TEAM KENTUCKY

PERSONNEL CABINET

# *Classification and Compensation Report*

Presented to:
*Interim Joint Committee on Appropriations and Revenue*

Prepared by:
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# EXECUTIVE SUMMARY AND REPORT INTRODUCTION

The Personnel Cabinet has consistently endeavored to promote state government as an employer of choice. However, state government agencies across the nation, including Commonwealth of Kentucky agencies, continue to navigate a very competitive labor market and challenges in recruitment and retention.

House Bill 1 from the 2022 Regular Session directed the Personnel Cabinet to perform a comprehensive review of the KRS Chapter 18A Classification and Compensation Plan, and to provide a report and recommendation for changes to the Interim Joint Committee on Appropriations and Revenue. House Bill 444 from the 2023 Regular Session extended the time period to complete the job classification reviews to November 1, 2023. This report supplements the report issued in July 2022 and attached hereto as Appendix 1. The General Assembly also passed Senate Bill 153, which amended KRS 18A.030 to require the Personnel Cabinet to "perform a classification and compensation study at least once every five (5) years." KRS 18A.030(2)(n).

As part of the process to ensure employees continue to be appropriately compensated, the Personnel Cabinet conducts reviews of all active job classifications that apply to Executive Branch employees. A summary of the job classification reviews required by HB 444 is contained herein, along with additional recommendations to improve recruitment and retention.

The General Assembly set aside $200 million from the General Fund in fiscal year 2023-24 for compensation changes across all three branches of Kentucky state government. The 2023 Session allocated $127,320,800 for a 6 percent salary increment for fiscal year 2023-24, along with improvements in salaries for Department of Juvenile Justice and Department of Corrections institutional staff.

This report includes a compilation of the Personnel Cabinet's job classification reviews and the many actions, including compensation actions, that have already been taken resulting from those reviews. Additionally, this report advances several recommendations related to the usage of the fiscal year 2024-25 value of the remaining $72,679,200 to address job classification review salary increases for critical areas for which existing funding is not available and to address the compression of salaries that has occurred since fiscal year 2010-11 when no salary increases were legislated for 10 of the 12 years between fiscal years 2010-11 and 2021-22.

Three of the main challenges the Personnel Cabinet has faced with its administration of the state employee compensation system are: (1) the lack of annual raises for more than a decade, which has caused employee salary compression, (2) reduction of benefits in the state's retirement system, and (3) lack of funding for adjustment of the entry level of the salary schedules.

The major recommendations include:

1) Continued funding for comprehensive job classification reviews;
2) Salary increase adjustments to address salary compression;
3) Regular annual increases for state employees to maintain standard of living, to remain competitive with the labor market, and to avoid future salary compression;
4) Adjustments to the overall salary schedule;
5) Creation of a student loan forgiveness retention program as a key retention benefit;
6) Pension reform for hazardous and State Police retirement systems; and
7) Adjustments to the statutory "pension spiking" provisions to permit legislatively directed salary increases and to exempt compensation actions related to high inflation from the statutory pension spiking provisions.

## *Understanding Perceived Disparities in Merit System Compensation*

Historically, numerous employees have alleged that disparities exist in the merit pay system. Allegations have included claims that some employees earn more than other employees in the same job classification. Certain supervisors have also found themselves earning less than employees they manage. On its face, a subordinate making more than a manager may appear to be unfair. Yet, upon closer inspection, the disparity usually results from an employee's career path, years of service, or education and experience. For example, consider an employee who has worked for the Commonwealth for twenty-five (25) years. In 2023, the agency hires or promotes an employee into a supervisor role managing that employee. However, the supervisor's salary is less than that of the 25-year subordinate. At first glance, this seems illogical. Nevertheless, under the merit system laws, based upon career path, years of service, and various opportunities for pay changes over the course of twenty-five (25) years, which at one time included regular, annual 5% increments, it is possible for this long-time, incumbent employee to earn more than this new supervisor.

Contrary to these perceived disparities in merit pay, federal and state laws allow employers to compensate employees differently based on a bona fide seniority, merit, or incentive system. Wage differentials under the Federal Equal Pay Act are justified under one of four affirmative defenses:

- A seniority system;
- A merit system;
- A system which measures earnings by quantity or quality of production; or
- Any other factor other than gender.[1]

Kentucky's General Assembly also recognizes that "it is not an unlawful practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system… or to employees who work in different locations if the differences are not the result of an intention to discriminate because of race, color, religion, national origin, sex, or age forty (40) and over, or because the person is a qualified individual with a disability." KRS 344.100.

Given the various rates of pay that do result from lawful application of the merit compensation system, numerous employees have filed appeals with the Kentucky Personnel Board and complaints with legislators seeking "equal pay for equal work," as the term is commonly used in the private sector. These appeals have included supervisors who earn less than subordinates. The Personnel Board has regularly dismissed these appeals alleging "unequal pay" and penalizations due to salary, finding that agencies correctly compensated employees according to merit system laws.

In one appeal, the Kentucky Personnel Board explained differences of pay in the merit system as follows:

> KRS 344.100 allows for different compensation payments for state employees in the same classification. The Personnel Board has previously held that the wage disparity complained of by the Appellants is the by-product of KRS Chapter 18A merit and seniority systems. *Kathryn Parrish v. Office of the Attorney General*, 2014 WL 2191021 (Ky. PB No. 2012-056). The Personnel Board has further held that there is no regulation or statute which provides that similarly situated or classified employees of the Commonwealth are to be paid at the same wage rate. *George Fortune v. Cabinet for Health and Family Services*, 2008 WL 4329627 (Ky PB Nos. 2006-381 – 2006-384).

*Frost, et al. v. KYTC and Personnel Cabinet* 2019 WL 5212758 (KY PB Nos. 2015-143, -145, -147, -153, -154, -155, -157, -160, -159, -144, - 243, -245 and -247).

Likewise, Franklin Circuit Court opined that "[t]here is no statutory authority that grants Petitioners a right to uniformity of pay… Although Kentucky has a merit system, there is no requirement that uniformity of pay exist in the merit system,

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[1] 29 U.S.C.A § 206(d)(1)

absent discrimination." *Emerson Adkins, et al. v. Energy and Environment and Personnel Cabinets*, Civil Action No. 18-CI-00027, Franklin Circuit Court, February 4, 2020. These perceived pay disparities are usually the result of an employee's career path, months of service, and several other considerations that are permitted under merit system laws.

### *Compression*

Even though individual rates of pay may differ among employees in a merit system, a goal of the Personnel Cabinet in the management of the state employee compensation system is to prevent what is referred to as "compression." Within Kentucky state government, the issue of one employee earning a similar amount to another more senior employee is the result of not having the funding to annually change the KRS Chapter 18A salary schedule along with the lack of annual salary increments. The lack of increases to the salary schedule and annual salary increments creates a situation where there is very little pay difference between a new employee and an employee hired in prior years. Beginning in fiscal year 2010-11, which included a pay cut due to six furlough days, there were no annual salary increments in 10 of the following 12 years from fiscal year 2010-11 to fiscal year 2021-22. There was only a one percent increment in fiscal year 2015-16 and a range of increments from one to five percent in fiscal year 2014-15.

There are two types of compression. There is (1) employee compression and (2) job classification compression:

1. Employee compression can occur for all employees assigned to a certain a job classification. The merit compensation system has two main components:
    a. Salary Schedule: Sets the initial compensation for new employees.
    b. Statutory Increment Policy (SIP): The application of regular Annual Increments or Adjustments to provide a steady progression of pay for current employees.

    When these two components are maintained in unison, the merit compensation system for employees works as intended. When they are not maintained in unison, and the initial compensation of a new employee is gradually permitted to encroach on that of a current employee, regardless of their respective experience and seniority, compression occurs. A key component of preventing employee compression is continued annual increments or adjustments to minimize compression, which can only be granted by the General Assembly. Likewise, regular increases in the entry level of salary schedules, and funding for the same, also help address compression. These 2 items (salary schedule maintenance and annual increases), if corrected and modernized together, would largely address the current compensation challenges.

2. Job classification compression can occur within a job series, such as Highway Technician Assistant I, II, Highway Technician I, II, III, IV, Highway Technician Superintendent I, II. For example, overlapping levels or minimal differences in the various job specification requirements for each job, such as minimum education, experience qualifications, or level of responsibility in characteristics of the job, may result in different job classifications being assigned the same pay grade when the job assessment is complete and Korn Ferry factoring is applied. This is something that the Cabinet attempts to avoid.

Recommendations to address compression are further discussed below.

## RECOMMENDATIONS

The Personnel Cabinet offers the following analyses and recommendations to improve the current Executive Branch state employee compensation:

### 1. Comprehensive Job Classification Review Project and Applicable Salary Changes

Comprehensive job reviews were conducted to assess the intent and accuracy of each individual job classification to determine the effectiveness and to identify any necessary modifications. The reviews included an in-depth assessment of all aspects of the current job classification specification, as noted in the chart below, for completeness, accuracy, and application of any necessary updates. A collective review was performed on job families, or a group of related jobs, simultaneously to ensure the entire series is clearly defined, does not overlap, and represents a necessary purpose for user agencies in order to prevent and address compression within a job series. As part of the Personnel Cabinet's review process, data is collected from all agencies that employ individuals in the specific job classification(s). Feedback from each agency's Human Resources (HR) office and subject matter experts within the agency that manage and/or work directly with employees in the specified job classification(s) under review is included in the Personnel Cabinet's comprehensive analysis. It is essential to obtain and document first-hand knowledge of each job's purpose and expectations to aid in identifying necessary modifications.

The chart below depicts an overview of the in-depth analysis that is applied during the assessment performed on each individual job classification specification.

| | |
|---|---|
| Job Title | Determine if the job title clearly reflects the job tasks and the latest terminology and industry standards for the job |
| Job Characteristics | Identification of:<br>• The purpose and main function of the job<br>• The level of decision-making authority<br>• Employee contact and communication expectations<br>• The level of problem-solving required to successfully perform the job tasks<br>• Budget and/or financial responsibility<br>• Change management responsibility<br>• Supervision or management responsibilities<br>• The job classifications that this job may directly supervise<br>• The job classification that this job typically reports to |
| Minimum Requirements: Education<br>Applicable substitution of Experience for Education | Identification of:<br>• The minimum education required to successfully perform the job tasks, including specific degree and/or credit hours within a specific study<br>• Specific job-related experience that would substitute for the required education and in what measurable portions (i.e., year-for year) |
| Minimum Requirements: Experience<br>Applicable substitution of Education for Experience | Identification of:<br>• The expected level of know-how to successfully perform the job tasks<br>• The minimum experience required to successfully perform the job tasks in measurable periods (i.e., one year)<br>• Specific skills required to successfully perform the job tasks (i.e., management)<br>• Specific education that would substitute for the required experience and in what measurable period (i.e., year-for-year) |
| Minimum Requirements: Special Requirements | Identification of:<br>• Specific licensure(s) and/or certifications required to successfully and legally perform the job duties<br>• How are the licensures/certifications obtained?<br>• Are the licensures/certifications verifiable? If so, how?<br>• Ongoing competencies or professional development required to successfully perform the job tasks |

| | |
|---|---|
| Examples of Duties | Identification of:<br>• Sample job tasks that may be performed throughout the agencies that utilize the job classification<br>• The required use, operation, maintenance, or repair of any specialized machinery, tools, equipment, instruments, vehicles, or computer hardware/software |
| Unique Physical Requirements | • Identification of unique physical requirements to successfully perform the job tasks (i.e., stooping, bending, lifting objects in excess of 50 pounds, etc.) |
| Typical Working Conditions | Identification of:<br>• The typical working conditions for employees in this job (i.e., office setting, outdoors in extreme weather conditions, etc.)<br>• Travel requirements |
| Additional Requirements | If applicable |

Additionally, reviews of national compensation data from the National Compensation Association of State Governments (NCASG), independent surveys from state governments, urban governments and federal government compensation survey data, and Payscale available market data[2] are collected and included in the overall analysis, where possible. Some job classifications are unique to the Commonwealth's Executive Branch, and an exact job match is unavailable in survey or market data sources.[3] These data reviews identify other states' and/or employers' comparable job classifications and the associated job duties, required education, experience, licensures/certifications, and compensation. When survey data is not readily available, the Personnel Cabinet may initiate a survey for a specific job classification or job series to solicit data from other state governments or businesses.

After the necessary data compilation, appropriate revisions are made to the job classification specification to ensure the job is up-to-date and reflective of the current duties.[4] A detailed job evaluation profile, which is a systematic process for ranking jobs logically, consistently, and fairly by comparing job against job or against a predetermined scale to determine the relative importance of jobs to an organization, is completed on the updated job classification. Point factoring methodologies are also applied which correlate to a specific pay grade on the salary schedule. The association of the compensation associated to a job classification system formalizes the relationship of an organization's jobs into a pay framework based on an objective assessment of the value of those jobs. This analysis is conducted as a portion of the Korn Ferry Job Evaluation and Point Factoring methodologies, which ensures the successful operation of the state's compensation system, as required by the KRS Chapter 18A statutes.

RESULTS OF THE JOB CLASSIFICATION REVIEW:

Number of job classifications reviewed - 1,316

Job Classifications that received a Pay Grade Change – 348, impacting 16,216 employees

Job Classifications with Revisions – 755

[2] Payscale is the leading provider of compensation data, used in comparing national, Kentucky, and other state government markets for executive branch job classifications.
[3] Job classifications for which market data is available are specified in Appendix 2, Column I.
[4] Many revisions have already been implemented. See Appendix 2.

New Job Classifications that were Established - 77

Job Classifications that were Abolished – 227

Details from the job classification review project report are attached as Appendix 2.

RECOMMENDATION: Most, but not all the recommended pay increases resulting from the job classification review were able to be implemented within existing budgetary resources. Nonetheless, additional funding is necessary in order to effectuate the job classification review findings for several remaining job classification series that warrant a grade change and/or the assignment of a special entrance rate. Those job classification series that require additional funding include the following:

Social Service Worker I & II*[5]
Social Service Clinician I & II*
Social Service Specialist*
Probation and Parole Officer job series*
Classification and Treatment Officer*
Corrections Unit Administrator I & II*
Information Technology job classifications

This report recommends allocating $17.7 million from the $72.7 million fiscal year 2024-25 value still available from the original $200 million set aside in the 2022-2024 biennial budget. The non-General Fund sources that will need to be appropriated in fiscal year 2024-25 are estimated to be approximately $11.8 million.

## 2. Compression Increase Adjustment

In order to address the employee compression explained above, the Personnel Cabinet suggests implementation of a variable percentage increase for employees based upon seniority. An employee hired in fiscal year 2009-10 experienced ten years with no annual salary increment in the twelve years through fiscal year 2021-22. One hired in fiscal year 2014-15 experienced six years with no salary increment through fiscal year 2021-22. An employee hired in fiscal year 2021-22 has subsequently received an eight percent increase in fiscal year 2022-23 and a six percent increase in fiscal year 2023-24.

RECOMMENDATION: The Cabinet recommends application of a percentage increase to each employee's salary based upon the employee's most recent period of continuous months of service. The percentage increase scale established by the Personnel Cabinet considers factors to include missed increments since fiscal year 2009-10. It is estimated that application of percentage increases based upon seniority will assist in alleviating employee compression issues across the Executive Branch. This report recommends allocating $55 million from the $72.7 million fiscal year 2024 - 2025 value available from the original $200 million set aside in the 2022-24 biennial budget. The non-General Fund sources that will need to be appropriated in fiscal year 2024-25 are estimated to be approximately $36.7 million.

## 3. Annual Increment or Salary Adjustment

Annual adjustment or annual increment for state employees should be budgeted to prevent salary compression.

RECOMMENDATION: The Administration recommends a 6% salary increase for all state employees to be budgeted for fiscal year 2025, and a 4% salary increase for fiscal year 2026 to be uniformly effective on July 1 of the respective year.

[5] An * indicates that additional funding from the General Assembly is required to effectuate special entrance rates.

## 4. Salary Schedule Adjustment

As required in KRS Chapter 64.640(1), the salary schedule is the foundation for setting rates of pay for each job classification.

In order to be competitive with recruitment, to retain employees, and to ensure existing employees' compensation does not fall below the federal poverty level, the salary schedule should be adjusted each fiscal year.

RECOMMENDATION: Funding should be appropriated for an annual adjustment to the salary schedule. This would assist in making state employee compensation more competitive as compared to the private sector, which would greatly assist with recruitment and retention.

## 5. Student Loan Forgiveness Retention Program

Establish a Student Loan Forgiveness Retention Program. A student loan forgiveness program can benefit the Commonwealth in several ways. While promoting Kentucky trades and postsecondary education through colleges and universities, it can also encourage career employment with state government.

RECOMMENDATION: The Personnel Cabinet proposes that the General Assembly grant the Personnel Cabinet statutory authority to establish a student loan forgiveness retention program. The estimated annual cost is $20 million from the General Fund.

## 6. Tier 3 for Hazardous and State Police Retirement Plan

As a result of changes to the retirement benefits for state employees, the current plan available for new employees (Tier 3) is no longer a recruitment or retention benefit and does not provide an advantage for state government when compared to the public and private sectors.

RECOMMENDATION: Reinstate the Tier 2 retirement system plan for employees who currently fall under KERS Hazardous and State Police Retirement System Tier 3 hybrid Cash Balance Plan, as recommended in the Governor's proposed budget bill. The less beneficial Tier 3 plan has contributed to the strain on the state's ability to recruit and retain qualified individuals, particularly for those public safety employees who fall under hazardous duty and the Kentucky State Police Retirement System. The actuaries for the Kentucky Public Pension Authority have estimated that the increase in the employer contribution for the KERS Hazardous and State Police Retirement System plans for the 2024-26 biennium to be 1.32 percent and 1.60 percent, respectively.

## 7. Pension Spiking Legislation Review

In 2017, legislation was passed to set up a process for determining if "pension spiking" occurred due to an increase in an employee's compensation. Under the legislation, KPPA is required to review the last 5 fiscal years of employment for Tier 1 and Tier 2 members retiring on or after January 1, 2018. Any increase in salary earned after July 1, 2017, in excess of 10% from the immediately preceding fiscal year, will be exempt from creditable compensation when calculating the member's retirement benefit if the fiscal year is to be used in the member's final compensation. KPPA will refund member contributions and interest attributable to the reduction in creditable compensation back to the employer. KPPA will allocate the employer contributions to the appropriate system to offset the unfunded pension liability. Under current law, a member's final compensation will be adjusted, unless it falls under one of these provisions:

A. Bona fide promotion or career advancement;
B. Lump sum payout for compensatory time at termination only;
C. Lump sum payout for alternate sick leave payments;
D. Increases in years where the member was on leave without pay in the prior fiscal year;
E. An increase due to overtime work and pay as the result of a state or federal grant, grant pass-through, or a similar program that requires overtime as a condition or necessity of the employer's receipt of the grant; or

F. An increase due to overtime work and pay required by a federal or state-declared emergency.

The above provisions do not account for the recent annual increases. That being the case, it is possible that pension spiking determinations could result for retiring employees who receive their 8% increase on July 1, 2022 and the 6% increase on July 1, 2023, if they also receive some type of salary increase in the fiscal year, whether by salary adjustment for a new employee, block 50 compensation, discretionary salary increases, etc.

RECOMMENDATION: It is recommended that the General Assembly modify the pension spiking provisions to account for evidence-based salary adjustments to accommodate the annual increases/increments or compensation actions related to high inflation, and to avoid reduction of final retirement compensation after an employee has retired, which is often the case with pension spiking determinations.

# CONCLUSION

Recruiting and retaining state government employees is more difficult than ever. Agencies have many positions available for hiring but face very competitive employers from the private sector, shortage of applicants, and retirements. Mission Square Research Institute has conducted an annual survey of state and local workforces since 2009. In its 2023 survey, it found that private sector employers largely recovered their pre-pandemic workforce, while state and local employment across the nation still lags behind its pre-pandemic totals measured as of February 2020.[6] In exit interviews with departing employees, the top three reasons for leaving were non-competitive compensation, retirement, and advancement with another public employer.[7]

Despite these challenges, the Executive Branch and the General Assembly continue to take steps to improve recruitment and retention. Among its regular efforts to implement and improve upon existing recruitment and retention methods, one key retention initiative implemented by the Personnel Cabinet was the award of a contract to All Star Talent and Deloitte Consulting, to provide recruiting, branding, and marketing strategies for all state agencies. The Cabinet hopes that these contracts will assist agencies with finding new and innovative ways to recruit employees.

The General Assembly has recently granted across-the-board increases to state employees and provided additional funds to the Personnel Cabinet to complete job classification reviews. The General Assembly's efforts, along with the Governor's and Personnel Cabinet's efforts to modernize and improve hiring, recruitment, and retention, have helped state agencies somewhat adjust to hurdles in maintaining a steady, dependable workforce.

Nonetheless, the battle to recruit and retain the best and brightest employees continues, and the General Assembly and the Executive Branch must continue to work together to improve Team Kentucky. We are hopeful that the above steps taken by the Cabinet alongside the General Assembly's implementation of the outlined recommendations will continue to improve recruitment and retention. We look forward to working together to strive towards making the Commonwealth of Kentucky an employer of choice.

[6] https://research.missionsq.org/resources/state-and-local-government-workforce-survey-2023, page 5.
[7] See above link, page 21, figure 26.

# APPENDIX

1) July 2022 Report

2) Job Review Project Report