

**GENERAL GOVERNMENT CABINET**  
**Personnel Board**  
**(Amendment)**

**101 KAR 1:365. Appeal and hearing procedures.**

RELATES TO: KRS Chapter 13B, 18A.075, 18A.0751, 18A.095, 344.030

STATUTORY AUTHORITY: KRS 13B.170, 18A.075, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations to carry out the provisions of KRS Chapter 13B and enact administrative hearing procedures. KRS 18A.075 ~~provides that~~~~requires~~ the Personnel Board ~~shall~~~~to~~ promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 ~~to~~~~through~~ 18A.200. KRS 18A.0751 ~~provides that~~~~requires~~ the Personnel Board ~~shall~~~~to~~ promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation establishes Personnel Board hearing procedures.

Section 1. Definitions.

- (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).
- (2) "Qualified individual with a disability" is defined by KRS 344.030(1).
- (3) "Reasonable accommodation" is defined by KRS 344.030(6).
- (4) "Religion" is defined by KRS 344.030(7).
- (5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

Section 3. Filing.

- (1) An appeal or a document relating to an appeal shall be filed with the Personnel Board through the office of the executive director within the time period established in KRS 18A.095.
- (2)
  - (a) An appeal, motion, request, objection, exception, response, witness list, or other document may be filed by a party with the board by means of facsimile transmission or other electronic means including email.
  - (b) If a party transmits a document to the board by facsimile transmission or other electronic means, the party shall attempt to transmit the document to all parties by the same method.
- (3) To be timely filed, a document transmitted by facsimile or other electronic means shall be received by the board within the statutory or regulatory times established for filing and be received by the board no later than midnight on the last day for filing.
- (4) The submission of an original copy of a facsimile transmission or email shall not be required, unless requested.
- (5) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal without the advance written permission of an appointing authority in their employing agency.
- (6) An appeal shall be heard in Franklin County, Kentucky.

Section 4. Designation of Hearing Officer.

- (1) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to an appeal.
- (2) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief hearing officer.

(3) If an appeal will be heard by the full board, the board shall designate a chief hearing officer.

#### Section 5. Continuances.

(1) A continuance of a scheduled hearing may be granted by a hearing officer for good cause.

(2) The hearing officer ~~has~~<sup>shall have</sup> the discretion to require that a request for continuance shall:

- (a) Be written;
- (b) State the reason for the request;
- (c) Include proposed dates for rescheduling the hearing; and
- (d) Be filed with the board.

(3) The hearing officer ~~has~~<sup>shall have</sup> the discretion to require that any objection to a request for continuance shall:

- (a) Be written;
- (b) State the reason for the objection to the request for continuance; and
- (c) Be filed with the board.

(4)

(a) At the direction of the hearing officer, the executive director may execute and transmit to all parties an interim order either granting or denying the request for continuance.

(b) If the request for continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

#### Section 6. Prehearing Procedures.

(1) A motion, request, or filing shall be in writing, filed with the board through the office of the executive director, and served on all parties.

(2) Unless an interim order provides for review by the board prior to the conclusion of a hearing, which shall only be granted at the sole discretion of the hearing officer, the board shall review an interim order when it considers the recommended order, record, and exceptions.

(3) If an employee retains counsel subsequent to filing an appeal, that attorney may be required to file a written entry of appearance.

(4) An employee shall notify all parties and the board in writing of a change of address.

(5)

(a) A Kentucky Personnel Board subpoena form shall be available in the office of the executive director and shall be issued by the executive director.

(b) Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(6) A deposition may be taken in an extraordinary circumstance and upon authorization by the hearing officer. A request to take a deposition shall be filed at least fifteen (15) calendar days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.

(7) At the discretion of the hearing officer, two (2) or more appeals that involve the same or similar facts may be consolidated. Upon motion of a party, or upon the hearing officer's own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

(8) An agreed settlement shall be submitted in writing for review by the Personnel Cabinet Secretary and final action by the board.

#### Section 7. Conduct of Hearing.

(1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.

(2) A party shall provide at least four (4) copies of an exhibit that is to be introduced as evidence. The parties may exchange documents through appropriate electronic means, including email. The hearing officer shall have the discretion to appropriately fashion the evidentiary record at all times.

#### Section 8. Board Review and Action.

(1) A response to a written exception to a recommended order may be filed by a party within fifteen (15) calendar days after the date the written exception is filed with the board. A response shall be:

- (a) In writing; and
- (b) Served on all parties.

(2) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:

- (a) In writing; and
- (b) Filed with the board within fifteen (15) days of issuance of a recommended order.

(3) A final order shall be prepared, executed, and entered at the direction of the board by the secretary to the board.

#### Section 9. Incorporation by Reference.

(1) The following forms are incorporated by reference:

- (a) "Kentucky Personnel Board Appeal Form", 6-29-2023~~[1-2018]~~; and
- (b) "Kentucky Personnel Board Subpoena Form", 2-90.

(2) These forms may be inspected, copied, or obtained at the office of the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. and the Web site of the Personnel Board, [personnelboard.ky.gov](http://personnelboard.ky.gov).

*MARK A. SIPEK, Executive Director*

APPROVED BY AGENCY: July 11, 2023

FILED WITH LRC: July 11, 2023 at 1 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2023, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by 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 canceled. 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 through September 30, 2023. 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: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email [stafford.easterling@ky.gov](mailto:stafford.easterling@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

**Contact Person: Stafford Easterling**

**(1) Provide a brief summary of:**

**(a) What this administrative regulation does:**

This administrative regulation governs the Personnel Board's appeal and hearing procedures.

**(b) The necessity of this administrative regulation:**

This regulation is necessary in order to provide more granular detail as to the Personnel Board's procedures and guidelines as to how the Board will process appeals and conduct hearings.

**(c) How this administrative regulation conforms to the content of the authorizing statutes:**

KRS 18A.075, 18A.0751, and KRS 13B.170 mandate that the Board promulgate administrative regulations that detail the procedures and guidelines that must be used by the Board when conducting hearings and processing appeals.

**(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:**

This regulation will continue to enable the Board to ensure the effective administration of the merit system in addition to assisting the Board in meeting its statutory requirements to establish appeal and hearing procedures.

**(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:**

**(a) How the amendment will change this existing administrative regulation:**

The language of the administrative regulation itself will not change. This amendment merely effectuates alterations to the Personnel Board Appeal form already incorporated by reference.

**(b) The necessity of the amendment to this administrative regulation:**

The Personnel Board's Appeal Form, which is incorporated by reference, need to be modernized.

**(c) How the amendment conforms to the content of the authorizing statutes:**

KRS 18A.075, 18A.0751, and KRS 13B.170 mandate that the Board promulgate regulations that detail the procedures and guidelines that must be used by the Board when conducting hearings and processing appeals. The updating of the form does not change the content of this regulation and the amendment of the form attached by reference conforms with the Board's mandate to effectively administer state government's merit system, as provided by KRS Chapter 18A.

**(d) How the amendment will assist in the effective administration of the statutes:**

Updating the Personnel Board's Appeal form will allow the Board to capture more information about the nature of an appeal before an initial pre-hearing conference, which is a more efficient use of the Board's extremely limited resources, in addition to making it easier for those utilizing the Board's Appeal form to submit information relevant to their appeals, which should permit all participants in Board appeals to more effectively resolve appeal through a more transparent streamlined process.

**(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:**

This regulation affects all state government agencies and all individuals with rights secured by KRS Chapter 18A, including, primarily, current state employees.

**(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:**

**(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:**

No entity identified in the Board's response will be required to undertake any significant new actions in order to comply with the amendment. Such entities will merely be required to handle and distribute the new amended Personnel Board Appeal form in the exact same manner that they handled and distributed the Board's old, unamended Appeal form.

**(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):**

There will be minimal additional cost to the entities to comply with this regulation. The only foreseeable cost would be incurred in printing the new form to replace the old form to the extent that distribution of the form is not done electronically.

**(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):**

In addition to the universal benefits conveyed by adopting more modern procedures and ensuring more uniformity in the appeal process and hearing procedures, by amending the Board's Appeal form to capture more information relevant to each appeal, all participants in Board appeals should benefit through a more transparent streamlined process.

**(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:**

**(a) Initially:**

Minimal printing costs up front to replace the old Board Appeal form with the new form.

**(b) On a continuing basis:**

After the initial expense, there will be no ongoing cost to implement this amendment.

**(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:**

Given the minimal costs involved, there is no need for a source of funding to implement and enforce this regulation.

**(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:**

There will not be an increase in fees and there is no necessity to secure a source of funding in order to implement this amendment.

**(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:**

This regulation, as amended, is not anticipated to generate any fees nor will any entity endure increased fees, directly or indirectly.

**(9) TIERING: Is tiering applied?**

No. This regulation, as amended assures hearings are held equally and appeals processed uniformly.

## FISCAL NOTE

**(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?**

This regulation affects all state government agencies and all individuals with rights secured by KRS Chapter 18A, including, primarily, current state employees.

**(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.**

KRS 18A.075, KRS 18A.0751, 18A.005 to 18A.200, and KRS 13B.170.

**(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.**

No effect on expenditures and revenues to any state or local government agency.

**(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?**

No revenue will be generated.

**(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?**

No revenue will be generated.

**(c) How much will it cost to administer this program for the first year?**

The minimal costs incurred to distribute new Board Appeal forms are so insignificant that the Board cannot provide detailed estimated costs to administer the amendments to this regulation, especially if participating state agencies chose to distribute the amended Personnel Board forms electronically.

**(d) How much will it cost to administer this program for subsequent years?**

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation. There are no estimated costs for subsequent years to administer the amendments to this regulation.

**Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.**

**Revenues (+/-):Zero**

**Expenditures (+/-):Zero**

**Other Explanation:**

There should be no increase or decrease in the cost to administer this administrative regulation.

**(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.**

**(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?**

Zero

**(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?**

Zero

**(c) How much will it cost the regulated entities for the first year?**

Minimal.

**(d) How much will it cost the regulated entities for subsequent years?**

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

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**Cost Savings (+/-):Zero**

**Expenditures (+/-):Zero**

**Other Explanation:**

There should be no increase or decrease in the cost for the regulated entities caused by this administrative regulation.

**(5) Explain whether this administrative regulation will have a major economic impact, as defined below.**

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]. This administrative regulation will not have a major economic impact.