

24-50-104. Job evaluation and compensation.

(1) **Total compensation philosophy.** (a) (I) It is the policy of the state to provide prevailing total compensation to officers and employees in the state personnel system to ensure the recruitment, motivation, and retention of a qualified and competent work force. For purposes of this section, "total compensation" includes, but is not limited to, salary, group benefit plans, retirement benefits, performance awards, incentives, premium pay practices, and leave. For purposes of this section, "group benefit plans" means group benefit coverages contracted for or administered by the state personnel director for medical, dental, and life benefits.

(II) The state personnel director shall establish technically and professionally sound survey methodologies to assess prevailing total compensation practices, levels, and costs. Except as provided in subparagraph (III) of this paragraph (a), for purposes of this paragraph (a), to determine and maintain salaries, state contributions for group benefit plans, and performance awards that are comparable to public and private employment, the state personnel director shall annually review the results of appropriate surveys by public or private organizations, including surveys by the state personnel director. Any surveys provided on a confidential basis shall not be revealed except to the state auditor's office and the private firm conducting the audit required in paragraph (b) of subsection (4) of this section. The state personnel director shall adopt appropriate procedures to determine and maintain other elements of total compensation, including the payment of incentive awards to employees in the state personnel system. The state personnel director's review and determination of total compensation practices shall not be subject to appeal except as otherwise authorized by law or state personnel director procedures.

(III) (A) The methodologies used for purposes of determining and maintaining prevailing compensation for state troopers employed by the Colorado state patrol shall be the same as the methodologies established pursuant to subparagraph (II) of this paragraph (a); except that the amount of salary shall be at least ninety-nine percent of the actual average salary provided to the top three law enforcement agencies within the state that have both more than one hundred commissioned officers and the highest actual average salary.

(B) As used in this subparagraph (III), "state trooper" means the chief and any commissioned or noncommissioned officer and patrolman of the Colorado state patrol.

(b) The state personnel director shall use a systematic approach to objectively determine classes of positions and the uniform alignment of classes and occupational groups for all jobs in the state personnel system. The state personnel director shall conduct timely, ongoing, and technically sound evaluation and analyses of jobs in order to group similar duties and responsibilities into clearly distinguished classes and occupational groups that relate to the compensation structure through the assignment of appropriate pay grades. If the state personnel director proposes or the department of personnel recommends any changes to classes or occupational groups or to the pay grades for such classes or groups as a result of the evaluation and analyses required under this paragraph (b), the director shall notify all affected employees and employee organizations of such changes. Upon request of any affected employee or employee organization, the state personnel director shall meet and confer in good faith with such employee or organization regarding the proposed or recommended changes prior to finalizing and implementing any such change.

(c) (I) Based on a system of performance management and evaluation, the state personnel director shall adopt procedures for periodic salary increases for employees in the state personnel system based on

performance.

(II) The department of personnel shall develop guidelines and coordinate a performance system pursuant to the provisions of subparagraph (I) of this paragraph (c) that:

(A) Is simple and understandable to employees in the state personnel system;

(B) (Deleted by amendment, L. 2003, p. 1931, § 5, effective May 22, 2003.)

(C) Is developed with input from employees in the state personnel system, managers, and other affected parties;

(D) Emphasizes planning, management, and evaluation of employee performance;

(E) Includes uniform and consistent guidelines for all state departments and institutions of higher education;

(F) Prohibits a forced distribution of performance ratings; and

(G) Authorizes individual and group performance awards.

(III) (Deleted by amendment, L. 2003, p. 1931, § 5, effective May 22, 2003.)

(IV) The state personnel director may authorize state departments and institutions of higher education to establish a program for the particular state department or institution to implement the performance system prepared by the department of personnel in accordance with the provisions of this paragraph (c). The state personnel director shall encourage state departments and institutions of higher education to implement performance evaluations of employees that are as objective as possible and that, as soon as possible and wherever feasible, include an assessment from multiple sources of each employee's performance. Such sources shall include, where applicable, the employee's self-assessment, the employee's superiors, subordinates, peers, and any other applicable sources of an employee's performance. The state personnel director shall adopt procedures to establish a process to resolve employee disputes related to performance evaluations that do not result in corrective or disciplinary action against the employee. Each program established by a state department or institution of higher education pursuant to this subparagraph (IV) shall be subject to the director's approval. Except as provided in paragraph (d) of subsection (5) of this section, salaries may be increased or left unchanged subject to available appropriations for the performance system; except that no annual increase shall be guaranteed.

(c.5) (I) The state personnel director shall provide for the evaluation of employee performance. Each employee shall be evaluated at least once a year. The evaluation of performance shall be used as a factor in compensation, promotions, demotions, removals, reduction of force, and all other transactions as determined by the state personnel director in which considerations of quality of service are properly a factor.

(II) A supervisor, including a supervisory state employee not within the state personnel system, who does not evaluate subordinate employees in the state personnel system as required by this paragraph (c.5) on at least an annual basis shall be suspended from work without pay for a period of not less than one workday. The provisions of this subparagraph (II) shall only apply to supervisors who are state employees.

(III) The head of each principal department and each state-supported institution of higher education, respectively, shall determine annually on May 1 whether each supervisor in the department or institution

has completed the mandatory performance evaluation required for each employee in the state personnel system during the preceding twelve months. If any evaluations have still not been completed by July 1, the supervisor may be subject to demotion. If a supervisor has not timely completed annual performance evaluations for two consecutive years, the supervisor shall be demoted to a nonsupervisory position.

(IV) The state personnel director shall adopt procedures for the implementation of the provisions of this paragraph (c.5). Nothing in this paragraph (c.5) shall be construed to limit the ability of the state personnel director to provide for additional sanctions for noncompliance with the provisions of this paragraph (c.5).

(V) The state personnel director shall monitor compliance with the requirements of this paragraph (c.5) and paragraph (c) of this subsection (1) and shall annually report the director's findings pertaining to the prior fiscal year no later than January 1 of the following fiscal year to the joint budget committee of the general assembly. The report shall include, by department or institution, the number of supervisors who were suspended or demoted, the percentage of all supervisors who complied with the requirements of this paragraph (c.5), the total amount of dollars appropriated for performance awards, the total amount of such dollars that were awarded to employees for performance awards, and the total amount of those dollars awarded for each performance category.

(c.7) In addition to the periodic salary increases authorized by paragraph (c) of this subsection (1), the performance system established pursuant to subparagraph (II) or (IV) of paragraph (c) of this subsection (1) shall be used for the purpose of determining eligibility for a performance-based bonus permitted pursuant to section 24-38-103 (1.5). The bonus shall be in addition to any other compensation authorized by law, and it shall not affect the compensation that the employee is entitled to receive in subsequent years.

(d) (Deleted by amendment, L. 2000, p. 1117, § 1, effective May 26, 2000.)

(e) The state personnel director shall sustain an employee's base salary in the event such employee's position is placed in a lower pay range due to an allocation of such employee's position, a system maintenance study of all positions in a class, a general job evaluation study of the state personnel system, or the annual compensation survey for a period not to exceed three years from the effective date of such placement.

(f) Initial hiring shall typically be at the minimum rate in the pay grade. On a showing of recruiting difficulty or other unusual condition, the appointing authority may authorize the appointment of a person at a higher base salary within the pay grade.

(g) Benefits shall include insurance, retirement, and leaves of absence with or without pay and may include jury duty, military duty, or educational leaves. The state personnel director shall prescribe procedures for the types, amounts, and conditions for all leave benefits that are typically consistent with prevailing practices, subject to the provisions governing the benefits provided in subsection (7) of this section. The general assembly shall approve any changes to leave benefits granted by statute before such changes are implemented. The state personnel director shall prescribe by procedure any nonstatutory benefits.

(h) The state personnel director may, following consultation with the state auditor and consistent with article III and sections 13, 14, and 15 of article XII of the state constitution, establish special procedures for classifying those employees of the state auditor's office who are within the state personnel system in order to take into consideration the special situations, circumstances, and duties unique to such employees. Such special procedures shall incorporate the directives, requirements, and elements of sections 13, 14, and 15 of article XII of the state constitution, including, but not limited to, the grading

and compensation of persons in the state personnel system according to standards of efficient service that are the same for all persons having like duties.

(i) (Deleted by amendment, L. 2003, p. 1926, § 1, effective May 22, 2003.)

(2) **Records.** To facilitate the reporting of estimated costs required of the state personnel director pursuant to paragraph (c) of subsection (4) of this section, the records of all positions in the state personnel system shall be current and included in the state personnel data system by January 1 of each year.

(3) **Total compensation advisory council.** (a) A total compensation advisory council is hereby established pursuant to this subsection (3) to advise the state personnel director on policy matters related to the total compensation program. The total compensation advisory council shall consist of ten members, who shall serve without compensation, as follows:

(I) and (II) (Deleted by amendment, L. 2003, p. 1926, § 1, effective May 22, 2003.)

(III) The insurance commissioner or the insurance commissioner's designee;

(IV) A private sector total compensation specialist appointed by the state personnel director;

(V) A member of the senate appointed by the president of the senate;

(VI) A member of the house of representatives appointed by the speaker of the house of representatives;

(VII) (Deleted by amendment, L. 2003, p. 1926, § 1, effective May 22, 2003.)

(VIII) One member appointed by the president of the senate, one member appointed by the minority leader of the senate, and two members appointed by the speaker of the house of representatives. The members appointed pursuant to this subparagraph (VIII) shall be employees, as defined in section 24-50-603 (7), and shall serve three-year terms.

(IX) Two members appointed by the state personnel director who shall serve three-year terms. One of the members appointed pursuant to this subparagraph (IX) shall be an employee, as defined in section 24-50-603 (7).

(a.5) The terms of the members of the general assembly appointed by the speaker of the house of representatives and the president of the senate pursuant to subparagraphs (V) and (VI) of paragraph (a) of this subsection (3) who are serving on March 22, 2007, shall be extended to and expire on or shall terminate on the convening date of the first regular session of the sixty-seventh general assembly. As soon as practicable after such convening date, the speaker and the president shall appoint or reappoint members of the general assembly in the same manner as provided in subparagraphs (V) and (VI) of paragraph (a) of this subsection (3). Thereafter, the terms of members of the general assembly appointed or reappointed by the speaker and the president shall expire on the convening date of the first regular session of each general assembly, and all subsequent appointments and reappointments by the speaker and the president shall be made as soon as practicable after such convening date. The person making the original appointment or reappointment shall fill any vacancy by appointment for the remainder of an unexpired term. A member of the general assembly appointed or reappointed by the speaker or the president shall serve at the pleasure of the appointing authority and shall continue in office until the member's successor is appointed.

(b) No more than two employees shall be appointed from one department or institution of higher education. No employee, as defined in section 24-50-603 (7), shall be denied the right to be appointed to

and serve on the total compensation advisory council. Nothing in this subsection (3) shall preclude any person, organization, or group from submitting a list of potential appointees to any person making appointments to the council pursuant to paragraph (a) of this subsection (3).

(c) Nothing in this subsection (3) shall affect the total compensation advisory council existing as of June 1, 2003, or the terms of the members serving on the council as of June 1, 2003.

(4) Annual compensation process. (a) The purpose of the annual compensation process is to determine any necessary adjustments to state employee salaries, state contributions for group benefit plans, and performance awards. The annual compensation survey, based on an analysis of surveys by public or private organizations, including surveys by the state personnel director, shall include a fair sample of public and private sector employers and jobs, including areas outside the Denver metropolitan area. In order to establish confidence in the selection of surveys, the state personnel director shall meet and confer in good faith with management and state employee representatives and the total compensation advisory council.

(b) (I) The state personnel director shall prepare an annual compensation report based on the analysis of surveys conducted pursuant to paragraph (a) of this subsection (4). The purpose of the annual compensation report shall be to reflect all adjustments necessary to maintain the salary structure, state contributions for group benefit plans, and performance awards for the upcoming fiscal year. The state auditor is responsible for contracting with a private firm to conduct a performance audit of the procedures and application of data, including any survey conducted by the state personnel director. Beginning January 1, 2003, such audits shall be conducted every two years, and beginning January 1, 2005, the audits shall be conducted every four years. A report shall be submitted to the governor and the general assembly by the June 30 immediately following the completion of the audit.

(II) The general assembly reviewed the reporting requirements to the general assembly in subparagraph (I) of this paragraph (b) during the 2008 regular session and continued the requirements.

(c) By August 1, 2003, and by August 1 of each year thereafter, the state personnel director shall submit the annual compensation report and recommendations and estimated costs for state employee compensation for the next fiscal year, covering salaries, state contributions for group benefit plans, and performance awards, to the governor and the joint budget committee of the general assembly. The recommendations shall reflect a consideration of the results of the annual compensation survey, fiscal constraints, the ability to recruit and retain state employees, appropriate adjustments with respect to state employee compensation, and those costs resulting from implementation of section 24-50-110 (1) (a). The recommendations for state contributions for group benefit plans shall specify the annual group benefit plan year established pursuant to section 24-50-604 (1) (m). The annual compensation report shall include the results of the surveys of public or private employers and jobs for prevailing total compensation and the reasons for any deviation from prevailing total compensation in the recommendations submitted to the governor and the joint budget committee. The state personnel director shall also publish such report.

(d) (I) For fiscal years commencing prior to the 2003-04 fiscal year and after the 2003-04 fiscal year, the recommended changes to salaries and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act shall be effective on July 1 of the ensuing fiscal year unless the general assembly, acting by bill, establishes a different effective date for that fiscal year or the governor orders otherwise pursuant to section 24-50-109.5 and such order is adopted by the general assembly through a joint resolution declaring a fiscal emergency and approved by the governor in accordance with section 39 of article V of the Colorado constitution.

(II) For the 2003-04 and 2004-05 budget years, to the extent such changes are funded, the recommended

changes in state contributions for group benefit plans and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act for the next fiscal year shall be effective January 1 of the next fiscal year. For the 2005-06 fiscal year and each fiscal year thereafter, to the extent such changes are funded, the recommended changes in state contributions for group benefit plans and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act for the next fiscal year shall be effective on the first day of the annual group benefit plan year established pursuant to section 24-50-604 (1) (m).

(III) (Deleted by amendment, L. 2006, p. 543, § 1, effective July 1, 2006.)

(IV) The state personnel director, in preparing the annual compensation report and submitting recommendations and estimated costs for state employee compensation for the next fiscal year, pursuant to paragraphs (b) and (c) of this subsection (4), and in implementing any changes to state employee compensation shall ensure that for the 2003-04 fiscal year no state employee receive the recommended changes in employee salaries in the annual compensation recommendations for changes to salaries and any adjustments to the recommended changes made by the general assembly in the annual general appropriation act.

(e) (Deleted by amendment, L. 2006, p. 543, § 1, effective July 1, 2006.)

(f) Any moneys appropriated pursuant to this subsection (4) shall not be used to achieve parity for employees outside the state personnel system.

(5) **Pay plans.** (a) The state personnel director shall establish pay plans as technically and professionally necessary and shall establish any procedures and directives required to implement the state's prevailing total compensation philosophy as defined in subsection (1) of this section.

(b) No employee in any pay plan may exceed an established maximum salary amount for such plan, except as provided in paragraph (e) of subsection (1) of this section. The maximum monthly salary for any employee whose position is assigned to a nonmedical pay plan in effect prior to July 1, 1991, shall be calculated based on the 1991 maximum of five thousand seven hundred ninety-four dollars, plus the subsequent adjustments made under this paragraph (b) since July 1, 1991; except that classes in the medical pay plan requiring licensure as a physician or dentist shall be subject to a maximum monthly salary calculated on the basis of the 1991 maximum of seven thousand eight hundred twelve dollars, plus the subsequent adjustments made under this paragraph (b) since July 1, 1991. Such amounts shall be adjusted by the state personnel director in accordance with the change in the employment cost index for the preceding calendar year or the percentage increase in state general fund appropriations in relation to such appropriations for the preceding fiscal year, whichever is greater. In no event shall such amounts exceed the maximum found in the market as determined by the annual compensation survey. The maximum monthly salary for the senior executive service plan shall not exceed the maximum monthly salary of any nonmedical pay plan by more than twenty-five percent.

(c) The senior executive service shall be limited to one hundred twenty-five positions. The state personnel director shall establish criteria for inclusion in the senior executive service and shall review each nominated position before it is placed in the pay plan for the senior executive service. The head of the department or agency or state auditor for employees of the state auditor's office shall make appointments to the senior executive service based on competitive selection and is responsible for the management of the employees in such plan. Any person in the senior executive service shall have no right to a position outside of the senior executive service.

(d) In the pay plans for medical and the senior executive service, there shall be no anniversary-based merit increases. The salaries in such pay plans shall be based on the negotiation of an annual contract

between the employee and the department head or the state auditor, when appropriate, and the amount of such salaries may increase, decrease, or remain unchanged from year to year. Any employee dismissed for failure to perform under such contract may only appeal directly to the state personnel board.

(6) Job evaluation. (a) System maintenance studies involving the assignment of classes to increased pay grades shall be incorporated into the annual total compensation request reported to the general assembly and shall be effective on July 1 of each year unless otherwise ordered by the governor acting pursuant to section 24-50-109.5.

(b) (I) The state personnel director shall allocate individual positions to the proper classes based on an objective evaluation of the job assignment.

(II) Any employee directly affected by the allocation of the employee's position to a class in a lower pay grade under subparagraph (I) of this paragraph (b) may file a written appeal with the state personnel director within ten days after receiving the notice of allocation of positions. The state personnel director, or the director's designee, shall review the appeal in summary fashion on the basis of written material that may be supplemented by oral argument at the sole discretion of the director or designee. At the director's discretion, an advisory panel of qualified job evaluators may be convened to assist the director in making a decision. The director shall issue a written decision within ninety calendar days after the receipt of a timely appeal. If the director does not issue a decision within ninety calendar days after receipt of a timely appeal, the original allocation decision shall be final. An allocation decision may be overturned only if the director finds it to have been arbitrary, capricious, or contrary to rule or law. The state personnel director shall establish a process for timely resolving appeals within the ninety-day period and the criteria for selection of and method of service upon an advisory panel. Any decision shall be subject to judicial review pursuant to section 24-4-106.

(7) Leaves. (a) No employee shall earn more than ten days of sick leave per fiscal year. No employee may retain accumulated sick leave in excess of forty-five days at the end of any fiscal year; except that any employee who had accumulated sick leave prior to July 1, 1988, shall retain such leave and may accumulate a maximum of forty-five additional days. Any excess accumulation may be converted to annual leave at the rate of five days of sick leave to one day of annual leave up to a total of two days per fiscal year. A medical certificate form from a health care provider shall be required for absences of more than three full consecutive working days, or the use of sick leave shall be denied.

(b) The procedures of the state personnel director shall provide that no more than two days of paid leave per fiscal year shall be granted for organ, tissue, or bone marrow donation for transplants. Such leave may not be accumulated.

(c) The state personnel director may establish procedures to allow the transfer of annual leave between employees when one employee, or an immediate family member of the employee, experiences an unforeseeable life-altering event beyond the employee's control. The recipient of any annual leave shall have a minimum of one year of state service and exhausted all applicable paid leave, including any compensatory time.

(d) An employee certified as a disaster service volunteer of the American red cross may be granted paid leave for specialized disaster relief services. Such leave shall not exceed five days for a local disaster or fifteen days for a national disaster in a twelve-month period. Such leave may not be accumulated. During this period of leave, an employee shall not be deemed to be an employee for purposes of the "Workers' Compensation Act of Colorado", as provided in articles 40 to 47 of title 8, C.R.S. The leave authorized by this paragraph (d) shall run concurrent with and shall not be in addition to any paid leave of absence required by law for service by a member in a Colorado civil air patrol mission as provided in section 28-1-104, C.R.S., or for qualified volunteer service in a disaster as provided in section 24-32-

2225.

(7.5) Repealed.

(8) **Payroll.** (a) Salaries for positions in the state personnel system paid on a monthly basis shall be paid as of the last working day of the month; except that:

(I) Salaries for the month of June shall be paid on the first working day of July; and

(II) For state personnel employees in the department of transportation hired before August 5, 1998, as amended, salaries for the month of December shall be paid on the first working day in January, unless any such employee informs the controller of the department of transportation of the employee's desire to be paid in the same manner as other employees in the state personnel system as provided in this subsection (8), in which case, the employee shall be paid in such manner.

(a.5) For state employment positions that are not in the state personnel system and that are not otherwise covered by paragraph (a) of this subsection (8), salaries paid on a monthly basis for the month of June shall be paid on the first working day of July.

(a.6) For state employment positions that are not otherwise covered by paragraph (a) or (a.5) of this subsection (8), whether or not such positions are in the state personnel system:

(I) Salaries paid on a biweekly basis for the pay period commencing on May 31, 2003, and ending on June 13, 2003, shall be paid on July 1, 2003; and

(II) Effective July 1, 2003, salaries paid on a biweekly basis for the fourteen-day pay period preceding the first fourteen-day pay period for which salaries paid on a biweekly basis for any work performed during the month of June are paid on or after July 1 shall be paid on the first working day of July.

(b) Monthly salaries shall be converted to annual salary as the basis for calculating amounts due for periods other than monthly.

(c) The state personnel director or the director's designee shall regulate, approve, and review all payroll deductions other than those expressly authorized by statute or state-sponsored for all state employees. The state personnel director may assess a charge to the organization that receives the benefit from such a payroll deduction to offset the cost to the state for this service.

(d) No payroll deduction shall be made on behalf of a state employee without prior written authorization from the state personnel director or the director's designee. The state personnel director or the director's designee may authorize a payroll deduction only after receiving a written request for such payroll deduction from the employee, a department or agency representative, or an organization.

(9) **Liability.** (a) Except for gross negligence or fraud, no state employee responsible for calculating pay shall be in any manner liable for overpayment or underpayment of salaries.

(b) No employee whose salary may be increased by an allocation of the employee's position to a class in a higher pay grade shall have any claim against the state unless the final allocation decision is made effective more than one year from the time the written allocation request was received by the appropriate personnel office. In such case, the employee is entitled to the difference between the salary of the old grade and the new salary for such period over twelve months.

Source: L. 72: R&RE, p. 161, § 1. C.R.S. 1963: § 26-1-4. L. 73: pp. 420, 421-423, 426, §§ 1, 1-5, 17. L. 75: (5)(e) and (5)(f) amended, p. 823, § 1, effective January 31; (5)(e) amended, p. 825, § 1, effective

July 1. **L. 79:** (1)(a) amended, p. 944 § 1, effective June 21; (5)(e) amended, p. 945, § 1, effective June 29. **L. 80:** (5)(e) amended, p. 598, § 1, effective February 14; (6) amended, p. 600, § 1, effective July 1. **L. 81:** (2), (4)(a), (5)(a), (5)(b), (5)(e), and (5)(f) amended, (3)(g) and (8)(c) added, and (5)(c) R&RE, pp. 1196-1199, §§ 4, 7, 5, 8, 6, effective July 1; (5)(e) amended, p. 887, § 2, effective January 1, 1982. **L. 83:** (4)(d) R&RE, (4)(e) added, (5)(a), (5)(b), (5)(c)(II), (5)(e), (6), and (8)(a) amended, and (8)(b) and (8)(c) repealed, pp. 848, 849, 852, §§ 2, 3, 4, 7, effective May 31; (5)(e)(I) amended, p. 2055, § 33, effective October 14. **L. 84:** (2)(a), (5)(a), (5)(b), and (6) amended, (3), (4), and (5)(c) to (5)(f) R&RE, and (5)(g) added, pp. 705, 710, 707, 709, §§ 3, 6, 4, 5, effective July 1. **L. 85:** (5)(g)(III) R&RE, p. 841, § 1, effective June 8; (3)(g), (4)(d)(I), (5)(f), (5)(g)(I), and (6) amended, p. 836, § 1, effective July 1. **L. 86:** (5)(b)(I) amended and (5)(b)(I.1) added, p. 418, § 38, effective March 26; (1)(a) amended, p. 1219, § 24, effective May 30; (5)(g)(IV) added, p. 591, § 2, effective July 1. **L. 87:** (4)(d)(II), (5)(a), (5)(b)(I)(A), (5)(b)(I.1)(A), (5)(b)(II), (5)(c), (5)(e), and (5)(g)(I) amended, p. 1032, § 1, effective July 1. **L. 88:** (5)(g)(I) and (9) amended and (5)(g)(V) added, pp. 953, 954, §§ 1, 2, effective May 24. **L. 89:** (5)(g)(VI) added, p. 1064 § 1, effective June 1; (2)(a), (5)(b)(I)(A), (8)(a), (9)(a), and IP (9)(b) amended, (2)(c) added, and (5)(b)(I)(B) repealed, pp. 487, 491, §§ 17, 23, effective July 1; (4)(d)(II) and (5)(g)(I) amended, p. 1062, § 1, effective July 1; (5)(b)(I.1) repealed and (9)(c) amended, p. 1646, §§ 23, 24, effective July 1; (9)(c) added, p. 664, § 4, effective July 1. **L. 91:** (9)(d) added, p. 903, § 1, effective March 11; (4)(d)(II) added, p. 842, § 1, effective April 17; (1)(a) amended, p. 1063, § 26, effective July 1; (5)(g)(VII) and (5)(g)(VIII) added and (6) amended, pp. 853, 854, §§ 1, 2, effective July 1. **L. 92:** (5)(g)(VII), (5)(g)(VIII), (6)(d), (6)(e)(I), and (6)(e)(V) amended and (5)(g)(IX) added, p. 1129, § 1, effective April 29; (5)(a), (5)(b)(I)(A), and (5)(e) amended, p. 1078, § 1, effective July 1; (8)(a) amended, p. 1046, § 1, effective July 1. **L. 93:** (3)(a), (3)(b), (3)(g), and (4) amended and (3)(h) added, pp. 299, 296, §§ 1, 2, effective April 7; (5)(g)(VII), (6)(e)(I), (6)(e)(V), and (8)(a) amended, (5)(g)(X) added, and (8)(a)(II) repealed, p. 2118, § 1, effective July 1. **L. 94:** (2)(c)(II) amended, p. 1136, § 2, effective May 19; (4)(d)(II), (5)(g)(I), and (8)(a)(I) amended and (8)(d) added, p. 1684, § 1, effective July 1. **L. 96:** (1)(b) and (1)(c) repealed, p. 1507, § 26, effective June 1; (8)(a)(I) and (8)(a)(III) amended and (8)(a)(IV) and (8)(a)(V) added, p. 1304, § 1, effective August 7. **L. 98:** Entire section R&RE, p. 668, § 1, effective August 5. **L. 99:** (1)(c) amended, p. 594, § 1, effective August 4. **L. 2000:** (1)(c), (1)(d), (1)(f), and (1)(i) amended, p. 1117, § 1, effective May 26; (7.5) added, p. 778, § 1, effective July 1; (1)(a)(II) amended and (1)(a)(III) added, p. 1982, § 2, effective August 2. **L. 2001:** (4)(c) amended, p. 701, § 1, effective May 31. **L. 2002:** (1)(a)(III)(A) amended, p. 1091, § 1, effective August 7. **L. 2003:** (8)(a) amended and (8)(a.5) and (8)(a.6) added, p. 52, § 1, effective March 5; (4)(c) amended and (4)(d) and (4)(e) added, p. 1494, § 1, effective May 1; (1)(a)(I), (1)(a)(II), (1)(a)(III)(A), (1)(c)(I), IP(1)(c)(II), (1)(c)(II)(B), (1)(c)(II)(D), (1)(c)(II)(E), (1)(c)(III), (1)(c)(IV), (1)(e), (1)(i), (3), (4)(a), (4)(b), (4)(c), and (4)(d)(II) amended, (1)(c)(II)(F), (1)(c)(II)(G), and (4)(f) added, and (1)(c.5) added with relocated provisions, pp. 1926, 1931, 1929, 1930, §§ 1, 5, 2, 3, 4, effective May 22. **L. 2004:** (1)(c.7) added, p. 1240, § 2, effective August 4; (4)(c), (4)(d), and (4)(e) amended, p. 1557, § 1, effective August 4. **L. 2006:** (4)(d)(I), (4)(d)(III), and (4)(e) amended and (4)(d)(IV) added, p. 543, § 1, effective July 1; (1)(c.5)(II) amended, p. 279, § 1, effective August 7. **L. 2007:** (3)(a.5) added, p. 184, § 18, effective March 22; (5)(b) amended, p. 1898, § 1, effective July 1, 2008. **L. 2008:** (4)(b) amended, p. 1269, § 6, effective August 5. **L. 2009:** (7)(c) amended, (HB 09-1008), ch. 78, p. 286, § 1, effective April 2; (7)(d) amended, (HB 09-1315), ch. 312, p. 1693, § 2, effective August 5.

Editor's note: (1) Amendments to subsection (5)(e) by House Bill 75-1160 and House Bill 75-1751 were harmonized. Amendments to subsection (5)(e) by Senate Bill 81-308 and House Bill 81-1365 were harmonized.

(2) (a) Subsection (5)(g)(IX) provided for the repeal of subsection (5)(g)(IX), effective July 1, 1993. (See L. 92, p. 1129.)

(b) Subsection (5)(g)(X) provided for the repeal of subsection (5)(g)(X), effective July 1, 1994. (See L. 93, p. 2118.)

(c) Subsection (8)(d)(V) provided for the repeal of subsection (8)(d), effective July 1, 1994. (See L. 94, p. 1684.)

(d) Subsection (7.5)(h) provided for the repeal of subsection (7.5), effective July 1, 2005. (See L. 2000, p. 778.)

(3) Subsection (1)(c.5) was formerly numbered as § 24-50-118.

(4) Subsection (7)(d) was amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

(5) Section 2 of chapter 78, Session Laws of Colorado 2009, provides that the act amending subsection (7)(c) applies to transfers of annual leave requested on or after April 2, 2009.

ANNOTATION

Am. Jur.2d. See 63C Am. Jur.2d, Public Officers and Employees, §§ 278, 279.

C.J.S. See 81A C.J.S., States, §§ 145-156.

Law reviews. For article, "The Fair Labor Standards Act: Criminal and Civil Liability", see 14 Colo. Law. 1802 (1985).

Annotator's note. The following annotations include cases decided under this section as it existed prior to its 1998 repeal and reenactment.

Former subsection (3)(g) unconstitutional under § 13(1) of art. XII, Colo. Const. because the statute's wording of "upward allocation of a position" read together with "movement of the incumbent employee with his position" is nothing but a euphemistic description of a promotion and as such must comply with the requirements of § 13(1) of art. XII, Colo. Const. for competitive tests. Colo. Ass'n of Pub. Employees v. Lamm, 677 P.2d 1350 (Colo. 1984) (decided prior to 1984 repeal and reenactment of subsection (3)).

Subparagraph (1)(a)(II) allows the state personnel director to supplement independent third party salary and benefits surveys, but does not allow the director to determine prevailing practices without using such independent third party surveys. Colo. Ass'n of Pub. Employees v. Colo. Dept. of Pers., 991 P.2d 827 (Colo. App. 1999).

Former subparagraph (2)(c)(I) language that the "state personnel director shall be responsible for the development, implementation, and administration of a total compensation program" did not grant the state personnel director any specific authority, but merely outlined general responsibilities, and did not relieve the director of the duty to comply with former subsection (5)(a) of this section. Colo. Ass'n of Pub. Employees v. Colo. Dept. of Pers., 991 P.2d 827 (Colo. App. 1999).

Subparagraph (5)(b)(I)(A) of this section requires the state personnel director to meet and confer with both the total compensation advisory council and state employee representatives. Colo. Ass'n of Pub. Employees v. Colo. Dept. of Pers., 991 P.2d 827 (Colo. App. 1999).

Challenges to salary survey results. Summary procedure employed by the department of personnel in processing state employees' challenge to salary and fringe benefits survey did not violate due process. Anderson v. State Dept. of Pers., 756 P.2d 969 (Colo. 1988) (decided under law in effect prior to 1984 amendment to subsection (5)(g) making salary recommendations not appealable).

Study conducted by the department pursuant to the department's responsibility to revise and maintain the classification system was not conducted as a salary survey, the department was not required to comply with the specific procedures applicable to salary and fringe benefit surveys under subsection (5), and plaintiffs' due process rights were not violated. The data used was sufficiently current, and reliance on it was not arbitrary and capricious nor contrary to law. Blake v. Dept. of Pers., 876 P.2d 90 (Colo. App. 1994).

Out-of-state employee compensation data is not prohibited by the constitution from being used to determine appropriate salary levels for state employees. Blake v. Dept. of Pers., 876 P.2d 90 (Colo. App. 1994).

Director's authority under paragraphs (f) and (g) of subsection (3) of this section, regarding allocation of individual positions, derives from director's duty under section 14 of article XII of the state constitution to administer day-to-day activities of state personnel system and is distinctly separate from personnel board's authority under section 13 of the said article to hear appeals from disciplinary decisions. Therefore, paragraph (g) does not intrude upon the board's exclusive jurisdiction. *Renteria v. State Dept. of Pers.*, 811 P.2d 797 (Colo. 1991).

Director's decisions are vested with a presumption of validity. *Bernstein v. Livingston*, 633 P.2d 519 (Colo. App. 1981).

Burden of proof is on employee in appeal under subsection (3)(g) of this section to show that decision was arbitrary, capricious, or contrary to rule or law. *Renteria v. State Dept. of Pers.*, 811 P.2d 797 (Colo. 1991).

Failure to provide employee with performance evaluations pursuant to § 24-50-118 does not furnish basis on which to invalidate reallocation decision. *Renteria v. State Dept. of Pers.*, 811 P.2d 797 (Colo. 1991).

Personnel analyst's alleged lack of authority to make preliminary reallocation decision does not furnish basis on which to invalidate decision. *Renteria v. State Dept. of Pers.*, 811 P.2d 797 (Colo. 1991).

A 1991 amendment to subsection (6) does not render moot a claim by state employees that former version of the subsection was unconstitutional. *Dempsey v. Romer*, 825 P.2d 44 (Colo. 1992); *Dept. of Corr. Employees v. Romer*, 879 P.2d 485 (Colo. App. 1994).

Authority granted under subsection (6) to state personnel director to establish pay plans justified by salary survey does not prevent the general assembly from establishing maximum monthly salary levels. *Dempsey v. Romer*, 825 P.2d 44 (Colo. 1992).

The statutory scheme set forth in this section does not unconstitutionally transfer legislative authority of appropriation to the state personnel director. The state constitution grants to the general assembly primary responsibility for determining the amount of revenue to be expended in the state. To construe this section as authorizing the state personnel director to control the appropriation process as it is impacted by classification and reclassification of state employees would alter the check and balance system of governmental fiscal responsibility. *Dempsey v. Romer*, 825 P.2d 44 (Colo. 1992).

This section does not authorize the state personnel director to establish specific levels of compensation for state employees. The authority in subsection (6) granted the state personnel director to develop pay plans is limited by subsections (3), (4), and (5). When construed as a whole, this section clearly prohibits the director from developing pay plans compensating state employees in excess of levels established by the legislature. *Dempsey v. Romer*, 825 P.2d 44 (Colo. 1992).

State personnel department required to follow the statutory mandates of former subsection (4)(d)(II), where a downward adjustment in personnel salaries was a reorganization with a "fiscal impact" in that it reduced the funds expended on revenue department salaries. *Alexander v. Colo. Dept. of Pers.*, 952 P.2d 814 (Colo. App. 1997), rev'd on other grounds, 970 P.2d 459 (Colo. 1998). (decided under law in effect prior to 1998 repeal and reenactment).

Governor, by communicating his or her approval of reorganization of statewide system of pay grades and salary rates in a letter to the joint budget committee and by submitting with the letter the annual salary and fringe benefits survey for implementing the reorganization, satisfied statutory requirements for indicating governor's approval of reorganization. *Colo. Dept. of Pers. v. Alexander*, 970 P.2d 459 (Colo. 1998) (decided under law in effect prior to 1998 repeal and reenactment).

This section does not prohibit the general assembly from establishing specific monthly salary levels for specific grades of employees. *Dempsey v. Romer*, 825 P.2d 44 (Colo. 1992).

This section does not violate equal protection standards. The monthly maximum salary level limit set forth in subsection (6) represents a reasonable exercise of the legislature's responsibility for maintaining the fiscal integrity of the state personnel system and does not discriminate between members of specific classes or grades of employees. *Dempsey v. Romer*, 825 P.2d 44 (Colo. 1992).

Challenge to occupational grouping of port of entry officers under subsection (3)(d). Where personnel director, by process of elimination, placed port of entry officers in the Office Support & Related Services grouping, which did not typify the primary duties performed by the officers, the director failed to comply with the statutory mandate included in subsections (3) and (5) and was ordered to modify or create an occupational grouping to accommodate the officers. *Bostron v. Colo. Dept. of Pers.*, 860 P.2d 595 (Colo. App. 1993).

The classifications authorized in subsections (4) and (5) of this section bear a rational relationship to the state's interest in maintaining the fiscal integrity of the personnel system. Plaintiffs are not deprived of their right to equal protection of the law. *Dept. of Corr. Employees v. Romer*, 879 P.2d 485 (Colo. App. 1994).

Subsection (5)'s requirement that the director of the department of personnel use wage surveys conducted by nonstate public or private agencies does not violate the doctrine of separation of powers by interfering with the department of personnel's power as established in the constitution. *Dept. of Corr. Employees v. Romer*, 879 P.2d 485 (Colo. App. 1994).

Department of corrections does not have to verify the qualifications of all certified employees before implementing layoff. *Halverstadt v. Dept. of Corr.*, 911 P.2d 654 (Colo. App. 1995).

For longevity salary increments under previous statutory provision, see *Colo. Ass'n of Pub. Employees, v. Colo. Civil Serv. Comm'n*, 31 Colo. App. 369, 505 P.2d 54 (1972).

Subsection (8)(c) gives the state personnel director discretion to grant or deny automatic payroll deductions. State employees and their labor organizations who alleged that an executive order and resulting personnel policy deprived them of the right to even be considered for automatic payroll deductions of union dues and that the employees had unsuccessfully requested such deductions, therefore, asserted both a legally protected right and injury in fact and had standing to sue the governor. *Ainscough v. Owens*, 90 P.3d 851 (Colo. 2004).

Applied in *Spahn v. State Dept. of Pers.*, 44 Colo. App. 446, 615 P.2d 66 (1980); *Eliopulos v. State Pers. Bd.*, 705 P.2d 1035 (Colo. App. 1985) (decided under law in effect prior to 1984 repeal and reenactment).