

# Emergency Rules

**Title 1—OFFICE OF ADMINISTRATION  
Division 20—Personnel Advisory Board and  
Division of Personnel  
Chapter 1—Organization and Operation**

**EMERGENCY AMENDMENT**

**1 CSR 20-1.040 [Merit System] Unclassified Service.** The board is amending the rule title, deleting sections (1) and (3), and amending existing section (2).

*PURPOSE: This amendment revises this rule pursuant to changes to Chapter 36, RSMo made by Senate Bill 1007 (2018).*

*PURPOSE: This rule defines the [classified and] unclassified service of the state under coverage of [all provisions of] the State Personnel Law.*

*EMERGENCY STATEMENT: This emergency amendment incorporates and implements changes to the law effected by Senate Bill 1007 (2018), effective August 28, 2018. Emergency amendment of this rule is necessary to preserve the compelling governmental interest of successfully implementing the changes to Chapter 36, RSMo made by Senate Bill 1007 (2018) across the departments and agencies of the executive branch of Missouri state government. Provisions of the existing rule are inconsistent with the provisions of Chapter 36, RSMo, effective August 28, 2018, and must be amended to avoid confusion or improper application, avoid potential liabilities, and ensure consistent implementation of Senate Bill 1007 (2018). A proposed amendment which covers the same material will be filed at a later date to be published in the **Missouri Register**. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the **Missouri and United States Constitutions**. The Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 17, 2018, becomes effective August 28, 2018, and expires February 28, 2019.*

*[(1)] The Classified Service. The classified service shall consist of and all provisions of the State Personnel Law and these rules, including those provisions which relate to selection, appointment, pay, tenure and removal, shall apply to those agencies enumerated in subsection (1)(A) of this rule and other agencies as may be provided for by law or regulations for grant-in-aid programs to maintain personnel standards on a merit basis, except those offices, positions and employees enumerated in subsection (1)(B) of this rule.*

*(A) All offices, positions and employees of the Department of Mental Health, the Department of Social Services, the Department of Corrections, the Department of Health, the Division of Employment Security, Mine Safety and On-Site Consultation Sections of the Division of Labor Standards, and Administration Operations of the Department of Labor and Industrial Relations, the Department of Natural Resources, the Office of Administration, the Missouri State Water Patrol, the Missouri Veterans' Commission, Capitol Police, and State Emergency Management Agency of the Department of Public Safety, the Divisions of Tourism and Job Development and Training, the Missouri Housing Development Commission and the Office of Public Counsel of the Department of Economic Development.*

*(B) As provided for in section 36.031, RSMo, persons employed or appointed as attorneys are covered by those provisions of the rules governing classification and pay, but are not subject to those provisions of the State Personnel*

*Law and these rules governing selection, appointment, tenure or removal.]*

*[(2)](1) [The Unclassified Service.] Certain positions may be established and filled without regard to provisions of the State Personnel Law or of these rules which relate to the classification and allocation of positions or which relate to the selection, appointment, compensation, [tenure] and removal of persons employed in these positions. The following positions [in the agencies covered by the State Personnel Law], as well as others that may be provided in law, including section 36.030.2, RSMo, comprise this unclassified service[, except that merit status will be retained by incumbents of positions which previously have been subject to the law]:*

*[(A)] Within each department established by law, the departmental director, and five (5) principal assistants designated by the departmental director;*

*(B) Within each division of service, the division director, and three (3) principal assistants designated by the division director, except that the exemptions for principal assistants shall not apply to the Division of Personnel;]*

*[(C)](A) Deputy(ies) or other policy-making assistants to the unclassified department director or division director as warranted by the size and complexity of the organization and as approved by the Personnel Advisory Board. Appointing authorities shall submit to the board a written request for each unclassified deputy or other policy-making assistant position describing the size and complexity of the organization, the reasons for requesting the unclassified position, and the relationship of the proposed position to other administrative positions in the agency both classified and unclassified. The duties assigned to unclassified deputies or other policy-making assistants shall not be designed to replace a classified position occupied by an incumbent or to result in the downward reclassification, layoff, or demotion of an incumbent of a classified position;*

*[(D)](B) The administrative head of each state medical, penal, and correctional institution, as warranted by the size and complexity of the organization and as approved by the board in the same manner and under the same conditions as provided for unclassified deputies and other policy-making assistants; and*

*[(E) Members of boards and commissions and one (1) principal assistant for each board or commission when the members are appointed by the governor or by a director of a department of the executive branch of government;*

*(F) Chaplains and attorneys regularly employed or appointed in any department or division subject to this law, except as provided in section 36.031, RSMo;*

*(G) Patients or inmates in state institutions who also may be employees of those institutions;*

*(H) Persons employed in an internship capacity in a state agency or institution as a part of their formal training at a college, university, business, trade, or technical school except that by appropriate resolution of the governing authorities of any such agency or institution, the Division of Personnel may be called upon to assist in selecting persons to be appointed to internship positions;*

*(I) Persons employed in work assignments with a geographic location principally outside the state of Missouri;*

*(J) Special assistants as designated by an appointing authority, except that the number of such special assistants shall not exceed one percent (1%) of a department's total authorized full-time equivalent workforce. The number of special assistants allowed in each department will be determined at the beginning of each fiscal year based on the department's budget as authorized in the previous legislative session, and the authorized number of special assistants shall apply throughout the fiscal year, unless an appointing authority requests a special review during the year because*

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*of a significant change in a department's authorized work force; and]*

*[(K)](C)* Other persons whose employment is such that **standard selection [by competitive examination]** and standard classification and compensation practices are not practical under all circumstances as determined by the director. The circumstances which justify that determination shall include the following:

1. Cooperative education programs with secondary schools involving part-time employment of students;
2. Positions involving short-term, part-time, or intermittent work schedules which do not exceed the equivalent of one-half (1/2) time in a year, except that this rule will not be used to *[retain]* **main-tain** permanent[,] or continuing *[employees]* **employment**, or both, in a division of service;
3. New positions for which allocation to an existing class is not practicable when those positions must be filled pending a review of the duties involved and preparation of a class specification for approval by the board;
4. Interns, trainees, and participants in special state or federal training, rehabilitation, or employment programs providing that the objectives of these programs are best served by selection or allocation procedures other than those based on competitive examination or uniform classification and pay; or
5. Situations in which the special needs of the service cannot be met by other appointment or classification and pay procedures provided in these rules.

*[(3) Conflicting Employment. No employee shall have conflicting employment while in a position subject to the provisions of the law. Each division of service will establish a procedure regarding outside employment and other activities that could potentially be in conflict with the mission and objectives of the division of service or the state service. This procedure will require that employees inform management of outside employment and will include a provision whereby either the employee or the appointing authority may request a determination from the Personnel Advisory Board.]*

*AUTHORITY: section 36.070, RSMo [2000] Supp. 2018. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Aug. 17, 2018, effective Aug. 28, 2018, expires Feb. 28, 2019. An emergency amendment covering this same material will be published in the October 1, 2018, issue of the **Missouri Register**. A proposed amendment covering this same material will be filed at a later date to be published in the **Missouri Register**.*