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MEMORANDUM

PERSONNEL MEMO 11-01

TO: Cabinet Heads
Independent Agency Heads
Constitutional Officers
HR Administrators

FROM: Nikki R. Jackson, Secretary 

RE: Amendments to KRS Chapter 18A

DATE: January 4, 2011

The Personnel Cabinet would like to take this opportunity to highlight many pertinent changes which occurred to KRS Chapter 18A during the 2010 Regular Session of the Kentucky General Assembly. These are the first substantive changes to 18A in quite some time, and for this reason, this Memorandum will hopefully serve as a somewhat comprehensive document for referral and future use.

KRS 18A.005

► KRS 18A definition amendments: House Bill 149 (effective 4/13/10)

(11) Demotion: The definition of “demotion” was changed to require **both** (a) “a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range” **and** (b) “less discretion or responsibility.” Previously, it was only necessary that one of the preceding conditions occur in order for a change in an employee’s job to be considered a “demotion.”

(13) Eligible: A person is considered “eligible” if he or she has **either** (a) “made a passing score on any examination required under KRS 18A.010 to 18A.200” **or** (b) “qualified to be placed on a register.” Previously, both of the preceding conditions were required for a person to be considered “eligible.” This change reflects the Commonwealth’s transition to the qualifying selection method.

(24) Penalization: Previously, the definition of “penalization” included any action that “**diminishes** the level, rank, discretion, or responsibility of an employee without proper cause. . . .” The definition was expanded to include any action that “**increases or**

diminishes the level, rank, discretion, or responsibility of an employee without proper cause **or authority.**” Further, the definition was changed to clarify that a reclassification or reallocation **“to a lower grade or rate of pay”** is included within the definition of penalization.

(28) Qualifying: KRS 18A.005 was expanded to include the definition of “qualifying.” Previously, this term was not defined by statute. “Qualifying” is defined as “the selection method type which results when the knowledge, skills, and abilities necessary for a job classification cannot be accurately measured by written examination.” Again, this change reflects the Commonwealth’s transition away from the testing selection method and to the qualifying selection method.

(30) Reclassification: The definition of reclassification was changed to include the requirement that **the appointing authority assign the change in classification of an employee in writing.**

(34) Reinstatement: The definition of “reinstatement” was revised to clarify that reinstatement is a **privilege**, not a **right**. Further, the definition was changed to specify that reinstatement occurs only **“at the option of the appointing authority.”**

NOTE: Since the definition of “qualifying” was added to KRS 18A.005, the numbering of the sections within the statute has changed.

KRS 18A.050

- ▶ Classified employees elected to Personnel Board: House Bill 149 (effective 4/13/10)

A classified employee elected to the Personnel Board is now eligible for reelection in the term succeeding his or her original four (4) year term. Further, now such members are eligible to be appointed to fill vacancies on the board that occur during the succeeding four year term.

KRS 18A.0551

- ▶ Personnel Board elections: House Bill 149 (effective 4/13/10)

Several dates relevant to the election process were changed to ensure that elections occur earlier within the calendar year. Further, the statute was changed to simplify ballot distribution, collection, and calculation. The statute also now mandates that classified employees be identified by a unique personal identification number, rather than Social Security number, during the Personnel Board election process.

Lastly, the statute has been changed to permit employees to use state materials or equipment, except for state-paid first class postage, to vote in the elections. KRS 18A.0551(10). Voting in the election is permitted on state time; however, no other election activity may be conducted during working hours.

KRS 18A.075

► **Duties of the Personnel Board:** House Bill 149 (effective 4/13/10)

KRS 18A.075(3) was amended to provide that it is the duty of the Personnel Board to hear appeals of “unclassified employees who have been dismissed, demoted, suspended, or **reduced in pay or grade.**” The language “reduced in pay or grade” replaces the word “penalized.” As a result, the statutory claim further limits the Personnel Board’s jurisdiction over complaints from unclassified employees.

Further, KRS 18A.075(6) was amended to provide that the Personnel Board shall make annual reports, to the co-chairs of the **Interim Joint Committee on State Government**, in addition to the Governor, the Legislative Research Commission, and the secretary of the Personnel Cabinet on the following prior to October 1:

- 1.) The number of merit state employees at the beginning and the end of the reporting period;
- 2.) The total number of grievances filed and mediation requests made by merit employees during the reporting period;
- 3.) A tabulation of the stages in which employee complaints were resolved during the reporting period; and
- 4.) The average amount of time taken to resolve employee complaints during the reporting period, by stage.

NOTE: Cabinets and Agencies now must compile and provide this additional information regarding grievances to the Personnel Board. Currently this may be tracked in a multitude of different manners across the enterprise. Therefore, as the Board will request this information in the future, it is information to ensure the information noted above is also maintained. Additional information will be forthcoming regarding this process.

KRS 18A.095

► **Administrative leave with pay:** House Bill 149 (effective 4/13/10)

KRS 18A.095(2)(c) was amended to provide agencies with the option of placing an employee on paid administrative leave at the time the employee is issued an intent to dismiss letter. If utilized, the notice of intent to dismiss must include a statement that the employee will be placed on administrative leave with pay pending the agency’s final action with respect to his or her dismissal.

NOTE: For additional information about the processing of this action, please see the July 2010 UPPS Newsletter at <http://personnel.ky.gov/persadmin/info/uppsnews.htm>.

KRS 18A.111

- Non-merit employee appointed to merit position: House Bill 149 (effective 4/13/10)

KRS 18A.111(7) now provides that certain non-merit employees (listed below) shall serve an initial probationary period of twelve (12) months if appointed to the classified service, rather than the typical probationary period. However, if the employee previously attained status in the classified/merit service, or has been separated from his or her unclassified/non-merit position for at least 180 days prior to the effective date of his or her appointment, then he or she is not required to serve the longer twelve (12) month probationary period.

The relevant non-merit employees are:

- 1.) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the Secretary of the Governor's Cabinet, and the Office of Program Administration;
- 2.) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Educational Professional Standards Board;
- 3.) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television;
- 4.) The principal assistants or deputy assistants for the cabinet secretaries, commissioners, office heads, the administrative heads of all boards and commissions, the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Educational Professional Standards Board, so long as the principal assistants or deputy assistants are deemed exempted from the classified service under KRS 18A.115; and
- 5.) Division directors subject to the provisions of KRS 18A.170, with the exception of those division directors who were in the classified service as of January 1, 1980.

Additionally, the statute has been amended to clarify that if the reason for the termination is provided during his or her initial or promotional probation, this does not provide the employee the right to appeal to the Personnel Board.

NOTE: When appointing an individual with prior non-merit status, there are separate nature of action codes that must be utilized. For additional information about the processing of this action, please see the July 2010 UPPS Newsletter at: <http://personnel.ky.gov/persadmin/info/uppsnews.htm>.

KRS 18A.115

- ▶ **Petitioned non-merit positions:** House Bill 149 (effective 4/13/10)

Amendments to KRS 18A.115 established additional time limits and reapproval requirements for all petitioned non-merit positions which must be approved by either the Personnel Secretary or the Personnel Board. For all petitioned positions, there now exists a five (5) year approval time limit. After the expiration of five (5) years, the position shall be abolished unless reapproved for another five (5) year period.

NOTE: For additional questions related to this process, please contact the Personnel Cabinet, Department of Human Resources Administration, Division of Employee Management, at 502-564-6464.

KRS 18A.140

- ▶ **Merit employees and nonpartisan elections:** House Bill 149 (effective 4/13/10)

KRS 18A.140 was amended to expressly permit classified employees and members of the Personnel Board to occupy elected offices if the election is on a **nonpartisan basis**. KRS 18A.140(4). However, the statute emphasizes that service in the elected position cannot interfere with or create any conflicts of interest with the employee's state duties. Also, the employee must comply with KRS 61.080 and the employee must give notice to his or her appointing authority the intent to run for office upon filing for election.

KRS 18A.150

- ▶ **Veterans preference in state hiring:** House Bill 75 (effective 7/15/10)

The statutory amendments ensure that Veterans' Preference remains in state hiring and is enforced at the statutory level. Previously, KRS 18A.150 reflected preference by way of adding additional points to test scores during the hiring process. As agencies have transitioned to the qualifying selection method, additional legislation was necessary to continue extending the appropriate hiring preference to veterans and other qualified individuals.

The amendments require a hiring agency to offer an interview to no fewer than five (5) qualified individuals for each vacant position. If there are less than five (5) qualified individuals who have applied, then the agency shall offer an interview to each qualified individual. Additional amendments were made surrounding eligibility requirements for the preference. Specifically, the statute previously was limited to service within the **Kentucky** National Guard; however, eligibility now encompasses the National Guard.

Administrative Regulation 101 KAR 2:066E was filed during the pendency of this legislation. However, this regulation was withdrawn July 16, 2010 once the statutory amendments became effective.

NOTE: For any additional questions on Veterans' Preference, please contact Dinah T. Bevington, Personnel Cabinet, Executive Director, Office of Legal Services, at 502-564-7430.

KRS 18A.195

- ▶ Compensatory leave maximums: House Bill 149 (effective 4/13/10)

KRS 18A.195 was amended to officially codify that an employee who leaves state service can be paid for a **maximum** of 240 hours of unused compensatory time. KRS 18A.195(2). Additionally, the statute now codifies that certain non-merit classifications are not eligible to receive block-50 payments or reductions in compensatory leave balances once the balance reaches 240 hours.

KRS 18A.197

- ▶ Sick leave sharing verification: House Bill 179 (effective 7/15/10)

KRS 18A.197 was amended to permit an advanced practice registered nurse to certify an employee's need for sick leave, as required in order to receive donated leave under the sick leave sharing program. Previously, only a licensed practicing physician could certify this need.

NOTE: The sick leave sharing certification forms are incorporated by regulation and in order to amend these forms, the regulation itself must also be updated. These changes will be made with the LRC. In the meantime, for additional questions, please contact Donna Shelton, Personnel Cabinet, Office of Employee Relations, at 502-564-7911.