

## **101 KAR 1:335. Employee actions.**

RELATES TO: KRS 18A.075(1), 18A.0751(1), (4), 18A.115(4)

STATUTORY AUTHORITY: KRS 18A.075

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1) and (4) require the Personnel Board to promulgate administrative regulations for the classified service governing demotion, transfer, reinstatement, reemployment, and discipline. KRS 18A.115(4) establishes requirements governing the promotion of a career employee to a position exempted from classified service. This administrative regulation establishes the method for determining an employee's work station, the requirements governing a demotion, transfer, or reinstatement of an employee, and requirements relating to written reprimands.

Section 1. Definition. "Class series" means a group of positions that are similar as to the duties performed and have:

- (1) Varying levels of:
  - (a) Discretion;
  - (b) Responsibility; and
  - (c) Minimum requirements of training, experience, or skill; and
- (2) Schedules of compensation that are commensurate with minimum requirements.

Section 2. Work Station.

- (1) The official work station of an employee assigned to an office shall be the street address where the office is located.
- (2) The official work station of a field employee shall be that address to which the employee is assigned at the time of appointment to the employee's current position.
- (3) Except as provided by Sections 3, 4, and 5 of this administrative regulation, an appointing authority may assign an employee to work at a site other than his or her work station if the:
  - (a) Site is within the employee's county of employment; and
  - (b) Assignment is not a transfer, demotion, or reinstatement.

Section 3. Demotion.

- (1) A demotion for cause shall be intra-agency.
- (2) Voluntary demotion.
  - (a) A voluntary demotion shall be made if an employee with status requests a voluntary demotion on the Voluntary Transfer/ Demotion/ Salary Retention Agreement Form prescribed by the Personnel Cabinet.
  - (b) The form shall include:
    1. A statement of the reason for the request;
    2. The effective date of the demotion;
    3. The position from which the employee requests demotion;
    4. The position to which the employee will be demoted; and
    5. A statement that the employee waives the right to appeal the demotion.
  - (c) The agency shall forward a copy of the request to the Secretary of Personnel.
- (3) A voluntary demotion shall be interagency or intra-agency.

Section 4. Transfers.

- (1) The transfer of an employee with status shall conform to the requirements established in this section.
- (2)
  - (a) A transfer shall be on a voluntary or involuntary basis.

- (b) An appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.
- (c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.
- (3) Involuntary transfer, same county.
  - (a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.
  - (b) The notice shall:
    - 1. Indicate that the employee:
      - a. Has been selected for transfer; and
      - b. Is required to report to the new work station; and
    - 2. State the:
      - a. New work station;
      - b. Reason for the transfer;
      - c. Effective date of the transfer; and
      - d. Right of the employee to appeal the transfer to the board within sixty (60) days of receipt of the notice of involuntary transfer, excluding the date the notice is received.
  - (c) A copy of the notice shall be forwarded to the Secretary of Personnel.
  - (d) An employee shall report to the new work station upon the date specified in the notice.
- (4) Involuntary transfer, out of county. If an involuntary transfer is to a position with a work station in a different county:
  - (a) An employee shall be entitled to travel and moving expenses as provided by 200 KAR 2:006;
  - (b) An employee shall receive a written notice of involuntary transfer at least thirty (30) days prior to the effective date of the transfer;
  - (c) The notice shall contain:
    - 1. The information specified in subsection (3)(b) of this section; and
    - 2. A statement that the employee is entitled to:
      - a. Reimbursement of travel expenses incurred within thirty (30) days of the effective date of the notice; and
      - b. Moving expenses, if any.
- (5) An involuntary transfer shall be intra-agency.
- (6) Voluntary transfer.
  - (a) Prior to a voluntary transfer, an employee with status shall request a voluntary transfer on the Voluntary Transfer/ Demotion/ Salary Retention Agreement Form prescribed by the Personnel Cabinet.
  - (b) The form shall include:
    - 1. A statement of the reason for the request;
    - 2. The effective date of the transfer;
    - 3. The position, including identifying number, from which the employee requests a transfer;
    - 4. The position, including identifying number, to which the employee requests a transfer; and
    - 5. A statement that the employee waives the right to appeal the transfer.
  - (c) The agency shall forward a copy of the request to the Secretary of Personnel.
- (7) A voluntary transfer shall be interagency or intra-agency.

## Section 5. Reinstatement.

- (1) A request for reinstatement shall be submitted by the appointing authority to the secretary of Personnel.
- (2) The request shall include a finding that the candidate for reinstatement:
  - (a) Meets the current qualifications for the job classification to which the employee is being reinstated; and
  - (b) Has previously held status at that grade level or higher.
- (3) If the reinstatement is to a classification outside of the classification series where the employee has previously held status, the candidate shall pass the appropriate examination prior to reinstatement.
- (4) The request for reinstatement shall contain a copy of the board's order ordering reinstatement, if applicable.

#### Section 6. Written Reprimand.

- (1) An employee or former employee may petition the Personnel Cabinet Secretary for removal of a written reprimand and all related documentation from the employee's official personnel file after a period of three (3) years.
  - (a) An employee's request shall not be granted if the employee has received any disciplinary action or written reprimand in the three (3) years prior to the request for removal.
  - (b) A petition for removal shall:
    1. Be made by the employee, and be dated and signed; and
    2. Include the following information:
      - a. The employee's current position, agency, work phone number, and work address;
      - b. The employee's immediate supervisor at the time of the petition for removal;
      - c. The date the written reprimand was issued;
      - d. A statement by the employee that the employee has not received any disciplinary actions or written reprimands in the three (3) years prior to the petition; and
      - e. A statement that the information contained in the petition is correct and complete to the best of the employee's knowledge, and that the employee has provided a copy of the petition to the employee's current appointing authority.
  - (c) The petition for removal shall be mailed by first-class mail or hand-delivered to the office of the Personnel Cabinet Secretary.
- (2) A petition for removal of a written reprimand shall be subject to the approval of the Personnel Cabinet Secretary.
  - (a) The Personnel Cabinet Secretary shall approve or deny the petition for removal within thirty (30) days of receipt of the petition.
  - (b) If the petition is denied, the Personnel Cabinet Secretary shall notify the employee in writing and provide justification for denial. The decision by the secretary with respect to the petition shall be final and not appealable to the Personnel Board.
  - (c) If the petition is approved, the Personnel Cabinet Secretary shall notify the employee and the appointing authority of the employee's agency in writing of the approval.
- (3) Upon removal from an employee's official personnel file maintained by the Personnel Cabinet, a written reprimand shall be handled as established in this subsection.
  - (a) The written reprimand shall be delivered to the Office of Legal Services and remain in the custody and care of the Office of Legal Services.
  - (b) The Office of Legal Services shall maintain the document as confidential work-product materials for the availability or use in any future legal proceeding.
  - (c) If no legal proceeding involving the employee's personnel file has been filed within five (5) years of receipt, the written reprimand shall be permanently destroyed.

(d) Upon removal from the official personnel file, but prior to destruction, a written reprimand shall not be considered as part of any personnel action.

(e) The employing agency shall be notified by the Personnel Cabinet of the removal of a written reprimand from an employee's official personnel file.

Section 7. Incorporation by Reference.

(1) "Voluntary Transfer/Demotion/ Salary Retention Agreement Form", March 2011, Personnel Cabinet, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Cabinet, State Office Building 501 High Street, 3rd Floor, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(15 Ky.R. 1715; Am. 2008; eff. 3-9-89; 17 Ky.R. 95; eff. 9-12-90; 19 Ky.R. 1633; 2234; eff. 4-7-93; 20 Ky.R. 826; 1567; eff. 12-6-93; 24 Ky.R. 1751; 2106; eff. 4-13-98; 34 Ky.R. 2419; 35 Ky.R. 256; eff. 9-5-08; 38 Ky.R. 809; 1115; eff. 1-6-12; Certified to be amended; filing deadline 8-25-2021.)