

BEFORE THE DEPARTMENT OF ADMINISTRATION  
OF THE STATE OF MONTANA

In the matter of the amendment of ARM ) NOTICE OF PUBLIC HEARING ON  
2.21.3703, 2.21.3707, 2.21.3708, ) PROPOSED AMENDMENT AND  
2.21.3711, 2.21.3719, 2.21.3721, ) REPEAL  
2.21.3723, and 2.21.3726, and the )  
repeal of ARM 2.21.3709 pertaining to )  
the Recruitment and Selection Policy )

TO: All Concerned Persons

1. On September 7, 2017, at 9:30 a.m., the Department of Administration will hold a public hearing in Room 136 of the Mitchell Building, at 125 N. Roberts Street, Helena, Montana, to consider the proposed amendment and repeal of the above-stated rules.

2. The Department of Administration will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Administration no later than 5:00 p.m. on August 24, 2017, to advise us of the nature of the accommodation that you need. Please contact Ann Brewer, Department of Administration, P.O. Box 200127, 125 N. Roberts Street, Helena, MT 59620-0127; telephone (406) 444-3879; Montana Relay Service 711; facsimile (406) 444-0703; or e-mail annbrewer@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

2.21.3703 DEFINITIONS For purposes of this subchapter, the following definitions apply:

- (1) "Applicant" means an individual who ~~satisfies the following three criteria:~~
  - ~~(a) the individual has indicated an interest in the particular position;~~
  - ~~(b) the agency considers the individual for employment in particular position;~~

and

~~(c) the individual has followed the agency's standard procedures for submitting the required applications, materials such as, for example, a resumes, cover letter, application form, or both other documentation.~~

(2) "Competencies" means a sets of measurable and observable knowledge, skills, abilities, and behaviors that contribute to success in a job.

(3) through (4)(b) remain the same.

(5) "Job analysis" means the process of gathering, analyzing, ~~and creating,~~ and documenting information about a position to identify the essential duties, functions, roles, and competencies required to perform the work, ~~and the written documentation of the analysis.~~

(6) remains the same.

(7) "Qualifications" means the minimum requirements needed to perform the job on the first day of employment, ~~including and~~ the education, experience, and competencies associated with successful job performance.

(8) "Vacancy announcement" means a recruitment posting, including the job duties, qualifications, and application instructions. Vacancy announcements are also called job listings and requisitions.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The "applicant" definition has been updated to clarify and to eliminate unnecessary wording. The current policy notes an application and resume are needed to be considered for a position. Examples of required document types are proposed to give the applicant an idea of what information may be requested as part of the hiring process. Minor clarification is proposed to include documenting information during the job analysis process. The current wording is not clear and concise. To provide consistency with the current processes used by agencies, the definition of "vacancy announcement" is being added to the definitions rule and removed from ARM 2.21.3709 to consolidate definitions. The new definition also clarifies that "job listings" and "requisitions" may be used as alternate reference names for vacancy announcements. The proposal to allow alternate reference names reflects the current practice in state agencies. The remaining changes are proposed to make the rule more concise.

2.21.3707 INTERNAL RECRUITMENT (1) remains the same.

(2) Agency managers are encouraged, but are not required to consider applicants included in the job registry in an internal recruitment process. Reinstated employees are not required to participate in a competitive process to be rehired as provided in the Implementing a Reduction in Force Policy (<https://montana.policytech.com/docview/?docid=328&public=true&fileonly=true>).

~~(2)~~(3) Agency managers may:

(a) limit the internal competitive recruitment process to:

~~(i) current employees of the agency, division, or other appropriate internal unit, or laid-off employees participating in the job registry as provided in the Implementing a Reduction in Force Policy; or~~

~~(ii) current employees and employees who have been laid off from the agency within one year of the effective date of layoff. Reinstated employees are not required to participate in a competitive process to be rehired as provided in Implementing a Reduction In Force, MOM Policy 3-0155;~~

~~(b) limit recruitment to laid-off employees participating in the job registry as provided in Implementing a Reduction In Force, MOM Policy 3-0155. Agency managers are encouraged, but not required, to consider applicants included in the job registry before recruiting from the general public; or~~

~~(c)~~(b) recruit internally to the agency, division, or other appropriate internal unit and to the job registry simultaneously unless this practice conflicts with agency policy or the provisions of a collective bargaining agreement.

~~(3)~~(4) Agency managers may consider temporary employees hired through a competitive process in an internal recruitment; however, student interns, and short-term workers, and temporary employees who were not hired through a competitive process are not eligible to ~~compete~~ participate in an internal recruitment.

~~(4)~~(5) Agency managers may reassign current employees to temporary assignments not ~~exceeding to exceed~~ to exceed a period of two years without using a competitive process recruitment. Agency managers shall use a competitive process when filling the position on a permanent basis.

~~(5)~~(6) Agency managers shall post internal vacancy announcements according to agency standard procedures. ~~The internal vacancy announcements should contain information similar to that required in ARM 2.21.3709, Vacancy Announcements.~~

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: Subsections (3)(a)(ii) and (3)(b) have been combined into (2) to remove redundant information. The department proposes that temporary employees may be considered for internal recruitment only if they went through a competitive process when initially hired to avoid abuse of temporarily hiring employees outside the competitive hiring process. The second sentence of (5) is being removed because the department is repealing ARM 2.21.3709 in this notice. The remaining changes are proposed to make the rule more concise.

2.21.3708 EXTERNAL RECRUITMENT (1) through (1)(b)(vii) remain the same.

(c) recalls a seasonal employee, as defined in 2-18-101, MCA, who was originally selected using a competitive recruitment process;

(d) and (e) remain the same.

(2) Agency managers shall post a vacancy announcement for all positions open to external recruitment on the State of Montana ~~Employment Information~~ Careers web site for at least five working days. The State Human Resources Division, Department of Administration, maintains the State of Montana ~~Employment Information~~ Careers web site <http://mt.gov/statejobs/statejobs.asp> <http://statecareers.mt.gov>.

~~(3) Agency managers shall post vacancy announcements~~ If an agency manager decides to conduct an external recruitment for a temporary employment employee, as defined in 2-18-101, MCA, or for permanent positions being filled on a temporary basis, with the State of Montana ~~Employment Information~~ the vacancy announcement must be posted on the Careers web site, ~~unless the agency director or designee decides the position must be filled immediately or other conditions exist that make it impractical to follow procedures outlined in this policy.~~

(4) through (4)(c) remain the same.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The State Human Resources Division implemented a new recruiting system in 2015, which is referred to as "Careers." The previous web site is replaced to reflect the current recruiting system. Because agencies are not required to conduct a competitive recruitment process for temporary positions, (3) has been clarified by removing unnecessary wording, and to update the name of the state's hiring web site.

2.21.3711 COMPLIANCE WITH MILITARY SELECTIVE SERVICE ACT

(1) through (3) remain the same.

(4) Agencies shall request the documentation described in this rule at the time they make an employment offer is made. Agencies may adopt reasonable timelines for individuals to provide the documentation. The Department of Administration, State Human Resources Division, has published the Montana Military Selective Service Act Compliance Guide fact sheet (<http://hr.mt.gov/Portals/78/newdocs/factsheets/SelectiveServiceFactSheet.pdf>) to assist agencies in complying with this rule and the Military Selective Service Act. The guide fact sheet provides examples of adequate documentation and information about who must register with the Sselective Sservice. If an individual does not provide documentation as required, and the exceptions in the fact sheet do not apply, agencies shall:

(a) through (5) remain the same.

AUTH: 2-15-130, MCA

IMP: 2-15-130, MCA

STATEMENT OF REASONABLE NECESSITY: The department proposes the new language in (4) so that this rule is consistent with the Military Selective Service Act fact sheet. Although the Selective Service fact sheet has been public since 2011, the direct link was never included in the rule. The direct link has been added to the rule for ease of access. The remaining changes are proposed to make the rule more concise.

2.21.3719 DEVELOPMENT OF SELECTION PROCEDURES (1) remains the same.

(2) Each selection procedure must be job-related and based on a current job analysis.

~~(a) Agency managers shall review the written position description or job profile~~ job description to ensure it accurately describes the current job duties, competencies, education, and experience to perform the job.

~~(b) For further guidance, agency managers may refer to the recruitment and selection resources found at the State Human Resources Division web site: <http://hr.mt.gov/hrpp/guides.mcp> and also available from the State Human Resources Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, or telephone (406) 444-3871.~~

(3) and (4) remain the same.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, MCA

**STATEMENT OF REASONABLE NECESSITY:** For consistency throughout this rule, "position description" and "job profile" are proposed to be replaced with the words "job description." Subsection (2)(b) is no longer applicable and therefore is proposed to be removed in its entirety.

2.21.3721 EVALUATION OF QUALIFICATIONS (1) and (2) remain the same.

(3) Agency managers may select from any of the most qualified group of applicants. The public employment hiring preferences must be applied as provided in:

(a) the Veterans' Employment Preference, MOM Policy (ARM Title 2, chapter, 21, subchapter 36) 3-0172, revised October 3, 2003;

(b) the Persons with Disabilities Employment Preference, MOM Policy (ARM Title 2, chapter, 21, subchapter 14) 3-0171, revised February 11, 2000; and

(c) as provided in 2-18-111, MCA, Hiring preference for residents of Indian reservations for state jobs within reservation — rules. These policies are incorporated by reference and are also available from the State Human Resources Division, Department of Administration, Room 130 Mitchell Building, 125 Roberts Street, P.O. Box 200127, Helena, MT 59620-0127, or telephone (406) 444-3871.

AUTH: 2-18-102, MCA  
IMP: 2-18-102, MCA

**STATEMENT OF REASONABLE NECESSITY:** The department proposes to remove the references to the Montana Operations Manual (MOM) policies and associated revision dates because these policies are now provided in administrative rules, as noted in the proposed additions, and are also available on the Secretary of State's website. Because the rules are inherently applicable to the hiring process, there is no need to incorporate them by reference in this rule, so that language is proposed for deletion. The remaining proposed changes are to make the rule more concise.

2.21.3723 INTENTIONAL MISREPRESENTATION (1) ~~Agency managers may exclude an applicant from further consideration for employment or discharge an employee if they learn an applicant intentionally misrepresented facts about their qualifications or job history during the recruitment and selection process.~~

(2) ~~The state employment process (online and traditional application) includes a verification notice. The that information applicants provide is subject to verification. Willful misstatements of qualifications may exclude an applicant from further consideration for the position or may result in discharge from employment.~~

AUTH: 2-18-102, MCA  
IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: Section (1) is proposed for removal because it repeats language in (2). The remaining changes are proposed to make the rule more concise.

2.21.3726 DOCUMENTATION (1) through (4)(c) remain the same.

(5) Agencies shall maintain items listed in this rule for a period of time consistent with the General Records Retention Schedule found at <http://sos.mt.gov/Records/StateForms.asp> and also available from Records and Information Management, Montana Secretary of State, 130 Bozeman Street, P.O. Box 202801, Helena, MT 59620, telephone (406) 444-9000.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: The change to this rule is proposed because retention schedules are only provided online by the Secretary of State's Office.

4. The department proposes to repeal the following rule:

2.21.3709 VACANCY ANNOUNCEMENTS found on ARM page 2-1117.

AUTH: 2-18-102, MCA

IMP: 2-18-102, MCA

STATEMENT OF REASONABLE NECESSITY: Because the definition of "vacancy announcement" is proposed to be included in ARM 2.21.3703, it is no longer necessary to retain this rule.

5. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to Ann Brewer, Department of Administration, P.O. Box 200127, Helena, MT 59620; telephone (406) 444-3879; Montana Relay Service 711; fax (406) 444-0703; or e-mail [annbrewer@mt.gov](mailto:annbrewer@mt.gov), and must be received no later than 5:00 p.m., September 15, 2017.

6. Ann Brewer, Department of Administration, has been designated to preside over and conduct this hearing.

7. The State Human Resources Division maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this division. Persons who wish to have their name added to the mailing list shall make a written request which includes the name and mailing address or e-mail address of the person to receive notices and specifies that the person wishes to receive notices regarding division rulemaking actions. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or

delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the department's web site at <http://doa.mt.gov/administrativerules>. The department strives to make its online version of the notice conform to the official published version, but advises all concerned persons that if a discrepancy exists between the official version and the department's online version, only the official text will be considered. In addition, although the department works to keep its web site accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. The department has determined that under 2-4-111, MCA, the proposed rule amendments and repeal will not significantly and directly affect small businesses.

By: /s/ John Lewis  
John Lewis, Director  
Department of Administration

By: /s/ Michael P. Manion  
Michael P. Manion, Rule Reviewer  
Department of Administration

Certified to the Secretary of State August 7, 2017.