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**MEMORANDUM**

**TO:** Interested Persons

**FROM:** Office of Legislative Legal Services

**DATE:** August 9, 2011

**SUBJECT:** Overview of the state personnel system, including the requirements specified in the Colorado constitution, the Colorado Revised Statutes, and the Rules of the State Personnel Board and the State Personnel Director.

This memo is in response to your request for an overview of the relevant state constitutional and state statutory provisions that create the state personnel system. The memo briefly explains the primary components and requirements of the state personnel system and indicates whether such aspects of the system are required by the state constitution or by state statute. In addition, because the state constitution and state statute delegate the duty to implement and administer the state personnel system to the state personnel board and to the state personnel director, the memo includes relevant references to the rules of the state personnel board and the state personnel director.

**1. Creation of the State Personnel System - Merit System**

*I. Constitutional Provision: State Constitution, article XII, section 13 (1)*

Article XII, section 13, of the state constitution, commonly referred to as the "civil service amendment", creates the state personnel system and specifies that it shall be a merit-based system. Specifically, subsection (1) of section 13 states that "[a]ppointments and promotions to offices and employments in the personnel system of the state shall be made according to merit and fitness, to be ascertained by competitive tests of competence without regard to race, creed, or color, or political affiliation."

*II. Statutory Provisions: Sections 24-50-101 and 24-50-112.5, C.R.S. (Selection System)*

The statutes regarding the establishment and basic operation of the state

personnel system are located in part 1 of article 50 of title 24, C.R.S. Section 24-50-101 (3) (a), C.R.S., states that "[it] is the purpose of the state personnel system, as a merit system, to assure that a qualified and competent work force is serving the residents of Colorado and that any person has an equal opportunity to apply and compete for state employment."

Section 24-50-112.5, C.R.S., requires the state personnel director to "establish procedures and directives necessary to implement a merit-based statewide selection system to be used uniformly by all principal departments." Although the state personnel director has promulgated rules to implement this system, the general assembly has also enacted criteria regarding the implementation of a merit-based system. For example, section 24-50-112.5 (2) (a), C.R.S., includes direction regarding the order in which employment lists are required to be used by appointing authorities to ensure that employees who have been laid off from state service and employees who are eligible for a promotion are given priority over "outside" candidates in filling vacant positions in the state personnel system. The Colorado Revised Statutes also contain guidance regarding the knowledge, skills, abilities, and competencies on which applicants for a vacant position in the state personnel system may be tested.

### *III. Rules: 4 CCR 801-1, Chapter 4 (Employment and Status)*

The personnel board rules and personnel director's administrative procedures are located in 4 CCR 801-1. Chapter 4 of these rules, entitled "Employment and Status", implements the state constitutional and statutory provisions that require a merit-based state personnel system. Board Rule 4-1 requires that:

State residents shall have an equal opportunity for entry into the state personnel system through fair and open competition. Selection and appointment to positions within the state personnel system shall be made according to merit and fitness, based upon the quality of performance and job-related ability as ascertained by competitive tests of competence. The selection process utilized to fill any vacancy shall uphold the protections of Colorado's constitutional merit based personnel system.

Chapter 4 contains rules regarding job announcements, the testing and scoring of competitive examinations and assessments, employments lists, referrals from employments lists, interviews, appointments, and employee status within the personnel system.

## 2. Classified vs. Exempt State Employees

### *I. Constitutional Provision: State Constitution, article XII, section 13 (2) and 13 (3)*

Article XII, section 13 (2), of the state constitution states that "[t]he personnel system of the state shall comprise all appointive public officers and employees of the state . . ." This provision specifies which state employees shall not be in the state personnel system, including members of specified state boards and commissions; certain employees in the offices of the governor and lieutenant governor; appointees to fill vacancies in elective offices; one deputy of certain elective officers; officers otherwise specified in the state constitution; faculty members of educational institutions and departments and administrators thereof; students and inmates in state educational or other institutions employed therein; attorneys serving as assistant attorneys general; and members, officers, and employees of the legislative and judicial departments of the state, unless otherwise specifically provided in the constitution.<sup>1</sup>

In addition, article XII, section 13 (3), states that "[o]fficers and employees within the judicial department, other than judges and justices, may be included within the personnel system of the state upon determination by the supreme court, sitting en banc, that such would be in the best interests of the state." Currently, officers and employees of the judicial department are not included in the state personnel system.

### *II. Statutory Provision: Section 24-50-101 (2), C.R.S.*

Section 24-50-101 (2), C.R.S., specifies that a reference in state law "made to the civil service, the state civil service, or the classified service" shall be deemed to refer to the state personnel system. In addition, article XII, section 13 (10), of the state constitution specifies that once a person has satisfactorily completed his or her probationary period as a state employee, the person shall be certified to the appropriate class or position within the personnel system. Therefore, employees who are included in the personnel system are often referred to as "certified employees" or "classified employees". Employees who are constitutionally exempt from the state personnel system

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<sup>1</sup> For a complete list of state employees exempt from the state personnel system, please see article XII, section 13 (2), of the state constitution.

are often referred to as "exempt"<sup>2</sup> or "non-classified" employees.

*III. Rule: 4 CCR 801-1, Board Rule 1-32.1*

Board Rule 1-32.1 defines "certified" as "[t]he status of an employee who has successfully completed a probationary period or trial service period". After an employee completes a probationary or trial service period he or she is included in the state personnel system and is entitled to the protections offered by to the system.

**3. Rule of Three**

*I. Constitutional Provision: State Constitution, article XII, section 13 (5)*

The phrase "rule of three" refers to a constitutional provision that requires an appointing authority to appoint one of the top three candidates to a job vacancy. Article XII, section 13 (5), of the state constitution states that:

The person to be appointed to any position under the personnel system shall be one of the three persons ranking highest on the eligible list for such position, or such lesser number as qualify, as determined from competitive tests of competence, subject to limitations set forth in rules of the state personnel board applicable to multiple appointments from any such list.

*II. Statutory Provision: Section 24-50-112.5 (2) (b), C.R.S.*

Section 24-50-112.5 (2) (b), C.R.S., restates the constitutional "rule of three" and does not provide any details regarding multiple appointments.

*III. Rules: 4-CCR 801-1, Board Rules 4-31 and 4-32 (Tie Scores and Multiple Vacancies)*

The rules of the state personnel board address how the rule of three operates in the event of a tie score for the first, second, or third ranking individual and how the rule of three is applied in the event that an appointing authority wants to fill multiple vacancies within the same class simultaneously. Board Rule 4-31 specifies that, if there is a tie for any of the three highest ranking scores, "the referral list shall be comprised of only the three highest scoring individuals, plus any individuals tying with those

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<sup>2</sup> This should not be confused with the definition of "exempt employee" in Board Rule 1-47, which defines "exempt employee" as an employee who is not eligible for overtime.

individuals." Board Rule 4-32 states that, if an appointing authority is filling multiple vacancies within the same class at one time and the appointing authority would be left with fewer than three applicants to consider for any additional position, "the applicant with the next ranking score, plus any individuals tying with that individual, will be referred to the appointing authority for each additional position." The rule also requires the appointing authority to determine the number of positions to be filled prior to the compilation of the referral list for the multiple vacancies.

#### **4. Residency Requirement and Exceptions**

##### *I. Constitutional Provision: State Constitution, article XII, section 13 (6)*

Article XII, section 13 (6), of the state constitution requires that state employees be Colorado residents, with certain exceptions. Specifically, the constitution provides that:

All appointees shall reside in the state, but applications need not be limited to residents of the state as to those positions found by the state personnel board to require special education or training or special professional or technical qualifications and which cannot be readily filled from among residents of this state.

The rules of the state personnel board provide more details regarding when the residency requirement may be waived.

##### *II. Statutory Provisions: None*

The Colorado Revised Statutes do not contain any provisions addressing the residency requirement for state employees.

##### *III. Rule: 4-CCR 801-1, Board Rule 4-9*

Board Rule 4-9 allows a department to request that the state personnel board grant a residency waiver when the department can show that the position involved requires special education, training, or professional or technical qualifications; there is an insufficient in-state applicant pool; and it is not feasible to train and hire from within. In addition, Board Rule 4-9 specifies that there shall be a presumption in favor of a residency waiver for a position if the Colorado unemployment index reflects an unemployment rate of less than 3% and the department's turnover rate for employees within the class series subject to the waiver request is greater than 10%.

## **5. Appointing Authorities**

### *I. Constitutional Provision: State Constitution, article XII, section 13 (7)*

The state constitution specifies who in each principal department of the state has the authority and responsibility to fill vacant state employee positions. Article XII, section 13 (7), of the state constitution states that the head of each department is the appointing authority for the employees of his or her office and is also the appointing authority for heads of divisions that rank next below the head of the department. The heads of such divisions are the appointing authorities for all classified positions within their respective divisions.

### *II. Statutory Provision: Section 24-50-101 (3) (d), C.R.S.*

Section 24-50-101 (3) (d), C.R.S., specifies that the "presidents of colleges and universities shall be the appointing authorities for employees of their respective institutions." In addition, this provision states that the appointing authority for a principal department shall be as specified in the state constitution.

### *III. Rules: 4 CCR 801-1, Rules 1-8 to 1-11*

The personnel director's rules regarding appointing authorities begin by restating the constitutional requirement that executive directors of principal departments are the appointing authorities for their own offices and division directors and that division directors are appointing authorities for their respective divisions. Additionally, Rule 1-8 reiterates the statutory requirement that the presidents of institutions of higher education are appointing authorities for their own offices and division directors. The rules allow an appointing authority to delegate, in writing, any and all human resource functions and require each department to establish a written document specifying the appointing authority for each employee. This document may be used by an employee in the case of corrective, disciplinary, or other actions that have an adverse impact on the employee's base pay, status, or tenure.

Rule 1-9 specifies the powers of an appointing authority, including but not necessarily limited to, hiring, performance evaluation of employees, determining non-base building incentives, defining job duties, administering corrective action, determining work hours, determining safe conditions of

employment, identifying positions to be created or abolished, assigning employees to positions, and determining an employee's work location.

## **6. Employment Protection for Employees in the State Personnel System**

### *I. Constitutional Provisions: State Constitution, article XII, section 13 (8)*

Article XII, section 13 (8), of the state constitution establishes the rights and protections to which employees in the state personnel system are entitled. Section 13 (8) provides the following:

- Employees in the state personnel system may not be fired without cause. Subsection (8) specifically states that "[p]ersons in the personnel system of the state shall hold their respective positions during efficient service or until reaching retirement age, as provided by law." This constitutional provision does not prohibit the general assembly from legislatively reducing the salaries of classified state employees, separating classified employees from state employment, or eliminating classified employee positions in furtherance of state budget reductions.<sup>3</sup> In addition, as discussed below, so long as certain conditions are met, this constitutional provision does not prohibit a state agency from contracting with a private entity to perform state governmental services to achieve increased efficiency in the delivery of such services.
- The job performance of employees in the state personnel system

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<sup>3</sup> The ability of the general assembly to legislatively reduce salaries of classified employees or reduce or eliminate classified employee positions is directly related to its plenary power of appropriation. The Colorado supreme court has recognized that "[t]he General Assembly enjoys broad legislative responsibility under our constitution to raise and spend funds for governmental purposes." *Dempsey v. Romer*, 825 P.2d 44, 51 (Colo. 1992). The court has also held that "[i]t is well settled that our constitution grants the General Assembly primary responsibility for determining the amount of revenue to be expended in carrying out the public policies of the state." *Dempsey* at 56.

In addition, state statute currently recognizes the possibility of reductions and the elimination of state employment positions. Section 24-50-124, C.R.S., contemplates reductions in employees "due to lack of work, lack of funds, or reorganization". In short, while the civil service amendment gives classified employees certain employment rights, it does not in all cases prohibit the general assembly from reducing or eliminating classified positions or reducing salaries in furtherance of its plenary power to legislate and its plenary power over appropriations.

shall not be judged arbitrarily but shall be "graded and compensated according to standards of efficient service which shall be the same for all persons having like duties."

- "A person certified to any class or position in the personnel system may be dismissed, suspended, or otherwise disciplined by the appointing authority upon written findings of failure to comply with standards of efficient service or competence, or for willful misconduct, willful failure or inability to perform his duties, or final conviction of a felony . . . , or written charges thereof may be filed by any person with the appointing authority, which shall be promptly determined."
- State employees in the state personnel system have the right to appeal to the state personnel board regarding any action of the appointing authority taken under subsection (8) and have the right to be heard by the board in person or by counsel, or both.

II. *Statutory Provisions: Section 24-50-104 (1) (c.5), C.R.S., (Job Evaluation and Compensation); Section 24-50-123, C.R.S. (Grievances); Section 24-50-125, C.R.S. (Disciplinary Proceedings); Part 5 of article 50 of title 24, C.R.S. (Contracts for Personal Services)*

**Job Evaluation and Compensation:** The civil service amendment requires that classified employees be graded and compensated according to standards of efficient service and in a manner that is the same for all employees that have similar duties. Section 24-50-104 (1) (c.5), C.R.S., requires the state personnel director to provide for the evaluation of employee performance at least once a year and specifies that the performance evaluation "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."

**Grievances:** The general assembly has enacted laws creating a grievance process for matters that are not otherwise subject to appeal or review by the state personnel board. Pursuant to the rules of the board, an employee with a grievance is required to exhaust his or her administrative remedies before appealing the matter to the board. Section 24-50-123 (3), C.R.S., states that the decision of the appointing authority is final; except that an employee may petition the board for review. The board may grant a

petition for review only when it appears that the decision of the appointing authority violates an employee's rights under: 1) the federal or state constitution; 2) part 4 of article 34 of title 24, C.R.S, dealing with matters of discrimination; 3) article 50.5 of title 24, C.R.S, dealing with retaliatory actions (whistleblower); or 4) the grievance procedures adopted by the appointing authority as required by the board.

The state personnel board is required to review and summarily grant or deny a petition within 120 days of receipt of the petition; except that petitions filed with the board that result in an investigation of a claim of discrimination or retaliatory action are exempt from the 120-day review requirement. If the board grants a petition for review, there will be a hearing before an administrative law judge or the board, and a written decision will be issued pursuant to section 24-50-125.4, C.R.S. Any party may appeal the final decision of the board or administrative law judge to the court of appeals.

**Disciplinary Proceedings, Appeals, and Hearings:** The civil service amendment specifies that any action of an appointing authority taken pursuant to article XII, section 13 (8), of the state constitution shall be subject to appeal to the state personnel board. Section 24-50-125, C.R.S., establishes a procedure for appealing the actions of appointing authorities to the board.

First, this section specifies that a classified employee may be dismissed, suspended, or otherwise disciplined by the appointing authority upon written findings of failure to comply with standards of efficient service or willful misconduct, willful failure or inability to perform his or her duties, or final conviction of a felony. The appointing authority is required to give written notice of the disciplinary action, as well as of the employee's right to appeal to the state personnel board, as specified in statute, to any classified employee who is so disciplined. An employee who has been disciplined may petition the board for a hearing regarding the action taken by the appointing authority, and the board is required to grant a hearing within time frames specified in statute. An employee is entitled to representation of his or her choosing at his or her own expense at the hearing. At the conclusion of the hearing, the board must make written findings of fact and conclusions of law affirming, modifying, or reversing the action of the appointing authority, and the appointing authority is required to execute the findings of the board.

In addition, upon the request of a classified employee or his or her representative, the board is required to hold a hearing on an appeal if the employee protests an action that adversely affects the employee's base pay, status, or tenure. A probationary employee is entitled to the same rights to a

hearing; except that a probationary employee does not have the right to a hearing to review a disciplinary action taken while the employee is still a probationary employee.

**Contracts for Personal Services:** As stated above, the civil service amendment does not prohibit a state agency from contracting with private entities to perform state governmental services to achieve increased efficiency in the delivery of such services, so long as certain conditions are met. A critical factor is whether the state agency intends to substitute services performed by private entities for services that have historically been performed by classified employees. The Colorado court of appeals has construed the civil service amendment to prohibit a classified position from being abolished and the incumbent employee terminated if a new position is created with substantially the same duties and responsibilities as the old position, but filled by another employee.<sup>4</sup> The Colorado supreme court has determined that personal services contracts may not be used to obtain services when those services have been commonly and historically performed by classified employees, there is a continuing need for those services, (i.e., the duties should be considered permanent), and proper classified positions currently exist.<sup>5</sup>

In 1991, the Colorado supreme court stated that, because privatization so directly implicates both the personnel system as a whole and the specific protections accorded state personnel system employees under the civil service amendment, standards regulating privatization must be established by legislation, regulation, or some combination of the two.<sup>6</sup> In 1993, the general assembly enacted statutory criteria to define the circumstances under which the state may have state governmental services performed by individuals outside of the state personnel system. The principle underlying each of the situations in which the use of nonstate employees to perform such services is authorized is increased efficiency in the delivery of government services.

Section 24-50-503, C.R.S., describes permissible contracts that implicate the state personnel system. Such contracts are for functions that are currently performed by classified state employees. The contracting agency must demonstrate to the state personnel director that certain specified

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<sup>4</sup> *Bardsley v. Colorado Dept. Of Public Safety - Division of Disaster Emergency Services*, 870 P.2d 641 (Colo. App. 1994).

<sup>5</sup> *Colorado Ass'n of Public Employees v. Department of Highways*, 809 P.2d 988 (Colo. 1991).

<sup>6</sup> *Id.*

conditions have been met in order to enter into such a contract. Such contracts cannot be approved if the contract would result directly or indirectly in the separation of classified employees from state service.

Section 24-50-504, C.R.S., describes permissible contracts that do not implicate the state personnel system. Such contracts are for functions that are otherwise performed by persons exempt from the state personnel system. Such a contract is permissible when the state personnel director determines that any one of certain specified conditions are met.

In short, a state agency may contract for personal services if certain statutory criteria are satisfied and the contract would not result directly or indirectly in the separation of any classified employees from state service.

*III. Rules: 4 CCR 801-1, Chapter 6 (Performance) and Chapter 8 (Dispute Resolution)*

The rules of the state personnel board and the state personnel director regarding job performance are in chapter 6 of the personnel board rules and personnel director's administrative procedures. The rules establish a system for evaluating classified employees on an annual basis and specify the requirements of the system.

The state personnel board rules regarding the dispute resolution process are in chapter 8 of the personnel board rules and personnel director's administrative procedures. The board's rules contain, for example, further information regarding the board's dispute resolution process, options for alternative dispute resolution, investigation of whistleblower and discrimination claims, the board appeal process, discretionary board hearings, filing deadlines, representation, and pre- and post-hearing procedures. In addition, chapter 8 contains the state personnel director's rules regarding the disputes over which the director has jurisdiction.

**7. Temporary Employment**

*I. Constitutional Provision: State Constitution, article XII, section 13 (9)*

Temporary employment, for up to six months, is authorized in article XII, section 13 (9), of the state constitution. The constitution contemplates that the appointing authority will undergo the process of hiring a permanent employee during the period of a person's temporary employment. Specifically,

section 13 (9) states that:

The state personnel director may authorize the temporary employment of persons, not to exceed six months, during which time an eligible list shall be provided for permanent positions. No other temporary or emergency employment shall be permitted under the personnel system.

*II. Statutory Provision: Section 24-50-114, C.R.S.*

Section 24-50-114, C.R.S., clarifies the constitutional provision by stating that a temporary appointment may be made pending the availability of an eligibility list. An appointing authority may fill a vacancy for a permanent position by the temporary appointment of a qualified and classified employee or, in the absence of a qualified and classified employee, by the temporary appointment of someone who is not in the state personnel system. Statute requires that an eligible list be established within the six-month period following the temporary appointment if the vacancy is for a permanent position.

The temporary appointment of a person from outside the state personnel system is also authorized in emergency situations or when the nature of the work is seasonal and nonpermanent in nature. Persons from outside the state personnel system who are appointed to temporary positions are not entitled to any of the protections afforded to classified employees.

Generally, the appointing authority is required to obtain permission from the state personnel director before making a temporary appointment or the temporary appointment is considered void and the temporary employee's employment is immediately terminated. Prior approval is not required in certain emergency situations; however, the state personnel director is required to approve the temporary appointment subsequent to such appointment.

*III. Rules: 4 CCR 801-1, Rules 4-48 and 4-49*

The personnel director's rules specify that a temporary appointment is an appointment for a period not to exceed six months in any twelve-month period. Temporary employees are employed at will and do not have the rights and benefits provided to permanent employees. When the job duties of the position to be filled are permanent and full-time, the position shall not be filled through a succession of temporary appointments. When the job duties of the position to be filled are seasonal or annually recurring, the department may fill the position with a permanent part-time position or a temporary position.

## 8. Probationary Periods

### *I. Constitutional Provision: State Constitution, article XII, section 13 (10)*

A state employee is not included in the state personnel system immediately upon becoming employed by a state agency that is included in the system. Instead, the state constitution establishes that all employees shall be subject to a probationary period, during which employees do not have the same protections or rights as classified employees. Article XII, section 13 (10), of the state constitution states that:

The state personnel board shall establish probationary periods for all persons initially appointed, but not to exceed twelve months for any class or position. After satisfactory completion of any such period, the person shall be certified to such class or position within the personnel system, but unsatisfactory performance shall be grounds for dismissal by the appointing authority during such period without right of appeal.

### *II. Statutory Provision: 24-50-112.5 (5) (b), C.R.S.*

Section 24-50-112.5 (5) (b), C.R.S., reiterates the constitutional requirements regarding probationary periods. This section expands on the constitutional provisions only to specify that a probationary period shall also apply to an employee who is promoted into a different position or who is in a position reallocated to a higher pay grade, that satisfactory completion of the probationary period shall be demonstrated by performance evaluations, and that any classified employee who is promoted to a different class or position and who fails to perform satisfactorily during the probationary period shall be reverted to a position in the former certified class or be disciplined.

### *III. Rules: 4 CCR 801-1, Board Rules 4-41 and 4-42*

The state personnel board rules reiterate that probationary employees do not have the same rights as classified employees in the state personnel system by specifying that probationary employees:

do not have a right to a pre-disciplinary meeting, to a mandatory hearing to review discipline for unsatisfactory performance, to be granted a period of time to improve performance, to be placed on a reemployment list, or to the privilege of reinstatement.<sup>7</sup>

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<sup>7</sup> 4 CCR 801-1, Board Rule 4-42.A.

Board Rule 4-42.A., however, does allow a probationary employee to petition the state personnel board for a discretionary hearing on a nondisciplinary matter.

## **9. State Personnel Board and Board Rules**

### *I. Constitutional Provisions: State Constitution, article XII, sections 14 (1), 14 (2), and 14 (3)*

The state personnel board, created in article XII, section 14 (1), of the state constitution, consists of five members, three of whom are appointed by the governor with the consent of the senate and two of whom are elected by state employees in the personnel system. Each member of the board is required to be a qualified elector of the state and is prohibited from being an officer or employee of the state or of any state employee organization. Article XII, section 14 (2), contains provisions regarding removal of a member from the state personnel board for specified reasons.

The state personnel board is required to adopt, and may from time to time amend or repeal, rules to implement the provisions of article XII, sections 13, 14, and 15, of the state constitution and the laws enacted pursuant to such sections. Article XII, section 14 (3), states that the rules enacted by the board shall include, but need not be limited to, rules concerning standardization of positions, determination of grades of positions, standards of efficient and competent service, the conduct of competitive examinations of competence, grievance procedures, appeals from actions by appointing authorities, and conduct of hearings by hearing officers where authorized by law.

### *II. Statutory Provisions: Sections 24-50-101 (3) (b) and 24-50-103, C.R.S.*

Section 24-50-101 (3) (b), C.R.S., states that "[i]t is the duty of the state personnel board to provide fair and timely resolutions of cases before it." Pursuant to section 24-50-123 (1), C.R.S, the board is required to promulgate rules to "adopt uniform procedures to be used by all principal departments and institutions of higher education in developing grievance processes for their employees." The grievance procedures are required to provide an orderly system of review for all grievances and define matters that are subject to such grievance procedures.

Section 24-50-103, C.R.S, provides additional detail about the method by which members are appointed or elected to the state personnel board and

allows the board to authorize administrative law judges, who shall be lawyers, to conduct hearings on any matter with the jurisdiction of the board.

*III. Rules: 4 CCR 801-1, Personnel Board Rules and Personnel Director's Administrative Procedures*

As stated above, the constitution directs the state personnel board to adopt rules to implement the constitutional provisions that create the state personnel system. The board's rules, together with the state personnel director's administrative procedures, are found in 4 CCR 801-1. The rules of the state personnel board are labeled "Board Rule" before the rule number.

**10. Department of Personnel, State Personnel Director, and Personnel Director's Procedures**

*I. Constitutional Provision: State Constitution, article XII, section 14 (4)*

The department of personnel is the only principal department of the executive branch that is created by the state constitution. Article XII, section 14 (4), of the state constitution also specifies that the head of the department of personnel shall be the state personnel director and that the state personnel director is responsible for the administration of the personnel system of the state under the constitution, the laws enacted pursuant to the constitution, and the rules adopted by the state personnel board.

*II. Statutory Provision: Section 24-50-101 (3) (c), C.R.S.*

Although the department of personnel and the position of state personnel director are both created in the state constitution, the constitution is silent regarding the rule-making authority of the state personnel director. This authority, however, is granted in statute. Section 24-50-101 (3) (c) states the following:

**24-50-101. Short title - legislative declaration - terminology.**

(3) (c) It is the duty of the state personnel director to establish the general criteria for adherence to the merit principles and for fair treatment of individuals within the state personnel system. It is the responsibility of the state personnel director to provide leadership in the areas of policy and operation of the state personnel system as well as to provide consultant services to executive branch agencies and institutions of higher education to further their professional management of human resources in state government. The state personnel director, pursuant to the "State Administrative Procedure Act", article 4 of this title, shall provide

necessary directives and oversight for the management of the state personnel system and in the discharge of his constitutional duty to administer the state personnel system.

*III. Rules: 4 CCR 801-1, Personnel Board Rules and Personnel Director's Administrative Procedures*

The rules of the state personnel director together with the rules of the state personnel board are found in 4 CCR 801-1.

**11. Veterans' Preference**

*I. Constitutional Provision: State Constitution, article XII, section 15*

The veterans' preference is created in article XII, section 15, of the state constitution. It specifies that a certain number of points shall be added to the passing grade of each examination taken by a veteran who is a candidate for appointment or employment in the personnel system of the state. There are various eligibility criteria and different preferences given to veterans depending on circumstances specified in the constitution.<sup>8</sup> The preference does not apply if the veteran is already in the personnel system and takes an examination that is required for a promotion.

If a reduction in the work force of the state becomes necessary because of lack of work or curtailment of funds, employees who were not eligible for the veterans' preference shall be separated before employees who were entitled to the veterans' preference and who have the same or more service in the employment of the state, counting both military service for which the points were added and the employment with the state from which the employee is to be separated.

*II. Statutory Provision: Section 24-50-112.5 (2) (b), C.R.S.*

The Colorado Revised Statutes do not provide any details, in addition to the constitutional requirements, regarding the veterans' preference. Section 24-50-112.5 (2) (b), C.R.S., simply requires that qualified candidates receive veterans' preference as prescribed by the state constitution.

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<sup>8</sup> For a complete description of the preferences and the eligibility criteria, please see article XII, section 15, of the state constitution.

*III. Rules: 4 CCR 801-1, Board Rules 1-56.1 and 7-11 and Rule 10-4*

Neither the state personnel board nor the state personnel director have promulgated extensive rules regarding the veterans' preference. Board Rule 1-56.1 makes a reference to the constitutional requirement that veterans' preference points shall be applied in ranking candidates for a job opening after a competitive assessment process has occurred. Board Rule 7-11 restates the constitutional requirement that, in the case of departmental layoffs, a veteran may not be laid off before a nonveteran. Rule 10-4 explains how the veterans' preference is applied when a department contracts for personal services.

**12. State Auditor's Office Employees**

*I. Constitutional Provision: State Constitution, article V, section 49*

Article V, section 49, of the state constitution specifies that the general assembly shall appoint a state auditor. Although the auditor's office is a legislative department and most legislative employees are exempt from the state personnel system, subsection (3) of section 49 of article V specifies that "[n]ot more than three members of the staff of the state auditor shall be exempt from the personnel system of the state." Therefore, the majority of the employees of the auditor's office are included in the state personnel system.

*II. Statutory Provisions: Sections 24-50-104 (1) (h) and 24-50-112.5 (6), C.R.S.*

In recognition of the unique nature of the job requirements of the staff of the state auditor, the Colorado Revised Statutes offer some flexibility regarding the appointment and promotion of such employees. Sections 24-50-104 (1) (h) and 24-50-112.5 (6), C.R.S., state that the state personnel director may establish special procedures governing the classification, appointment, and promotion of employees of the state auditor's office to address special situations, circumstances, and duties unique to those employees. The state personnel director is required to consult with the state auditor and remain consistent with the principles of separation of powers and with article XII, sections 13, 14, and 15, of the state constitution.

*III. Rules: None*

Neither the rules of the state personnel director nor the state personnel board's rules provide any additional guidance regarding the staff of the state

auditor.

### **13. Senior Executive Service**

#### *I. Constitutional Provision: None*

The state constitution does not provide any specific authorization for the senior executive service (SES). It is an alternative performance-based pay plan created in statute and further explained by the rules of the state personnel director.

#### *II. Statutory Provisions: Section 24-50-104 (5) (b) to (5) (d), C.R.S.*

Section 24-50-104 (5) states that the SES is limited to 125 positions. The state personnel director is required to establish the criteria for inclusion in the SES and is required to review each nominated position before it is placed in the SES pay plan. The maximum monthly salary for an SES position shall not exceed the maximum monthly salary of any pay plan, not including medical pay plans, by more than 25%. Employees who are included in the SES are not eligible to receive anniversary-based merit increases because their salaries are based on the negotiation of an annual contract between the employee and the department head or state auditor, as applicable. The amount of the salary negotiated in the contract may increase, decrease, or stay the same from year to year. The head of the department, agency, or the state auditor, as applicable, makes the appointments to the SES for his or her respective department, agency, or office based on competitive selection.

An employee who is included in the SES does not have the right to a position outside the SES, and an employee who is dismissed for failure to perform under his or her contract may only appeal directly to the state personnel board.

#### *III. Rules: 4 CCR 801-1, Rules 2-11, 2-12, 3-25, 8-53, and 8-81 and Board Rule 2-13*

Rule 2-11 states that:

The senior executive service is an alternative performance-based pay plan available for employees in positions that are in the management class and are responsible for directly controlling, through subordinate managers, relatively large or important segments of a principal department . . .

The rule provides details regarding how a position becomes included in the SES and how a state employee's status within the state personnel system may change as a result of being included in the SES. Specifically, an employee who enters into an SES employment contract may be required to waive all appeal, disciplinary, grievance, and other rights and privileges of the state personnel system in consideration for a salary that exceeds the maximum of the management class. In addition, if an SES employee's contract is not renewed, the department head may separate the employee from state service upon expiration of the contract.

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