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MEMORANDUM

PERSONNEL MEMO 19-18

TO: Constitutional Officers
Cabinet Secretaries
Agency Heads
HR Administrators

FROM: Thomas B. Stephens, Secretary

DATE: November 1, 2019

RE: Regulation Amendments: 101 KAR 2:102, 101 KAR 3:015

Several amendments to the Personnel Cabinet leave regulations became effective on November 1, 2019, which will impact agencies and employees. The Personnel Cabinet's Department of Human Resources Administration (DHRA) will be providing any additional guidance, as necessary, to HR Administrators on these changes.

101 KAR 2:102 – Classified leave general requirements: Along with general maintenance edits, the regulation is amended as follows:

- **Section 1. Annual Leave:**

- Subsection (1)(b) is amended to clarify that overtime hours, or “hours worked in excess of the prescribed hours of duty,” are not included in the total number of hours required to accrue annual leave.
- Subsection (1)(e) is amended to clarify that rehired employees shall receive credit for prior months of service for purposes of annual leave accrual, unless the individual was previously dismissed for cause or retired from a position covered by a state retirement system.
- Subsection (3)(d) is amended to state that an employee who is “dismissed for cause” shall not be paid for accumulated annual leave. The revised regulation no longer limits applicability of this provision to misconduct dismissals.
- Subsection (3)(e) is amended to state that an appointing authority *may*, in his or her discretion, withhold payment of accumulated annual leave for an employee who fails to give proper notice of resignation or retirement. A new provision is added to discretionarily allow the appointing authority to withhold an annual leave payout when an individual submits notice of resignation or retirement after receiving an intent to dismiss letter.

- Section 2. Sick Leave:
 - o Subsection (1)(b) is amended to clarify that overtime hours, or “hours worked in excess of the prescribed hours of duty,” are not included in the total number of hours required to accrue sick leave.
 - o Subsection (1)(g) is amended to clarify that rehired employees shall receive credit for prior months of service for purposes of sick leave accrual, and shall be credited with the unused sick leave balance that existed at the time of the previous separation, unless the individual was previously dismissed for cause or retired from a position covered by a state retirement system.
 - o Subsection (1)(h) is amended to clarify that months of total service for purposes of sick leave accrual shall be verified by the Personnel Cabinet.
 - o Subsection (2)(a) is amended in several instances to state that an employee who uses sick leave due to a disability caused by illness or injury, or who is placed on agency directed sick leave, shall obtain and present, prior to his or her return to work, “a fitness-for-duty certification from an appropriate medical health care professional indicating the employee is able to resume work.”
 - o Subsection (2)(a)(4) is amended to allow an agency to place an employee on agency directed sick leave due to communicable conditions, such as bed bugs.
 - o Subsection (3)(b) is amended to clarify that sick leave without pay shall be granted to employees who do not qualify for Family and Medical Leave “within an employee’s first twelve (12) months of employment after initial appointment.” This section further clarifies that the period of unpaid leave shall not exceed thirty (30) working days *in a calendar year*.
 - o Subsection (4)(e) is amended to add a requirement that employees returning from sick leave by personnel action be notified of any new annual increment date.
 - o Subsection (4)(g) is amended to state that an employee shall be deemed resigned from sick leave by personnel action after one (1) continuous year if an employee is unable to return the employee to his or her former position “or to a position for which the employee is qualified and which resembles the former position as closely as circumstances permit.”

- Section 3. Family and Medical Leave: Consistent with a Department of Labor (DOL) opinion letter (March 14, 2019), subsection (6) is amended to require employees to use accrued paid leave concurrently with FMLA leave.

- Section 4. Court Leave: This section is amended to clarify that an employee shall return to work if relieved from juror duty or *released from subpoena*. The section is further amended to clarify that an employee may not utilize court leave to comply with a subpoena if the employee or a member of the employee’s family is a party to the proceeding.

- Section 5. Compensatory Leave and Overtime: Subsection (2)(d) is amended to clarify that payment of block fifty (50) payments shall be made “upon accumulation of 240 hours of compensatory leave at the end of a pay period,” and “[i]n the event a work week is split between pay periods, then the 240 hours of compensatory leave required for payment must be accrued at the end of the pay period following the split pay period week.”

- Section 7. Voting and Election Leave: This section is amended to clarify that employees should be granted *up to* four (4) hours of leave for voting leave. The section is further amended to clarify that leave shall be allowed for voting or “to appear before the county clerk to request an application for or to execute an absentee ballot.” Lastly, an amendment is added to state that “a supervisor, manager, or appointing authority may specify the hours an employee may be absent.”

- Section 9. Special Leave of Absence: Subsection (3) is amended to permit agencies to place an employee on special leave with pay for investigative purposes pending an investigation *of a work-*

related incident. A provision is also added to require agencies to notify *current* employees of the investigation completion and action taken.

- Section 10. Absence Without Leave: Subsection (3) is amended to state that an employee who is absent for *five (5)* working days shall be deemed resigned.
- Section 11. Absences Due to Adverse Weather: Subsection (4) is amended to clarify the order of leave and pay deduction if an employee fails to make up adverse weather leave.

101 KAR 3:015 – Leave requirements for unclassified service. Along with general maintenance edits, the unclassified service leave regulation was revised to include the above amendments made to the classification leave regulation.

Please direct questions to Mary Elizabeth Bailey, Commissioner, Department of Human Resources Administration, at MaryE.Bailey@ky.gov, or Rosemary Holbrook, Executive Director, Office of Legal Services, at RosemaryG.Holbrook@ky.gov.