

GENERAL GOVERNMENT CABINET

Personnel Board

(Amendment)

101 KAR 1:375. Employee grievances and complaints.

RELATES TO: KRS 18A.075, 18A.0751~~[, 18A.095]~~

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 and 18A.0751 requires the Personnel Board to adopt comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751(1)(i) requires the Personnel Board to promulgate an administrative regulation governing employee grievances and complaints. This administrative regulation establishes the requirements governing employee grievances and complaints.

Section 1. Definitions; Grievance. A grievance is ~~[Definition. "Grievance" means]~~ a complaint filed by an employee ~~that~~~~[which]~~ concerns some aspect of ~~their~~~~[his or her]~~ conditions of employment;

- (1) Over which ~~their~~~~[the employee's]~~ cabinet or agency has control, and
- (2) Which has occurred, or of which the employee has become aware~~[,]~~ through the exercise of due diligence,~~[,]~~ within thirty (30) days prior to filing.

Section 2. General Provisions.

(1) An employee in the classified service who believes that ~~they have~~~~[he or she has]~~ been subjected to unfair or unjust treatment concerning their conditions of employment may file a grievance in accordance with this ~~procedure~~~~[administrative regulation]~~.

(2) A grievance concerning an action ~~that~~~~[which]~~ is appealable directly to the board pursuant to KRS 18A.095 may also be filed with the cabinet or agency. The filing of a grievance with the cabinet or agency shall not~~[,]~~

~~[(a)]~~ prohibit the employee from also filing an appeal with the board~~[,]~~~~or~~

~~[(b)]~~ Extend the statutory appeal period.

(3) An employee utilizing this procedure shall be entitled to file a grievance without interference, coercion, discrimination, or reprisal.

(4) An appointing authority shall inform its employees of the provisions of this administrative regulation, or any modifications in the levels of review that have been approved by the Personnel Board for the employee's cabinet or agency pursuant to Section 4~~(3)~~~~[(4)]~~ of this administrative regulation.

~~(5)~~

(a) The Personnel Cabinet shall provide to the employees, through the appointing authorities, a grievance form to be used for the filing a grievance.

(b) "Grievance Form (Revised October 2011)" is incorporated by reference.

(c) This form may be inspected, copied, or obtained at the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, 8 a.m. to 4:30 p.m., Monday through Friday.

Section 3. Procedures.

(1) A grievance shall be filed ~~[on a Grievance Form]~~ with an employee's immediate supervisor within thirty (30) days following occurrence or the employee becoming aware, through the exercise of due diligence, of the action that is the subject of the grievance. If the action or conduct of the first line supervisor is the basis of an employee's grievance, the grievance may be filed with the second line supervisor.

(2) An employee shall state in writing the basis of ~~their~~~~[the]~~ grievance or complaint together with the corrective action desired. If an employee wishes to submit additional

information or documentation, ~~they~~~~[the employee]~~ may attach it to the grievance ~~[Form]~~.

(3) If a grievance is filed that alleges discrimination on the basis of race, color, religion, national origin, sex, disability or age forty (40) or over, the recipient of this grievance shall immediately notify the cabinet or agency EEO coordinator to comply with the affirmative action plan.

(4) Interviews to evaluate or investigate the grievance outside of normal work hours with the grievant or other employees shall entitle them to compensatory time.

(5) Interviews to evaluate or investigate the grievance held with the grievant or other employees shall not require the use of leave time.

(6) Parties may have a representative present at each step of the grievance procedure.

Section 4. Grievance Levels.

(1) Except as provided by Section 3(1) of this administrative regulation, the immediate supervisor shall, upon investigation, issue findings and a decision in writing to the employee within ten (10) work days after receipt of the grievance. If the responding supervisor is unable to resolve the complaint to the satisfaction of the employee, the employee may request review of the grievance within five (5) work days of receipt of the decision by the next appropriate level.

(2) The next line supervisors shall each have five (5) work days to respond to the grievance. The employee ~~has~~~~[shall have]~~ five (5) work days after each intermediate supervisory review to decide to appeal the grievance to the next level.

(3) If the line supervisors are unable to resolve the grievance to the satisfaction of the employee, the employee may request review of the grievance within five (5) work days of receipt of the decision of the final line supervisor by the appointing authority for a final determination. The appointing authority, upon investigation, shall issue findings and a final determination in writing to the employee within twenty (20) work days.

(4) Unless the time limits have been extended by agreement of the parties, failure of supervisory or management personnel to respond within prescribed time limits shall automatically advance the grievance to the next review level.

(5) An intermediate grievance level may be waived by written agreement of the parties. [

~~[Section 5.] [Incorporation by Reference.]~~

~~[(1)] ["Grievance Form", October 2011, is incorporated by reference.]~~

~~[(2)] [This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

MARK A. SIPEK, Executive Director, Personnel Board

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, 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 November 30, 2021. 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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:Stafford Easterling

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This regulation establishes the requirements governing employee grievances and complaints.

(b) The necessity of this administrative regulation:

This regulation is necessary to set guidelines for classified employees on filing a grievance or complaint and the proper procedures for state agencies to process the filings.

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

KRS 13A and KRS 18A.0751 requires the Board to promulgate a regulation on the filing of grievances and complaints.

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

This regulation sets timelines and procedures on the proper filing, and responding to, a grievance and complaint.

(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:

This amendment updates the Grievance Form and the correct address for the Board.

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

The amendment is necessary to incorporate by reference the updated Grievance Form.

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

By updating the Board's address and the current revised Grievance Form the amendment fulfills the statutory requirement of KRS 18A.0751 and KRS 13A.

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

This amendment updates required information for effectively filing a grievance or complaint. (3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administration: This regulation affects all state government agencies and classified employees.

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

No answer provided.

(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:

To comply with the regulation the Personnel Cabinet provides the Grievance Form to appointing authorities. The Board maintains the forms for distribution, inspection, or copying. All state government agencies must comply with the regulation when a

classified employee files a grievance. All appointing authorities must inform its employees of the provisions of this regulation.

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

There will not be any cost by complying with the amended regulation.

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

Classified employees and the agencies have clear concise guidelines on filing and receiving grievances and complaints thereby assuring the grievance or complaint is properly heard.

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

(a) Initially:

There will be no cost to implement this amendment.

(b) On a continuing basis:

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:

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 or a necessity in funding to implement this amendment.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This regulation, as amended, is not anticipated to generate any new or additional fees.

(9) TIERING: Is tiering applied?

No. This regulation, as amended, treats all impacted entities the same.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(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?

No answer provided.

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

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

(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.

(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?

There are no estimated costs to administer the amendments to this regulation.

(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.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

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