



RESEARCH REPORT | Center for American Freedom

MAKING THE UTAH CAREER SERVICE AT-WILL WOULD IMPROVE STATE GOVERNMENT

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TOPLINE POINTS

- ★ Removal protections cover about two-thirds of Utah state government employees. Public officials report these protections make removing problematic employees challenging.
- ★ Several states, including Texas and Georgia, have made their entire state workforces at-will. Human Resource supervisors in these states report at-will employment makes state government more efficient and responsive to senior leadership without evidence of systematic abuses.
- ★ Utah state government could serve Utahns more effectively if all, rather than some, career service employees served at-will.

INTRODUCTION

Utah's civil service laws give state government employees extensive removal protections. These restrictions make removing incompetent or intransigent state employees more challenging. A series of incremental reforms have addressed these problems by making some state employees at-will, allowing agencies to dismiss them without going through civil service procedures. State officials report these reforms were successful. Other states have expanded at-will employment through part or all of their state workforces. Human Resource (HR) directors in these states report at-will

employment improves government operation without evidence of systematic abuses. Utah could make its government work better for Utahns by extending at-will employment to all state employees.

Removal Restrictions in Utah State Government

Utah passed its civil service system in 1965. Most employees in Utah state government's "career service" (CS) now enjoy removal protections.¹ Once they pass a one-year probationary period, they may be dismissed only for "cause" or "to advance the good of the public service" ([UT Code § 63-17-306\(1\)](#)).² The law now requires

¹ Career service employees are classified as 'Schedule B' in the Utah State Personnel Management Act ([Underwood et al., 2021, p. 2](#)).

² Statutorily, a career service employee is someone who "has successfully completed a probationary period of service in a position covered by the career service" ([Utah Code 63A-17-102\(3\)](#)).



agencies to spend considerable time and effort proving good cause exists.

Tenured CS employees can appeal dismissals ([UT Code § 67-19a-301\(3\)](#)).³ To dismiss a CS employee, their agency must give them a written notice detailing the specific reasons for their termination. The employee has the right to reply within five working days, including requesting a preliminary meeting to counter the action ([Utah Admin. Code R 477-11-2](#)). If the agency dismisses the employee, they can appeal by submitting a written grievance first to an immediate supervisor, then to the agency or division director, and then to the department head. Utah law provides for over two months for these internal appeals ([UT Code § 67-19a-402](#)).⁴ If none of these officials overturn the dismissal, the employee can then appeal to the Career Service Review Office (CSRO) ([UT Code § 67-19a-402\(4\)](#)).^{5 6}

The CSRO administrator will then appoint a hearing officer who adjudicates the grievance after a hearing. The agency bears the burden of proof and must show by “substantial evidence” the employee merited dismissal. The CSRO can order the employee reinstated with benefits and back wages ([UT Code § 67-19a-406](#)).⁷ The CSRO takes an average of nearly six months to issue decisions ([Underwood et](#)

[al., 2021, p. 12](#)).⁸ If the CSRO rules against the employee, they can appeal directly to the Utah Court of Appeals ([UT Code § 67-19a-406\(6\)](#)). If an employee uses all their appeals rights, the dismissal grievance process thus takes approximately eight months, not counting time spent in any judicial appeals.

Removal Restrictions Hurt Government

These restrictions make removing poorly performing or intransigent employees more difficult. Researchers at the University of Utah interviewed state managers, HR officials, political appointees, and elected officials about the state civil service. They found widespread frustration with the removal process. Most believe it is too lengthy and difficult for managers to use effectively and comes with unreasonably high costs. They reported most Utah managers would rather reassign or transfer poor performers than attempt to navigate the dismissal process ([Green et al., 2008, p. 544](#)).

Political officials also reported that civil service employees were not responsive enough to directions. Many reported being frustrated with civil service employees actively resisting their agendas ([Green et al., 2008, p. 542](#)). Another study found state work units with greater job security had lower organizational performance than

³ Utah agencies can generally dismiss a probationary employee or CS exempt status employee for any or for no reason without right of appeal. The principle exception is that agencies may not retaliate against any employee for whistleblowing ([UT Code §§ 67-21-3 \(1\); 67-21-3.5; 67-19a-402.5](#)).

⁴ After a dismissal, employees have 10 working days to submit their grievance to their supervisor, who has five working days to respond. Employees then have 10 working days to appeal to the agency or division director, who has 5 working days to respond. The employee then has 10 working days to appeal to the department head, who has 10 working days to respond. The employee then has 10 working days to advance the grievance to the CSRO. These periods total 60 working days, approximately two and a half calendar months.

⁵ The CSRO is an independent quasi-judicial state entity that manages the grievance and appeals procedures for executive branch employees.

⁶ Dismissals account for one-third of CS grievances ([Utah Career Service Review Office, 2020, p.4](#)).

⁷ This provision requires the hearing officer to order back wages and benefits if the agency decision is overturned.

⁸ The CSRO takes an average of 169 days to issue decisions after receiving a case ([Underwood et al., 2021, p. 12](#)).



those with less job security ([Hijal-Moghrabi et al., 2015, p. 1363](#)).

Incremental Reforms Made Some Employees At-Will

State leaders have long recognized these problems. In response, Utah has made an increasing portion of its state workforce at-will. By the early 1990s, many administrative positions had been made at-will. Under the Leavitt Administration (1993-2003), division directors and wardens also became at-will positions, as did all positions in the Department of Environmental Quality ([Green et al., 2008, p. 536](#)).

In 2006, the Utah legislature exempted the newly-formed Department of Technology Services (DTS) from civil service rules and made all newly created DTS positions at will ([H.B. 109, 2005](#)). This ultimately made about 900 positions at-will and was the largest systematic change of employment status in Utah's history ([Green et al., 2008, p. 536](#); [Isman et al., 2020, p. 41](#)). Incumbent employees were allowed to keep their employment protections but were offered a pay increase in exchange for relinquishing them. Ninety-three percent of DTS employees preferred at-will employment and higher pay ([Underwood & Pulsipher, 2010, p. 13](#)).⁹

In 2010, the Utah legislature passed H.B. 140 to streamline the grievance process. The bill removed several steps from the grievance process and allowed more grievances to be solved at the department level ([Underwood et al., 2021, p. 1](#)). The bill's most significant change required the CSRO to conduct evidentiary hearings

within 150 days. CSRO evidentiary hearings had previously had no time limits and took an average of 10 months ([Underwood et al., 2021, pp. 10-12](#)).

Most recently, Utah enacted H.B. 104 in 2022. This bill made newly hired state supervisors at-will.¹⁰ The bill instead allowed each agency to create an internal appeals process for at-will employees. It also incentivized incumbent supervisors to forfeit their CS protections in exchange for higher pay.¹¹ ¹² The career service now covers 64 percent of Utah state employees. The remaining 36 percent serve at-will. ([Underwood et al., 2021, p. 19](#)).

Expanding at-will Employment to All State Employees Would Improve State Operations

Utah could build on these reforms by making all, rather than just some, CS employees at-will. Several other states have made their state workforces more or even entirely at-will. Their experience suggests universal at-will employment would improve Utah government operations.

Texas, known as the “grandfather of civil-service-free states,” abolished the Texas Merit Council—and thus its civil service system—in 1985 ([Walters, 2002, p. 16](#)). The legislation was passed by a Democrat majority legislature and signed by former Democratic Governor Mark White. Every employee in Texas state government currently serves at-will. A survey asked Texas HR directors their views on how at-will employment affects state operations. Table 1 summarizes their responses.

⁹ Since its significant move to at-will employment, the for-cause dismissal rate for DTS only slightly increased compared to agencies that retained the Career Service ([Underwood & Pulsipher, 2010 p. 13](#)).

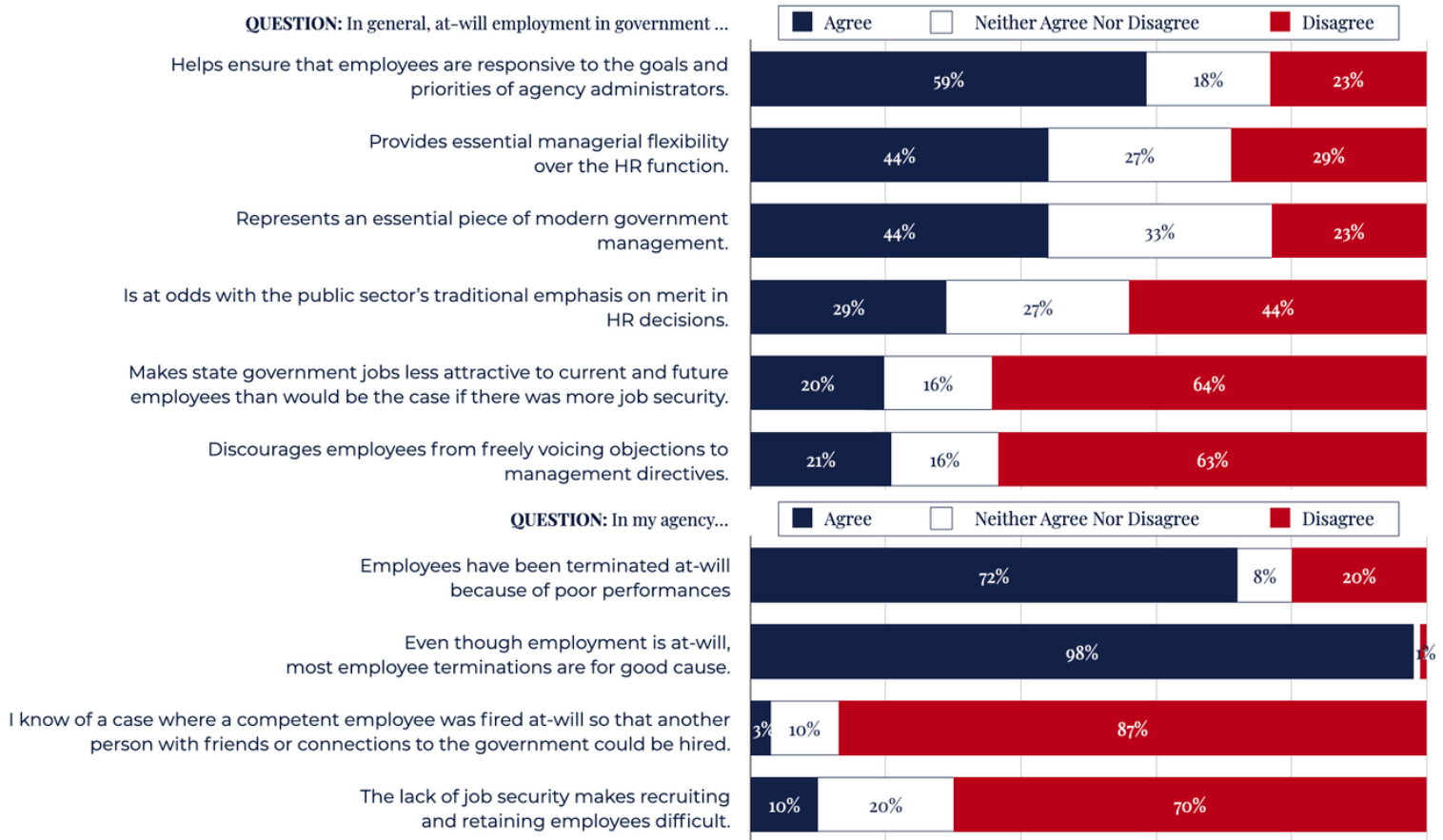
¹⁰ HB 104 placed newly hired supervisors in a newly created at-will Schedule AX ([UT Code § 67-19a-406\(6\) \(a-c\)](#))

¹¹ Opt-in for CS employees is available from July 1, 2022 - June 30, 2023.

¹² The bill defined supervisors as anyone who administers a performance evaluation.



Texas HR Directors' Opinions on the Effects of At-Will Employment



Source: J. D. Cogburn, "At-Will Employment in Government: Insights from the State of Texas," *Review of Public Personnel Administration*, Vol. 26, No. 2 (June 2006), Tables 1, 2 & 4. **TABLE 1**

Texas HR directors widely believe at-will employment makes employees more responsive to the goals and priorities of agency administrators, provides essential managerial flexibility, helps remove poor performers, and is an essential component of modern government management. Texas state HR directors report nearly all separations occur for a good cause, and patronage appointments are virtually nonexistent (Cogburn, 2006, pp. 163-69).

Another study of Texas state HR directors reports they "highly value the discretion they receive as a product of the state's decentralized approach. In fact, there was widespread agreement—even among

those respondents lacking in HR expertise—that HR flexibility was key to state agencies' effectiveness." Texas HR managers also report "virtually no pressure on them to make personnel decisions based on someone's political loyalty or lack thereof" (Walters, 2002, pp. 19-21).

In 1996, Georgia's Democrat-controlled legislature and Democrat Governor Zell Miller enacted legislation that designated all newly hired state employees as at-will. Virtually all Georgia state employees now serve at-will. State reporting finds managerial abuses of the new system are almost nonexistent.¹³

¹³ "According to a University of Georgia report on the impacts of Act 1816, there's been no decipherable pattern of abuses. One experienced personnel director in a large agency reports that he can 'count on the fingers of two hands' the number of questionable hires he's seen under the current administration" (Walters, 2002, p. 28).

In 2001, Florida’s Republican-controlled legislature and Republican Governor Jeb Bush made almost all state managers and supervisors at-will. “Virtually every agency personnel director interviewed [in Florida, Georgia, and Texas] expressed the strong opinion that there was life after civil service reform and that it was considerably better” ([Walters, 2002, p. 39](#)).

A separate study surveyed over 250 state HR professionals across Florida, Georgia, Texas, and Mississippi—which also expanded at-will employment in state government—about their experiences with at-will employment ([Coggburn et al., 2010, p. 196-97](#)). That survey showed these professionals widely believe that at-will employment makes employees responsive to agency administrators’ goals and priorities, makes HR more efficient, provides essential managerial flexibility, and provides a necessary piece of modern government management. Only 10 percent report knowing of a case where a competent employee was fired at-will to make room for another person with friends

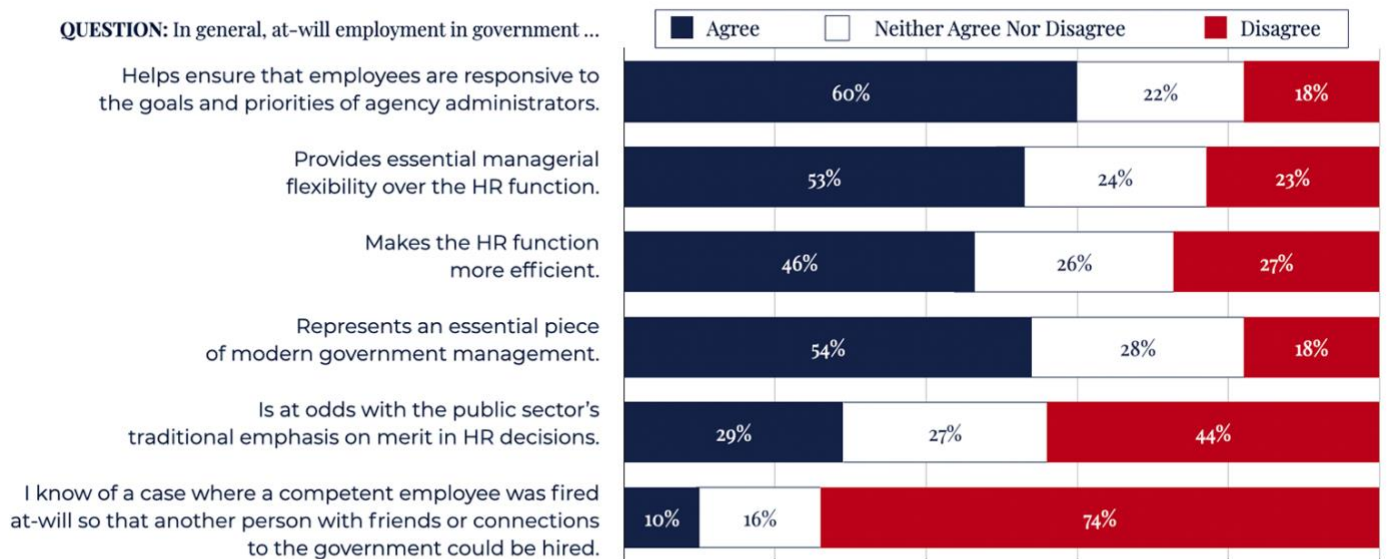
or connections to the government ([Coggburn et al., 2010, p. 196-97](#)).

Arizona made newly hired state employees at-will in 2012, and Missouri made its state workforce at-will in 2018. Political scientists have not examined these reforms as they have in Texas, Florida, Georgia, and Mississippi. But where at-will employment has been studied, state HR directors report it improves government operations while feared abuses did not materialize.

Utah could realize the benefits of at-will employment across its entire state workforce—not just the one-third currently at-will. The Appendix presents two model bills making the Utah career service at-will. The model bill in Appendix A would put all newly hired state employees into the at-will schedule AX, not just managers and supervisors, as under HB 104. This model follows the Georgia model, where the state allowed existing employees to retain civil service protections while not extending them.

HR Directors’ Opinions on the Effects of At-Will Employment in Georgia, Florida, Texas, and Mississippi

QUESTION: In general, at-will employment in government ...



Note: This study only posed some of the same questions asked in Coggburn (2006).

Source: J. D. Coggburn, R.P. Battaglio, J. S. Bowman, S. E. Condrey, D. Goodman, & J. P. West “State Government Human Resources Professionals’ Commitment to Employment at Will,” *The American Review of Public Administration*, Vol. 40 (2010), Tables 1 & 2. <https://sites.duke.edu/niou/files/2011/05/Coggburn-et-al.-State-Government-Human-Resource-Professionals-Commitment-to-Employment-at-Will.pdf>

TABLE 2

The model bill in Appendix B would make all Utah state employees at-will and eliminate dismissal grievances immediately. It would still require agencies to provide written notification of the reasons for a proposed dismissal, allow the employee to respond, and require the agency head or designated representative to make the ultimate determination.

Conclusion

Civil service protections mean removing Utah state CS employees can take as long as eight months. State officials have long reported that the process makes removing incompetent or intransigent employees difficult; supervisors prefer to

reassign such employees rather than try to dismiss them. Utah has recognized these problems by making an increasing portion of the state workforce at-will, without removal protections. One-third of state employees now serve at will.

Utah could improve government operations by making its entire state workforce at-will. Several other states have done so. These states' HR professionals report doing so made state government more efficient, flexible, and responsive to senior leadership's priorities, while feared abuses rarely occur. Utah state government could operate more efficiently if all CS employees became at-will.



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Appendix A – Model Legislation Making Newly Hired Career Service Employees At-Will

Be it enacted by the Legislature of the state of [State]:

Section 1. [Appropriate (sub)section] of [state] statutes is amended by adding at the end:

An employee who is hired on or after July 1, 2023 and is not designated exempt from the career service under any other provision of law shall be placed in schedule [appropriate schedule designator TBD]. Notwithstanding any other provision in [state] statutes, employees in schedule [TBD]:

- (a) may be dismissed or demoted for good cause, bad cause, or no cause at all, provided that such employee may not be dismissed or demoted for any reason expressly prohibited by law; and
- (b) may not grieve, appeal, or otherwise contest a dismissal or demotion outside their agency.

Section 2. Effective date. This bill takes effect on July 1, 2023.

Appendix B – Model Legislation Making All Career Service Employees At-Will

Be it enacted by the Legislature of the state of [State]:

Section 1. [Appropriate (sub)section] of [state] statutes is amended to read:

A career service employee may be dismissed or demoted for good cause, bad cause, or no cause at all, provided that such employee may not be dismissed or demoted for any reason prohibited by law. A career service employee may not grieve, appeal, or otherwise contest a dismissal or demotion outside their agency.

Section 2. Effective date. This bill takes effect on July 1, 2023.

