

PERSONNEL CABINET
(Amendment)

101 KAR 2:190. Employee performance management system.

RELATES TO: KRS 18A.005, 18A.110

STATUTORY AUTHORITY: KRS 18A.110(1)(i), (2), (7)(j)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.110(1)(i) and (7)(j) require the Secretary of the Personnel Cabinet to promulgate comprehensive administrative regulations for classified service employees to establish a uniform system of annual employee evaluations for classified employees. KRS 18A.110(2) requires the secretary to promulgate comprehensive administrative regulations for the unclassified service. This administrative regulation establishes the uniform employee performance evaluation system for performance years beginning in 2020.

Section 1. General Provisions.

(1) The provisions of this administrative regulation shall be effective beginning with 2020 performance year activities.

(2) The annual performance period shall be one (1) calendar year beginning on January 1.

(3) Annual performance evaluations shall be completed no later than January 31 after the end of the annual performance period.

(4) All agencies shall use the Annual Performance Evaluation process established by the secretary.

(5)

(a) Except as provided in paragraph (b) or (c) of this subsection, the first line supervisor of an employee when the evaluation is due shall be the evaluator unless otherwise directed by the appointing authority and approved by the Personnel Cabinet.

(b) If the first line supervisor has not supervised the employee for at least sixty (60) calendar days during the performance year, the next line supervisor who meets the sixty (60) day requirement shall be the evaluator for the final evaluation.

(c) If an employee changes jobs or reports to a different supervisor on or before November 1 of the performance year, the agency shall transfer all performance evaluation documentation for the performance year to the new evaluator for incorporation in the year-end interim review and final evaluation.

(d) If an employee changes jobs or reports to a different supervisor after November 1 of the performance year, the year-end interim review and final evaluation shall be completed by the former supervisor.

(6)

(a) Except as provided in paragraph (b) of this subsection, the evaluator shall establish an annual performance plan for each eligible employee no later than January 31 after the start of the annual performance period.

(b) If an employee's position or job title changes during the performance year, the evaluator shall establish a new performance plan no later than thirty (30) calendar days after the start of the position or job title change unless otherwise directed by the appointing authority and approved by the Personnel Cabinet, or directed by the Personnel Cabinet. The new performance plan shall become a part of the original annual performance evaluation documentation.

(7) The evaluator shall meet with the employee when completing the performance plan to discuss job duties and expectations.

(8) The evaluator shall present and explain all documentation relevant to an employee's annual performance evaluation.

(9) The Personnel Cabinet or approved agency personnel shall provide supervisor evaluation training on the annual performance evaluation process.

(a) The appointing authority shall require that supervisor evaluation training is completed prior to completing performance planning, interim reviews, and final evaluations of employees.

(b) The Personnel Cabinet and participating agencies shall monitor compliance with supervisor evaluation training requirements.

(10) An employee shall complete orientation to the performance evaluation process prior to January 1 of the employee's initial performance evaluation period.

Section 2. Employee Eligibility. Annual performance evaluations shall be completed for all full-time classified employees with status at the beginning of the performance year who have remained in continuous merit status throughout the performance year.

Section 3. Performance Planning.

(1) The annual performance plan shall specify job competencies, goals, and expectations for the employee in categories established by the secretary.

(2) The employee's job duties and goals shall be consistent with the position description.

(3) The evaluator shall develop the annual performance plan in consultation with the employee.

(a) The employee and evaluator shall certify that the employee has met with the evaluator and is aware of the annual performance plan.

(b) The next line supervisor shall certify that he or she has reviewed the competencies and goals.

Section 4. Performance Coaching and Feedback.

(1) Modification of the performance plan may occur during the annual performance period if the changes are consistent with the duties reflected on an employee's position description. The evaluator shall meet with the employee to review changes to the performance plan.

(2) Interim reviews shall be required during a performance year as specified by the secretary.

(a) The evaluator shall document the interim reviews.

1. Interim reviews shall not contain a rating.

2. The interim reviews shall contain comments by the evaluator for each competency and goal.

(b) The evaluator shall schedule interim reviews to discuss performance. The employee and evaluator shall certify that the interim reviews occurred.

(c) For consideration in the final evaluation, the employee may submit pertinent comments relating to the interim review within five (5) working days of the interim review meeting. The appointing authority may extend the comment period if the employee is unable to submit pertinent comments within five (5) working days.

(d) The mid-year interim period is January 1 through June 30, and the year-end interim period is July 1 through December 31.

(e) The mid-year interim review shall be completed no later than July 31 after the end of the interim review period, and the year-end interim review shall be completed no later than January 31 after the end of the interim review period.

(f) Interim reviews shall document performance to justify the annual performance evaluation rating.

Section 5. Final Evaluations and Ratings.

(1) The evaluator and the employee shall meet no later than January 31 after the performance period ends to discuss and explain the final evaluation.

- (2) Eligible employees shall be evaluated on job competencies, goals, and expectations set forth in his or her performance plan.
- (3) The final evaluation shall consist of a defined rating as established by the secretary.
- (4) Unresolved disagreements on ratings or any aspect of the annual performance evaluation shall be reviewed through the reconsideration process established in Section 7 of this administrative regulation.
- (5) Signatures of the evaluator, employee, and next line supervisor shall be required on the final evaluation. For the purpose of evaluating or managing the performance of the evaluator, the next line supervisor's signature shall certify that he or she is aware of the evaluation and has reviewed it.

Section 6. Performance Incentives. Annual leave shall be awarded as a performance incentive as specified in KRS 18A.110(7)(j).

Section 7. Reconsideration and Appeal Process.

- (1) Within five (5) working days of the final evaluation meeting, an employee may request reconsideration of the annual performance evaluation by the evaluator.
- (2) If the employee refuses to sign the final evaluation, the evaluation shall not be eligible for reconsideration.
- (3) Within five (5) working days of the receipt of the request for reconsideration, the initial reconsideration shall be conducted by the evaluator.
- (4) The next line supervisor shall review the request for reconsideration within ten (10) working days of receipt of the request for reconsideration.
- (5) The next line supervisor shall inform both the employee and evaluator of the decision.
- (6) If either the evaluator or the next line supervisor does not respond to the request for reconsideration in the designated time period, the employee may submit a written request to their appointing authority for response to the request for reconsideration and compliance with this section. The written request to the appointing authority shall be submitted within ten (10) working days after expiration of the time periods established in subsections (3) and (4) of this section.
- (7) Within sixty (60) calendar days after an employee has received the reconsideration decision, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

Section 8. Evaluation-based Agency Action. If an employee receives an overall rating of unacceptable, the agency shall:

- (1) Demote the employee to a position commensurate with the employee's skills and abilities; or
- (2) Terminate the employee.

Section 9. Exceptions.

- (1) Except as requested in writing by the appointing authority and authorized by the secretary, all agencies shall comply with the provisions of this administrative regulation.
- (2) If the secretary approves an exception, the exception decision shall be sent, in writing, to the appointing authority within ten (10) working days of receiving the request for exception.
- (3) The written justification and the secretary's approval of the exception request shall be placed in the employee's agency personnel file.

Section 10. Applicability to the Unclassified Service.

- (1) Within an organizational unit, all unclassified employees in KRS Chapter 18A federally funded time-limited or grant funded time-limited positions may be subject to the provisions of this administrative regulation at the option of the appointing authority,

except unclassified employees shall not be eligible for the performance incentive award specified in KRS 18A.110(7)(j).

(2) Evaluations performed pursuant to this section are final and shall not be appealable to the Personnel Board except as provided by KRS 18A.005(15).

Section 11. Applicability to Non-KRS Chapter 18A State Employees.

(1) With approval of the Personnel Cabinet, and at the request of the appointing authority, non-KRS Chapter 18A state employees may be subject to the provisions of this administrative regulation.

(2) Evaluations performed pursuant to this section are final and shall not be appealable to the Kentucky Personnel Board except as provided by KRS 18A.095(14)(a).

(45 Ky.R. 3592; 46 Ky.R. 409; eff. 9-6-2019; 48 Ky.R. 2802; eff. 9-27-2022.)

GERINA D. WHETHERS, Secretary

APPROVED BY AGENCY: April 11, 2022

FILED WITH LRC: April 15, 2022 at 9:25 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on June 21, 2022 at 10:00 a.m. at 501 High Street, 3rd floor, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until 11:59 p.m. on June 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Rosemary Holbrook, Assistant General Counsel, Office of Legal Services, 501 High Street, 3rd floor, Frankfort, Kentucky 40601, phone (502) 564-7430, fax (502) 564-0224, email RosemaryG.Holbrook@ky.gov.