

1 AN ACT relating to state employee legal representation before the Personnel Board
2 and Franklin Circuit Court.

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

4 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 7 IS CREATED TO
5 READ AS FOLLOWS:

6 **(1) *The Legislative Research Commission shall employ a nonpartisan attorney whose***
7 ***sole responsibility is to provide legal representation to executive branch***
8 ***employees for pretermination hearings and personnel actions appealed to the***
9 ***Personnel Board or Franklin Circuit Court should the attorney determine that***
10 ***the appeal has merit.***

11 **(2) *The attorney shall have experience in administrative law and procedures, have***
12 ***knowledge of current state personnel policies, and be admitted to the practice of***
13 ***law in Kentucky.***

14 **(3) *The Commission shall:***

15 **(a) *Determine the salary of the attorney;***

16 **(b) *Provide a dedicated support staff and office space for the attorney; and***

17 **(c) *Provide professional liability insurance to cover the cost of any claims***
18 ***against the attorney.***

19 ➔Section 2. KRS 18A.095 is amended to read as follows:

20 (1) A classified employee with status shall not be dismissed, demoted, suspended, or
21 otherwise penalized except for cause.

22 (2) Prior to dismissal, a classified employee with status shall be notified in writing of
23 the intent to dismiss him. The notice shall also state:

24 (a) The specific reasons for dismissal including:

25 1. The statutory or regulatory violation;

26 2. The specific action or activity on which the intent to dismiss is based;

27 3. The date, time, and place of such action or activity; and

- 1 4. The name of the parties involved;
- 2 (b) That the employee has the right to appear personally, or with counsel if he has
3 retained counsel, to reply to the head of the cabinet or agency or his designee;
4 and
- 5 (c) Whether the employee is placed on administrative leave by the appointing
6 authority with pay upon receiving the intent to dismiss letter prior to the
7 agency's final action.
- 8 (3) The Personnel Cabinet shall prescribe and distribute a form to be completed and
9 forwarded by an employee who wishes to appear before the head of the cabinet or
10 agency or his designee, to each appointing authority. The form shall be attached to
11 every notice of intent to dismiss and shall contain written instructions explaining:
- 12 (a) The right granted an employee under the provisions of this section relating to
13 pretermination hearings; and
- 14 (b) The time limits and procedures to be followed by all parties in pretermination
15 hearings.
- 16 (4) No later than five (5) working days after receipt of the notice of intent to dismiss,
17 excluding the day he receives the notice, the employee may request to appear,
18 personally or with counsel if he has retained counsel, to reply to the head of the
19 cabinet or agency or his designee.
- 20 (5) Unless waived by the employee, the appearance shall be scheduled within six (6)
21 working days after receipt of an employee's request to appear before the head of the
22 cabinet or agency or his designee, excluding the day his request is received.
- 23 (6) No later than five (5) working days after the employee appears before the head of
24 the cabinet or agency or his designee, excluding the day of the appearance, the
25 cabinet head or agency or his designee shall:
- 26 (a) Determine whether to dismiss the employee or to alter, modify, or rescind the
27 intent to dismiss; and

- 1 (b) Notify the employee in writing of the decision.
- 2 (7) If the cabinet or agency head or his designee determines that the employee shall be
3 dismissed or otherwise penalized, the employee shall be notified in writing of:
- 4 (a) The effective date of his dismissal or other penalization;
- 5 (b) The specific reason for this action, including:
- 6 1. The statutory or regulatory violation;
- 7 2. The specific action or activity on which the dismissal or other
8 penalization is based;
- 9 3. The date, time, and place of the action or activity; and
- 10 4. The name of the parties involved; and
- 11 (c) That he may appeal the dismissal or other penalization to the board within
12 sixty (60) days after receipt of this notification, excluding the day he receives
13 notice.
- 14 (8) A classified employee with status who is demoted, suspended, or otherwise
15 penalized shall be notified in writing of:
- 16 (a) The demotion, suspension, or other penalization;
- 17 (b) The effective date of the demotion, suspension, or other penalization;
- 18 (c) The specific reason for the action including:
- 19 1. The statutory or regulatory violation;
- 20 2. The specific action or activity on which the demotion, suspension, or
21 other penalization is based;
- 22 3. The date, time, and place of the action or activity; and
- 23 4. The name of the parties involved; and
- 24 (d) That he or she has the right to appeal to the board within sixty (60) days,
25 excluding the day that he or she received notification of the personnel action.
- 26 (9) Any unclassified employee who is dismissed, demoted, suspended, or otherwise
27 penalized for cause may, within thirty (30) days after the dismissal, demotion,

1 suspension, or other form of penalization, appeal to the board for review thereof.

2 (10) (a) An employee whose position is reallocated shall be notified in writing by the
3 appointing authority of:

4 1. The reallocation; and

5 2. His right to request reconsideration by the secretary within ten (10)
6 working days of receipt of the notice, excluding the day he receives
7 notification.

8 (b) He shall be provided with a form prescribed by the secretary on which to
9 request reconsideration.

10 (c) The employee shall file a written request for reconsideration of the
11 reallocation of his position with the secretary in a manner and form prescribed
12 by the secretary and shall be given a reasonable opportunity to be heard
13 thereon by the secretary. The secretary shall make a determination within sixty
14 (60) days after the request has been filed by an employee. After
15 reconsideration of the request by the secretary, the employee may appeal to the
16 board.

17 (11) Any state employee, applicant for employment, or eligible on a register may appeal
18 to the board on the grounds that his right to inspect or copy records, including
19 preliminary and other supporting documentation, relating to him has been denied,
20 abridged, or impeded by a public agency. The board shall conduct a hearing to
21 determine whether the records related to the employee, applicant, or eligible, and
22 whether his right to inspect or copy these records was denied, abridged, or impeded.
23 If the board determines that the records related to the employee and that the right to
24 inspect or copy these records has been denied, abridged, or impeded, the board shall
25 order the public agency to make them available for inspection and copying and shall
26 charge the cost of the hearing to the public agency. A state employee, an applicant
27 for employment, and an eligible on a register shall not have the right to inspect or to

1 copy any examination materials.

2 (12) Any classified employee may appeal to the board an action alleged to be based on
3 discrimination due to race, color, religion, national origin, sex, disability, or age
4 forty (40) and above. Nothing in this section shall be construed to preclude any
5 classified or unclassified employee from filing with the Kentucky Commission on
6 Human Rights a complaint alleging discrimination on the basis of race, color,
7 religion, national origin, sex, disability, or age in accordance with KRS Chapter
8 344.

9 (13) When an eligible's name is removed from a register, the secretary shall notify the
10 eligible of his action and the reasons therefor, together with his right of appeal. An
11 eligible's name shall be restored to the register upon presentation of reasons
12 satisfactory to the secretary or in accordance with the decision of the board.

13 (14) (a) Any employee, applicant for employment, or eligible on a register, who
14 believes that he has been discriminated against, may appeal to the board.

15 (b) Any applicant whose application for admission to an open-competitive
16 examination has been rejected shall be notified of this rejection and the
17 reasons therefor and may appeal to the board for reconsideration of his
18 qualifications and for admission to the examination. Applicants may be
19 conditionally admitted to an examination by the secretary pending
20 reconsideration by the board.

21 (c) Any applicant who has taken an examination may appeal to the board for a
22 review of his rating in any part of the examination to assure that uniform
23 rating procedures have been applied equally and fairly.

24 (d) An appeal to the board by applicants or eligibles under subsections (11) and
25 (13) of this section and under this subsection shall be filed in writing with the
26 executive director not later than thirty (30) calendar days after the notification
27 of the action in question was mailed.

- 1 (15) An evaluation may be appealed to the board if an employee has complied with the
2 review procedure established in KRS 18A.110(7)(j).
- 3 (16) (a) Appeals to the board shall be in writing on an appeal form prescribed by the
4 board. Appeal forms shall be available at the employee's place of work. The
5 Personnel Cabinet shall be responsible for the distribution of these forms.
- 6 (b) The appeal form shall be attached to any notice, or copy of any notice, of
7 dismissal, demotion, suspension, fine, involuntary transfer, or other
8 penalization, reallocation, or notice of any other action an employee may
9 appeal under the provisions of this section. The appeal form shall instruct the
10 employee to state whether he is a classified or unclassified employee, his full
11 name, his appointing authority, work station address and telephone number,
12 and, if he has retained counsel at the time he files an appeal, the name,
13 address, and telephone number of his attorney.
- 14 (c) The form shall also instruct a classified employee to state the action he is
15 appealing in a short, plain, concise statement of the facts. The form shall
16 instruct an unclassified employee to make a short, plain, concise statement of
17 the reason for the appeal and the cause given for his dismissal.
- 18 (d) Upon receipt of the appeal by the board, the appointing authority and the
19 Personnel Cabinet shall be notified and the board shall schedule a hearing.
- 20 (17) All administrative hearings conducted by the board shall be conducted in
21 accordance with KRS Chapter 13B.
- 22 (18) (a) The board may deny a hearing to an employee who has failed to file an appeal
23 within the time prescribed by this section; and to an unclassified employee
24 who has failed to state the reasons for the appeal and the cause for which he
25 has been dismissed. The board may deny any appeal after a preliminary
26 hearing if it lacks jurisdiction to grant relief. The board shall notify the
27 employee of its denial in writing and shall inform the employee of his right to

1 appeal the denial under the provisions of KRS 18A.100.

2 (b) Any investigation by the board of any matter related to an appeal filed by an
3 employee shall be conducted only upon notice to the employee, the
4 employee's counsel, and the appointing authority. All parties to the appeal
5 shall have access to information produced by the investigations and the
6 information shall be presented at the hearing.

7 (19) Each appeal shall be decided individually, unless otherwise agreed by the parties
8 and the board. The board shall not:

9 (a) Employ class action procedures; or

10 (b) Conduct test representative cases.

11 (20) Board members shall abstain from public comment about a pending or impending
12 proceeding before the board. This shall not prohibit board members from making
13 public statements in the course of their official duties or from explaining for public
14 information the procedures of the board.

15 (21) An appeal to the board may be heard by the full board or one (1) or more of the
16 following: Its executive director, its general counsel, any nonelected member of the
17 board, or any hearing officer secured by the board pursuant to KRS 13B.030.

18 (22) (a) If the board finds that the action complained of was taken by the appointing
19 authority in violation of laws prohibiting favor for, or discrimination against,
20 or bias with respect to, his political or religious opinions or affiliations or
21 ethnic origin, or in violation of laws prohibiting discrimination because of
22 such individual's sex or age or disability, the appointing authority shall
23 immediately reinstate the employee to his former position or a position of like
24 status and pay, without loss of pay for the period of his penalization, or
25 otherwise make the employee whole unless the order is stayed by the board or
26 the court on appeal.

27 (b) If the board finds that the action complained of was taken without just cause,

1 the board shall order the immediate reinstatement of the employee to his
2 former position or a position of like status and pay, without loss of pay for the
3 period of his penalization, or otherwise make the employee whole unless the
4 order is stayed by the board or the court on appeal.

5 (c) If the board finds that the action taken by the appointing authority was
6 excessive or erroneous in view of all the surrounding circumstances, the board
7 shall direct the appointing authority to alter, modify, or rescind the
8 disciplinary action.

9 (d) In all other cases, the board shall direct the appointing authority to rescind the
10 action taken or otherwise grant specific relief or dismiss the appeal.

11 (23) If a final order of the board is appealed, a court shall award reasonable attorney fees
12 to an employee who prevails by a final adjudication on the merits as provided by
13 KRS 453.260. This award shall not include attorney fees attributable to the hearing
14 before the board. However, if an employee elects to retain the services of the
15 attorney provided in Section 1 of this Act, any attorney fees awarded by the court
16 shall be paid to the Legislative Research Commission.

17 (24) When any employee is dismissed and not ordered reinstated after the appeal, the
18 board in its discretion may direct that his name be placed on an appropriate
19 reemployment list for employment in any similar position other than the one from
20 which he had been removed.

21 (25) After a final decision has been rendered by the board or court, an employee who
22 prevails in his appeal shall be credited with the amount of leave time used for time
23 spent at his hearing before the board or court. Employees who had an insufficient
24 amount of leave time shall be credited with leave time equal to the amount of time
25 spent at their hearings before the board or court.

26 (26) If the appointing authority appeals the final order of the board, unless the board
27 rules otherwise, the reinstated employee shall remain in his former position, or a

1 position of like status or pay, until the conclusion of the appeals process, at which
2 time the appointing authority shall take action in accordance with the court order.

3 (27) After a final decision in a contested case has been rendered by the last
4 administrative or judicial body to which the case has been appealed, the board shall
5 make the decision available to the public in electronic format on its Web site and
6 shall organize the decisions according to the statutory basis for which the appeal
7 was based.

8 (28) For the purposes of subsections (2), (3), (4), (5), (6), and (7) of this section, the
9 word "agency" means any agency not assigned to a cabinet for organizational
10 purposes.

11 (29) Notwithstanding any other prescribed limitation of action, an employee that has
12 been penalized, but has not received a written notice of his or her right to appeal as
13 provided in this section, shall file his or her appeal with the Personnel Board within
14 one (1) year from the date of the penalization or from the date that the employee
15 reasonably should have known of the penalization.

16 **(30) An employee may elect to use the counsel provided in Section 1 of this Act to**
17 **appear for pretermination hearings and personnel actions appealed to the**
18 **Personnel Board or Franklin Circuit Court. If a final order of the Personnel**
19 **Board is appealed to the Franklin Circuit Court, the employee shall pay all court**
20 **costs including court reporting and filing fees.**