

## Summary of KRS Chapter 18A revisions

1. **KRS 18A.005 – Definitions:** Updated/modernized various definitions contained within KRS Chapter 18A, as well as added new definitions of terms used in KRS Chapter 18A that were not previously defined, some of which have been the subject of litigation since the last updates to the chapter, such as “career employee.” Most notable revisions include:
  - a. Removed outdated terms that are no longer in use in application of the Executive Branch merit system, such as “eligible” and “examination.”
  - b. Subsection (4)/(new (5): Clarified that KRS Chapter 18A “career employee” must include a prior period of five (5) years of service in the KRS Chapter 18A classified service, since this right would eventually allow an individual to block KRS Chapter 18A classified service registers against all other applicants.
  - c. Subsection (24): Suggest repeal of the overly broad definition of “penalization.” Currently, this definition allows employees to appeal matters that are not under 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. Currently, the Personnel Board process is overburdened with appeals, resulting in the delay of hearings for many of the most substantial, warranted appeals, such as suspensions and dismissals. These numerous appeals filed pursuant to the overly broad “penalization” definition require the unnecessary expenditure of agency resources, and they give many employees false hope that their appeals may be successful, resulting in employees expending thousands of dollars on attorney’s fees, when their appeals are ultimately dismissed. In place of this overly broad “penalization” definition, please see KRS 18A.095 which has been edited to provide a distinct list of actions that may be appealed by applicants and employees to the Personnel Board. **Note: Federal merit funding requirements do not require that every employee grievance be reviewed by the Kentucky Personnel Board, as is currently the case.**
  - d. Subsection (35)/new (34): “Reversion” – Removed reference to appeals that can be filed pursuant to KRS 18A.095(12), which permits appeals alleging discrimination, as it is duplicative with KRS 18A.095. You will see in KRS 18A.095 that a classified employee can continue to file discrimination claims for any reason, regardless of whether or not it is for reversion or career employee termination. Accordingly, this appeal reference has been removed here, as it is now covered in KRS 18A.095(11).
2. **KRS 18A.010 – General Purpose of KRS 18A.005 to 18A.204:** Clarifications/corrections made. Updated to delete terms/practices no longer utilized in hiring practices or terms that are not relevant to administration of KRS Chapter 18A.
3. **KRS 18A.015 – Creation of Personnel Cabinet – Provision for administrative costs:** Updated to reflect language that seemed redundant and unnecessary. The remaining language covers all requirements necessary for the Personnel Cabinet to conduct agency billings.
4. **KRS 18A.020 – Records of Personnel Cabinet subject to open records law – Employee access to personnel files:**
  - a. General clean up edits have been made.
  - b. Subsection (2)(c) – Currently, the Personnel Board administers the regulation that governs removal of reprimands; however, in practice, the actual removal of reprimands is administered by the Personnel Cabinet. An addition is added to this statute that places the authority to promulgate regulations concerning reprimand removals under the authority of the Personnel Cabinet, since the Cabinet actually administers the program. You will see that KRS 18A.110 is also revised to add “corrective active/reprimands” to the Personnel

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Cabinet's regulatory authority. Likewise, KRS 18A.0751, detailed below, has been revised to eliminate "reprimands" from the list of regulatory authority for the Personnel Board.

### **5. KRS 18A.025 – Appointing of secretary of Personnel Cabinet – Responsibilities - Organization and duties of cabinet:**

- a. Throughout:
  - i. Removed terms/programs that are no longer in use, such as "examinations."
  - ii. Clarified organizational practices/programs/terms that are ongoing and in use in the administration of KRS Chapter 18A.
- b. Subsection (1) - Revised to include requirements of education and experience that are more focused on human resources administration, a key component to successful leadership of the Personnel Cabinet staff/mission.
- c. Subsection (3) - Recent litigation has challenged the Personnel Cabinet's authority to disseminate policies and procedures governing Executive Branch state employee personnel issues. Said authority currently exists in language contained in current subsection (3)(a), which states that the Cabinet "shall be responsible for communication with state employees about personnel and other relevant issues." This new, revised language is intended to strengthen the statutory authority for the Personnel Cabinet to continue to provide personnel guidance/policies to state employees.
- d. Subsection (4)(a) – language stricken is moved up to new subsection (3) and reworded (communication authority).
- e. Subsection (4)(a)(1)(b), (c), and (h) – These programs are administered by the Personnel Cabinet's Department of Human Resources Administration. Accordingly, these items are simply moved down to (4)(b)(1). See new sections (4)(b)(1)(g)(h) and (i).
- f. Subsection (4)(a)(5) – There is a statute currently contained with the Kentucky Revised Statutes that discusses the Personnel Cabinet's Governmental Services Center. See KRS 164.357 contained in this package. KRS 164.357 places GSC at the Kentucky State University. In practice, GSC is administered at the State Office Building in Frankfort, Kentucky, where the Personnel Cabinet is located. Accordingly, we are recommending that KRS 164.357 be repealed. The only provision that we need to maintain from KRS 164.357 would be the provision that helps fund the program. Accordingly, we have retained the funding provision from KRS 164.347 and placed it within KRS 18A.025(4)(a)(5).

### **6. KRS 18A.030 – Duties of Personnel Cabinet Secretary**

- a. Removed terms no longer in use, such as "examinations" and "technicians."
- b. Clean up revisions, where necessary, to reflect current practices/programs.
- c. Subsection (2)(f) – The addition of "[f]or the filling of positions in the classified service, the secretary shall be free to use any investigation of education and experience and any test of capacity, knowledge, skill, character, or physical fitness, which in his judgment, serves the need to discover the relative fitness of applicants," is simply a transfer of language that currently appears in KRS 18A.110(d). We also removed "personal traits" as it currently appears in KRS 18A.110(d), as that is not a category upon which applicants are assessed.
- d. Subsection 2(l) – Suggest repeal of this provision as it is duplicative of KRS 12.010, which requires the generation of an annual report by the Personnel Cabinet.
- e. Subsection (2)(m) - The Personnel Board does not assist the Personnel Cabinet with the application of the classification selection methods for positions. Accordingly, it is suggested that this provision be repealed.

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- f. New subsection (4) – Currently, KRS 18A.043 requires the Personnel Cabinet to promulgate a “regulation” to implement the provisions of the Federal Drug-Free Workplace Act of 1988. There is no federal requirement that Kentucky promulgate a regulation to satisfy the requirements of this federal law. Rather, the federal law is complied with by virtue of correspondence with employees and the applicable agencies. Accordingly, is it requested that KRS 18A.043 be repealed and replaced with language in KRS 18A.030 that permits the Personnel Cabinet to comply with this federal law by implementation of applicable “procedures.”
  - g. New subsection (5): This section is amended to specify that regular, quarterly turnover reports should go to the hiring agency, for their awareness of turnover issues. Additionally, the changes specify that any turnover rates over 25% (as opposed to 15%) will require investigation by the Cabinet and reports to LRC and the Governor. The Cabinet is requesting this change, because some smaller agencies can experience more than 15% turnover (the current metric) if only one person leaves, even though this is not necessarily a problematic turnover indicator.
  - h. Current subsection (5) – Stricken as it now seems outdated to provide this pamphlet information to employees.
  - i. Subsections (6) and (7) – Reports can be generated upon request of any party, to include LRC and the Governor. Whether LRC utilized this report is unknown. If LRC wants us to continue to submit these reports on a regular basis, then please feel free to disregard the repeal of subsections (6) and (7). If you maintain subsection (6), we would need to further edit it, to ensure the appropriate classifications of employees are reflected.
  - j. Subsection (6) – The Personnel Cabinet does currently carry out the reorganizations of Executive Branch agencies that are passed by the legislature in accordance with KRS Chapter 12; however, the current statutory provisions do not explicitly give the cabinet authority to carry out the reorganizations. So, this change is proposed as a result.
- 7. KRS 18A.032 – Applicants to the classified service – Placement and Removal from registers – Certification for employment**
- a. Removed terms no longer in use, such as “examinations” and “eligible.”
  - b. Clean up revisions, where necessary, to reflect current practices/programs.
  - c. Subsection (2)(h) – At times, applicants have applied to positions and demonstrate erratic, unsafe, or threatening behavior towards staff. A provision is added that will allow the Personnel Cabinet Secretary or the agency appointing authority to remove an applicant from a hiring register if they demonstrate this type of behavior at any point.
- 8. KRS 18A.035 – Delegation of secretary’s powers – Assistant in Testing – Membership in Kentucky Employees Retirement System (KERS) Board**
- a. Removed terms no longer in use, such as “tests/testing.”
  - b. Clean up revisions, where necessary, to reflect current practices/programs.
  - c. Subsection (4) – In accordance with a bill that previously passed in the legislature, the Secretary is no longer a member of the KERS Board.
- 9. KRS 18A.037 – New system of job classification and compensation:** Removed terms no longer in use, such as “commissioner,” and references to 1997 submission requirements that have now passed.
- 10. KRS 18A.040 – Compliance with federal standards:** Minor clean up revisions. The personnel references within KRS Chapter 18A go through KRS 18A.204.
- 11. KRS 18A.043 – Administrative regulations to implement Federal Drug Free Workplace Act** – See above item #6(f) above. In practice, the requirements for this federal law require numerous

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communications with the employees/agencies as opposed to promulgation of a regulation. We are requesting that the statutes be updated to replace the requirement of the promulgation of a regulation with implementation of procedures, our current practice, as explained above.

12. **KRS 18A.045 – Creation of Personnel Board – Membership – Prohibited Acts** - We are suggesting that KRS 18A.050, which governs the composition of the Personnel Board, be repealed, as further discussed below, and relevant provisions be taken from KRS 18A.050 and placed within KRS 18A.045:
  - a. New subsection (4) – currently language contained in KRS 18A.050(4): Language is added to specify that board members must be “citizens at large who are not associated with state government.”
  - b. New subsection (5) – currently language contained in KRS 18A.050(5).
  - c. New subsection (6) – currently language contained in KRS 18A.050(6): The language is modified as a result of recent litigation wherein a Court held that a classified employee who retired could remain on the Personnel Board despite the end of their classified employment status, which appears contrary to the spirit of classified employee representation on the Board.
  - d. New subsection (7) – New members are sometimes appointed who have very little practical knowledge of the KRS Chapter 18A merit system. A training requirement is added that will require the Personnel Cabinet to train new members before they vote on matters before the Board.
13. **KRS 18A.050 – Personnel Board – Grandfather Clause – Composition – Terms – Automatic Termination** – We suggest that this statute be repealed:
  - a. Provisions (1) through (3) deal with the original establishment of the Board in the 1980s, and these provisions are no longer necessary.
  - b. The remaining provisions (4) through (6) have been moved to KRS 18A.045 as explained above in item #12.
14. **KRS 18A.0551 – Personnel Board elections – Procedures** – In general, the edits in this section serve to modernize the current Personnel Board election process, which is still performed through a paper process. With these amendments, the election process will be moved to the Kentucky Human Resources Information System (KHRIS), which is administered by the Personnel Cabinet. From prior discussions between the Personnel Cabinet and Personnel Board, it is estimated that this change to an electronic process will result in budget savings for the Personnel Board.
15. **KRS 18A.060 – Vacancies of elected board members to be filled by the board:**
  - a. Modernized the statute to allow for “electronic” notification of board vacancies.
  - b. Per a suggestion by the Kentucky Personnel Board, added additional days for the Board to send the notification of a vacancy (15 to 30 calendar days) and for the employees to notify the Board of their wish to fill the vacancy (10 to 15 days).
16. **KRS 18A.065 – Oaths, testimony, and production of records** - A subpoena provision was added per a suggestion by the Kentucky Personnel Board.
17. **KRS 18A.070 – Personnel Board – Organization – Meeting notice required – Records to be public** – edits made to modernize publication notices.
18. **KRS 18A.075 – Duties of Personnel Board**
  - a. Subsection (3) - Since edits have been made to KRS 18A.095 to specify the appeals that may be heard by the Personnel Board, this subsection is revised to state that the Personnel Board can hear appeals as provided in KRS 18A.095, as well as KRS Chapter 13B.
  - b. Subsection (6) – This subsection is revised to add additional items for the Personnel Board’s annual report. These edits are suggested for transparency and to assess the

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efficiency of the Personnel Board process for future statutory, regulatory, or procedural amendments, if necessary.

- c. The Personnel Board does not assist the Personnel Cabinet with the application of the classification selection methods. Accordingly, it is suggested that this provision be repealed.

### **19. KRS 18A.0751 – Personnel Board Regulatory authority**

- a. Subsection (1)(d) - Completely removes fines as disciplinary options under KRS Chapter 18A.
- b. Subsection (1)(e) – Suggest repeal consistent with changes to KRS 18A.110, below, to move regulation of probationary periods to the Personnel Cabinet, since it is the agency that administers probationary periods.
- c. New subsection (4)(d)/now subsection (f) - Added performance evaluations as a factor to be considered in promotions.
- d. Current subsection (4)(g) – Both the cabinet and the board suggest repeal of “reemployment” in this section. The cabinet proposes that regulatory authority for reemployments be inserted into the cabinet’s regulatory authority list in KRS 18A.110, since the cabinet administers reemployment personnel actions.
- e. Deleted the current paragraph (4)(h) because it addresses transfers of employees subject to layoff. The applicable section, KRS 18A.1131, is proposed for deletion with relevant provisions moved into a revised version of KRS 18A.113.
- f. Current subsection (4)(g): Deleted the provision for promotion of career employees into the unclassified service. Promotion actions are not used to move employees into the unclassified service.

**20. KRS 18A.080 – Personnel Board – Composition – Attendance** – One edit is proposed to refer to revisions to KRS 18A.045 instead of KRS 18A.050, since we are suggesting that KRS 18A.050 be repealed, after some of its provisions are moved to KRS 18A.045.

**21. KRS 18A.085 – Removal of board members by Governor – Appeal** - No suggested amendments.

### **22. KRS 18A.090 – Personnel Board to hire full-time staff – General Counsel may be designated assistant attorney general**

- a. Subsection (1) - Similar to KRS 18A.025, Subsection 1, which dealt with qualifications of the Personnel Cabinet Secretary, revisions are included to include requirements of education and experience that are more focused on human resources administration, a key component to successful leadership of the Personnel Board.

### **23. KRS 18A.095 – Rights of executive branch employees**

- a. As noted in item number 1.c. above, the definition of “penalization” contained in KRS 18A.005(24) is overly broad, resulting in the filing of a high volume of appeals with the Kentucky Personnel Board. The numerous appeals cause a backlog of other, genuine appeals, such as dismissal and suspensions, and result in the needless expenditure of agency resources, as well as a financial loss to employees in the form of attorney’s fees that frequently result in appeal dismissals. A grievance procedure is in place for employees to address complaints they have with their employing agency (see 101 KAR 1:375). Amendments are proposed to repeal the overly broad KRS 18A.005 “penalization” definition, under which an employee can appeal any matter, to include minor grievances, to the Board. In its place, it is suggested the General Assembly amend KRS 18A.095 to provide employees and agencies with a distinct list of items that can be appealed to the Kentucky Personnel Board, to include the following:

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- i. Dismissal for cause (classified employee with status (i.e. completed probationary period)) – KRS 18A.095(7)(c)
  - ii. Demotion (classified employee with status) – KRS 18A.095(8)(d)
  - iii. Suspension (classified employee with status) – KRS 18A.095(8)(d)
  - iv. Involuntary transfer - classified employee with status) – KRS 18A.095(8)(d)
  - v. Dismissal for cause (unclassified employee) – KRS 18A.095(9)
  - vi. Demotion for cause (unclassified employee) - KRS 18A.095(9)
  - vii. Suspension for cause (unclassified employee) - KRS 18A.095(9)
  - viii. Involuntary transfer for cause (unclassified employee) - KRS 18A.095(9)
  - ix. Discrimination (applicant, classified employee with status, and granted funded, time limited (GFTL) employees) – KRS 18A.095(11)
  - x. Non-selection (applicants for classified position) – KRS 18A.095(13)
    1. for alleged violation of merit appointment and promotion provisions OR
    2. reemployment rights conferred by applicant status and KRS 18A.135
  - xi. Non-selection after military leave (KRS Chapter 18A employee) – KRS 18A.095(26) and KRS 61.371 to KRS 61.377
  - xii. Dismissal without cause after military leave (KRS Chapter 18A employee) – KRS 18A.095(26) and KRS 61.371 to KRS 61.377
  - xiii. **Note: Federal merit funding requirements do not require that every employee grievance be reviewed by the Kentucky Personnel Board, as is currently the case.**
- b. Other notable revisions:
- i. Appeal periods are modified from sixty (60) to thirty (30) days, to expedite review of various agency actions.
  - ii. KRS 18A.095(10) and (12) – Revisions are suggested to limit review of reallocations, reclassifications, and minimum qualification determinations to review by the Personnel Cabinet (not the Personnel Board). Reallocations, reclassifications, and minimum qualification determinations are decisions that are made by expert staff at the Personnel Cabinet after lengthy reviews of an employee’s duties, education, and/or experience (as applicable). It is suggested that any requested reconsideration of a reallocations, reclassifications, or minimum qualification determinations reside with the Personnel Cabinet, the experts on the topic. The federal merit principles do not require that these items be reviewed by the Personnel Board. Nonetheless, if an employee believes that he or she has been discriminated against, as a result of any of these actions, an employee may appeal any allegation of discrimination to the Personnel Board.
  - iii. KRS 18A.095(11) – Revisions are suggested to remove the ability of employees to appeal Open Records issues to the Personnel Board, as this procedure is duplicative of the appeals process to the Kentucky Attorney General’s Office contained within KRS Chapter 61.
  - iv. KRS 18A.095(12) –
    1. Former subsection (12), now (11), is amended to clarify the basis of discrimination appeals, since the state and federal civil right laws on point frequently change.
    2. Discrimination references were previously spread between subsections (12) and (14). These proposed revisions now merge the two discrimination subsections into one subsection (11). Subsection (14)

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contained the appeal period for discrimination claims, which is now moved up to subsection (11). Subsection (11) also now includes language to allow applicants to allege discrimination, which was previously placed in subsection (14). Appeals by grant funded time-limited employees (GFTLs) has always been permitted pursuant to KRS 18A.005(15), so this amendment recaptures those same appeals rights within KRS 18A.095.

- v. KRS 18A.095(14) –
  - 1. New subsection (14) – Review is capped at the Personnel Cabinet for those employee’s whose name is removed from a register in accordance with KRS 18A.032 (as opposed to full Personnel Board review).
  - 2. Former subsection (14):
    - a. 14(a) - Discrimination appeal rights have now been combined in subsection (12).
    - b. 14(b) – Moved to new subsection (13); see item (b)(ii) above that discusses minimum qualifications review by the Personnel Cabinet.
    - c. 14(c) – Examinations are no longer utilized; suggested repeal of this provision.
- vi. KRS 18A.095(15) – This subsection grants appeal rights in accordance with KRS 18A.110(7)(j). KRS 18A.110(7)(j) allows an employee to appeal evaluations that result in dismissals or demotions. An employee may always appeal dismissals or demotions under the current revisions to KRS 18A.095, regardless of the underlying cause, so this section can be repealed as duplicative and unnecessary.
- vii. KRS 18A.095(16) – This paragraph is amended to strike language that states the “appeal forms shall be available at the employee’s place of work,” as the appeal forms are now available on the Personnel Board’s website.
- viii. KRS 18A.095(21) – formerly (22) as well as other places within KRS 18A.095: We suggest changing the word “reinstatement” to “restoration,” as the Personnel Cabinet regularly utilizes “reinstatement” personnel actions to return individuals to state service. The use of the term “reinstatement” within KRS 18A.095 to describe a Personnel Board action is not the same as the Personnel Cabinet’s use of the term, so this amendment is suggested for clarity of the two types of actions.
- ix. KRS 18A.095(27) – A provision is suggested to ensure that dismissals take precedence over all other appeals, due to the permanent loss of income, which should be reversed as quickly as possible, if an agency’s actions were excessive or erroneous as determined by the Personnel Board.
- x. KRS 18A.095(29) and (30) – This language is proposed to clarify the time period by which an individual can appeal, should they not receive written notice of the alleged action in question; this provision replaces former subsection (29).
- xi. KRS 18A.095(28) – suggest repeal, as its meaning in application is unknown.
- xii. KRS 18A.095(31) – suggest the addition of a provision to assist the Personnel Board, Personnel Cabinet, and agencies with investigations, hearings, proceedings, or inquiries, as employees are sometimes uncooperative with same.
- xiii. KRS 18A.095(32) – Suggest a provision be added to clarify that the Personnel Board shall not have jurisdiction over any appeal except as authorized by KRS 18A.095, to prevent appeals that are not clearly delineated within the now revised version of KRS 18A.095.

- 24. KRS 18A.100 – Appeal of final order of the Personnel Board** – Per the Kentucky Personnel Board’s suggestion, revised to combine sentences and state the appeal procedure to Franklin Circuit Court.
- 25. KRS 18A.105 – Compensation, retirement system contributions of employee order reinstated without loss of pay:**
- a. Minor clean up edits.
  - b. A provision is added to refer to the Kentucky Teacher’s Retirement System (KTRS), as some KRS Chapter 18A employees are members of KTRS.
  - c. A provision is included to require the retirement systems to calculate retirement contributions within sixty (60) days of receipt of the request from the agency (previously unspecified).
  - d. As stated above, suggested replacement of “reinstatement” with “restoration” so as not to confuse the Personnel Board’s action with a current Personnel Cabinet reinstatement personnel action.
- 26. KRS 18A.110 - Personnel secretary – Regulatory authority**
- a. Subsection (1)
    - i. (a) and (b) – deleting terms/language no longer in use.
    - ii. (d) implementing terms included in current budget bill with regards to layoffs.
    - iii. (g) inserted “types of leave, with or without pay” as opposed to listing all of the various kinds of leave that are currently available to employees; any new types of leave that may be proposed, if any, will still go through the General Assembly’s regulation review process.
    - iv. (i) - Removed “reinstatements” from the Personnel Board’s regulatory authority in KRS 18A.0751(g) and placed it within the Personnel Cabinet’s regulatory authority. The Personnel Cabinet administers reinstatement personnel actions, so it seems logical that the Personnel Cabinet should control the regulatory requirements of this personnel action.
    - v. (j) – The Personnel Board currently promulgates the regulation that controls reprimand removals (101 KAR 1:335); however, the reprimand removal process is administered by the Personnel Cabinet. Accordingly, it is suggested that the regulatory authority for reprimands/corrective actions be placed under the Personnel Cabinet’s authority and removed from the Personnel Board’s authority.
    - vi. (k) – The Personnel Board currently has regulatory authority for probationary periods within KRS 18A.0751, but the Personnel Cabinet administers the probationary periods for all of the job classifications. Accordingly, it is suggested that “probationary periods” be moved from the Personnel Board’s authority to the Personnel Cabinet’s regulatory authority.
  - b. Subsection (3)(a) – contrary to this subsection, some personnel actions may reduce an employee’s salary, such as those that are authorized by KRS 18A.0751 (demotions to a lower pay grade). This provision should be repealed, as it conflicts with personnel actions authorized by statute that may reduce an employee’s salary.
  - c. Subsection (3)(b) – See item a.vi. above (moving probationary regulatory authority from the Personnel Board to the Personnel Cabinet).
  - d. Subsection (4) – Adding a provision that permits the Secretary to promulgate regulations to implement scholarship programs, internship programs, education programs, and educational assistance and student loan reimbursements.



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- e. Subsection (7)(b)/proposed (7)(c) – Revised to permit the Cabinet to consider all factors deemed relevant, such as turnover, retention, etc.
- f. Subsection (7)(d):
  - i. “Examinations,” “eligible,” and “scores” are no longer utilized; suggest repeal of these terms throughout this section.
  - ii. Change the days for posting registers from 10 days to 5 days, to expedite hiring.
  - iii. We now post positions through online resources, and the press/radio are no longer used.
  - iv. The “secretary shall be free to use any investigation of education and experience” language has been moved to KRS 18A.030, as discussed above under KRS 18A.030 (item number 6(d)).
- g. Subsection (7)(g) – This is now covered by the Cabinet’s regulatory authority for all “types of leave, with or without pay” in (1)(g) of this section, as explained above.
- h. Subsection (7)(h) – This is now covered in (1)(d) above, which gives the Cabinet regulatory authority over “layoffs, furloughs, and reduction of hours.”
- i. Subsection (7)(j):
  - i. (j)(4) current/proposed (7)(g)(4): Suggest repeal of the language that permits an employee to appeal evaluations of the “two lowest possible evaluation ratings,” and replace it with language to allow an employee to appeal only an evaluation in the lowest category.
  - ii. (j)(5) current/(g)(4) revised – Suggested revision to give agencies the ability to provide employees with lump sum payments instead of days of leave for first and second highest possible ratings on evaluations. Note: revision states “if sufficient funds are available,” so employees are not entitled to these payments if funding is lacking.
  - iii. (j)(6) current/(g)(5) revised – Revise statute to delete agency requirement to demote an employee if they receive the lowest possible evaluation score. A demotion will move the employee to a different job classification, but it does not ensure that the employee will perform as expected. The agency should not be forced to keep an employee via demotion, if they have gone through a performance improvement plan and exhausted the yearlong evaluation process with an employee.
  - iv. New (7)(h) proposed – as stated above, revisions are suggested to move probationary periods from the Personnel Board to the Personnel Cabinet. This language is language that currently appears in KRS 18A.0751 (Personnel Board regulatory authority).
  - v. New (7)(i) proposed – The Personnel Cabinet administers layoffs, so it is suggested that this language be removed from KRS 18A.0751 (Board regulatory authority) and placed here under the Personnel Cabinet’s regulatory authority.
  - vi. New (7)(j) proposed - a new provision is suggested to permit hiring of emergency employees during a state of emergency.

### **27. KRS 18A.111 – Probationary periods for classified service – initial and promotional**

- a. Clean up edits to ensure consistency with KRS 18A.095.
- b. Subsection (1) - revisions are proposed to remove the term “eligible,” which is no longer utilized.
- c. Subsection (3) - replacing “reinstatement” with “restoration” so as not to confuse the Personnel Board’s action with a current Personnel Cabinet reinstatement personnel action.

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- d. Subsection (4) – Added “consistent with the initial probationary period for the job classification,” as the probationary periods for job classification range from 6 months to 12 months (they are not always 6 months).
- e. Subsection (4) – Added “placed on” to permit an agency to extend the probationary period if they “place” an employee on leave. As worded, the statute only accounts for the employee’s request to take leave, but it does not account for agency placement on leave, (i.e. agency directed investigative leave).
- f. Subsection (7) - Suggest repeal of this subsection as unclassified employees, like any applicant, should be able to apply for classified positions.

### **28. KRS 18A.113, 1131, and 1132 - Layoff rules**

- a. These statutes are outdated and do not match the current layoff language that exists in the budget bill. Accordingly, we suggest repeal of the language currently present in KRS 18A.113, 1131, and 1132, to be replaced with language from the current budget bill.
- b. In addition to the language that is in the current budget bill, we suggest minor additions to include the following:
  - i. The 15-day advance notice period is expanded to 30 days, to ensure an employee has timely advance notice of the action.
  - ii. Deleted reference to “penalization” language in budget bill, since that definition is proposed for repeal in KRS 18A.005.
    - 1. Clarified that the actual layoff is not subject to review by the Personnel Board, but provided appeal rights to the Personnel Board for any reemployment applicant who is removed from a register.
    - 2. These reemployment appeal rights are not contained in current budget bill, but they are currently in KRS 18A.113(8).

### **29. KRS 18A.115 – Employment exempted from classified service**

- a. Subsection (1) - Clarifications made to specify that the classified service resides within the Executive Branch of state government.
- b. Subsection (1)(a) and (1)(l) - Since clarifications were made to specify that the classified service resides within the Executive Branch, references pertaining to the legislative and judicial branches were removed throughout this section.
- c. Subsection (1) was updated throughout to correct or modernize references. For instance, unclassified employees are considered “policymaking or advisory,” a term added throughout this subsection.
- d. Subsection (k) – a revision is proposed to include “contractors or personal service contractors” to the list of employees who are exempt from the classified service.
- e. Subsection (aa) current – Suggest repeal of this provision, as it is duplicative. The Executive Director of the Commonwealth Office of Technology is covered by proposed subsection (1)(d), which applies to “office heads.”
- f. Subsection (1)(z) as proposed is changed to reflect the name change for grant funded time-limited employees in KRS 18A.005.
- g. Subsection (9) – A new section is added to clarify rights under KRS Chapter 18A after retirement.
- h. Subsection (10) – A new section is added to clarify that all agencies that have KRS Chapter 18A employees shall be subject to the Personnel Cabinet’s regulations, policies, or procedures that pertain to KRS Chapter 18A classified employment. This language helps ensure merit principles are complied with, to ensure continued federal funding for agencies.

**30. KRS 18A.120 – Basis for hiring for classified service – exception – credit for sick leave:** It is suggested that this provision be repealed, as it appears to be outdated. To date, when the legislature moves an agency into KRS Chapter 18A, the legislature includes language pertaining to these same matters within the bill at issue. For instance, see HB 777 from the 2022 session that moved Emergency Medical from KCTCS to the Executive Branch. The bill specified salaries, leave time balances, leave time accumulation, etc. See also KRS 18A.115, current subsections (7), (8), and (9) for examples.

**31. KRS 18A.125 – Control through payroll certification**

- a. Subsection (2) is added due to recent pushback from some agencies and employees in complying with standard payroll policies, procedures, and requirements. Noncompliance places the Commonwealth of Kentucky at risk of liability due to the requirements of various federal, state, and local payroll and tax requirements. Noncompliance also runs the risk of delaying the payroll process.
- b. Subsection (6) is added due to the recent advancement of telecommuting use by all agencies to clarify that an agency may not authorize the performance of duties from an alternate work station outside the Commonwealth of Kentucky without the approval of the Personnel Cabinet Secretary. Agencies have inquired if employees can work from their residences outside of Kentucky. Employment outside Kentucky could cause liability for the Commonwealth of Kentucky, as numerous federal, state, and local legal requirements must be met on a daily basis. These legal requirements are different within each state, county, and locality, and currently, the Personnel Cabinet does not have adequate staff to research and administer payroll and other legal requirements for any state other than Kentucky. For instance, employment outside Kentucky would require research and continuing monitoring of the following (**for every individual instance of teleworking by a single employee**):
  - i. Unemployment Insurance
  - ii. Short-Term Disability
  - iii. Worker's Compensation
  - iv. Paid-Time Off Policies
  - v. Tax Rates (State, County, City/Local)
  - vi. Tax Forms (State, County, City/Local) and Tax Form Reporting
  - vii. State Minimum Wage
  - viii. Laws Governing Meals/Breaks
  - ix. Overtime Calculations
  - x. Mandatory Direct Deposit
  - xi. Jury Duty Leave
  - xii. Pay Stub Reporting
  - xiii. Pre-Tax Deductions from State/Local Taxable Wages (Cafeteria Plans, 401(k), 457, etc.)
  - xiv. Reimbursements for Home Office Expenses
  - xv. State-Specific Reporting (OSHA, EEO, New-hire, etc.)
  - xvi. Child Support and Garnishment Processing, and
  - xvii. Health Insurance Reporting

Accordingly, this statute change is requested to assist the Personnel Cabinet with legal compliance in administering payroll for Executive Branch employees.

**32. KRS 18A.130 – Reemployment of career employees terminated on or after January 1, 1980 –**

This statute and KRS 18A.135, both of which deal with reemployment of career employees, as currently written, are very difficult to understand. New language is proposed to clarify reemployment rights as follows:

- a. First, there is no need to refer to classified employees within this statute, because classified career employees are never dismissed “other than for cause” as the statute currently indicates. Instead, classified employees (career employee and non-career employee) must be dismissed “for cause,” pursuant to KRS 18A.095. KRS 18A.095 guarantees the classified employees dismissed “for cause” full appellate rights at the Kentucky Personnel Board.
- b. This section is simplified to address the “**reversion**” rights for the unclassified career employees, which, in practice, has been the only group of employees to which this section applies. KRS 18A.135, by contrast, has been revised to address the “**reemployment**” rights of unclassified career employees, as further defined below.
  - i. Reversion rights require an agency to return a career employee to the classified position the employee last held before their transition to unclassified employment if the position is vacant.
  - ii. If the position is not vacant, “reemployment” rights then apply, which means the employee will be separated from state government, but they will have “reemployment” rights for the last job classification for which he or she held status (i.e. right of first refusal for that position over any other applicant).

**33. KRS 18A.135 – Reemployment of career employees –** As stated above in the analysis of the revisions to KRS 18A.130, this statute, as currently written, is very difficult to understand. New language is proposed to clarify reemployment rights:

- a. Like KRS 18A.130, there is no need to refer to classified employees within this statute, because classified employees (career employee and non-career employee) must be dismissed “for cause,” pursuant to KRS 18A.095. KRS 18A.095 guarantees the classified employees dismissed “for cause” full appellate rights at the Kentucky Personnel Board.
- b. This section is simplified to address “reemployment” rights for the unclassified career employees, which, in practice, has been the only group of employees to which this section applies. This statute will only apply if the agency is not able to “revert” the employee to the last classified position in which he or she held status (i.e. the position is not vacant), as outlined in KRS 18A.130.
- c. This section is modified to include a two (2) year period of time for which an employee can assert reemployment rights.
- d. The appeal rights were removed from this section, because they refer to appeals that can be filed due to alleged discrimination. This language is redundant, as the right for all applicants, to include reemployment applicants, to appeal discriminatory actions has been and continues to be maintained in in KRS 18A.095 (now subsection (11)/formerly subsections (12) and (14)).

**34. KRS 18A.138 – Affirmative action plan for the Executive Branch of State Government –** minor clean up edits.

**35. KRS 18A.140 – Prohibition against discrimination and political activities:** Revised language in subsection (1) to make it flow more smoothly.

**36. KRS 18A.145 – Other acts prohibited:** Removed terminology related to testing, since testing is no longer used in the employee selection process. Added language in subsection (1) to provide falsification prohibitions in a broader range of personnel matters.

- 37. KRS 18A.146 – Felony conviction grounds for disciplinary action:** No changes.
- 38. KRS 18A.150 – Interview preference for current service members, honorably or generally discharged former service members, and members' spouses, surviving spouses, and dependent parents -- Required interviews:** No changes.
- 39. KRS 18A.155 – Rules for unclassified employees:** This section is the authorizing statute for promulgation of regulations for KRS Chapter 18A unclassified service.
- a. Subsection (1) – Revised to correct and update applicability of regulations to employees exempted from the classified service per KRS 18A.115
  - b. Subsection (1)(a) – Revised, consistent with other revisions throughout the chapter, to clarify that references to unclassified service apply to *KRS Chapter 18A* unclassified service. In addition, allocation reconsideration language was deleted, because a revised reconsideration process is included in KRS 18A.095.
  - c. Subsection (1)(b) – Added a general provision for consideration of other factors deemed relevant for establishment or amendment of the pay plan for unclassified service. This change matches the change made in KRS 18A.110(6)(c).
  - d. Subsection (1)(c) – Revised to clarify that a transfer is not restricted to an intra-cabinet move.
  - e. Subsections (1)(d) and (e) – Revised to match changes made in KRS 18A.110.
  - f. Subsection (2) – Revised to clarify that optional use of the unclassified regulations does not confer KRS Chapter 18A status on an agency or its employees.
  - g. Subsection (4) – This subsection is added to convey that following the cabinet's regulations, policies, and procedures is *not* optional for agencies with KRS Chapter 18A unclassified employees, as it pertains to those unclassified employees.
- 40. KRS 18A.160 – Use of public buildings, property, and facilities:** Deleted in its entirety as an obsolete section.
- 41. KRS 18A.165 – Administration of KRS 18A.005 to 18A.204:** No changes except for clean-up of applicable sections of KRS Chapter 18A.
- 42. KRS 18A.170 – Certification of division directors who do not make policy:** Deleted in its entirety as an obsolete section.
- 43. KRS 18A.175 – Evaluation of duties of division directors or heads -- Procedure when duties have become policy making:** Deleted in its entirety as an obsolete section.
- 44. KRS 18A.180 – Extension of system to other governmental units:**
- a. Subsection (1) – Revised to remove the requirement for board approval prior to the cabinet entering into an agreement to provide services to a municipality or other political subdivision in the administration of personnel on merit principles. Note: This subsection may appear to be obsolete, but there could be a scenario where the services provided are in the form of assistance from the cabinet's legal or business teams in review or implementation of systems based on merit principles.
  - b. Subsection (2) – Deleted this subsection because it is obsolete. The cabinet does not develop or administer tests for use in employee selection, nor does it maintain passive lists for certification. Individuals must actively apply to advertised vacancies.
  - c. Subsection (3) – Deleted this subsection because the Cabinet for Health and Family Services already administers a personnel program for local health departments based on merit principles per KRS 211.1755.
- 45. KRS 18A.185 – Service as elected official deemed full-time employment for specified purpose:** No changes.

- 46. KRS 18A.190 – Holidays for state personnel -- Military spouses to receive paid deployment and return days off:**
- a. Amended subsection (1) to clearly state that state holidays are “paid,” which is the current status.
  - b. Proposed making Good Friday a full-day holiday and added the nineteenth day of June.
  - c. Revised subsection (4) language to be consistent with edits to leave language in KRS 18A.110 and 18A .155.
- 47. KRS 18A.194 – Living Organ Donor Leave Program:** No changes.
- 48. KRS 18A.195 – Compensatory time -- Payment upon leaving state service:**
- a. Re-lettered subsection (2) to account for edits to KRS 18A.115.
  - b. Revised subsection (2) to remove executive secretaries from the list of those ineligible to receive block payments. They are not policy-making or advisory employees and denial of block payments could be contrary to FLSA requirements.
  - c. Added a provision to subsection (2) to permit the Cabinet to designate certain positions as policy making or advisory which would make them ineligible for block payment of compensatory leave, except as provided by subsection (3) of this section. This is consistent with the historical application of this section, and is necessary, as some agencies have a hybrid mix of employees, some of which should receive full compensatory leave payouts (i.e. non-exempt employees).
- 49. KRS 18A.196 – Definitions for KRS 18A.197:** No changes.
- 50. KRS 18A.197 – Sick-leave sharing program:** Revised subsection (1) to eliminate the seventy-five (75) hour balance requirement. This change provides greater ability of non-Tier 1 retirement plan participants to help co-workers with donation of accrued sick leave that may otherwise be left unused upon their retirement.
- 51. KRS 18A.200 – Per diem salaries for state officers or employees serving on boards or commissions prohibited during regular working hours -- Reimbursement of expenses authorized:** Revised subsection (1) to clarify that elected and appointed employees serving on boards or commissions shall not receive per diem pay for service during regular working hours. This change is consistent with existing language in subsection (2).
- 52. KRS 18A.201 – Transportation Engineering Assistant I experience requirements:** Deleted in its entirety as an obsolete section.
- 53. KRS 18A.202 – Work-related incentive programs for state employees:** No changes.
- 54. KRS 18A.203 – Annual-leave sharing program:** Revised subsection (1) to eliminate the seventy-five (75) hour balance requirement. This change is consistent with the sick leave sharing changes in KRS 18A.197.
- 55. KRS 18A.204 – Waiver of educational requirement in Highway Equipment Operator series for employees hired before July 1, 1999:** No changes.
- 56. KRS 18A.355 – Formula for increasing base salary or wages of state employees -- Percentage of annual increment may be reduced:** No changes.
- 57. KRS 18A.990 – Penalties:** No changes except for clean-up of applicable sections of KRS Chapter 18A.
- 58. KRS 48.130 – Budget reduction plan for revenue shortfall of five percent or less to be included in each enacted branch budget bill -- Shortfalls over five percent require legislative action:** Updated a section reference due to proposed changes. No other changes.
- 59. KRS 164.357 – Governmental Services Center at Kentucky State University -- Authority to direct -- Duties and responsibilities of center -- Executive director of authority:** Deleted in its entirety as an obsolete section.

Summary of KRS Chapter 18A revisions

- 60. KRS 61.379 – Rules and regulations -- Appeals from failure to restore or discharge – Procedure:** Deleted this section in its entirety. Added a provision in KRS 18A.095 to provide for board review for KRS Chapter 18A employees.
- 61. KRS 344.025 – Construction of KRS Chapter 18A:** Revised to match changes proposed in KRS 18A.095.