

**CHAPTER 107****( HB 46 )**

AN ACT relating to the promotion of living donor human organ and bone marrow donation.

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

➔Section 1. A NEW SECTION OF KRS CHAPTER 18A IS CREATED TO READ AS FOLLOWS:

**(1) As used in this section:**

- (a) "Human organ" means any part of a human intestine, kidney, liver, lung, or pancreas;**
- (b) "Living donor" means a full-time employee of the executive, judicial, or legislative branch of the Commonwealth of Kentucky who is absent from work due to medical reasons associated with donating a human organ or bone marrow; and**
- (c) 1. "Living organ donor leave" means a paid leave of absence provided to a living donor for time off work from the donation of a human organ or bone marrow and the recovery time associated with the donation; and**
- 2. "Living organ donor leave" does not include any other form of paid leave that has been granted by the living donor's employer.**

**(2) The Commonwealth of Kentucky Living Organ Donor Leave Program is created. A living donor may request to receive living organ donor leave for donating a human organ or bone marrow.**

**(3) Before being approved to receive any amount of living organ donor leave, the living donor shall submit verification of the human organ or bone marrow donation procedure to his or her employer.**

**(4) Once approved, a living donor shall be granted living organ donor leave in an amount of:**

- (a) Two hundred forty (240) hours for each human organ donation; and**
- (b) Forty (40) hours for each bone marrow donation.**

**(5) A living donor may be approved to receive living organ donor leave each time the living donor donates a human organ or bone marrow.**

**(6) A living donor shall not be required to use compensatory time, sick leave, or annual leave before being eligible to receive living organ donor leave.**

**(7) While a living donor is on living organ donor leave, he or she shall be deemed a state employee and shall receive the same treatment with respect to salary, wages, and employee benefits.**

**(8) For purposes of determining seniority, pay or pay advancement, performance awards, and the receipt of any benefit that may be affected by a leave of absence, the service of the living donor shall be considered uninterrupted by the leave of absence.**

**(9) The secretary of the Personnel Cabinet shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement the provisions of this section.**

➔Section 2. KRS 18A.025 is amended to read as follows:

**(1) The Governor shall appoint the secretary of personnel as provided in KRS 18A.015, who shall be considered an employee of the state. The secretary shall be a graduate of an accredited college or university and have at least five (5) years' experience in personnel administration or in related fields, have known sympathies with the merit principle in government and shall be dedicated to the preservation of this principle. Additional education may be substituted for the required experience and additional experience may be substituted for the required education.**

**(2) The secretary of the Personnel Cabinet or the secretary's designee, shall be responsible for the coordination of the state's affirmative action plan, established by KRS 18A.138.**

**(3) There is established within the Personnel Cabinet the following offices, departments, and divisions, each of which shall be headed by either a commissioner, executive director, or division director appointed by the secretary, subject to the prior approval of the Governor pursuant to KRS 12.040 or 12.050, depending on the**

level of the appointment, except that the Kentucky Employees Deferred Compensation Authority shall be headed by an executive director who shall be appointed by the authority's board of directors:

- (a) Office of the Secretary, which shall be responsible for communication with state employees about personnel and other relevant issues and for the administration and coordination of the following:
  1. Office of Employee Relations, composed of the following programs:
    - a. Workers' Compensation Program pursuant to KRS 18A.375;
    - b. Sick leave Sharing Program, pursuant to KRS 18A.197;
    - c. Annual Leave Sharing Program, pursuant to KRS 18A.203;
    - d. Health and Safety Program;
    - e. Employee Assistance Program;
    - f. Employee Incentive Programs, pursuant to KRS 18A.202;~~[-and]~~
    - g. Employee Mediation Program; *and*
    - h. *Living Organ Donor Leave Program, pursuant to Section 1 of this Act;***
  2. Office of Administrative Services, which shall be responsible for the Personnel Cabinet's administrative functions, composed of the following programs:
    - a. Division of Technology Services;
    - b. Division of Human Resources; and
    - c. Division of Financial Services;
  3. Office of Legal Services, which shall provide legal services to the Personnel Cabinet and to executive branch agencies and their representatives upon request;
  4. Office of Diversity, Equality, and Training, which shall coordinate and implement diversity initiatives for state agencies, the affirmative action plan established by KRS 18A.138, the state Equal Employment Opportunity Program, and the Minority Management Trainee Program;
  5. Governmental Services Center, which shall be responsible for employee and managerial training and organizational development;
  6. Kentucky Public Employees Deferred Compensation Authority, which shall maintain a deferred compensation plan for state employees; and
  7. Office of Public Affairs, which shall assist in all aspects of developing and executing the strategic direction of the cabinet;
- (b) Department of Human Resources Administration, which shall be composed of the:
  1. Division of Employee Management, which shall be responsible for payroll, records, classification, and compensation. The division shall also be responsible for implementing lay-off plans mandated by KRS 18A.113 to 118A.1132 and shall monitor and assist state agencies in complying with the provisions of the federal Fair Labor Standards Act. The division shall:
    - a. Maintain the central personnel files mandated by KRS 18A.020 and process personnel documents and position actions;
    - b. Operate and maintain a uniform payroll system and certify payrolls as required by KRS 18A.125;
    - c. Maintain plans of classification and compensation for state service and review and evaluate the plans; and
    - d. Coordinate and implement the employee performance evaluation systems throughout state government; and
  2. Division of Career Opportunities, which shall be responsible for employment counseling, applicant processing, employment register, and staffing analysis functions. The division shall:
    - a. Operate a centralized applicant and employee counseling program;

- b. Operate, coordinate, and construct the examination program for state employment;
  - c. Prepare registers of candidate employment; and
  - d. Coordinate outreach programs, such as recruitment and the Administrative Intern Program; and
- (c) Department of Employee Insurance, which shall be responsible for the:
- 1. Health Insurance Program, pursuant to KRS 18A.225;
  - 2. Flexible Benefit Plan, pursuant to KRS 18A.227;
  - 3. Division of Insurance Administration, which shall be responsible for enrollment and service functions;
  - 4. Division of Financial and Data Services, which shall be responsible for fiscal and data analysis functions; and
  - 5. Life Insurance Program pursuant to KRS 18A.205 to 18A.220.
- (4) The cabinet shall include principal assistants appointed by the secretary, pursuant to KRS 12.050 or 18A.115(1)(g) and (h), as necessary for the development and implementation of policy. The secretary may employ, pursuant to the provisions of this chapter, personnel necessary to execute the functions and duties of the department.

➔Section 3. KRS 18A.110 is amended to read as follows:

- (1) The secretary shall promulgate comprehensive administrative regulations for the classified service governing:
- (a) Applications and examinations;
  - (b) Certification and selection of eligibles;
  - (c) Classification and compensation plans;
  - (d) Incentive programs;
  - (e) Lay-offs;
  - (f) Registers;
  - (g) Types of appointments;
  - (h) Attendance; hours of work; compensatory time; annual, court, military, sick, voting, *living organ donor*, and special leaves of absence, provided that the secretary shall not promulgate administrative regulations that would reduce the rate at which employees may accumulate leave time below the rate effective on December 10, 1985; and
  - (i) Employee evaluations.
- (2) The secretary shall promulgate comprehensive administrative regulations for the unclassified service.
- (3) (a) Except as provided by KRS 18A.355, the secretary shall not promulgate administrative regulations that would reduce an employee's salary; and
- (b) As provided by KRS 18A.0751(4)(e), the secretary may submit a proposed administrative regulation providing for an initial probationary period in excess of six (6) months to the board for its approval.
- (4) The secretary may promulgate administrative regulations to implement state government's affirmative action plan under KRS 18A.138.
- (5) (a) The administrative regulations shall comply with the provisions of this chapter and KRS Chapter 13A, and shall have the force and effect of law after compliance with the provisions of KRS Chapters 13A and 18A and the procedures adopted thereunder;
- (b) Administrative regulations promulgated by the secretary shall not expand or restrict rights granted to, or duties imposed upon, employees and administrative bodies by the provisions of this chapter; and
- (c) No administrative body other than the Personnel Cabinet shall promulgate administrative regulations governing the subject matters specified in this section.

- (6) Prior to filing an administrative regulation with the Legislative Research Commission, the secretary shall submit the administrative regulation to the board for review.
- (a) The board shall review the administrative regulation proposed by the secretary not less than twenty (20) days after its submission to it;
  - (b) Not less than five (5) days after its review, the board shall submit its recommendations in writing to the secretary;
  - (c) The secretary shall review the recommendations of the board and may revise the proposed administrative regulation if he deems it necessary; and
  - (d) After the secretary has completed the review provided for in this section, he may file the proposed administrative regulation with the Legislative Research Commission pursuant to the provisions of KRS Chapter 13A.
- (7) The administrative regulations shall provide:
- (a) For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class. The secretary shall allocate the position of every employee in the classified service to one (1) of the classes in the plan. The secretary shall reallocate existing positions, after consultation with appointing authorities, when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The occupant of a position being reallocated shall continue to serve in the reallocated position with no reduction in salary;
  - (b) For a pay plan for all employees in the classified service, after consultation with appointing authorities and the state budget director. The plan shall take into account such factors as:
    1. The relative levels of duties and responsibilities of various classes of positions;
    2. Rates paid for comparable positions elsewhere taking into consideration the effect of seniority on such rates; and
    3. The state's financial resources.

Amendments to the pay plan shall be made in the same manner. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the class of position in which he is employed, provided that the full amount of the annual increment provided for by the provisions of KRS 18A.355, and the full amount of an increment due to a promotion, salary adjustment, reclassification, or reallocation, shall be added to an employee's base salary or wages;
  - (c) For open competitive examinations to test the relative fitness of applicants for the respective positions. The examinations shall be announced publicly and applications accepted at least ten (10) days prior to certification of a register, and may be advertised through the press, radio, and other media. The secretary shall continue to receive applications and examine candidates on a continuous basis long enough to assure a sufficient number of eligibles to meet the needs of the service. Except as provided by this chapter, he shall add the names of successful candidates to existing eligible lists in accordance with their respective ratings. The secretary shall be free to use any investigation of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness, which in his judgment, serves the need to discover the relative fitness of applicants;
  - (d) As provided by this chapter, for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Except as provided by this chapter, an eligible's score shall expire automatically one (1) year from the date of testing, unless the life of the score is extended by action of the secretary for a period not to exceed one (1) additional year. Except for those individuals exercising reemployment rights, all eligibles may be removed from the register when a new examination is established;
  - (e) For the rejection of candidates or eligibles who fail to comply with reasonable requirements of the secretary in regard to such factors as age, physical condition, training, and experience, or who have attempted any deception or fraud in connection with an examination;

- (f) Except as provided by this chapter, for the appointment of a person whose score is included in the five (5) highest scores earned on the examination;
  - (g) For annual, sick, and special leaves of absence, with or without pay, or reduced pay, after approval by the Governor as provided by KRS 18A.155(1)(d);
  - (h) For lay-offs, in accordance with the provisions of KRS 18A.113, 18A.1131, and 18A.1132, by reasons of lack of work, abolishment of a position, a material change in duties or organization, or a lack of funds;
  - (i) For the development and operation of programs to improve the work effectiveness of employees in the state service, including training, whether in-service or compensated educational leave, safety, health, welfare, counseling, recreation, employee relations, and employee mobility without written examination;
  - (j) For a uniform system of annual employee evaluation for classified employees, with status, that shall be considered in determining eligibility for discretionary salary advancements, promotions, and disciplinary actions. The administrative regulations shall:
    - 1. Require the secretary to determine the appropriate number of job categories to be evaluated and a method for rating each category;
    - 2. Provide for periodic informal reviews during the evaluation period which shall be documented on the evaluation form and pertinent comments by either the employee or supervisor may be included;
    - 3. Establish a procedure for internal dispute resolution with respect to the final evaluation rating;
    - 4. Permit a classified employee, with status, who receives either of the two (2) lowest possible evaluation ratings to appeal to the Personnel Board for review after exhausting the internal dispute resolution procedure. The final evaluation shall not include supervisor comments on ratings other than the lowest two (2) ratings;
    - 5. Require that an employee who receives the highest possible rating shall receive the equivalent of two (2) workdays, not to exceed sixteen (16) hours, credited to his or her annual leave balance. An employee who receives the second highest possible rating shall receive the equivalent of one (1) workday, not to exceed eight (8) hours, credited to his or her annual leave balance; and
    - 6. Require that an employee who receives the lowest possible evaluation rating shall either be demoted to a position commensurate with the employee's skills and abilities or be terminated; and
  - (k) For other administrative regulations not inconsistent with this chapter and KRS Chapter 13A, as may be proper and necessary for its enforcement.
- (8) For any individual hired or elected to office before January 1, 2015, and paid through the Kentucky Human Resources Information System, the Personnel Cabinet shall not require payroll payments to be made by direct deposit or require the individual to use a Web-based program to access his or her salary statement.
- (9) To the extent that KRS 16.010 to 16.199 and administrative regulations promulgated by the commissioner of the Department of Kentucky State Police under authority granted in KRS Chapter 16 conflict with this section or any administrative regulation promulgated by the secretary pursuant to authority granted in this section, the provisions of KRS Chapter 16 shall prevail.

**Signed by Governor April 24, 2020.**