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§2-103.4.

(a) Without regard to the laws of this State relating to other State employees, the Secretary of Transportation may establish a human resources management system for employees of the Department and its units. Any human resources management system that the Secretary establishes under this section shall:

(1) Be based on merit;

(2) Include fair and equitable procedures for appointment, hiring, promotion, layoff, removal, termination, redress of grievances, and reinstatement of employees;

(3) Include consideration of hiring a contractual employee to fill a vacant position in the same or similar classification in which the contractual employee is employed; and

(4) Permit employees to participate in the pension and retirement systems for employees of the State of Maryland authorized under Division II of the State Personnel and Pensions Article or any other pension and retirement systems authorized by law.

(b) (1) In the exercise of the Secretary's powers under this section, the Secretary may:

(i) Create any position in accordance with State law; and

(ii) Subject to subsection (b-1) of this section, determine the qualifications, appointment, removal, tenure, terms of employment, and compensation of employees unless otherwise prohibited by law.

(2) The Secretary shall designate executive service employee and commission plan employee positions in the Human Resources Management System that:

(i) Must be filled without regard to political affiliation, belief, or opinion; or

(ii) In accordance with the criteria established under § 6-405(b) of the State Personnel and Pensions Article, may be filled with regard to political affiliation, belief, or opinion.

(3) On an annual basis, the Secretary shall report on the total number of positions designated under paragraph (2) of this subsection to the Governor and, in accordance with § 2-1246 of the State Government Article, to the General Assembly.

(b-1) (1) In this subsection, “Central Repository” means the Criminal Justice Information System Central Repository of the Department of Public Safety and Correctional Services.

(2) (i) In the exercise of the Secretary’s powers under subsection (b) of this section, the Secretary may request a State and national criminal history records check from the Central Repository for:

1. A prospective employee; or
2. A current employee for whom a criminal history records check is required by federal or State law.

(ii) The Secretary shall apply to the Central Repository for a State and national criminal history records check for each prospective or current employee for whom a records check is sought.

(iii) As part of the application for a criminal history records check, the Secretary shall submit to the Central Repository:

1. Two complete sets of the prospective or current employee’s legible fingerprints taken on forms approved by the Director of the Central Repository and the Director of the Federal Bureau of Investigation;
2. The fee authorized under § 10–221(b)(7) of the Criminal Procedure Article for access to criminal history record information; and
3. The mandatory processing fee required by the Federal Bureau of Investigation for a national criminal history records check.

(iv) In accordance with Title 10, Subtitle 2 of the Criminal Procedure Article, the Central Repository shall forward to the prospective or current employee and the Department the prospective or current employee’s criminal history record information.

(v) Information obtained from the Central Repository under this paragraph:

1. Is confidential and may not be disseminated; and
2. May be used only for the employment purpose authorized by this section.

(3) A person who is the subject of a criminal history records check under this section may contest the contents of the printed statement issued by the Central Repository as provided in § 10–223 of the Criminal Procedure Article.

(4) The Secretary may adopt regulations, guidelines, and policies to carry

out this subsection.

(c) (1) Any human resources management system established under this section shall provide that classified service employees employed immediately prior to the date of its establishment shall be allowed to remain in the previous personnel system until June 30, 1996.

(2) Any person who as of June 30, 1996 is employed by the Department in a position authorized by the State budget, but not included under a collective bargaining agreement, shall be required to transfer into the human resources management system of the Department without loss of accumulated leave or retirement status.

(3) Any employee hired after the establishment of the new system as a permanent employee of the Department shall be hired under the provisions of the new human resources management system.

(4) Nothing in this section shall affect:

(i) The collective bargaining rights of members of the transit workers union;

(ii) The rights of employees hired at any time to join an employee organization; or

(iii) The rights of Maryland Transit Administration employees eligible under § 7-601 of this article to be included in a collective bargaining unit.

(d) (1) The Secretary shall adopt regulations to govern the human resources management system established under this section.

(2) The regulations shall address procedures for leave, appointment, hiring, promotion, layoff, removal, termination, redress of grievances, and reinstatement of employees and shall be presented to the Joint Committee on Administrative, Executive, and Legislative Review under Title 10, Subtitle 1 of the State Government Article.

(3) The regulations shall provide that before taking any disciplinary action related to employee misconduct, an appointing authority or designated representative shall:

(i) Investigate the alleged misconduct;

(ii) Meet with the employee;

(iii) Consider any mitigating circumstances;

(iv) Determine the appropriate disciplinary action, if any, to be imposed; and

(v) Give the employee a written notice of the disciplinary action to be taken and the employee's appeal rights.

(4) (i) The regulations shall provide that the appointing authority or designated representative may suspend an employee, with or without pay, pending the filing of charges for termination.

(ii) If an employee is suspended without pay, the appointing authority or designated representative shall provide to the Secretary the charges for termination within 30 calendar days after the first day of the suspension period.

(iii) If the appointing authority or designated representative files the charges for termination after the 30-day period described in subparagraph (ii) of this paragraph, the employee shall be placed on leave with pay until the Secretary receives the charges.

(5) The regulations shall provide that an appointing authority or a designated representative and an employee may agree to the holding in abeyance of a disciplinary action for a period not to exceed 18 months in order to permit an employee to improve conduct or performance.

(6) The employee grievance procedures shall include, at a minimum, the following sequence of levels of appeal:

(i) Initially an aggrieved employee shall present any grievance to the appointing authority or a designated representative, who shall render a written decision;

(ii) Any appeal shall be presented to the Secretary or a designated representative, who shall render a written decision; and

(iii) If the dispute is still unresolved, the aggrieved employee may appeal to the Office of Administrative Hearings or a mutually agreed upon third party arbiter that may not hear grievances relating to classification, salary, or fiscal matters.

(7) The Secretary shall establish appeal procedures for disciplinary actions through regulations and policy.

(8) (i) During any stage of a complaint, grievance, or other administrative or legal action that concerns State employment by a full-time or part-time executive service, career service, or commission plan employee of the Department, or by a temporary or contractual employee of the Department, the employee may not be subjected to coercion, discrimination, interference, reprisal, or restraint by or initiated on behalf of the Department solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(ii) An employee of the Department may not intentionally take or

assist in taking an act of coercion, discrimination, interference, reprisal, or restraint against another employee solely as a result of that employee's pursuit of a grievance, complaint, or other administrative or legal action that concerns State employment.

(iii) An employee who violates the provisions of this paragraph is subject to disciplinary action, including termination of employment.

(e) (1) The Secretary shall establish an Employee Performance Incentive Awards Program that conforms to the provisions of Division I of the State Personnel and Pensions Article.

(2) The Secretary shall have the same authority to implement this Program as is delegated to the Secretary of Budget and Management.

(3) Funding for an Employee Performance Incentive Awards Program shall be budgeted as a separate line item in the Department's annual budget submission to the General Assembly.

(f) All permanent employees of the Department shall:

(1) Be considered as permanent State employees for the purposes of transferring to a position in the Executive, Legislative, or Judicial Branch of government;

(2) Receive credit for service with the Department for the purpose of transferring accumulated sick and vacation leave, service credit in the Employees' Retirement System, and all other benefits; and

(3) Be granted the same salary consideration that would be provided to an employee transferring within the Executive, Legislative, or Judicial Branch.

(g) In establishing a pay plan for the Department's human resources management system, the Secretary shall use the standard salary schedule adopted by the Secretary of Budget and Management pursuant to the budget. The Secretary shall prepare and recommend a standard pay plan for all classes of positions in the human resources management system that conforms to the provisions of §§ 8-101, 8-102, 8-104, 8-105, and 8-109 of the State Personnel and Pensions Article that govern the standard pay plan of the State. The Secretary shall have the same authority to implement a standard pay plan as is delegated to the Secretary of Budget and Management. Employees in the Department may not be paid salaries in excess of those paid to employees in substantially the same classifications in other State agencies.

(h) (1) The Secretary shall establish an executive pay plan that conforms to the provisions of §§ 8-101, 8-102, 8-103(b), 8-104, 8-108, and 8-109 of the State Personnel and Pensions Article that govern the executive pay plan of the State. The Secretary shall have the same authority to implement an executive pay plan as is delegated to the Secretary of Budget and Management.

(2) Subject to § 2–1246 of the State Government Article, the Secretary shall submit to the Department of Legislative Services, on or before July 15, October 15, January 15, and April 15 of each fiscal year:

(i) A list of the position, pay grade and step, title, name, and pay rate of each employee who was included in the executive pay plan as of the last day of the preceding fiscal quarter; and

(ii) The details of any lump–sum increases given to employees in the executive pay plan during the preceding fiscal quarter.

(3) (i) The quarterly reports required under paragraph (2) of this subsection shall include each flat–rate employee position in the executive pay plan.

(ii) Each flat–rate employee position included in the quarterly reports under subparagraph (i) of this paragraph shall be assigned a unique identifier that:

1. Describes the program to which the position is assigned for budgetary purposes; and

2. Corresponds to the position identification number used in the budget data provided annually by the Secretary to the Department of Legislative Services.

(i) The Department shall permit continuation of the rights of employee organizations in existence on July 1, 1992 to represent employees and to collect dues through a checkoff system consistent with Title 2, Subtitle 4 of the State Personnel and Pensions Article.

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