or exceed the maximum rate for the  
32 employee's salary range.

33 (B) If an appointing authority postpones or denies a merit step increase, the appointing  
34 authority must provide the employee with performance feedback prior to postponing or de-  
35 nying any step increase and document the feedback in the employee's personnel record.

36 (C) At any time during the year following the postponement or denial of an annual merit  
37 increase, the appointing authority may grant the increase. Postponing or denying an annual  
38 merit increase does not change an employee's salary eligibility date.

39 (e) Promotional increases.

40 (A) Upon promotion, an employee normally receives an increase in pay equivalent to one  
41 step, unless additional steps are required to compensate the employee at the first step of the  
42 new classification or an equal pay analysis indicates a higher rate of pay not to exceed the  
43 maximum rate of pay. All equal pay analysis documentation shall be retained in the  
44 employee's personnel record for the established rate of pay.

45 (B) An employee who is promoted may receive a step increase six months following the

1 effective date of the promotion. The salary eligibility date for the annual merit increase is  
2 one year after the promotional increase.

3 (f) Merit bonus.

4 (A) With the approval of the appointing authority and Employee Services, a lump sum  
5 payment or the equivalent amount of leave may be given to a current, eligible employee when  
6 the employee's performance rating exceeds expectations and meets the following criteria:

7 (i) Payment by results;

8 (ii) Longevity;

9 (iii) Special assignment;

10 (iv) Achieved special job-related skills;

11 (v) Training or education;

12 (vi) Extensive hours; or

13 (vii) Extensive travel.

14 (B) Lump sum payments or equivalent administrative leave may only be given one time  
15 in a calendar year beginning January 1 and going through December 31. The employee must  
16 be employed for at least six months or employed through a long session (February through  
17 June) to be eligible. The amount shall not exceed one month of an eligible employee's gross  
18 monthly salary or equivalent amount of administrative leave. Necessary justification doc-  
19 umentation must be maintained in the employee's record.

20 (g) Special salary adjustments.

21 (A) An appointing authority may grant a one-step special salary adjustment, up to the  
22 salary range maximum, to any employee who is not in a temporary position, who has com-  
23 pleted six months of employment and, if applicable, who has completed six months of the  
24 current introductory period. An equal pay analysis must be completed by Employee Services  
25 prior to granting the special salary adjustment.

26 (B) A special salary adjustment is to be reserved for truly exemplary performance or for  
27 uniquely compelling circumstances. An appointing authority who wishes to grant a special  
28 salary adjustment to an employee must submit, for inclusion in the employee's personnel  
29 record, written justification that clearly demonstrates how this expenditure is equitable and  
30 in the best interest of the Legislative Branch.

31 (C) An employee may receive no more than one special salary adjustment in any  
32 12-month period. Such an adjustment does not affect an employee's salary eligibility date.

33 (h) Salary eligibility date. For each period of leave without pay that is in excess of 15  
34 consecutive calendar days, the employee's recognized service date shall be permanently ad-  
35 justed by adding to the salary eligibility date the number of calendar days absent, thereby  
36 making the eligibility date later than it would have been if leave without pay had not been  
37 taken. This subsection does not apply to statutorily protected leave.

38 (4) Salary administration - misc.

39 (a) Part-time employees. Any employee hired to work less than full time (40 hours per  
40 week) is a part-time employee. A part-time employee may be scheduled to work any per-  
41 centage of full-time work if the percentage is a whole percent and does not total more than  
42 100 percent.

43 [(i)] (b) Transfer. When an employee transfers from one position to another position **from the**  
44 **Legislative, Judicial or Executive Branch** in the same **or comparable** classification or a classi-  
45 fication having the same **or comparable** salary range, the employee's base rate of pay remains the

1 same. **Employee Services will help determine a comparable salary range when an employee**  
 2 **transfers from another branch.** The employee's status and salary eligibility date are not affected  
 3 **unless the employee serves an introductory period. If the employee serves an introductory**  
 4 **period and is granted a step increase at the end of the introductory period, the employee's**  
 5 **salary eligibility date is set one year thereafter.**

6 [(j)] (c) Reclassification.

7 (A) Upward.

8 (i) Except as described below, when an employee's position is reclassified to a higher classi-  
 9 fication, the employee may receive an increase from the employee's base rate of pay to a rate in the  
 10 salary range to which the employee is reclassified. [*The employee's status is not affected.*] The  
 11 employee's salary eligibility date is not affected by the reclassification.

12 (ii) Under unusual circumstances, **as documented through an internal equal-pay analysis,**  
 13 an appointing authority may, **in consultation with Employee Services,** grant an additional step  
 14 upon upward reclassification. Unusual circumstances include, but are not limited to, an employee's  
 15 scheduled salary eligibility date closely following the effective date of the upward  
 16 reclassification[,], or the employee having received a differential for a substantial duration that will  
 17 no longer continue after the upward reclassification. Such an increase may not cause the employee's  
 18 new base rate of pay to exceed the maximum rate of the higher-level classification. [*The appointing*  
 19 *authority shall report the increase to the Human Resources Director and document and retain the*  
 20 *reasons for granting such an increase.*] **Necessary justification documentation must be main-**  
 21 **tained in the employee's record.**

22 (B) Downward. When an employee's position is reclassified to a lower classification, the  
 23 employee's base rate of pay [*and status are*] **is not affected.** If the employee's base rate of pay is  
 24 higher than the maximum rate of pay for the class to which the employee is reclassified, the em-  
 25 ployee shall be red-circled. If the employee's base rate of pay is lower than the maximum rate for  
 26 the class to which the employee is reclassified, the employee's salary eligibility date is not affected.

27 [(k)] (d) Demotion.

28 (A) Voluntary demotion.

29 (i) When a regular status [*employee*] or a limited duration status employee requests and is  
 30 granted demotion to a classification having a lower salary range, the employee's base rate of pay  
 31 shall be decreased to a rate within the salary range of the lower classification. The employee's sal-  
 32 ary eligibility date shall not be affected. However, if the employee's base rate of pay is above the  
 33 maximum rate for the lower salary range, the employee's base rate of pay shall be decreased to the  
 34 maximum rate of the lower salary range, and the month and day of the employee's salary eligibility  
 35 date shall be maintained. The employee's status is not affected.

36 (ii) When an employee who has been promoted and is on a promotional introductory period re-  
 37 quests and is granted demotion back to the employee's prior classification, the appointing authority  
 38 shall reduce the employee's base rate of pay to the step in the salary range that the employee was  
 39 at prior to promotion. The month and day of the employee's prior salary eligibility date shall be  
 40 restored and the employee shall receive the annual increase the employee would have otherwise  
 41 received, if any, but for the promotion. The employee's status returns to what it was prior to pro-  
 42 motion.

43 (iii) When an employee in an initial introductory period, or a limited duration status employee  
 44 who has been employed for less than one year, requests **and is granted a** demotion to a classifica-  
 45 tion having a lower salary range, the appointing authority shall adjust the employee's base rate of

1 pay, not including differentials, to the lower salary range and may adjust the employee's base rate  
2 of pay to any rate of pay within that salary range that is **equitable and** equal to or lower than the  
3 employee's base rate of pay prior to demotion. The employee's salary eligibility date is not affected,  
4 provided the employee's base rate of pay does not equal the maximum rate of the lower salary range.  
5 The employee's status is not affected.

6 **(B) Involuntary demotion.** When an employee is involuntarily demoted, the appointing authority  
7 shall adjust the employee's salary range to the salary range for the position to which the employee  
8 is demoted and *[may adjust]* **adjust** the employee's base rate of pay to *[any]* **an equitable** step within  
9 that salary range. The employee's status *[is]* **and salary eligibility date are** not affected. *[The*  
10 *employee's salary eligibility date is not affected provided the employee's base rate of pay does not equal*  
11 *the maximum rate within the lower salary range.]*

12 **(C) Employee Services must complete an equal pay analysis which may warrant a higher**  
13 **pay rate within the range. Equal pay analysis documentation must be retained in the**  
14 **employee's personnel record.**

15 *[(L) Red-circled employees. The base rate of pay of an employee who becomes red-circled may not*  
16 *be increased until the salary amount being paid is within the salary range established for the*  
17 *position.]*

18 *[(m)] (e) Rehire.* Upon rehire, an employee's base rate of pay, not including differentials, shall  
19 be determined *[by the appointing authority in accordance with this subsection]* **after an equal pay**  
20 **analysis by Employee Services is complete. Equal pay analysis documentation must be re-**  
21 **tained in the employee's personnel record.**

22 **(f) Red-circled employees.** The base rate of pay of an employee who becomes red-circled  
23 **may not be increased, including cost of living increases, until the salary amount being paid**  
24 **is within the salary range established for the position. An employee with a red-circled status**  
25 **is not considered to have received a reduction in the employee's level of compensation for**  
26 **purposes of complying with the equal pay provisions under ORS 652.220.**

27 **(g) Market salary review.**

28 **(A) Every three years, beginning in 2023, a branch-wide market study will be done com-**  
29 **paring the branch salaries against the current market.**

30 **(B) After review of the results by Employees Services and the appointing authorities,**  
31 **recommendations shall be presented to the Legislative Administration Committee (LAC) or**  
32 **its designee for an implementation decision.**

33 **(C) An employee's salary may not be reduced as a result of the review.**

34 **(5) Equal pay analysis.**

35 **(a) The Legislative Branch shall perform an equal pay analysis, as defined in ORS 652.210,**  
36 **at the times and with the frequency to ensure compliance with ORS 652.220 and other laws**  
37 **that prohibit wage discrimination. Notwithstanding any other provision of this rule, the**  
38 **Legislative Branch shall pay wages in conformance with the most recent equal pay analysis.**

39 **(A) Any necessary adjustments will be effective on the date the equal pay analysis was**  
40 **complete.**

41 **(B) An employee's pay may not be reduced as a result of the analysis.**

42 **(b) Equity adjustment.** An employee or appointing authority may provide Employee Ser-  
43 vices with a written request, on a case-by-case basis, to conduct an equity adjustment re-  
44 view. Written appeals to an equity adjustment decision may be made in accordance with  
45 subsections (6) or (7) of this rule.

1       **(6) Equal pay appeal - employees.**

2       **(a) An employee may appeal any salary-based decision if the employee believes their pay**  
3 **is inequitable as follows:**

4       **(A) An employee may make a written appeal to the employee's appointing authority and**  
5 **Employee Services within 60 calendar days after receipt of any equal pay analysis results.**  
6 **The employee's written appeal shall identify all factors outlined in ORS 652.220 (2) the em-**  
7 **ployee believes were not properly considered and include all supporting documentation, if**  
8 **any.**

9       **(B) Employee Services shall respond in writing to the employee's appeal within 30 calen-**  
10 **dar days from receipt of the written appeal and all necessary information and documenta-**  
11 **tion.**

12       **(C) The parties may agree to extensions of time from the process outlined in this section**  
13 **upon written mutual agreement.**

14       **(D) All documentation must be retained with the employee's personnel record.**

15       **(E) Any salary adjustments shall be effective on the first day of the month following the**  
16 **decision.**

17       **(b) The appeal shall only relate to the employee's own salary. An employee cannot appeal**  
18 **on behalf of or because of decisions made on another employee's salary.**

19       **(c) No part of the appeal process precludes an employee from submitting a claim to the**  
20 **Bureau of Labor and Industries (BOLI) in accordance with BOLI's administrative rules or**  
21 **pursuing other legal recourse.**

22       **(7) Equal pay appeal - appointing authority.**

23       **(a) An appointing authority may appeal any salary-based decision made by Employee**  
24 **Services if the appointing authority feels the pay decision is inequitable as follows:**

25       **(A) An appointing authority may make a written request for reconsideration to Employee**  
26 **Services within 30 calendar days after receipt of any equal pay analysis results. The ap-**  
27 **pointing authority's request for reconsideration shall identify all factors outlined in ORS**  
28 **652.220 (2) the appointing authority believes were not properly considered and include all**  
29 **supporting documentation, if any.**

30       **(B) Employee Services shall respond in writing to the appointing authority's request**  
31 **within 30 calendar days from receipt of the written request and all necessary information**  
32 **and documentation.**

33       **(C) All appeal documentation must be retained with the employee's personnel record.**

34       **(b) If the appointing authority believes the reconsideration decision is inequitable, an**  
35 **appointing authority may appeal the reconsideration as follows:**

36       **(A) Within 60 calendar days of the response to the request for reconsideration, an ap-**  
37 **pointing authority may file a formal appeal with the Legislative Administrator:**

38       **(i) If the appeal concerns nonpartisan staff, appoint an appeals panel consisting of at**  
39 **least three agency heads or parliamentarians, including the administrator who shall serve**  
40 **as the appeals panel chair. The agency head or parliamentarian who is the appellant may not**  
41 **serve on the appeals panel.**

42       **(ii) If the appeal concerns partisan staff, the appeal is forwarded to the Senate or House**  
43 **majority and minority leaders. Each leader shall appoint one member of their caucus to**  
44 **serve on the appeals panel. If a leader is the appellant, the deputy leader of that caucus shall**  
45 **make the appointment and the appellant may not serve on the appeals panel. The member**

1 of the appeals panel who is from the same caucus as the appellant shall serve as the appeals  
2 panel chair.

3 (B) Within 30 calendar days of receipt of the appeal, the panel shall schedule a time to  
4 review the appeal and supporting documentation and decide the appeal.

5 (C) The panel shall provide a written response to the appointing authority no more than  
6 90 calendar days from receipt of the written appeal.

7 (D) The parties may agree to extensions of time from the process outlined in this section  
8 upon written mutual agreement.

9 (E) All appeal documentation must be retained with the employee's personnel record.

10 (c) No part of the appeal process precludes an employee from submitting a claim to the  
11 Bureau of Labor and Industries (BOLI) in accordance with BOLI's administrative rules or  
12 pursuing other legal recourse.

13 (8) Compensation plan changes. The Legislative Administration Committee (LAC) may,  
14 at such times as LAC deems appropriate and subject to the availability of resources, adjust  
15 the compensation plan and set the effective date of the compensation plan adjustment. LAC  
16 may designate to the presiding officers the authority to grant changes to the compensation  
17 plan, including branch-wide changes. The designation must be in writing, with an effective  
18 and expiration date and be filed with Employee Services.

19 (9) Moving expenses. An appointing authority may reimburse actual moving expenses for  
20 a newly hired employee, not to exceed a total of \$20,000. The appointing authority shall re-  
21 quire receipts for any reimbursement requests above \$5,000. A condition of moving expense  
22 reimbursement is agreement to repay any moving expense reimbursement in an amount  
23 equal to the amount of moving expenses reimbursed multiplied by the percentage of the  
24 24-month commitment not served by the employee. The employee is not responsible for re-  
25 payment of moving expense reimbursement if the employee is terminated at the discretion  
26 of the appointing authority under terms of at-will employment. The employee shall be noti-  
27 fied that all or part of any moving expenses may be considered taxable income by the  
28 Internal Revenue Service. Legislative Administration shall report the reimbursements on the  
29 employee's form W-2. Employees are encouraged to consult a tax professional on advice on  
30 their own tax liabilities and allowable tax deductions.

31 (10) Partial pay period. If an employee works less than a full calendar month in a pay  
32 period due to hire, termination or leave without pay, the employee's pay for that month shall  
33 be computed on a prorated basis using the number of available work hours, based on the  
34 employee's schedule, in that month.

35 (11) Partial day absences. An employee shall request the use of appropriate accrued leave  
36 for a partial day absence. If the employee does not have sufficient, appropriate accrued paid  
37 leave to cover the absence, the appointing authority may authorize leave without pay.

38 (12) Overtime.

39 (a) Employee Services shall determine the overtime eligibility for each position based on  
40 either the United States Department of Labor or the Bureau of Labor and Industries' crite-  
41 ria, where applicable.

42 (b) Employees are eligible for overtime when:

43 (A) Time worked is in excess of 40 hours in one workweek; or

44 (B) Time worked in a single workday exceeds 12 hours. In such a case, overtime is cal-  
45 culated and paid only for the time worked in excess of 12 hours in any one workday or in

1 **excess of 40 hours worked in one workweek.**

2 **(c) Overtime-eligible employees who work overtime are eligible, when budget allows, for**  
3 **pay at one and one-half of the employee's rate. If budget does not allow, overtime will accrue**  
4 **as compensatory time at the rate of one and one-half of the employee's rate.**

5 **(d) An overtime-eligible employee who performs overtime work without authorization**  
6 **from the employee's supervisor may be subject to discipline. Even if the time worked is un-**  
7 **authorized, an overtime-eligible employee will be compensated for any overtime worked in**  
8 **the manner outlined in paragraph (b) of this subsection.**

9 **(e) Volunteering. An appointing authority may not allow an employee who is overtime**  
10 **eligible and who has worked 40 hours in a workweek to perform work that is the same or**  
11 **similar to the employee's regularly assigned duties on a volunteer basis. Work performed by**  
12 **an overtime-eligible employee during a workweek in which the employee has worked 40 hours**  
13 **is considered time worked for purposes of computing overtime.**

14 **(13) Eligibility. All employees of the Legislative Branch, other than legislative librarian**  
15 **positions, are exempt from the Fair Labor Standards Act (FLSA). The State of Oregon's**  
16 **wage and hour laws are applicable to positions in the Legislative Branch entitled to the**  
17 **payment of overtime as determined by Employee Services and as outlined in subsection (12)**  
18 **of this rule.**

19 *[(n) Special salary adjustments.]*

20 *[(A) Recognition.]*

21 *[(i) An agency head or parliamentarian may grant a one-step special salary adjustment, up to the*  
22 *salary range maximum, to any employee who is not in a temporary or limited duration status position,*  
23 *who has completed six months of employment and, if applicable, who has completed six months of the*  
24 *current introductory period.]*

25 *[(ii) A special salary adjustment is to be reserved for truly exemplary performance or for uniquely*  
26 *compelling circumstances. An agency head or parliamentarian who wishes to grant a special salary*  
27 *adjustment to an employee must submit, for inclusion in the employee's official personnel file, written*  
28 *justification that clearly demonstrates how this expenditure is in the best interest of the Legislative*  
29 *Branch.]*

30 *[(iii) An employee may receive no more than one recognition adjustment in any 12-month period.*  
31 *Such an adjustment does not affect an employee's salary eligibility date.]*

32 *[(iv) An agency head or parliamentarian may grant a special recognition bonus for truly exemplary*  
33 *performance or under uniquely compelling circumstances. An employee may receive only one special*  
34 *recognition bonus in any 12-month period and may not receive a special recognition bonus in the same*  
35 *12-month period in which the employee received a special salary adjustment under this rule.]*

36 *[(B) Retention.]*

37 *[(i) An appointing authority may grant a special salary adjustment up to the maximum of the*  
38 *employee's salary range to retain any employee who is not in a temporary or limited duration status*  
39 *position and who holds a mission-critical position. The employee must present to the appointing au-*  
40 *thority a bona fide employment offer that does not originate from the Legislative Branch. The employee*  
41 *may be required by the agency head or parliamentarian to sign a legally binding agreement not to re-*  
42 *sign from the Legislative Branch for up to one year from the date of the adjustment.]*

43 *[(ii) The appointing authority must produce a report with written justification defining the terms*  
44 *of the employee's external employment offer and demonstrating the mission-critical nature of the posi-*  
45 *tion held by the employee for whom a special salary adjustment is to be granted. This report, along*



1 *with the signed agreement to remain, if any, shall be placed in the employee's official personnel file.]*

2 *[(iii) An employee may receive no more than one retention adjustment in any salary range. An*  
3 *adjustment does not affect an employee's salary eligibility date.]*

4 *[(4) Compensation plan changes. Changes in the compensation plan are effective on the date speci-*  
5 *fied by the presiding officers. All compensation plan changes are subject to availability of funding.]*

6 *[(5) Partial pay period. If an employee works less than a full calendar month in a pay period due*  
7 *to hire, termination or leave without pay, the employee's pay for that month shall be computed on a*  
8 *prorated basis using the number of available work hours, based on the employee's schedule, in that*  
9 *month.]*

10 *[(6) Partial day absences. An employee who is not eligible for overtime must use accrued leave for*  
11 *partial day absences. If the employee does not have sufficient appropriate paid leave accrued to cover*  
12 *the absence, the appointing authority may not reduce the employee's salary for that portion of the par-*  
13 *tial day absence not covered by paid leave.]*

14 *[(7) Overtime.]*

15 *[(a) Authorization. Overtime-eligible employees are eligible for overtime when:]*

16 *[(A) Time worked is in excess of 40 hours in one workweek; or]*

17 *[(B) Time worked in a single workday exceeds 12 hours. In such a case, overtime is calculated and*  
18 *paid only for the time worked in excess of 12 hours in any one workday or in excess of 40 hours*  
19 *worked in one workweek.]*

20 *[(b) Unauthorized overtime. An overtime-eligible employee who performs overtime work without*  
21 *authorization from the employee's supervisor may be subject to discipline.]*

22 *[(c) Volunteering. An appointing authority may not allow an employee who is overtime-eligible and*  
23 *who has worked 40 hours in a workweek to perform work that is the same or similar to the employee's*  
24 *regularly assigned duties on a volunteer basis. Such voluntary work performed by an overtime-eligible*  
25 *employee during a workweek in which the employee has worked 40 hours is considered time worked*  
26 *for purposes of computing overtime.]*

27 *[(8) Eligibility. All legislative agencies and parliamentary offices, other than legislative librarian*  
28 *positions, are exempt from the Fair Labor Standards Act (FLSA). Some positions are treated under*  
29 *these rules as overtime eligible, as determined using FLSA criteria. The employees in these positions*  
30 *are eligible for overtime.]*

31 *[(9)] (14) Recording and compensation.*

32 (a) In the case of overtime-eligible employees, all time worked must be recorded on the  
33 employee's timesheet. Overtime is compensated at the rate of one and one-half times the employee's  
34 regular hourly rate of pay, as defined by the Bureau of Labor and Industries, at the time the over-  
35 time is worked. For the purpose of calculating overtime, accrued paid leave that is used is not  
36 considered as time worked, but a paid holiday that is taken off is considered as time worked.

37 (b) An *[agency head or parliamentarian]* **appointing authority** may elect to compensate  
38 overtime-eligible employees by cash payment or by compensatory time. An employee may accrue a  
39 maximum of 240 hours of compensatory time. An employee who has accrued 240 hours of  
40 compensatory time and who works overtime must receive cash payment for the overtime worked in  
41 excess of 240 hours.

42 *[(10)] (15) Use of compensatory time.*

43 (a) In the case of overtime-eligible employees, compensatory time is available for use any time  
44 following the workday in which it is earned. The use of compensatory time may be requested by the  
45 employee or may be required by the appointing authority.

1 (b) The use of compensatory time must be scheduled in advance.

2 (c) A supervisor shall grant an overtime-eligible employee's request to use accrued compensatory  
3 time unless doing so would unduly disrupt business operations.

4 (d) Compensatory time must be used within 18 months **of its accrual**. After 18 months, unused  
5 compensatory time will be paid to the employee at the employee's current rate of pay.

6 [(11)] (16) Compensation and compensatory time at termination. [*In the case of overtime-eligible*  
7 *employees, an employee who terminates employment shall be paid for accrued compensatory time at the*  
8 *employee's regular hourly rate at termination.*] **Upon termination of employment, an overtime-**  
9 **eligible employee's unused compensatory time shall be paid at the average regular rate of**  
10 **compensation received by the employee during the last three years of the employee's em-**  
11 **ployment or at the employee's final regular rate of compensation, whichever is higher.**

12 [(12)] (17) Compensation and compensatory time upon transfer or promotion.

13 (a) When an overtime-eligible employee transfers or is promoted to a different position in the  
14 Legislative Branch, the appointing authority for the position being vacated shall pay [*the employee*  
15 *for*] all accrued compensatory time earned prior to the effective date of transfer or promotion at the  
16 regular hourly pay rate the employee was receiving on the workday prior to transfer or promotion.

17 (b) The appointing authority for the position being filled may, prior to the effective date of the  
18 transfer or promotion, agree in writing to allow the employee to retain some or all of the employee's  
19 accrued compensatory time, which then becomes the liability of the legislative unit or agency to  
20 which the employee is transferring or being promoted.

21 [(13)] (18) Compensation and compensatory time before termination. An appointing authority  
22 may elect at any time to pay an overtime-eligible employee in cash for all or a portion of  
23 compensatory time after such time has been accrued. If an employee is paid for accrued  
24 compensatory time before termination, payment shall be made at the employee's regular hourly pay  
25 rate at the time of payment.

26 [(14)] (19) Second jobs. When an employee applies for a second job within the Legislative  
27 Branch:

28 (a) If the employee is working full-time for the first legislative agency or parliamentary office  
29 and if the second Legislative Branch position has the same or similar job duties, the second legis-  
30 lative agency or parliamentary office shall be responsible for any overtime pay liability. However,  
31 the second agency or office may refuse to hire the employee because of potential overtime pay li-  
32 ability.

33 (b) If the employee is working part time for the first legislative agency or parliamentary office  
34 and if the second legislative agency or parliamentary office job has the same or similar duties, the  
35 two entities shall **consult with Employee Services to determine if the entities** mutually agree  
36 on the employee's overtime eligibility status and any overtime pay obligation. Unless both entities  
37 agree otherwise, the legislative agency or parliamentary office employing the employee at the time  
38 the employee exceeds 40 hours in one workweek shall pay any overtime for which the employee is  
39 eligible.

40 (c) If the second legislative job is **unrelated, has different duties or** [*in a different capacity*  
41 *than the employee's regular job and*] is occasional or sporadic, the second legislative agency or par-  
42 liamentary office may, **depending on the duties**, hire the employee without overtime pay liability.  
43 [*As used in this paragraph:*]

44 [(A) "*Different capacity*" means employment involving duties that do not fall within the same gen-  
45 eral occupational category as the employee's regularly assigned duties.]

1 [(B) "Occasional or sporadic" means infrequent, irregular or occurring in scattered instances.]

2 [(15) Separation of powers.]

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

9 [(b) Article III, section 1, prohibits:]

10 [(A) Employees of one branch from undertaking a duty or function that belongs in another  
11 branch;]

12 [(B) Employees of one branch, in performing a duty appropriate to that branch, from doing so in  
13 a way that unduly interferes with the operation of another branch's function; and]

14 [(C) The same person from simultaneously performing duties as an affiliate of more than one  
15 branch.]

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

18 [(16)] (20) Differentials.

19 (a) Shift differential.

20 (A) Shift differential applies to any employee who is in an overtime-eligible position and whose  
21 regularly scheduled workday falls entirely or partially within the hours of 6:00 p.m. and 6:00 a.m.  
22 or on Saturday or Sunday. **The differential is \$1.00 per hour.**

23 [(B) The amount of shift differential must be consistent with differentials paid in other branches  
24 of state government. Shift differential is applied to the actual time worked between the hours of 6:00  
25 p.m. and 6:00 a.m., or on Saturday or Sunday, and is considered in the calculation of overtime pay.]

26 [(C) Shift differential may not be computed at the rate of one and one-half the employee's regular  
27 rate of pay for a shift occurring on a holiday.]

28 [(D) Shift differential is not applied to base pay rates for computation of pay during leave with  
29 pay.]

30 [(E)] (B) An appointing authority and employee may mutually agree, in advance and in writing,  
31 to waive the payment of shift differential. A waiver is [possible] **permitted** only when an employee  
32 requests to work a schedule that would otherwise qualify for payment and the approval is based on  
33 the employee's personal preference rather than business need.

34 (b) Work out of class.

35 (A) Eligibility and rate. Except as described below, an employee assigned in writing to perform  
36 duties of an existing, higher-level classification for a period of 10 or more consecutive [work days]  
37 **workdays** must be compensated for the performance of such duties. **The rate of pay for temporary  
38 duties at a higher classification is either:**

39 (i) **Five percent of the employee's base rate of pay; or**

40 (ii) **The difference between the employee's base rate of pay and the first step of the  
41 higher work out of class classification's salary range, whichever is greater. The pay rate may  
42 not exceed the top step of the higher level classification.** [Compensation is generally a temporary  
43 one-step salary increase for the period during which the duties are performed. Under unusual circum-  
44 stances, such as when the employee assumes the full responsibility of a higher level class and a one-step  
45 increase is not sufficient to compensate the employee at the minimum rate of the higher level class, and

1 after consultation with the Human Resources Director, an appointing authority may grant more than  
2 a one-step increase. The appointing authority shall document and retain the reasons for granting more  
3 than a one-step increase. The pay rate of an employee receiving work out of class may not exceed the  
4 top step of the higher level classification.]

5 (B) Duration. Work out of class duties may be assigned for a specified period not to exceed one  
6 year. An appointing authority may extend a work out of class assignment beyond one year under  
7 unusual circumstances.

8 (C) Waiver. When an employee is assigned higher-level duties that would otherwise qualify for  
9 work out of class, the employee and appointing authority may mutually agree to waive the work out  
10 of class when the purpose of the assignment is to give the employee the opportunity to learn a  
11 higher-level job skill.

12 (c) Lead differential.

13 (A) An employee may receive a [*one-step*] **five percent** lead differential when an appointing au-  
14 thority assigns lead work or team leader duties to that employee for a period of 10 or more con-  
15 secutive [*work days*] **workdays**. The appointing authority shall consult with [*the Human Resources*  
16 *Director*] **Employee Services** prior to authorizing such payment.

17 (B) Lead differential does not apply to employees whose classifications normally include lead  
18 work or team leader duties, or to voluntary training or developmental assignments.

19 (C) Payment of a lead differential must be designated for a specific lead work or team leader  
20 assignment, project or time period as determined by the appointing authority. The employee must  
21 be paid for the full period during which the duties are assigned.

22 (D) When an employee who is receiving a lead differential is temporarily assigned to perform  
23 work that qualifies for a work out of class differential, the appointing authority may continue the  
24 lead differential for the duration of the work out of class assignment for up to one year.

25 (E) While [*this*] **the lead** differential is normally [*one step*] **five percent**, the appointing  
26 authority, **after consultation with Employee Services**, may determine that [*two steps are*] **10**  
27 **percent is** warranted when the lead work assignment is significantly larger as a result of factors  
28 including, but not limited to:

29 (i) The number of employees led.

30 (ii) The number of work units led.

31 (iii) The complexity of, or differences between, the work unit or units led.

32 (iv) The number of geographic locations in which the employee is leading staff.

33 (F) [*The appointing authority shall document and retain the reasons*] **Necessary justification**  
34 **documentation must be maintained in the employee's personnel record** for granting a  
35 [*two-step*] **10 percent** lead differential.

36 (G) As used in this paragraph, "lead work or team leader duties" includes duties where, on a  
37 recurring or daily basis, the employee has been assigned the responsibility to perform substantially  
38 all of the following functions:

39 (i) Training or orienting new employees.

40 (ii) Assigning and reassigning tasks to other employees.

41 (iii) Giving direction to other employees concerning day-to-day work procedures.

42 (iv) Communicating established standards of performance to affected employees.

43 (v) Reviewing the work of other employees to ensure conformance to established standards.

44 (vi) Providing informal assessment of employees' performance to the supervisor.

45 (d) On-call differential.

1 (A) When an overtime-eligible employee is required to work times other than the employee's  
 2 regular, flexible or irregular work schedule in order to perform work before the employee's next  
 3 regularly scheduled [*work day*] **workday**, the employee must be compensated with an on-call duty  
 4 differential.

5 (B) An overtime-eligible employee who is on-call and available for work need not be subject to  
 6 restrictions that prevent the employee from using on-call time for the employee's own purposes, but  
 7 must be available, within 60 minutes of being requested, to consult by telephone or to report  
 8 promptly for work. On-call duty differential pay may not be applied to base pay rates for compu-  
 9 tation of pay during leave with pay.

10 (C) An on-call employee who returns to work when requested shall be paid the on-call differen-  
 11 tial for a minimum of two hours at the rate of time and one-half. Additional time worked is paid on  
 12 an hourly basis for each hour or major portion of an hour worked at the rate of time and one-half.  
 13 As used in this subparagraph, "major portion of an hour" means 30 minutes or more.

14 (D) On-call duty differential does not apply to employees working in overtime situations or  
 15 whose flexible or irregular work schedule falls between 5 p.m. and 8 a.m. or on weekends.

16 **(e) Short session differential.**

17 **(A) Employees hired to staff short session duties are eligible for a five or 10 percent**  
 18 **differential.**

19 **(B) Short session employees are not eligible for any benefits other than those required**  
 20 **by law.**

21 **(C) The differential is only available December through April for sessions occurring in**  
 22 **even numbered years.**

23 **(f) LAC or a person designated by LAC may establish any other differential that is in**  
 24 **addition to those listed in this subsection.**

25 [*e) The presiding officers may establish any other differential, in addition to those listed above,*  
 26 *determined by the presiding officers to be necessary.*]

27 [(17)] **(21) Call back.**

28 (a) An overtime-eligible employee who has been released from duty and who must return to the  
 29 work site to perform work before the employee's next regularly scheduled [*work day*] **workday** shall  
 30 be compensated for a minimum of two hours of work. The work may be performed:

31 (A) At the employee's work site.

32 (B) At a work site other than the employee's official work site.

33 (b) Time worked that is a continuation of or immediately preceding an overtime-eligible  
 34 employee's normal work schedule, that is scheduled in advance or that does not require the em-  
 35 ployee to physically travel to a work site does not constitute call back. An employee may be called  
 36 back only by the appointing authority or by the employee's immediate supervisor.

37 (c) A full-time overtime-eligible employee shall be compensated for call back time in excess of  
 38 40 hours in a [*work week*] **workweek** in accordance with subsections [(7) to (9)] **(12) to (14)** of this  
 39 rule. A part-time overtime-eligible employee shall be compensated for call back time at straight time  
 40 and shall be paid at the hourly rate equivalent to the employee's current salary. If a part-time  
 41 employee's call back time, when combined with the employee's regular hours worked in a [*work*  
 42 *week*] **workweek**, exceeds 40 hours, the work in excess of 40 hours shall be compensated in ac-  
 43 cordance with subsections [(7) to (9)] **(12) to (14)** of this rule.

44  
 45

1 Legislative Branch Personnel Rule 6: Recruitment, [and] Selection **and Hire**

2 APPLICABILITY: This rule applies to all legislative agencies and parliamentary offices, except  
3 that it does not apply to limited duration [*status employees*] and temporary status employees.

4 (1) Purpose. The purpose of the recruitment and selection process is to ensure that all positions  
5 are filled by qualified, competent individuals who are well-suited to do the work for which they are  
6 employed. Individuals selected by any of the methods specified in these rules must meet the minimum  
7 qualifications for the class of work to which an appointment is made.

8 (2) Methods for recruiting and filling vacancies.

9 (a) Upon deciding to fill a vacancy, the appointing authority shall notify Employee Services of  
10 the action to be taken.

11 (b) An appointing authority may fill a position through any of the following methods:

12 (A) Open competitive recruitment, in which any Legislative Branch employee or member of the  
13 public may apply for the position.

14 (B) Legislative Branch limited internal recruitment, in which only current Legislative Branch  
15 employees, including limited duration status employees and temporary status employees, may apply  
16 for the position.

17 (C) Direct appointment, in which the appointing authority may appoint an applicant to a vacant  
18 position based on the applicant meeting the minimum qualifications established for the position.

19 (c) Underfill appointments may occur for the following reasons:

20 (A) Developmental. After consultation with the Human Resources Director, an appointing au-  
21 thority may underfill a position for developmental reasons, such as gaining the necessary length of  
22 experience by time on the job. Recruitment for the underfill opportunity shall be conducted in ac-  
23 cordance with this rule. The length of the underfill and requirements to satisfactorily complete the  
24 developmental experience shall be documented prior to the appointment. When the employee, as  
25 determined by the appointing authority, satisfactorily completes the underfill requirements, the em-  
26 ployee shall be reclassified to the level required for the position and may receive an increase in pay  
27 in accordance with LBPR 4.

28 (B) Administrative need. An appointing authority may underfill a position if, due to organiza-  
29 tional changes, the budgeted level of a position is higher than organizational needs require. The  
30 position may be filled at the lower level classification using any method listed in this rule.

31 (3) Job announcements.

32 (a) Recruitment announcements are required for all job vacancies being filled by open compet-  
33 itive or limited internal recruiting methods.

34 (b) The required content of a recruitment announcement may be defined or refined beyond the  
35 required content as expressed in a classification specification or position description to more fully  
36 reflect the specific requirements of a position.

37 (c) An announcement issued for a job vacancy must include the following:

38 (A) Class title;

39 (B) Salary range;

40 (C) Location;

41 (D) Type of recruitment;

42 (E) Nature of the assigned work;

43 (F) Qualifications required of the applicant;

44 (G) Manner in which application is to be made;

45 (H) Notification that a criminal records check may be part of the selection process, only when

1 a criminal records check is part of the selection process; and

2 (I) Any special working conditions that apply.

3 (d) Appointing authorities shall ensure that announcements issued for job vacancies are posted  
4 in a manner accessible to all employees. Announcements for vacancies being filled through open  
5 competitive recruitment must be posted in a manner accessible to the public.

6 (e) Announcements issued for job vacancies being filled through open competitive recruitment  
7 must be posted and applications accepted for a minimum of 14 calendar days. A limited internal  
8 recruitment announcement need only be posted for a minimum of seven days.

9 (4) Selection process for open competitive and limited internal recruitments.

10 (a) When an announcement is issued for an open competitive or limited internal recruitment as  
11 described in subsection (2)(b) of this rule, the appointing authority is responsible for reviewing and  
12 selecting applicants in compliance with Legislative Branch Personnel Rules and procedures.

13 (b) Employee Services is responsible for determining which applicants meet the minimum quali-  
14 fications for a position in Legislative Administration. Applications for positions in other legislative  
15 agencies or parliamentary offices shall be forwarded to those agencies or offices for evaluation.  
16 Applications for positions in Information Services may be evaluated by Information Services profes-  
17 sionals.

18 (c) Evaluation of all applicants must be based on the qualifications of the applicant and the  
19 applicant's responses to supplemental questions, if any, in the announcement.

20 (d) All applicants who are not selected shall be notified by Employee Services no later than 10  
21 business days after the selected applicant's acceptance of the position. In the event the decision is  
22 made not to fill a position for which recruitment has been announced, Employee Services shall notify  
23 the applicants no later than 10 business days after the date on which such a decision was made.

24 (e) Upon written request of a veteran applicant, Employee Services shall provide to the veteran  
25 applicant the reason(s) that the applicant was not selected.

26 (5) Veterans' Preference.

27 (a) Consistent with ORS 408.230, veterans' preference [*will*] **shall** be applied when one or more  
28 qualified disabled or nondisabled veterans apply for a vacancy for which the recruitment method  
29 used by the appointing authority is a competitive process involving application screening or scoring,  
30 interviews or any other form of examination.

31 **(b) When an interview of a veteran applicant is a component of the selection process for**  
32 **a position to be filled by an employee, the interviews shall be conducted in accordance with**  
33 **ORS 408.237.**

34 (6) Documentation of hiring decision. The appointing authority shall, in accordance with the  
35 Legislative Branch document retention schedule, retain all selection and evaluation materials either  
36 electronically or in hard copy, including:

37 (a) Application screening summaries;

38 (b) The screening criteria used;

39 (c) All applications received;

40 (d) Names of applicants interviewed;

41 (e) Interview questions used;

42 (f) Interview notes;

43 (g) Notes from reference checks;

44 (h) The name of the applicant selected; and

45 (i) Other information as required by Legislative Branch policy statements.

1 (7) Confirmation and acceptance of appointment.

2 (a) When a position is filled, the appointing authority shall notify Employee Services of the ap-  
 3 pointment [*by completing a personnel action form and forwarding the form and the offer letter, once*  
 4 *accepted and signed by the applicant, to Employees Services*]. **Either the appointing authority or**  
 5 **Employee Services shall prepare an offer letter to the successful candidate. The offer letter**  
 6 **should include, at minimum, the date of hire, salary and notification of at-will employment.**  
 7 **Once the offer letter is signed by the successful candidate, Employee Services will upload it**  
 8 **into the human resources information system.**

9 (b) [*Employee Services shall confirm in writing the offer of employment to the selected applicant.*]  
 10 **If no signed offer letter is received**, an applicant who reports for work at the scheduled time and  
 11 location shall be considered to have accepted the terms and conditions offered. An applicant who  
 12 fails to report for work at the scheduled time and location declines the appointment.

13 **(8) Required documents. An appointing authority is responsible for ensuring each new**  
 14 **employee:**

15 (a) **Completes a form I-9 “Employment and Eligibility Verification” within three days of**  
 16 **beginning work as required by federal law.**

17 (A) **If the appointing authority fails to have the employee complete the required docu-**  
 18 **ments, the employee is not authorized to be employed.**

19 (B) **Employee Services shall retain completed I-9 forms for three years after the date of**  
 20 **hire or one year after the date employment ends, whichever is later.**

21 (b) **Enters the employee’s emergency contact information in conformance with Employee**  
 22 **Services policy within five days of employment.**

23 [(8) *Introductory period.*]

24 [(a) *An introductory period is the period following the initial appointment to a position in the*  
 25 *Legislative Branch, a change in positions within the Legislative Branch or an appointment to a position*  
 26 *in the Legislative Branch that follows a break in legislative service of at least 12 months’ duration.*]

27 [(b) *During an introductory period, an employee is trained and oriented to the employee’s position*  
 28 *in the Legislative Branch. In general, an employee is not eligible for a raise or promotion during an*  
 29 *introductory period. An introductory period lasts for six months but may be extended by the appointing*  
 30 *authority.*]

31 [(c) **(9) At-will status.** Employment with the Legislative Branch remains at-will during and af-  
 32 ter completion of [*an*] **the** introductory period. An employee may be terminated without cause at the  
 33 discretion of the appointing authority at any time.

34 [(d) *If an employee changes appointing authorities as a result of a promotion, and the new ap-*  
 35 *pointing authority determines during the introductory period that the employee should be removed from*  
 36 *the new position, at the discretion of the previous appointing authority the employee may return to the*  
 37 *previous appointing authority in a position in the same class as the position in which the employee was*  
 38 *previously employed, if available.*]

39  
 40 Legislative Branch **Personnel** Rule [5A (*renumbered as Rule 8 on 6/23/2016*)] 8: Americans with  
 41 Disabilities Act (ADA)

42 **APPLICABILITY:** This rule applies to all members of the Legislative Assembly and all Legisla-  
 43 tive Branch employees.

44 (1) The Legislative [*Assembly*] **Branch** shall continue to seek ways to provide universal access  
 45 [*to physical areas within the Capitol and to provide equal opportunity for access to employment infor-*



1 *mation, programs]* and services [*of the legislative branch]* according to the provisions of the Ameri-  
 2 cans with Disabilities Act (ADA). In support of this effort, the Legislative [*Assembly]* **Branch** shall:

3 **(a)** Identify and support an ADA coordinator who will complete an ADA self-evaluation of pol-  
 4 icies and procedures and manage ADA compliance within the Capitol.

5 [*(a)*] **(b)** Identify programmatic barriers that limit [*the*] accessibility [*of programs, activities, ser-*  
 6 *vices or employment to individuals with disabilities*].

7 [*(b)*] **(c)** Provide employment-related informational materials in multiple formats when  
 8 [*requested*] **needed**.

9 [*(d)*] *Manage and document requests for accommodation.*

10 [*(e)*] *Manage an ADA complaint and grievance procedure.*

11 [*(f)*] **(d)** Provide a notice to participants, applicants and employees regarding the rights and  
 12 protections afforded by Title II of the ADA (42 U.S.C. 12131 to 12165) **and ORS chapter 659A**.

13 [*(g)*] *Provide equally effective communication to individuals with disabilities via telephone.*

14 **(2) Reasonable Accommodations.**

15 **(a) For purposes of this rule, “reasonable accommodation” means the following:**

16 **(A) Acquisition or modification of equipment or devices;**

17 **(B) More frequent or longer break periods or periods of rest;**

18 **(C) Assistance with manual labor; or**

19 **(D) Modification of work schedules or job assignments.**

20 **(b) Reasonable accommodation does not include:**

21 **(A) Modifications or adjustments that cause an undue hardship to the branch;**

22 **(B) Providing items such as hearing aids or service animals that a person uses both on**  
 23 **and off the job; or**

24 **(C) Lowering production standards, promoting or assigning an employee to a higher-**  
 25 **paying job, creating a position or assigning essential job duties to another worker.**

26 **(3) Notice - employee.** An employee shall submit a written request for a reasonable ac-  
 27 commodation to Employee Services. Employee Services shall acknowledge in writing the  
 28 employee’s request within seven calendar days from receipt.

29 **(4) Interactive process.** The duty to provide a reasonable accommodation is ongoing. The  
 30 branch and the employee must engage in the interactive process and continue to do so until  
 31 the issue is resolved. The branch may deny the accommodation request if the accommo-  
 32 dation is not effective, proves to be an undue hardship or creates an imminent harm or risk.

33 **(5) Notice - employer.** The branch shall post written notice of employees’ employment  
 34 protections under ORS chapter 659A and also provide a copy of the notice to:

35 **(a) A new employee at the time of hire;**

36 **(b) Existing employees within 180 days after the effective date of this policy; and**

37 **(c) An employee who informs the employer of the employee’s pregnancy, within 10 days**  
 38 **after the employer receives the information. An appointing authority or direct supervisor**  
 39 **shall immediately provide the employee’s notice to Employee Services.**

40 **(6) Federal and state law prohibit retaliation against an employee with respect to hiring**  
 41 **or any other term or condition of employment because the employee asked about, requested**  
 42 **or was previously accommodated under the ADA.**

43 [(2)] **(7)** Nothing in this rule precludes any person from pursuing administrative remedies with  
 44 the Bureau of Labor and Industries or the federal Equal Employment Opportunity Commission.

45

1 Legislative Branch Personnel Rule 14: Vacation Leave

2 APPLICABILITY: This rule applies to all employees of the Legislative Branch, except for tem-  
 3 porary status employees[ *members of the Legislative Assembly*] and session-only status employees.  
 4 Subsection (8) of this rule does not apply to personal staff. **This rule does not apply to members**  
 5 **of the Legislative Assembly.**

6 (1) Monthly accrual.

7 (a) Full-time employees. An employee with a full-time schedule shall accrue vacation leave at a  
 8 rate based on each full calendar month for which the employee has been employed in accordance  
 9 with the following schedule and based on the employee’s recognized service date:

10 Duration of	Vacation leave	Total annual
11 employment	accrued per	vacation leave
12	month	accrual
13 First month through		
14 60th month	10.00 hours	120 hours (15 days)
15 61st month through		
16 120th month	11.34 hours	136 hours (17 days)
17 121st month through		
18 180th month	13.34 hours	160 hours (20 days)
19 181st month through		
20 240th month	15.34 hours	184 hours (23 days)
21 241st month through		
22 300th month	17.34 hours	208 hours (26 days)
23 After 300th month	19.34 hours	232 hours (29 days)

24 (b) Part-time employees. An employee with a part-time schedule shall earn vacation leave on a  
 25 prorated basis. If the employee is paid on an hourly basis, vacation leave shall be prorated using the  
 26 number of available work hours, based on the employee’s schedule, in that month. If the employee  
 27 is paid on a salaried basis, vacation leave shall be prorated on the basis of the percentage of work  
 28 days in the month that the employee worked.

29 (c) Introductory period. During an introductory period, an employee is eligible to accrue vaca-  
 30 tion leave.

31 (d) Crediting of vacation. Vacation leave shall be credited to an employee on the first day of the  
 32 calendar month following the calendar month in which it was earned. When an employee in a  
 33 session-only status position **or personal staff** is appointed to a continuing status position within 30  
 34 days following adjournment sine die of a legislative session, vacation leave shall be credited for time  
 35 worked during the legislative session. **Credited time will be prorated if the session-only em-**  
 36 **ployee or personal staff worked part time during the legislative session.**

37 (e) Partial month accrual. Vacation leave accrual for an employee working less than a full cal-  
 38 endar month in a pay period due to hire, termination or leave without pay shall be computed on a  
 39 prorated basis. If the employee is paid on an hourly basis, vacation leave shall be prorated using the  
 40 number of available work hours, based on the employee’s schedule, in that month. If the employee  
 41 is paid on a salaried basis, vacation leave shall be prorated on the basis of the percentage of work  
 42 days in the month that the employee worked.

43 (f) Restoration of vacation accrual rate upon rehire. An employee who separates from and re-  
 44 turns to legislative service within two years of the employee’s separation date may be given credit  
 45 toward additional vacation accrual rates for service prior to separation. Vacation leave hours ac-

1 crued in the Legislative Branch shall be restored in accordance with ORS 173.005.

2 (2) Maximum accumulation. An employee may accrue a maximum of 350 hours of vacation leave.  
3 An employee who accrues 350 hours must take vacation leave by the end of the month during which  
4 the employee's vacation leave accrual exceeds 350 hours or forfeit payment for, or use of, additional  
5 hours earned that would cause the employee's vacation leave balance to exceed 350 hours.

6 (3) Scheduling of vacation leave. Unless otherwise protected by law, rule or Legislative Branch  
7 policy, **an employee may use accrued vacation leave with prior approval from the employee's**  
8 **supervisor. The supervisor may deny a vacation request based on** [*the time during which an*  
9 *employee may take vacation leave shall be subject to the approval of the employee's supervisor with due*  
10 *regard to the employee and*] the needs of the Legislative Branch.

11 (4) Illness during vacation leave. When an employee is on vacation and circumstances arise that  
12 would qualify the employee to use accrued sick leave, the employee may use, with supervisory ap-  
13 proval and in accordance with LBPR 16 (5)(b), accrued sick leave instead of vacation leave.

14 (5) Effect of movement between legislative agencies or offices.

15 (a) When an employee transfers, [*is promoted*] **promotes** or [*is demoted*] **demotes** from one em-  
16 ployer to another within the Legislative Branch, all [*of*] the employee's accrued vacation leave shall  
17 [*also*] be transferred.

18 (b) Notwithstanding paragraph (a) of this subsection, when an employee transfers, [*is promoted*]  
19 **promotes** or [*is demoted*] **demotes** from an employer within the Legislative Branch to a leadership  
20 office or a caucus office, a maximum of 100 hours of accrued vacation leave shall [*be transferred,*]  
21 **transfer. More** [*except that more*] hours may [*be transferred*] **transfer** at the discretion of the ap-  
22 pointing authority in the leadership office or caucus office receiving the employee.

23 (6) Employees hired from a State of Oregon agency. When an employee from another branch of  
24 state government is employed by the Legislative Branch without a break in service, a maximum of  
25 100 hours of accrued vacation leave shall [*be transferred,*] **transfer. More** [*except that more*] hours  
26 may [*be transferred*] **transfer** at the discretion of the appointing authority in the Legislative Branch.  
27 The employee's recognized service date shall be used to determine the monthly vacation accrual  
28 rate.

29 (7) Vacation pay upon termination.

30 (a) Upon termination [*that occurs before January 1, 2014, an employee, or, in the case of the death*  
31 *of the employee, an employee's beneficiary or estate, shall be compensated for up to 300 hours of unused*  
32 *vacation leave. Upon termination that occurs on or after January 1, 2014,*] an employee, or, in the case  
33 of the death of the employee, an employee's beneficiary or estate, shall be compensated for up to  
34 300 hours of unused vacation leave.

35 (b) If the employee leaves to accept another position in another branch of state government, the  
36 employee can request transfer of all or a portion of the employee's accrued vacation leave with the  
37 approval of the new agency. Any vacation leave liability shall be deducted from the maximum hours  
38 available for compensation, as set forth in paragraph (a) of this subsection.

39 (c) The rate of pay for vacation leave shall be the employee's current rate of pay at the time  
40 of termination, including all differentials the employee is being paid under LBPR 4 [(16)] (20), except  
41 shift differential. If, at the time of termination, the employee holds more than one position, each with  
42 a different rate of pay, the distribution between rates shall be as determined by the appointing au-  
43 thority or appointing authorities.

44 (8) Payment for vacation leave in lieu of time off.

45 (a) Eligibility. An employee with either a full-time or part-time schedule who has accumulated

1 250 hours or more of vacation leave may request to be paid for up to a maximum of 120 hours va-  
2 cation leave in lieu of time off per fiscal year provided the employee has taken a total of at least  
3 40 hours of vacation during the last 12 months. To be eligible for receipt of payment for vacation  
4 leave, an employee must be unable to take vacation leave due to the demands of the legislative  
5 schedule. The approval to pay vacation leave is:

6 (A) In the case of the person receiving payment being an agency head, at the discretion of both  
7 presiding officers.

8 (B) In the case of the person receiving payment being a parliamentarian, leadership office staff  
9 member or caucus office staff member, at the discretion of the presiding officer of the chamber in  
10 which the person receiving payment serves.

11 (C) In all other instances, at the discretion of the appointing authority.

12 (b) Available funds. A decision to approve the payment of vacation leave is subject to available  
13 funds in the appropriate Legislative Branch budget.

14 (c) Request and approval. To request payment for vacation leave in lieu of time off, an employee  
15 shall submit a Request for Payment for Vacation Leave in Lieu of Time Off form[,] (available in  
16 Employee Services)[,] to the appointing authority. The decision of the appointing authority to grant  
17 or deny the request is final and may not be appealed. Within 15 calendar days of receipt of a request  
18 for payment for vacation leave in lieu of time off, the appointing authority shall:

19 (A) Return the request to the employee noting whether the request has been approved, denied  
20 or approved with modifications; and

21 (B) Provide a copy of the request, if approved, to Employee Services.

22 (d) Rate of compensation. The rate of compensation for payment for vacation leave in lieu of  
23 time off shall be at the employee's current rate of pay at the time the request is submitted to the  
24 appointing authority, including all differentials the employee is being paid under LBPR 4 [(16)]  
25 (20), except shift differential.

26 (9) Donation of vacation leave for sick leave purposes.

27 (a) A Legislative Branch employee may voluntarily donate accrued vacation leave in full hour  
28 increments to another non-temporary Legislative Branch employee, provided the employee to whom  
29 the leave is to be donated:

30 (A) Is absent due to [*family or medical leave authorized under LBPR 15;*]:

31 **(i) The absent employee's own serious health condition;**

32 **(ii) Parental leave; or**

33 **(iii) A family member's serious health condition;**

34 (B) Has exhausted all available paid leave; and

35 (C) Is not eligible for or receiving workers' compensation benefits.

36 (b) Unused donated leave shall be retained by the employee who receives the leave.

37 (c) All requests from the receiving employee and the donating employee must be in writing.

38 (d) No transfer of funds may occur between agency budgets when vacation leave is donated  
39 under this subsection.

40 **(e) Under this subsection, "serious health condition," "parental leave" and "family**  
41 **member" have the meaning as defined in LBPR 15, Family Medical Leave.**

42 (10) Donation of vacation leave for military leave purposes.

43 (a) A Legislative Branch employee may voluntarily donate accrued vacation leave in full hour  
44 increments to another Legislative Branch employee, provided the employee to whom the leave is to  
45 be donated:

- 1 (A) Is not in a limited duration status or temporary status;
- 2 (B) Is on leave without pay to perform active military duty, whether voluntarily or involuntarily
- 3 ordered;
- 4 (C) Has exhausted all accrued vacation leave;
- 5 **(D) Provides a copy of the military orders;**
- 6 [(D)] (E) Receives less total gross military compensation, including allowances or special pay,
- 7 while on active duty status than the gross pay (including differentials and annual average overtime
- 8 pay, if any, for the employee's classification) received as a Legislative Branch employee at the time
- 9 the military leave without pay began;
- 10 [(E)] (F) Provides a **copy of the employee's monthly Leave and Earning Statement for**
- 11 verification of all military compensation received for the month in which donated leave is to be
- 12 used; and
- 13 [(F)] (G) Has the approval of the appointing authority to receive donated leave.
- 14 (b) A Legislative Branch employee is ineligible to receive donated leave under this rule if the
- 15 employee is on paid military training duty or has been released from active duty but has not yet
- 16 reported back to work.
- 17 (c) A Legislative Branch employee may receive donated leave under this rule in an amount that
- 18 does not exceed the positive amount determined when the employee's military compensation for a
- 19 month is subtracted from the compensation received as a Legislative Branch employee for the last
- 20 full month of Legislative Branch employment performed prior to the beginning of the employee's
- 21 military service.
- 22 (d) Donated vacation leave shall be transferred to the receiving employee's vacation leave and
- 23 treated as taken in the month of receipt, to the extent that the amount taken does not exceed the
- 24 limit established under paragraph (c) of this subsection.
- 25 (e) Unused donated leave shall be retained by the receiving employee.
- 26 (f) No transfer of funds shall occur between budgets when vacation leave is donated under this
- 27 subsection.

28  
29 Legislative Branch Personnel Rule 16: Paid Sick Leave

30 **APPLICABILITY:** This rule applies to all employees of the Legislative Branch. This rule does  
31 not apply to members of the Legislative Assembly.

32 (1) Monthly accrual.

33 (a) Full-time continuing status positions. An employee in a full-time continuing status position  
34 accrues sick leave at the rate of eight hours for each full calendar month employed, credited to the  
35 employee *[on the first day of the calendar month following the month in which]* **when** the leave  
36 *[was]* **is** earned.

37 (b) Part-time continuing status positions. Sick leave accrual for an employee in a part-time  
38 continuing status position is calculated on a prorated basis, using the number of hours the employee  
39 works in a month, credited to the employee *[on the first day of the calendar month following the*  
40 *month in which]* **when** the leave *[was]* **is** earned.

41 (c) Introductory period. During an introductory period, an employee is eligible to accrue and  
42 use sick leave.

43 (d) Temporary status employees. A temporary status employee begins accruing sick leave on the  
44 first day of employment **at the rate of eight hours for each full calendar month.** A temporary  
45 status employee accrues sick leave on a part-time or full-time basis, **prorated** based on *[the]* hours

1 [that the employee works] **worked**.

2 (e) Crediting sick leave. Sick leave is credited to an employee [on the first day of the calendar  
3 month following the calendar month in which] **when** the leave [was] **is** earned.

4 (f) Partial month accrual. Sick leave accrual for an employee working less than a full calendar  
5 month in a pay period due to hire, termination or leave without pay is computed using the number  
6 of hours the employee worked in that month.

7 (2) Maximum accumulation. Sick leave accrues without limitation, subject to other policies.

8 (3) Notification.

9 (a) It is an employee's responsibility to notify the employee's immediate supervisor of the need  
10 to use sick leave. If the employee's absence is unanticipated, the employee shall contact the imme-  
11 diate supervisor at the beginning of each missed day's regularly scheduled work time unless other  
12 arrangements have been approved by the supervisor.

13 **(b) When the employee's absence is an emergency, the employee shall notify the super-**  
14 **visor of the need for leave as soon as is practicable.** [If the employee's absence is an emergency,  
15 the employee shall notify the supervisor of the need for leave as soon as the employee is able to do so.  
16 If the employee's absence is prescheduled, the employee shall notify the supervisor of the need for leave  
17 as far in advance as possible.]

18 [(b) In emergency situations, an employee or the employee's representative shall contact the super-  
19 visor as soon as possible during the 24-hour period immediately following the employee's failure to  
20 report to work.]

21 **(c) For use of sick leave that is foreseeable, an employee shall provide notice as pre-**  
22 **scribed in paragraph (a) of this subsection. A supervisor or appointing authority may not**  
23 **require notice to be given more than 10 calendar days before the first day of sick leave be-**  
24 **gins.**

25 **(d) For notifications specific to protected leave under the Family and Medical Leave Act**  
26 **(FMLA) or Oregon Family Leave Act (OFLA), refer to LBPR 15, Family and Medical Leave,**  
27 **and for other types of leave, refer to LBPR 17, Other Types of Leave.**

28 (4) Holiday during sick leave. If a holiday occurs while an employee is on sick leave, the holiday  
29 is not deducted from the employee's accrued sick leave.

30 (5) Use of accrued sick leave.

31 (a) Availability. Sick leave is available to an employee for use [on the first day of the calendar  
32 month following the month in which] **when** the leave [was] **is** earned.

33 (b) Qualifying absence. An employee may use accrued sick leave:

34 (A) For the employee's mental or physical illness, injury or health condition, need for medical  
35 diagnosis, care or treatment of a mental or physical illness, injury or health condition or need for  
36 preventive medical care.

37 (B) For care of a family member with a mental or physical illness, injury or health condition,  
38 care of a family member who needs medical diagnosis, care, or treatment of a mental or physical  
39 illness, injury or health condition or care of a family member who needs preventive medical care.

40 (C) For a purpose specified in ORS 659A.159, **659A.174**, [or] 659A.272 **or 659A.285**.

41 (D) In the event of a public health emergency.

42 (6) Use of other leave.

43 (a) An employee eligible to take FMLA or OFLA leave is entitled to use accrued paid sick leave,  
44 personal leave, vacation leave or any other paid leave for which the employee qualifies during the  
45 period of FMLA or OFLA leave or if OFLA and FMLA leave are exhausted. Accrued paid sick leave

1 does not include disability insurance or disability benefits.

2 (b) Use of leave without pay. An employee who is absent due to family or medical leave under  
3 LBPR 15 shall be allowed to use leave without pay if the employee so elects. An employee may elect  
4 to receive leave without pay while receiving disability income. A supervisor may require the em-  
5 ployee to provide evidence of such disability benefit.

6 (7) Medical verification.

7 (a) Need to be absent. Under certain circumstances, the appointing authority may require an  
8 employee to submit substantiating evidence for the use of sick leave and request additional infor-  
9 mation pursuant to state and federal law.

10 *[(b) Ability to return to work. Verification of an employee's ability to return to work with or*  
11 *without any modification is required from the employee's health care provider whether the absence was*  
12 *paid or unpaid due to a health or medical event, when.]*

13 *[(A) The employee was absent for more than five consecutive workdays as a result of the employee's*  
14 *own illness or injury; or]*

15 *[(B) The employee was hospitalized as an inpatient.]*

16 *[(c) (b) Job limitations. [An appointing authority] **Employee Services or an appointing au-***  
17 *thority may require an employee returning from a paid or unpaid leave of absence due to a health*  
18 *or medical event to provide information about any limitations on the employee's ability to perform*  
19 *the employee's job if the employee did not receive a full duty work release to return to work **or if***  
20 ***the employee requests a change of duty or work schedule.** Unless otherwise required by state*  
21 *or federal law, an appointing authority may modify an employee's work assignment or schedule in*  
22 *response to the stated limitations for the purpose of meeting operational needs.*

23 *[(d) Parental leave. An employee who is absent for parental leave reasons is not required to present*  
24 *verification of the ability to return to work.]*

25 *[(e) Workers' compensation. An employee who is absent as a result of an injury, illness or condition*  
26 *incurred or aggravated on the job for which a workers' compensation claim has been filed and who*  
27 *has sought medical treatment for the injury, illness or condition must request reinstatement or reem-*  
28 *ployment pursuant to ORS 659A.043 or 659A.046.]*

29 *[(f) (c) Cost of obtaining certification. **The** [In the case of] legislative agency, **Legislative As-***  
30 *sembly or parliamentary office [employees, the agency or office] shall reimburse an employee for any*  
31 *out-of-pocket costs incurred in obtaining medical certification **when it is required as a result of***  
32 ***a limitation as stated in paragraph (b) of this subsection** [of the need to be absent or ability to*  
33 *return to work. In the case of all other legislative employees, the Legislative Assembly shall reimburse*  
34 *an employee for any out-of-pocket cost incurred in obtaining medical certification of the need to be ab-*  
35 *sent or ability to return to work].*

36 **(d) Examinations and inquiries. An appointing authority may not require that an em-**  
37 **ployee submit to a medical examination, make inquiries of an employee as to whether the**  
38 **employee has a disability or make inquiries of an employee as to the nature or severity of**  
39 **any disability of the employee, unless the examination or inquiry is shown to be job-related**  
40 **and consistent with business necessity.**

41 **(e) Voluntary examinations and inquiries.**

42 **(A) Notwithstanding paragraph (d) of this subsection, an appointing authority may con-**  
43 **duct voluntary medical examinations, including voluntary medical histories, that are part of**  
44 **an employee health program available to employees at the Capitol. An appointing authority**  
45 **may make inquiries into the ability of an employee to perform job-related functions.**

1       **(B) Information obtained under subparagraph (A) of this paragraph relating to the med-**  
 2 **ical condition or history of any employee is subject to the same restrictions applicable to**  
 3 **information acquired from medical examinations authorized under ORS 659A.133.**

4       (8) Workers' compensation claims.

5       (a) Reporting requirements.

6       (A) An employee who is injured on the job or becomes ill or develops or aggravates a condition  
 7 because of the job shall immediately report the occurrence to the employee's supervisor.

8       (B) The employee's supervisor shall respond to this report by completing an Accident Incident  
 9 Report form (available in Employee Services) and returning the form to Employee Services.

10       (b) Use of leave. An employee who is absent because of an injury, illness or condition that was  
 11 incurred or aggravated on the job and who is receiving time loss payments for that absence may  
 12 either take leave without pay or prorate the use of accrued sick leave as described in paragraph  
 13 [(c)] (d) of this subsection. An employee may also prorate the use of other available paid leave. Such  
 14 leave may be requested in lieu of sick leave or when sick leave is exhausted, but it may not be  
 15 counted against an employee for the purpose of available OFLA [*or FMLA*] leave.

16       (A) An employee who takes leave without pay receives no compensation other than the time loss  
 17 payments authorized by the workers' compensation insurance carrier.

18       (B) An employee who is absent because of an injury, illness or condition that was incurred or  
 19 aggravated on the job and who is not receiving time loss payments for that absence may take leave  
 20 in accordance with this rule.

21       **(c) Reinstatement.**

22       **(A) An employee who is absent as a result of an injury, illness or condition that was in-**  
 23 **curring or aggravated on the job for which a workers' compensation claim has been filed, and**  
 24 **who has sought medical treatment for the injury, illness or condition, must request rein-**  
 25 **statement or reemployment pursuant to ORS 659A.043 or 659A.046.**

26       **(B) This paragraph is not intended to apply to an employee who incurs a single or inter-**  
 27 **mittent absence for a medical appointment or treatment that is related to a compensable**  
 28 **injury, as defined in ORS 656.005, but who is not disabled from performing the duties of the**  
 29 **employee's position or otherwise in a circumstance that requires reinstatement or reem-**  
 30 **ployment under ORS 659A.043 or 659A.046.**

31       [(c)] (d) An employee who chooses to prorate the use of accrued leave shall do so by using, for  
 32 every hour absent, one-third of one accrued leave hour and two-thirds of one hour of leave without  
 33 pay. The amount of leave taken without pay must represent the amount of time loss compensation  
 34 received.

35       (9) Effect of rehire.

36       **(a) A continuing status employee rehired within [*If, within*] two years from the employee's**  
 37 **date of separation [*, a former Legislative Branch employee is hired by the Legislative Branch, the***  
 38 ***employee's previously*] shall have any unused, accrued [*and unused*] sick leave restored upon re-**  
 39 **hire [*shall be restored*].**

40       **(b) A PERS retired [*employees who become rehired*] employee rehired after retirement [*do*] does**  
 41 **not receive restored sick leave.**

42       **(c) A prior temporary status employee rehired within 180 days from the temporary status**  
 43 **employee's date of separation shall have any unused, accrued sick leave restored upon rehire.**

44       (10) Effect of movement within Legislative Branch. When an employee [*is transferred*]  
 45 **transfers, [*promoted*] promotes or [*demoted*] demotes** from one appointing authority to another



1 within the Legislative Branch, all [of] the employee's accrued sick leave shall [be transferred]  
2 **transfer.**

3 (11) Employees hired from a State of Oregon agency. If, within two years of separation, a former  
4 State of Oregon agency employee is hired by the Legislative Branch, the employee's previously ac-  
5 cused unused sick leave shall be transferred.

6 (12) Employees hired from an Oregon university or governing board. If an individual who pre-  
7 viously worked for an Oregon university or governing board as defined by ORS 352.054 is hired into  
8 a Legislative Branch position, the employee's previously accrued unused sick leave **from the**  
9 **Oregon university or governing board** may not be transferred.

10 (13) Sick leave upon termination.

11 (a) **Employees are not compensated** [*There is no compensation*] for unused sick leave upon  
12 termination of employment. Unused sick leave is placed in the State's accrual clearinghouse for two  
13 years following [*the*] **a continuing status** employee's termination of employment, available to be  
14 restored to the employee if the employee is reinstated within those two years.

15 (b) **Except for PERS retirees as described in paragraph (c) of this subsection, all unused**  
16 **sick leave hours are restored to temporary status employees who are reinstated within 180**  
17 **days of separation.**

18 [(b)] (c) The Legislative Branch shall report unused sick leave to the Public Employees Retirement  
19 System (PERS). According to statute, sick leave, once reported by the employer to PERS for  
20 retirement purposes, is considered used and is therefore not subsequently available for restoration.

21 (14) Use of donated vacation leave for sick leave purposes. An employee may receive paid sick  
22 leave that has been converted from vacation leave donated by other employees **in accordance with**  
23 **LBPR 14, Vacation Leave.** An employee receiving donated leave may use the leave only in ac-  
24 cordance with this rule.

25 [(15) *Operative date. This rule becomes operative January 1, 2016.*]

26  
27 Legislative Branch Personnel Rule 17: Other Types of Leave

28 APPLICABILITY: This rule applies to all employees of the Legislative Branch. This rule does  
29 not apply to members of the Legislative Assembly.

30 (1) Leave requests.

31 (a) All requests for paid leave granted by an agency or office subject to this rule shall be sub-  
32 mitted to Employee Services either via an approved electronic timekeeping application or in writing.

33 (b) Except as otherwise provided **in rule or law**, leave with pay [*may be*] **is** granted at the dis-  
34 cretion of **the** appointing authority **or the employee's immediate supervisor.**

35 (2) Administrative leave.

36 (a) Administrative leave is paid leave awarded by an appointing authority that is not classified  
37 as any other specific type of leave.

38 (b) The appointing authority may grant paid administrative leave to an employee who is ineli-  
39 gible for overtime compensation. The appointing authority may grant paid administrative leave to  
40 an employee who is eligible for overtime compensation provided [*that the employee is paid*] **the leave**  
41 **is not in lieu of payment for** overtime [*in addition to any administrative leave granted*].

42 (c) Administrative leave must be used within one year after the date on which the leave is  
43 granted.

44 (d) Administrative leave is noncompensable. No cash payment in lieu of paid leave may be made  
45 for administrative leave.

1 (e) Use of administrative leave is subject to approval by the appointing authority and the  
2 employee's immediate supervisor.

3 (f) Employee Services shall maintain records of the amount of administrative leave granted and  
4 used.

5 **(g) All awards of administrative leave must comply with pay equity laws. See LBPR 4,  
6 Compensation and Salary Administration, for further guidance.**

7 (3) Personal business leave.

8 (a) **Twenty-four hours of** personal business leave is awarded each fiscal year and is not cu-  
9 mulative from year to year or compensable in any form other than leave.

10 (b) Personal business leave is granted to eligible employees after completion of six months of  
11 employment in the Legislative Branch.

12 (c) An employee in a part-time status position is granted paid personal business leave on a  
13 prorated basis.

14 (d) Unused personal business leave is restored to employees who, within the same fiscal year,  
15 vacate and return and complete 1,040 hours of employment.

16 (e) Use of personal business leave is subject to approval by the employee's immediate supervisor.

17 **(f) Any unused personal business leave of an employee who transfers from another  
18 branch of state government or within the Legislative Branch shall also be transferred for  
19 use during the same fiscal year.**

20 (4) Jury duty and witness leave.

21 (a) An employee who is summoned to jury duty on a day within the employee's regular work  
22 schedule shall receive normal pay for such service. The employee shall waive *[the]* **any** juror fees,  
23 **but may keep all mileage fees or any extraordinary expenses paid to the employee for jury  
24 duty or for appearing as a witness** *[normally paid]*.

25 (b) An employee who is subpoenaed to appear as a witness, other than as a party in the action,  
26 in a court or other forum on a day within the employee's regular work schedule shall receive normal  
27 pay for such service.

28 (c) An employee shall receive no additional compensation (i.e., overtime) for juror or witness  
29 service that extends beyond an employee's regular work schedule.

30 (d) An employee who is summoned to serve as a juror or who is subpoenaed to appear as a  
31 witness on the employee's regularly scheduled day off may not receive pay for that day[,] but may  
32 keep any juror or witness fees paid.

33 *[(e) An employee may keep all mileage fees and any authorized extraordinary expenses paid to the  
34 employee for jury duty or for appearing as a witness.]*

35 (5) Military leave. *[An employee is entitled to leave for]* **An employee's eligibility and  
36 entitlement for leave during** military service *[as]* **is** provided in ORS 408.240 through 408.290,  
37 **ORS 659A.086** and under the Uniformed Services Employment and Reemployment Rights Act, 38  
38 U.S.C. 4301 to 4335 ("USERRA").

39 (6) Leave to address domestic violence, harassment, sexual assault or stalking.

40 (a) An **eligible** employee who is a victim of domestic violence, a victim of harassment, a victim  
41 of sexual assault as described in ORS 659A.270 to 659A.285 or a victim of stalking *[may]* **shall** be  
42 granted **up to 160 hours** leave with pay *[up to 160 hours]* in each calendar year. An employee must  
43 exhaust all other forms of paid leave before the employee *[may]* **is eligible to** use the paid leave  
44 established in this rule.

45 (b) An employee may use the 160 hours of employer-paid leave to seek legal or law enforcement

1 assistance, to seek medical treatment, to assist a minor child in obtaining counseling, to obtain  
2 services from a victim services provider or to relocate or take steps to secure an existing home to  
3 ensure the health and safety of the eligible employee or the employee's minor child or dependent.

4 (c) An employee seeking leave under this rule must give reasonable advance notice. In an un-  
5 anticipated or emergency situation, oral or written notice must be provided as soon as is practica-  
6 ble.

7 (d) An employee may be required to provide documentation from an attorney, law enforcement  
8 officer, [or] health care professional, **licensed mental health care professional or counselor,**  
9 **member of the clergy or victim services provider** or a copy of a police report or protective or-  
10 der.

11 (7) Bereavement leave.

12 (a) At the request of the employee, an appointing authority shall grant up to 24 hours or the  
13 equivalent of three full days of scheduled work for paid bereavement leave after the death of a  
14 qualifying family member as defined by the federal Family and Medical Leave Act or Oregon Family  
15 Leave Act, a domestic partner as defined by Public Employees Benefit Board (PEBB) eligibility  
16 rules, a child or parent of the employee's domestic partner, as defined by PEBB eligibility rules, a  
17 sibling, a grandparent or a grandchild.

18 (b) At the discretion of the appointing authority, an employee may be granted up to 24 hours  
19 or the equivalent of three full days of scheduled work for paid bereavement leave after the death  
20 of any other relative, any in-law or any person residing in the same household as the employee. In  
21 determining the amount of time to grant, the appointing authority shall consider the need for travel  
22 time.

23 (c) With the prior approval of the appointing authority, accrued leave may be used to cover time  
24 spent beyond bereavement leave.

25 **(d) In addition to the paid leave in paragraph (a) of this subsection, an employee may also**  
26 **be eligible for two weeks of protected bereavement leave under the Oregon Family Leave Act.**  
27 **For more information and eligibility, see LBPR 15, Family and Medical Leave.**

28 (8) Other statutorily provided leave with pay. The Legislative Branch shall grant all other leave  
29 with pay for which an employee is eligible under state or federal law.

30 (9) Leave without pay.

31 (a) An employee **shall submit a written request to use** [*desiring a*] leave [*of absence*] without  
32 pay [*shall submit*] to the **employee's** appointing authority [*a written request for that leave*]. The re-  
33 quest must specify the duration **and purpose** of the leave [*and the purpose of the leave*].

34 (b) Except as otherwise provided by a **Legislative Branch Personnel Rule** or law, any request  
35 for leave without pay must be submitted in advance of the leave, and approval or denial of the re-  
36 quest is at the discretion of the appointing authority. Normally, leave without pay may not be  
37 granted until all other appropriate available paid leave has been exhausted.

38 (c) [*Unless LBPR 4 (6) applies,*] Time off reported on an employee's timesheet in excess of  
39 available paid leave will be charged to leave without pay by Employee Services.

40 (d) Vacation and sick leave accrual for an employee who worked less than a full calendar month  
41 in a pay period because of leave without pay is computed on a prorated basis using the number of  
42 available work hours, based on the employee's regular schedule, in that month.

43 (e) Effect on recognized service date. Except as otherwise provided by law, leave without pay  
44 in excess of 15 consecutive calendar days results in a permanent adjustment of the employee's re-  
45 cognized service date. An employee's recognized service date is adjusted by adding to it the number

1 of calendar days absent without pay, thereby making the recognized service date later than it would  
2 have been if leave without pay had not been taken.

3 (f) Effect on introductory period. Leave without pay in excess of 15 consecutive calendar days  
4 may not be considered for fulfillment of an introductory period.

5 (g) Leave without pay totaling 11 or more working days in a calendar month may affect an  
6 employee's creditable service calculation under PERS. **It is an employee's responsibility to con-**  
7 **tact** PERS [*maintains*] **for** more detailed information.

8 (10) Leave during official building closure.

9 (a) Leave described under this subsection may be claimed only for periods of time during which  
10 Legislative Branch operations are officially curtailed or [*facilities are officially*] closed under LBPR  
11 29.

12 (b) Employees who are unable to work due to an official curtailment or closure shall be granted  
13 leave with pay **during the time of the curtailment or closure**. Employees who are otherwise on  
14 **approved** paid or unpaid leave during the official curtailment or closure shall [*remain on leave*] **code**  
15 **time based on the appropriate leave**. Overtime-eligible employees shall record time worked during  
16 an official curtailment or closure as regular hours [*on their timesheets*]. **For further assistance,**  
17 **refer to the Temporary Interruption of Employment Guide for Capitol Closure.**

18 (c) Overtime-eligible **essential** employees [*who are*] required by the appointing authority to work  
19 during an official building closure shall record time worked as regular hours and shall **accrue**  
20 **compensatory time** [*be provided administrative leave*] at the rate of time and one half for each hour  
21 worked during the official building closure.

22 (d) When a hazardous condition does not result in official curtailment or building closure, but  
23 an employee does not wish to remain on site, the employee has the option of using available paid  
24 leave or leave without pay. Employees are ultimately responsible for their own safety decisions and  
25 no employee will be required to remain if the employee feels unsafe. **An employee may be eligible**  
26 **to work from an alternate location with supervisory approval.**

27 (11) Family and medical leave. An **eligible** employee may be absent for reasons that qualify un-  
28 der FMLA or OFLA. **For details specific to eligibility and qualifying conditions, see** [*in accord-*  
29 *ance with*] LBPR 15, **Family and Medical Leave.**

30 [(12) *Operative date. This rule becomes operative January 1, 2016.*]

31  
32 Legislative Branch Personnel Rule 28: Safe and Healthy Workplace

33 **APPLICABILITY:** This rule applies to all members of the Legislative Assembly and to all em-  
34 ployees of the Legislative Branch.

35 (1) Policy. The Legislative Branch is committed to a drug-free and smoke-free workplace that  
36 encourages a safe, healthy and productive work environment.

37 (2) Drug-free Capitol.

38 (a) An employee may not, in the workplace, be under the influence of alcohol, marijuana or a  
39 prescribed or nonprescribed substance that impairs the employee's ability to safely and competently  
40 perform the duties of the employee's position or negatively impacts others in the workplace.

41 (b) An employee may not, in the workplace, be under the influence of, manufacture, distribute,  
42 dispense, possess or use an illegal substance.

43 (c) An appointing authority may grant leave with or without pay to permit any employee who  
44 requests to participate in a substance abuse assistance or rehabilitation program.

45 (3) Smoke-free Capitol. No one may smoke, aerosolize or vaporize an inhalant or use a smoking

1 instrument, as defined in ORS 433.835, inside the Capitol, on Capitol grounds, within any Capitol  
 2 courtyard, in the underground parking structure or within 10 feet of any entrance, exit, window that  
 3 opens or ventilation intake that serves an enclosed area.

4 (4) Violation. A violation of this policy may be reported to a supervisor, manager or Employee  
 5 Services. Additionally, in the event of unlawful conduct or conduct that gives rise to safety con-  
 6 cerns, violations may be reported to Capitol security or the appropriate authorities. In the event of  
 7 damage to Legislative Branch property caused by a violation of this rule, **an employee may be**  
 8 **disciplined up to and including termination.** The Legislative Branch [*shall*] **may** assess actual  
 9 costs against the [*offending party*] **offending member's personal conduct**, not to exceed \$5,000 per  
 10 occurrence.

11 **(5) Retaliation.**

12 **(a) It is a violation of this rule for a person to retaliate against an employee, prospective**  
 13 **employee or other person who has reported a violation of this rule because the employee,**  
 14 **prospective employee or reporter has opposed any practice, made a complaint, instituted or**  
 15 **caused to be instituted any proceeding or exercised on behalf of the employee, prospective**  
 16 **employee, reporter or others any rights or protected activity described in this rule or ORS**  
 17 **654.062, relating to workplace health and safety.**

18 **(b) As used in this subsection, "retaliate" means fire, lay off, blacklist, demote, deny**  
 19 **overtime or promotion, discipline, deny benefits, fail to hire or rehire, intimidate, make**  
 20 **threats, reduce pay or hours or take any other adverse action.**

21  
 22 Legislative Branch Personnel Rule 29: Building or Office Closure or Curtailment

23 APPLICABILITY: This rule applies to all members of the Legislative Assembly and to all em-  
 24 ployees of the Legislative Branch. This rule does not apply to the operations of district offices.

25 (1) Branch closure. The Legislative Branch may curtail services and close facilities only under  
 26 hazardous conditions or inclement weather.

27 (2) Definitions. As used in this rule:

28 (a) "Closure" means a temporary cessation of operations.

29 (b) "Curtailment" means a temporary change in operations. Curtailment may involve continuing  
 30 some but not all [*of*] the operations of a legislative agency or parliamentary office.

31 (c) "Hazardous conditions" means internal or external workplace conditions that interfere with  
 32 normal operations, including but not limited to the presence of hazardous chemicals, flood, fire,  
 33 earthquake or contagious illness and other safety issues.

34 (d) "Inclement weather" means extreme weather conditions that interfere with normal agency  
 35 operations.

36 (3) Designated officials to determine curtailments and closures; reason for curtailment or clo-  
 37 sure.

38 (a) The Legislative Administrator, in consultation with leadership offices, may curtail or close  
 39 legislative agency and parliamentary office operations or close the State Capitol for hazardous  
 40 conditions, inclement weather or other situations to ensure the health or safety of employees or the  
 41 public.

42 (b) The Legislative Administrator shall base decisions to curtail services or close **legislative**  
 43 **agency or parliamentary office operations or the State Capitol** [*facilities*] on information in-  
 44 cluding but not limited to road conditions, as announced by the Department of Transportation,  
 45 weather forecasts, public health or safety alerts, building conditions, the accessibility of exits and

1 parking areas and discussions with other local government officials regarding the status of other  
2 building conditions in the area.

3 (4) Essential personnel. Agency heads and parliamentarians may designate personnel who are  
4 essential to operations during curtailment or closure of operations. Legislative agencies and parlia-  
5 mentary offices shall notify essential personnel that they are required to report, as directed, re-  
6 gardless of curtailment or closure. Agencies and offices shall provide essential personnel with  
7 instructions on how to proceed in the event of curtailment or closure.

8 (5) Notification procedure.

9 *[(a) Employees may call the Building Information line at (503) 986-1178 for information about un-*  
10 *planned curtailment or closure of operations or official building closure. Employees may also get in-*  
11 *formation about curtailments or closures on the legislative website. Legislative agencies and*  
12 *parliamentary offices may develop additional internal procedures for notifying employees and the public*  
13 *of unplanned curtailment or closure of services.]*

14 **(a) If a curtailment or closure decision is made before the start of the work day, the**  
15 **Legislative Administrator shall notify media outlets by 5:00 a.m. or, if the decision is made**  
16 **after 5:00 a.m., as soon as is practicable.**

17 (b) *[If the]* **As soon as the** Legislative Administrator decides to curtail or close legislative op-  
18 erations, the Legislative Administrator shall notify the legislative website editor and Facilities Ser-  
19 vices Director to begin the notification process. **Employees have the following options for**  
20 **closure or curtailment notifications:**

21 **(A) Capitol Information line at (503) 986-1178;**

22 **(B) Legislative website;**

23 **(C) Local media outlets; or**

24 **(D) Additional internal procedures that a legislative agency or a parliamentary office may**  
25 **develop for notifying employees and the public of unplanned curtailment or closure of ser-**  
26 **vices.**

27 *[(c) If a curtailment or closure decision is made before the start of the work day, the Legislative*  
28 *Administrator shall notify media outlets by 5:00 a.m. or, if the decision is made after 5:00 a.m., as soon*  
29 *as is practicable.]*

30 *[(d)]* **(c)** Legislative Administration shall establish communication procedures for employees who  
31 start work at or prior to 6:00 a.m.

32 (6) Personal safety. **Except as provided in subsection (4) of this rule,** employees are respon-  
33 sible for their own personal safety and should make their own decisions about reporting to work  
34 during periods of inclement weather or when hazardous conditions exist.

35 (7) Leave. Whether leave with pay is granted for periods of closure or curtailment is determined  
36 under LBPR 17 (10) and the Temporary Interruption of Employment Guide **for Capitol Closure**  
37 **found on the Legislative Intranet under Human Resources [(TIE)].**

38  
39 Legislative Branch Personnel Rule 30: Safety and Wellness Committee

40 **APPLICABILITY:** This rule applies to legislative agencies and parliamentary offices.

41 (1) Policy. It is the policy of the Legislative Branch to promote health and safety *[in places of*  
42 *employment]* for all employees, volunteers and visitors. Employee involvement in accident prevention  
43 is desired to promote a safe and healthy workplace. To accomplish this task, a Safety and Wellness  
44 Committee (SWC) is established, consistent with ORS 654.182.

45 (2) Purpose. The SWC shall seek to eliminate risks and identify opportunities to educate and

1 engage the *[staff]* **employees** of the Legislative Branch on health and safety issues in the workplace.

2 (3) Committee membership.

3 (a) The SWC shall consist of:

4 (A) Safety Coordinator and the Human Resources Director as permanent members; and

5 (B) At least one representative **each** from:

6 (i) The Legislative Administrator's Office;

7 (ii) Financial Services;

8 (iii) Committee Services;

9 (iv) Information Systems;

10 (v) The Legislative Counsel Office;

11 (vi) The Legislative Fiscal Office;

12 (vii) The Legislative Revenue Office;

13 (viii) The Commission on Indian Affairs; *[and]*

14 **(ix) The Legislative Policy and Research Office;**

15 **(x) The Legislative Equity Office;**

16 **(xi) Office of the Secretary of the Senate;**

17 **(xii) Office of the Chief Clerk of the House of Representatives; and**

18 *[(ix)]* **(xiii) Other Capitol building tenants, including the Oregon State Treasurer, the Secretary**  
19 **of State and the Governor's Office.**

20 (b) No interested party may be excluded from participation in the SWC.

21 (c) *[Whenever possible,]* A balanced membership must be maintained between management per-  
22 sonnel and staff.

23 (d) Representatives on the SWC may be volunteers or elected by their peers.

24 (e) Representatives on the SWC shall serve a continuous term of one year (January 1 through  
25 December 31).

26 *[(f) Legislative Branch employees who serve as representatives on the SWC remain at-will employ-*  
27 *ees.]*

28 (4) Committee meetings. The SWC shall meet during regular business hours. All representatives  
29 on the SWC shall be compensated at their regular hourly wage while they are engaged in SWC  
30 training or are attending SWC meetings.

31 (5) Duties and functions. The duties and functions of the SWC include, but are not limited to:

32 (a) Conducting an annual review of existing procedures and approving modifications to or  
33 adopting written procedures for:

34 (A) Reporting and investigating health and safety incidents, accidents, illnesses and deaths;

35 (B) Tracking and reporting incident statistics;

36 (C) Safety and wellness training for SWC members and legislative *[staff]* **employees**; and

37 (D) **Conducting** workplace safety **and health** inspections by the SWC.

38 (b) In January of each year, conducting an annual review and evaluation of those records that  
39 are required to be maintained by the Occupational Safety and Health Administration, including  
40 those that reflect the prior year's incidents, accidents, illnesses and deaths, for the purpose of re-  
41 commending corrective action necessary to prevent similar events from occurring.

42 (c) Evaluating current Legislative Administration policies and procedures that may impact  
43 health and safety in the workplace, and making written recommendations to the Legislative Ad-  
44 ministrator for modifying or adopting policies and procedures as necessary.

45