

CHAPTER 127**(SB 219)**

AN ACT relating to federally funded time-limited state employees.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

Section 1. KRS 18A.005 is amended to read as follows:

As used in this chapter, unless the context indicates otherwise:

- (1) "Appointing authority" means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the secretary;
- (2) "Base salary or wages" means the compensation to which an employee is entitled under the salary schedules adopted pursuant to the provisions of KRS 18A.030 and 18A.110. Base salary or wages shall be adjusted as provided under the provisions of KRS 18A.355 and 48.130;
- (3) "Board" means the Personnel Board created by KRS 18A.045;
- (4) "Career employee" shall mean a state employee with sixteen (16) or more years of permanent full-time state service, or the part-time employment equivalent of at least sixteen (16) years of full-time state service. The service may have been in the classified service, the unclassified service, or a combination thereof;
- (5) "Certification" means the referral of the name of one (1) or more qualified prospective employees by the secretary on request of an appointing officer for consideration in filling a position in the classified service;
- (6) "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness, and the same schedule of compensation have been or may be applied to each position in the group;
- (7) "Classified employee" means an employee appointed to a position in the classified service whose appointment and continued employment are subject to the classified service provisions of this chapter;
- (8) "Classified position" means a position in the executive branch of state government that is not exempt from the classified service under KRS Chapter 16, KRS 18A.115, KRS Chapter 151B, or any other provision of law;
- (9) "Classified service" includes all the employment subject to the terms of this chapter except for those positions expressly cited in KRS 18A.115; a "classified position" is a position in the classified service;
- (10) "Secretary" means the secretary of the Personnel Cabinet as provided for in KRS 18A.015;
- (11) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range or less discretion or responsibility;

- (12) "Cabinet" means the Personnel Cabinet provided for in KRS 18A.015, unless the context indicates otherwise;
- (13) "Eligible" refers to a person who has made a passing score on any examination required under KRS 18A.010 to 18A.200 and who has qualified to be placed on a register;
- (14) "Employee" means a person regularly appointed to a position in the state service for which he is compensated on a full-time, part-time, or interim basis;
- (15) ***"Federally funded time-limited employee" means an employee in the unclassified service, appointed to a position that is funded one hundred percent (100%) by a federal grant or grants. An employee appointed to a federally funded time-limited position shall be required to meet the minimum requirements for the classification in which he or she is hired and, subject to the provisions of Section 2 of this Act, shall serve at the pleasure of the appointing authority during a period of time that shall not exceed the life of the federal grant that funds the position. A federally funded time-limited employee who has been aggrieved by notice of disciplinary action or termination, other than an action based on expiration of the federal grant funding, may petition the appointing authority of the agency for the opportunity to be heard by the appointing authority or his designee prior to the effective date of the disciplinary action or termination. The decision of the appointing authority shall be final except as provided by KRS 18A.095(15)(a) and 18A.140. A federally funded time-limited employee shall not have the right of appeal to the Personnel Board except as provided by KRS 18A.095(15)(a) and 18A.140;***
- (16) ***"Federally funded position" means a full-time or a part-time position in which the unclassified employee is eligible for benefits at the same level as a classified employee in a permanent position;***
- (17) "Full-time employee" means an employee in a full-time position;
- (18)~~(16)~~ "Full-time position" means a position, other than an interim position, requiring an employee to work at least thirty-seven and one-half (37.5) hours in a work week, except for the following:
- (a) Positions in the state parks, where the work assigned is dependent upon fluctuations in tourism, may be assigned work hours from twenty-five (25) hours per week during the off seasons and remain in full-time positions; and
 - (b) Positions in health care facilities, which regularly involve three (3) consecutive days of twelve (12) hour shifts to cover weekends, shall be considered full-time;
- (19)~~(17)~~ "Initial probation" means the period of service following initial appointment to any position under KRS 18A.010 to 18A.200 which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred as provided in KRS 18A.110 and by the provisions of this chapter. If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence;
- (20)~~(18)~~ "Interim employee" means an unclassified employee without status who has been appointed to an interim position that shall be less than nine (9) months duration;
- (21)~~(19)~~ "Interim position" means a position established to address a one-time or recurring need of less than nine (9) months duration and exempt from the classified service under KRS 18A.115;

- (22)~~(20)~~ "Part-time employee" means an employee in a part-time position;
- (23)~~(21)~~ "Part-time position" means a position, other than an interim position, requiring an employee to work less than one hundred (100) hours per month;
- (24)~~(22)~~ "Penalization" shall include, but not be limited to, demotion, dismissal, suspension, fines and other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation; and the abridgement or denial of other rights granted to state employees;
- (25)~~(23)~~ "Position" means an office or employment in an agency (whether part-time, full-time, or interim, occupied, or vacant) involving duties requiring the services of one (1) person;
- (26)~~(24)~~ "Promotion" means a change of rank of an employee from a position in one (1) class to a position in another class having a higher minimum salary or carrying a greater scope of discretion or responsibility;
- (27)~~(25)~~ "Promotional probation" means the period of service, consistent with the length of the initial probationary period, following the promotion of an employee with status which must be successfully completed in order for the employee to retain the position to which he has been promoted. If the employee is granted leave in excess of twenty (20) consecutive work days during this period, his promotional probation shall be extended for the same length of time as the granted leave to cover such absence;
- (28)~~(26)~~ "Reallocation" means the correction of the classification of an existing position by placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform;
- (29)~~(27)~~ "Reclassification" shall mean the change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs;
- (30)~~(28)~~ "Reemployment" shall mean the rehiring of an employee with status who has been laid off;
- (31)~~(29)~~ "Reemployment register" means the separate list of names of persons who have been separated from state service by reason of layoff. Reemployment registers shall be used as provided by the provisions of KRS 18A.110, 18A.130, and 18A.135;
- (32)~~(30)~~ "Register" means any official list of eligibles for a particular class and, except as provided in this chapter, placed in rank order according to the examination scores maintained for use in making original appointments or promotions to positions in the classified service;
- (33)~~(31)~~ "Reinstatement" shall mean the restoration of an employee who has resigned in good standing, or who has been ordered reinstated by the board or a court to a position in his former class, or to a position of like status and pay;
- (34)~~(32)~~ "Reversion" means either the returning of a status employee to his or her last position held in the classified service, if vacant, or the returning of a status employee to a vacant position in the same or similar job classification as his or her last position held in the classified service. Reversion occurs after a career employee is terminated other than for cause from the unclassified service or after a status employee fails to successfully complete promotional probation. Reversion after unsuccessful completion of promotional probation,

or in the case of a career employee after termination from the unclassified service, may only be appealed to the Personnel Board under KRS 18A.095(13);

- (35)~~(33)~~ "Seniority" means the total number of months of state service;
- (36)~~(34)~~ "Status" means the acquisition of tenure with all rights and privileges granted by the provisions of this chapter after satisfactory completion of the initial probationary period by an employee in the classified service; *and*
- (37)~~(35)~~ "Transfer" means a movement of any employee from one (1) position to another of the same grade having the same salary ranges, the same level of responsibility within the classified service, and the same salary received immediately prior to transfer.

Section 2. KRS 18A.113 is amended to read as follows:

- (1) It shall be unlawful to coerce employees who may be or who are subject to layoff to resign or retire in lieu of layoff. Dismissals shall comply with statutes relating thereto, and layoffs shall not be utilized as a method of dismissal.
- (2) In the same cabinet, county, and job classification, *federally funded time-limited*, interim and probationary employees shall be laid off before full-time or part-time employees with status. For purposes of layoff, "probationary employee" does not include an employee with status serving a promotional probation. A cabinet shall not transfer positions, including vacant positions, in order to circumvent the provisions of this section.
- (3) If two (2) or more employees subject to layoff in a lay-off plan submitted to the secretary have the same qualifications, the employee with the lesser seniority shall be laid off first.
- (4) An employee who is laid off shall be placed on a reemployment register for the class of position from which he was laid off and for any class for which he is qualified. He shall have the right to test for any class of position for which he is qualified to take an examination. If he passes the examination, he shall be placed on the register for the class.
- (5) For a period of five (5) years, laid-off employees shall be hired before any applicant or eligible except another laid-off employee with greater seniority who is already on such register.
- (6) For a period of five (5) years, a laid-off employee shall not be removed from any register unless:
 - (a) He notifies the cabinet in writing that he no longer desires consideration for a position on such register;
 - (b) He declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county, as the position from which he was laid off;
 - (c) Without good cause, he fails to report for an interview after he has been notified in writing at least ten (10) calendar days prior to the date of the interview;
 - (d) He is unqualified for appointment;
 - (e) He is unable to perform the duties of the class;
 - (f) He has made a false statement of a material fact in his application;
 - (g) He has used or attempted to use political influence or bribery to secure an advantage in connection with his placement on the register;

- (h) He has been convicted of a felony within the preceding five (5) years and his civil rights have not been restored or he has not been pardoned by the Governor;
 - (i) He has been convicted of a job related misdemeanor, except that convictions for violations of traffic regulations shall not constitute grounds for disqualification;
 - (j) He cannot be located by postal authorities at the last address provided by him; or
 - (k) He has otherwise willfully violated the provisions of this chapter.
- (7) When the cabinet is notified by an appointing authority that a laid-off employee has accepted a bona fide offer of appointment to any position, effective on a specified date, his name may be removed from the register for all classes for which the maximum salary is the same as or less than that of the class to which he has been appointed.
- (8) When a laid-off employee is removed from a register he shall be notified in writing and shall be notified of his right to appeal to the board under the provisions of KRS 18A.095.

Section 3. KRS 18A.115 is amended to read as follows:

- (1) The classified service to which KRS 18A.005 to 18A.200 shall apply shall comprise all positions in the state service now existing or hereafter established, except the following:
- (a) The General Assembly and employees of the General Assembly, including the employees of the Legislative Research Commission;
 - (b) Officers elected by popular vote and persons appointed to fill vacancies in elective offices;
 - (c) Members of boards and commissions;
 - (d) Officers and employees on the staff of the Governor, the Lieutenant Governor, the Office of the secretary of the Governor's Cabinet, and the Office of Program Administration;
 - (e) Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Education Professional Standards Board;
 - (f) Employees of Kentucky Educational Television who have been determined to be exempt from classified service by the Kentucky Authority for Educational Television, which shall have sole authority over such exempt employees for employment, dismissal, and setting of compensation, up to the maximum established for the executive director and his principal assistants;
 - (g) One (1) principal assistant or deputy for each person exempted under subsection (1)(e) of this section;
 - (h) One (1) additional principal assistant or deputy as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved are such that the commissioner approves such an addition on petition of the relevant cabinet secretary or department head and such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person exempted under subsection (1)(e) of this section in those instances in which the nature of the functions, size, or complexity of the unit involved

are such that the board may approve such an addition or additions on petition of the department head approved by the commissioner;

- (i) Division directors subject to the provisions of KRS 18A.170. Division directors in the classified service as of January 1, 1980, shall remain in the classified service;
- (j) Physicians employed as such;
- (k) One (1) private secretary for each person exempted under subsection (1)(e), (g), and (h) of this section;
- (l) The judicial department, referees, receivers, jurors, and notaries public;
- (m) Officers and members of the staffs of state universities and colleges and student employees of such institutions; officers and employees of the Teachers' Retirement System; and officers, teachers, and employees of local boards of education;
- (n) Patients or inmates employed in state institutions;
- (o) Persons employed in a professional or scientific capacity to make or conduct a temporary or special inquiry, investigation, or examination on behalf of the General Assembly, or a committee thereof, or by authority of the Governor, and persons employed by state agencies for a specified, limited period to provide professional, technical, scientific, or artistic services under the provisions of KRS 45A.690 to 45A.725;
- (p) Interim employees;
- (q) Officers and members of the state militia;
- (r) State Police troopers and sworn officers in the Department of State Police, Justice Cabinet;
- (s) University or college engineering students or other students employed part-time or part-year by the state through special personnel recruitment programs; provided that while so employed such aides shall be under contract to work full-time for the state after graduation for a period of time approved by the commissioner or shall be participants in a cooperative education program approved by the commissioner;
- (t) Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2);
- (u) Staff members of the Kentucky Historical Society, if they are hired in accordance with KRS 171.311;
- (v) County and Commonwealth's attorneys and their respective appointees;
- (w) Chief district engineers and the state highway engineer;
- (x) Veterinarians employed as such by the Kentucky State Racing Commission or the Kentucky Harness Racing Commission;
- (y) Employees of the Kentucky Peace Corps;
- (z) Employees of the Council on Postsecondary Education;
- (aa) Chief information officer of the Commonwealth;~~and~~
- (ab) Employees of the Kentucky Commission on Community Volunteerism and Service;
and

(ac) Federally funded time-limited employees as defined in Section 1 of this Act.

- (2) Nothing in KRS 18A.005 to 18A.200 is intended, or shall be construed, to alter or amend the provisions of KRS 150.022 and 150.061.
- (3) Nothing in KRS 18A.005 to 18A.200 is intended or shall be construed to affect any nonmanagement, nonpolicy-making position which must be included in the classified service as a prerequisite to the grant of federal funds to a state agency.
- (4) Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and 18A.135.
- (5) Nothing in KRS 18A.005 to 18A.200 shall be construed as precluding appointing officers from filling unclassified positions in the manner in which positions in the classified service are filled except as otherwise provided in KRS 18A.005 to 18A.200.
- (6) The positions of employees who are transferred, effective July 1, 1998, from the Cabinet for Workforce Development to the Kentucky Community and Technical College System shall be abolished and the employees' names removed from the roster of state employees. Employees that are transferred, effective July 1, 1998, to the Kentucky Community and Technical College System under KRS Chapter 164 shall have the same benefits and rights as they had under KRS Chapter 18A and have under KRS 164.5805; however, they shall have no guaranteed reemployment rights in the KRS Chapter 151B or KRS Chapter 18A personnel systems. An employee who seeks reemployment in a state position under KRS Chapter 151B or KRS Chapter 18A shall have years of service in the Kentucky Community and Technical College System counted towards years of experience for calculating benefits and compensation.
- (7) On August 15, 2000, all certified and equivalent personnel, all unclassified personnel, and all certified and equivalent and unclassified vacant positions in the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B personnel system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. The personnel officers who administer the personnel systems under KRS Chapter 151B and KRS Chapter 18A shall exercise the necessary administrative procedures to effect the change in personnel authority. No certified or equivalent employee in the Department for Adult Education and Literacy shall suffer any penalty in the transfer.
- (8) On August 15, 2000, secretaries and assistants attached to policymaking positions in the Department for Technical Education and the Department for Adult Education and Literacy shall be transferred from the personnel system under KRS Chapter 151B to the personnel system under KRS Chapter 18A. The positions shall be deleted from the KRS Chapter 151B system. All records shall be transferred including accumulated annual leave, sick leave, compensatory time, and service credit for each affected employee. No employee shall suffer any penalty in the transfer.

Section 4. KRS 278.050 is amended to read as follows:

- (1) The Public Service Commission shall consist of three (3) members appointed by the Governor with the advice and consent of the Senate. If the Senate is not in session when a

term expires or a vacancy occurs, the Governor shall make the appointment to take effect at once, subject to the approval of the Senate when convened. Appointments to the Public Service Commission made more than ninety (90) days prior to a regular session of the General Assembly shall be subject to confirmation by the Joint Interim Committee on Energy. Each of the three (3) members of the commission shall be appointed on or before the first day of July, 1982, for staggered terms as follows: one (1) shall serve until the first day of July, 1983, one (1) until the first day of July, 1984, and one (1) until the first day of July, 1985, and thereafter for a term of four (4) years and until a successor is appointed and qualified. Each member of the commission shall be a full-time employee as defined in KRS 18A.005(17){(15)}.

- (2) The Governor shall appoint one (1) of the commissioners on the commission to act as chairman thereof and the chairman shall be the chief executive officer of the commission. The Governor shall designate one (1) of the commissioners on the commission to serve as vice chairman thereof and act for the chairman in the latter's absence.
- (3) Vacancies for unexpired terms shall be filled in the same manner as original appointments, but the appointee shall hold office only to the end of the unexpired term.

Section 5. Employment in a federally funded position, as defined in subsection (16) of Section 1 of this Act, shall not exceed the original grant period or any renewal thereof. A copy of the relevant section or sections of the federal grant which relate to the establishment of a time frame for the position shall become part of the employee's personnel file and shall be reported and justified to the State Personnel Board.

Approved April 9, 2004