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Gerina D. Whethers
SECRETARY

MEMORANDUM

PERSONNEL MEMO 22-15

To: Constitutional Officers
Cabinet Secretaries
Agency Heads
Human Resource (HR) Administrators

From: Gerina D. Whethers, Secretary

Date: November 4, 2022

Re: **Regulation Amendments: 101 KAR 2:046, 101 KAR 2:066, 101 KAR 2:102, 101 KAR 2:190, and 101 KAR 3:015**

Several amendments to Personnel Cabinet regulations became effective September 27, 2022. The Personnel Cabinet’s Department of Human Resources Administration (DHRA) will be providing any additional guidance, as necessary, to Human Resources (HR) Administrators on these changes.

101 KAR 2:046 – Applying for employment, qualifications and examinations: Along with general maintenance edits, the regulation is amended as follows:

- **Section 4. Advance Eligibility:** In order to enhance recruiting, an amendment is added to allow an appointing authority to request an exception to the current regulatory limit that prevents an applicant from applying to a vacancy earlier than thirty (30) calendar days from completion date of the required education for a job classification. Please note, employees must still meet minimum requirements for the applicable position as specified in the job classification before employment commences.
- **Section 11. Examination Records:** This section required retention of “examination records” for a period of three (3) years. Examination records must be retained in accordance with the Personnel Cabinet’s retention schedule (item 04266-Applicant Register Folder), which requires five (5) years retention. Accordingly, this item of the regulation has been deleted, as it is duplicative and unnecessary.

101 KAR 2:066 – Certification and selection of eligible applicants for appointment:

The regulation is amended to change references from “preferences and skills” questions to “prescreening” questions, in accordance with the terms utilized by the MyPURPOSE system.

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

- **Section 1. Annual Leave:**
 - o Subsection (3)(a)(1) – An amendment is added to clarify that an employee “terminated from initial probation other than for cause” shall be paid in lump sum for their accumulated annual leave.
 - o Subsection (3)(e) – An amendment is added to clarify that annual leave withheld by an appointing authority due to an employee’s failure to provide proper notice of resignation or retirement, or an employee’s resignation or retirement after receiving an intent to dismiss letter, shall result in a determination that the employee resigned not in good standing. **This same amendment was made to 101 KAR 3:015 for unclassified employees.**

- **Section 4. Court Leave:** Subsection 1 is amended to clarify that an employee must provide prior notification to their supervisor in order to utilize court leave. **This same amendment was made to 101 KAR 3:015 for unclassified employees.**

- **Section 5. Compensatory Leave and Overtime:** Subsection (1)(c)(2) is amended to clarify that the agency shall not mandate an employee’s election to receive either compensatory leave or paid overtime. **This same amendment was made to 101 KAR 3:015 for unclassified employees.**

- **Section 7. Voting and Election Leave:** Subsection (2) is amended to clarify that an employee may utilize voting leave when they cast their vote “by mail or in-person submission.” **This same amendment was made to 101 KAR 3:015 for unclassified employees.**

- **Section 9. Special Leave of Absence:**
 - o Subsection (3) – An amendment is made to allow placement of an employee on special leave with pay for investigative purposes for “lack of good behavior or unsatisfactory performance of duties.” **This same amendment was made to 101 KAR 3:015 for unclassified employees.**
 - o Subsection (5) – Creates a new type of paid leave that gives an agency discretion to place an employee on leave when it is considered necessary for the employee’s welfare. **This same amendment was made to 101 KAR 3:015 for unclassified employees.**

- **Section 11. Absences Due to Adverse Weather:**
 - o Subsection (3) – A new subsection is added to clarify the criteria by which telecommuting employees are eligible for adverse weather leave. **This same amendment was made to 101 KAR 3:015 for unclassified employees.**
 - o Subsection (5)(a) – An amendment is added to clarify that employees have (123) calendar days to make up adverse weather leave. **This same amendment was made to 101 KAR 3:015 for unclassified employees.**

- Section 12. Blood Donation Leave: An amendment is added to clarify that an employee must donate blood during their “scheduled work” hours to be eligible for blood donation leave. An amendment is also added to clarify that a donation initiated or attempted during an employee’s lunch period is outside of scheduled work hours, and therefore, shall not qualify for any amount of blood donation leave. **This same amendment was made to 101 KAR 3:015 for unclassified employees.**

101 KAR 2:190 – Employee performance management system: Along with general maintenance edits, the regulation is amended as follows:

- Section 1. General Provisions:
 - o Subsections (5) and (6) are amended to allow an agency, with approval of the Personnel Cabinet, to alter normal evaluation procedures in certain instances.
 - o Subsection (9) is amended to permit supervisor evaluation training by “approved” agency personnel. Subsection (9)(b) is also amended to require “participating agencies” to monitor compliance of the supervisor evaluation training requirements, along with the Personnel Cabinet.
- Section 4. Performance Coaching and Feedback:
 - o Subsection (1) is amended to require the supervisor to meet with an employee if they **change** the employee’s performance plan.
 - o Subsection (2)(c) is amended to allow for the appointing authority to extend the employee’s five (5) working day comment period, if the employee cannot submit pertinent comments within five (5) working days.
 - o Subsection (2)(d) is amended to specify that the mid-year interim period is January 1 through June 30, and the year-end interim period is July 1 through December 31.
- Section 7. Reconsideration and Appeal Process: Subsection (6) is amended to add a deadline by which an employee must seek evaluation reconsideration by the appointing authority.
- Section 11. Applicability to Non-KRS Chapter 18A State Employees: A new section is added to permit utilization of the MyPURPOSE evaluation system by non-KRS Chapter 18A employees, contingent upon Personnel Cabinet approval.

101 KAR 3:015 – Leave requirements for unclassified service: Along with general maintenance edits, and edits that mirror the edits to 101 KAR 2:102, the regulation is amended as follows:

- Section 1. Annual Leave: Subsection (3)(a)(1) is amended to clarify that an employee terminated other than for cause shall be paid in a lump sum for accumulated annual leave.
- Section 5. Compensatory Leave and Overtime: Subsection (1)(f) is amended to change the maximum amount of compensatory leave that may be carried forward from one (1) pay period to another from 240 hours to 480 hours for an employee in a

policy-making position. Please note, KRS 18A.195 continues to cap the payout for the balance of unused compensatory time at 240 hours.

- Section 9. Special Leave of Absence: Subsection (4) is amended to permit the placement of a **career** unclassified employee on administrative leave following the employee's receipt of an intent to dismiss for cause letter.

Please direct questions to Mary Elizabeth Bailey, Commissioner, Department of Human Resources Administration, at MaryE.Bailey@ky.gov.