

18A.095 Rights of executive branch employees.

- (1) A classified employee with status shall not be dismissed, demoted, suspended without pay, or involuntarily transferred except for cause.
- (2) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him or her. The notice shall also state:
 - (a) The specific reasons for dismissal including:
 1. The statutory, regulatory, or policy violation;
 2. The specific action or activity on which the intent to dismiss is based;
 3. The date and place of such action or activity; and
 4. The names of the parties involved;
 - (b) That the employee has the right to appear personally, or with counsel if he or she has retained counsel, to reply to the appointing authority or his or her designee; and
 - (c) Whether the employee is placed on administrative leave by the appointing authority with pay upon receiving the intent to dismiss letter prior to the agency's final action.
- (3) The Personnel Cabinet shall prescribe and distribute a pretermination form to be completed and forwarded by an employee who wishes to appear before the appointing authority or his or her designee. The form shall be attached to every notice of intent to dismiss and shall contain written instructions explaining:
 - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
 - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (4) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he or she receives the notice, the employee may request to appear, personally or with counsel if he or she has retained counsel, to reply to the appointing authority or his or her designee.
- (5) Unless agreed to by the appointing authority or his or her designee and the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the appointing authority or his or her designee, excluding the day his or her request is received.
- (6) No later than five (5) working days after the employee appears before the appointing authority or his or her designee, excluding the day of the appearance, the cabinet head or agency or his or her designee shall:
 - (a) Determine whether to dismiss the employee or to modify or rescind the intent to dismiss; and
 - (b) Notify the employee in writing of the decision.
- (7) If the appointing authority or his or her designee determines that the employee shall be dismissed, the employee shall be notified in writing of:
 - (a) The effective date of his or her dismissal;
 - (b) The specific reason for the dismissal, including:

1. The statutory, regulatory, or policy violation;
 2. The specific action or activity on which the dismissal is based;
 3. The date and place of the action or activity; and
 4. The names of the parties involved; and
- (c) That he or she may appeal the dismissal to the board within thirty (30) calendar days after receipt of this notification, excluding the day he or she receives notice.
- (8) A classified employee with status who is demoted, suspended without pay, or involuntarily transferred shall be notified in writing of:
- (a) The demotion, suspension, or involuntary transfer;
 - (b) The effective date of the demotion, suspension, or involuntary transfer;
 - (c) The specific reason for the demotion, suspension, or involuntary transfer, including:
 1. The statutory, regulatory, or policy violation;
 2. The specific action or activity on which the demotion, suspension, or involuntary transfer is based;
 3. The date and place of the action or activity; and
 4. The names of the parties involved; and
 - (d) That he or she has the right to appeal to the board within thirty (30) calendar days, excluding the day that he or she received notification of the personnel action.
- (9) Any unclassified employee who is dismissed, demoted, suspended without pay, or involuntarily transferred for cause may, within thirty (30) calendar days after the dismissal, demotion, suspension, or involuntary transfer, appeal to the board for review thereof.
- (10) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
1. The reallocation or reclassification; and
 2. If the reallocation or reclassification is to a lower grade, his or her right to request reconsideration by the secretary within ten (10) working days of receipt of the notice, excluding the day he or she receives notification.
- (b) The employee shall file a written request for reconsideration of the reallocation or reclassification to a lower grade with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard by the secretary. The secretary shall make a determination within sixty (60) calendar days after the request has been filed by an employee. The secretary's determination shall be final and shall not be appealable to the Personnel Board.
- (11) (a) Any applicant, classified employee, or federally funded time-limited employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, age forty (40) and above, or any other category protected under state or federal

civil rights laws. Nothing in this section shall be construed to preclude any applicant, classified employee, or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.

- (b) Appeals alleging discrimination shall be filed within thirty (30) calendar days after the alleged discriminatory action occurred.
- (12) (a) Any applicant for classified employment under KRS Chapter 18A who has been notified by the Personnel Cabinet that he or she did not meet the minimum qualifications for a position may request reconsideration from the secretary not more than ten (10) calendar days after the notification was sent. The secretary's review and determination of the reconsideration shall be completed within ten (10) calendar days from the receipt of the request for reconsideration. The secretary's determination shall be final and shall not be appealable to the Personnel Board.
- (b) Any applicant for employment in a classified position under KRS Chapter 18A may appeal the hiring agency's nonselection based on an alleged violation of appointment and promotion provisions contained in this chapter or administrative regulations promulgated under this chapter to the board. The appeal shall be filed not later than thirty (30) calendar days after the notice of nonselection was mailed or sent electronically.
- (13) When an employee who qualifies for a position has his or her name removed from the register, the employee may petition the secretary for the opportunity to be heard by the secretary or his or her designee. The petition shall be delivered to the secretary in writing or electronically no later than ten (10) calendar days after the removal notification has been sent. The secretary's decision shall be final and not appealable to the Personnel Board.
- (14) (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. The Personnel Board shall be responsible for the distribution of these forms.
- (b) The appeal form shall be attached to any notice of dismissal, demotion, suspension, or involuntary transfer. The appeal form shall instruct the employee to state whether he or she is a classified or unclassified employee, his or her full name, his or her appointing authority, work station address and telephone number, home address and personal telephone number, personal email address, and, if he or she has retained counsel at the time he or she files an appeal, the name, address, and telephone number of his or her attorney.
 - (c) The form shall also instruct a classified employee to state the action he or she is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his or her dismissal, demotion, suspension, or involuntary transfer.
 - (d) Any appeal form filed by a classified or unclassified employee shall identify the statute, administrative regulation, or policy that was allegedly violated.
 - (e) Upon receipt of the appeal by the board, the appointing authority and the

Personnel Cabinet shall be notified and the board shall schedule a hearing.

- (15) All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- (16)
 - (a) The board shall deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he or she has been dismissed, demoted, suspended without pay, or involuntarily transferred. The board shall deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his or her right to appeal the denial under the provisions of KRS 18A.100.
 - (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- (17) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
 - (a) Employ class action procedures; or
 - (b) Conduct test representative cases.
- (18) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (19) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.
- (20)
 - (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his or her political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his or her former position or a position of like status and pay, without loss of pay for the period of time at issue, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
 - (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his or her former position or a position of like status and pay, without loss of pay for the period of time at issue, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
 - (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to modify or rescind the action at issue.

- (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- (21) If a final order of the board is appealed, a court may award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.
- (22) When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his or her name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he or she had been removed.
- (23) After a final decision has been rendered by the board or court, an employee who prevails in his or her appeal may be credited with the amount of leave time used for time spent at his or her hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.
- (24) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his or her former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
- (25) After a final decision in a contested case has been rendered by the last administrative or judicial body to which the case has been appealed, the board shall make the decision available to the public in electronic format on its website and shall organize the decisions according to the statutory basis for which the appeal was based.
- (26) Appeals concerning dismissals of classified employees with status shall take precedence for hearings before the board over all other appeals.
- (27) Any classified or unclassified employee as defined in KRS 18A.005 who is not restored to a position pursuant to KRS 61.371 to 61.377, or who is dismissed without cause within one (1) year after reinstatement, may appeal to the Personnel Board. The appeal shall be filed in writing with the executive director of the board not later than thirty (30) days after the notification of the action in question has been mailed or sent electronically.
- (28) If an individual received a notice that does not comply with subsection (7)(c), (8)(d), or (14)(b) of this section, or received no written or electronic notification of his or her dismissal, demotion, suspension, or involuntary transfer pursuant to subsection (7) or (8) of this section, he or she shall file his or her appeal to the board within one hundred eighty (180) days of:
 - (a) Receipt of the written notice, if he or she received a written notice that does not comply with subsection (7)(c), (8)(d), or (14)(b) of this section; or
 - (b) The alleged act, if he or she did not receive written or electronic notification of the alleged act in question.
- (29) If a classified or unclassified employee refuses or fails to cooperate as a witness in an agency, Personnel Cabinet, or board investigation, hearing, proceeding, or

inquiry, the employee may be subject to disciplinary action.

- (30) Unless otherwise provided by this chapter, the board shall not have jurisdiction over any appeal except as authorized by this section.

Effective: June 29, 2023

History: Amended 2023 Ky. Acts ch. 35, sec. 5, effective June 29, 2023. -- Amended 2010 Ky. Acts ch. 153, sec. 8, effective April 13, 2010. -- Amended 2009 Ky. Acts ch. 75, sec. 15, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 85, sec. 104, effective June 26, 2007. -- Amended 2000 Ky. Acts ch. 501, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 154, sec. 23, effective July 15, 1998. and ch. 425, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 22, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 317, sec. 1, effective July 15, 1994; ch. 405, sec. 4, effective July 15, 1994; and ch. 475, sec. 1, effective July 15, 1994. -- Amended 1992 Ky. Acts ch. 202, sec. 1, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 250, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 494, sec. 16, effective July 15, 1986. -- Repealed, reenacted, and amended as KRS 18A.095, 1982 Ky. Acts ch. 448, sec. 19, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 269, sec. 6, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 86, sec. 9, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 13, sec. 6. -- Created 1960 Ky. Acts ch. 63, sec. 14.

Formerly codified as KRS 18.270.

2022-2024 Budget Reference. See State/Executive Branch Budget, 2022 Ky. Acts ch. 199, Pt. I, C, 2, (1) at 1658.