



Andy Beshear
GOVERNOR

PERSONNEL CABINET

501 High Street, 3rd Floor
Frankfort, Kentucky 406 01
Phone: (502) 564 -7430
Fax: (502) 564 -7603

Gerina D. Whethers
SECRETARY

November 1, 2022

Interim Joint Committee on Appropriations and Revenue Capitol Annex
702 Capital Avenue
Frankfort, Kentucky 40601

Re: House Bill 1- 18A

Dear members of the Interim Joint Committees on State Government and Appropriations and Revenue:

As required by House Bill 1:

The Personnel Cabinet Secretary shall perform a comprehensive review of KRS Chapter 18A and provide a report with recommendations for changes to the Interim Joint Committees on State Government and Appropriations and Revenue by November 1, 2022. The recommendations for changes shall include but not be limited to probationary periods, lay-off rules, exemptions from classified service, and employee evaluations.

KRS Chapter 18A Workforce Efficiency and Modernization Act

The Commonwealth's civil service merit system for the executive branch is governed by KRS Chapter 18A. The Personnel Cabinet is responsible for overseeing and implementing KRS Chapter 18A. KRS Chapter 18A was created in 1960 and although some modifications have been made over the years, the last significant changes were occurred in 1986. KRS Chapter 18A is outdated and is in need of modernization. This package transforms an outdated employment system into a system designed to meet agency needs, while maintaining a merit system for employees that is consistent with federal funding requirements.

Key Changes

Layoffs, furloughs, etc.: In the enclosed package, you will see edits to KRS 18A.113, 1131, and 1132. These statutes have been replaced by the current legal provisions that govern layoffs, which are contained in the most recent budget bill. The current statutory scheme as contained in KRS Chapter 18A for layoffs does not actually achieve its intended result. When an agency can no longer afford to maintain offices or provide services, other agencies must unexpectedly absorb the impacted employees, resulting in no budgetary savings. Employees are placed into positions based primarily on seniority, preventing agencies from filling positions with the most qualified candidates. The end result is that employees are upset when forced into positions in distant locations and in jobs for which they may meet the minimum requirements but are ultimately not the best fit. Agencies, who may have achieved cost-savings elsewhere, must then assume unplanned financial burdens for employees not necessarily required for their missions.

The new plan transforms the layoff provisions in KRS Chapter 18A to allow for the following reasons (which are currently law in the budget bill):

- Lack of funds or budgetary constraints;
- A reduction in spending authorization;
- Lack of work;
- Abolishment of a position;
- Efficiency; or
- Other material change in duties or organization.

It also amends the criteria for determining those subject to layoff from primarily seniority to the following (also currently law in the budget bill):

- Job performance evaluations;
- Seniority;
- Education, training, and experience; and
- Disciplinary record.

We are seeking to update the KRS Chapter 18A layoff provisions, so we no longer have to place layoff provisions in the budget bill every budget cycle.

Reform KRS 18A.095 – Appeal Rights and Procedures: A state employee currently has the ability to appeal numerous matters to the Kentucky Personnel Board because of the vague and overly-broad definition of “penalization,” to include matters that are outside the purview of the Board. This causes agency resources to be diverted to defending hundreds of appeals that drag on for years, with little to no benefit to the employees or agencies. Employees also have false hope that they have legitimate claims against an agency, when they simply do not, and many spend thousands of dollars on attorney’s fees that result in nothing gained. Furthermore, the current Personnel Board appeals process is broken, due to a voluminous amount of pending appeals.

The following amendments are proposed:

- Remove the overly-broad definition of “penalization,” which currently allows employees to appeal matters that are outside the purview of the Kentucky Personnel Board to the Board, even minor grievances that can be filed with an employing agency pursuant to a grievance procedure established in 101 KAR 1:375. The current merit system appeals process is inefficient and heavily backlogged and delayed with appeals. This is largely in part due to the broad definition of “penalization” under which employees can appeal any issue to the Kentucky Personnel Board.
- Allow only for specifically identified appeals, to include dismissals, demotions, involuntary transfers, suspensions, discrimination, non-restoration after military leave, and limited personnel actions to meet federal funding requirements as they pertain to merit systems.
- Expedite the appeals process by shortening the appeal periods, to include the current one-year appeal period for some claims.

Other Important Changes:

- Delete outdated statutes that are no longer utilized in the administration of KRS Chapter 18A.
- Remove all references to testing and examinations for hiring, which have not been utilized since 2007.
- Reward employees who receive the highest evaluation scores by allowing agencies to award monetary bonuses, if funds are available.
- Allow agencies to fill positions faster by reducing the number of days a register must remain open from 10 days to 5 days.

- Clarified uncertainty over the applicability of KRS Chapter 18A to various executive branch agencies, an issue which has led to multiple appeals.
- Allow for emergency appointments of employees to assist the state in times of emergencies or crises.
- Allow agencies to remove individuals for consideration from positions if they have demonstrated erratic, unsafe, or threatening behavior.
- Save funds by moving the antiquated paper process for Personnel Board elections to an easier, electronic process, potentially increasing the number of employees who vote and participate in elections.
- Transferred regulatory authority from the Personnel Board to the Personnel Cabinet for those programs/areas that fall under Personnel Cabinet for administration.
- Strengthened the legal references to require Executive Branch agencies to comply with Personnel Cabinet policies and procedures.
- Transferred certain sections of existing statutory language to other sections deemed more appropriate.
- Require Personnel Cabinet training for new Personnel Board members before voting during monthly Personnel Board meetings.
- Added numerous requirements to the Personnel Board's annual report to ensure transparency over the appeals process.
- Added "June Nineteenth" to the paid state holiday list.

We appreciate the opportunity you have given us to assist with modernization of KRS Chapter 18A. We look forward to collaborating with you on the attached suggested amendments. If you have any questions or need additional information, please feel free to contact my office at 564-6798.

Sincerely,



Gerina D. Whethers
Secretary