

**902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.**

RELATES TO: KRS 211.170(1), (2), 212.040, 212.850, 212.870

STATUTORY AUTHORITY: KRS 194A.050(1), 211.1755(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 194A.050(1) requires the Cabinet for Health and Family Services to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. KRS 211.1755(2) requires the cabinet to promulgate administrative regulations establishing the policies and procedures for the local health department personnel program. This administrative regulation establishes employment categories of permissible appointments, employment probationary periods, and an employee evaluation process.

**Section 1. Initial Appointments.**

- (1) The appointing authority of a local health department shall make an initial appointment of an eligible applicant from a certification of eligible applicants issued by the department.
- (2) The reemployment of a person shall be an initial appointment if the person:
  - (a) Was formerly employed by an agency; and
  - (b) Is receiving retirement benefits from the:
    1. Kentucky Employee Retirement System; or
    2. Kentucky Teachers Retirement System.

**Section 2. Provisional Appointments.**

- (1) If there is an urgent reason for filling a position and no appropriate register exists, the appointing authority may submit to the department the name of a person to fill the position pending establishment of a register. If the person's qualifications have been certified by the department as meeting the minimum qualifications, the person may be provisionally appointed to fill the existing vacancy.
- (2) A provisional appointment shall not:
  - (a) Be made until the position has been classified and minimum qualifications established for the class of position; and
  - (b) Exceed thirteen (13) pay periods from the date of appointment.
- (3) Successive provisional appointments of the same person shall not be permitted.
- (4) Provisional service immediately prior to initial appointment may be credited, at the request of the appointing authority, toward the required probationary period.

**Section 3. Reinstatement.**

- (1)
  - (a) For a period of time not to exceed thirty-six (36) months since termination of employment from an agency, a regular-status employee who has resigned while in good standing, or separated without prejudice, may be eligible for reinstatement to the same position or in a corresponding position within the agency, with the same seniority rights and leave status.
  - (b) The individual being considered for reinstatement shall be certified by the department as meeting the current minimum qualifications.
  - (c) The individual being considered for reinstatement shall not be required to serve an initial probationary period if the employee has had a break in service of not more than twelve (12) months.
  - (d) The accumulated balance of sick leave earned during prior employment with the agency shall be reinstated upon employment and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

(2)

(a) If the employee has had a break in service of more than twelve (12) months, and the break in service does not exceed thirty-six (36) months, the employee shall serve an initial probationary period and be eligible to receive a probationary increment based on satisfactory performance.

(b) If the employee satisfactorily completes the initial probationary period, the accumulated balance of sick leave earned during prior employment with the agency shall be reinstated and the period of time of prior employment with the agency shall be used to determine the rate at which the employee earns annual leave.

(3) The annual increment date shall be twenty-six (26) pay periods from the effective date of reinstatement.

#### Section 4. Emergency Appointments.

(1)

(a) If an emergency exists that requires the immediate services of one (1) or more persons and it is not possible to secure a person from an appropriate register, or there is no person qualified for a provisional appointment, the appointing authority may appoint a person with the approval of the department.

(b) An emergency appointment shall not exceed seven (7) pay periods in duration and shall not be renewable.

(c) The department may make investigations as necessary to determine if an emergency exists.

(2) The appointing authority shall report an emergency appointment to the department, providing the name of the appointee, rate of pay, length of employment, nature of emergency, and duties to be performed. Separation from service of an emergency appointee shall also be reported.

(3) An emergency appointment shall not confer upon the incumbent a privilege or right to promotion, transfer, salary adjustment, or reinstatement to a position under the merit system.

(4) An individual appointed to an emergency position shall be considered in the unclassified service and continued employment shall be subject to the current employment needs of the agency.

#### Section 5. Temporary Appointment.

(1) The appointing authority may, with the approval of the department, establish a position on a temporary basis for up to nineteen (19) pay periods to accommodate the following:

(a) Increased work activity of a seasonal nature;

(b) Work study or job training programs;

(c) Special projects; or

(d) Summer employment.

(2) An applicant shall not be appointed to a temporary position unless the applicant meets established minimum requirements.

(3) Continuous appointments to the same temporary position shall not be made.

(4) The period of temporary service shall not constitute a part of the initial employment probationary period.

(5) An individual appointed to a temporary position shall be considered in the unclassified service and continued employment shall be subject to the current employment needs of the agency.

#### Section 6. Appointment of an Individual to a Variable Hour Position.

(1) An agency, because of special working requirements in meeting programmatic service needs, may establish a position having variable hours of work.

- (2) An agency may appoint to a variable hour position an individual who meets the minimum requirements of education and experience established for the position.
- (3) The hours of work of the individual shall not exceed 800 hours per year.
- (4) An individual appointed to the variable hour position shall be considered in the unclassified service and continued employment shall be subject to the current employment needs of the agency.
- (5) The compensation of the individual employed shall be determined by the appointing authority.
- (6) The individual employed shall not be eligible for salary adjustments.

#### Section 7. Partial year Appointment.

- (1) An agency may establish a partial year position to accommodate foreseeable seasonal fluctuations in staffing, budgetary, operational, programmatic, or other needs.
- (2) An employee in a designated partial year position shall receive the following agency provided benefits:
  - (a) Health and life insurance benefits provided by the agency for full-time and part-time 100-hour employees;
  - (b) Sick and annual leave, in accordance with 902 KAR 8:120, Sections 2 and 4, for pay periods the employee actually works;
  - (c) Enrollment in the Kentucky Employee Retirement System and receipt of appropriate service credit for those pay periods of actual work; and
  - (d) Service credit for computation of seniority for those pay periods the employee has actually worked.
- (3) The employee in a designated partial year position shall be considered a regular-status employee following completion of the initial probationary period in accordance with Section 9 of this administrative regulation.
- (4) The employee in a designated partial year position shall:
  - (a) Work the required number of hours, unless the employee is absent due to illness or needing to provide care for an immediate family member; and
  - (b) Work at the request of the agency during periods of nonwork to cover during coworker periods of illness, vacation schedules, and other periods of agency demand.

#### Section 8. Performance Evaluation.

- (1) Except as provided in 902 KAR 8:096, the appointing authority, or designated supervisory staff, shall conduct a performance appraisal pursuant to this administrative regulation using the Employee Performance Appraisal, form CH-40 for a:
  - (a) Regular status employee on an annual basis; and
  - (b) Probationary employee prior to completion of the required probationary period.
- (2) An employee who receives a rating of "meets requirements", "exceeds requirements", or "outstanding", shall receive the Board of Health approved annual increment not to exceed five (5) percent of the employee's salary.
- (3) An overall rating of "below requirements" or "inadequate" shall require that a new rating of the employee be made within ninety (90) days.
  - (a) If the employee performance has improved, the appointing authority shall approve the annual increment as approved by the Board of Health.
  - (b) If employee has not improved or performance deteriorates, the appointing authority shall initiate a disciplinary action.
  - (c) An employee shall be notified by the appointing authority in writing at least fourteen (14) days prior to the annual increment date if the employee:
    1. Is denied an annual increment; or
    2. Only receives a portion of the annual increment.
- (4) Performance evaluations shall be considered in determining:
  - (a) An annual and probationary salary advancement;

- (b) Requesting and approving a:
  - 1. Promotion;
  - 2. Demotion; or
  - 3. Dismissal; and
- (c) The order of separation due to a reduction of work force.
- (5) Each agency shall elect, by Board of Health vote, to participate in one (1) of the following employee performance evaluation programs:
  - (a) The current employee performance evaluation described in this section; or
  - (b) The evaluation program described in 902 KAR 8:096.
- (6)
  - (a) An agency choosing the current employee evaluation program described in this section shall notify the department at the beginning of the new fiscal year.
  - (b) The agency shall remain under the requirements of this section, unless the agency, by vote of the Board of Health, elects to participate in the provisions of 902 KAR 8:096 at the beginning of a subsequent fiscal year.
  - (c) An agency choosing the current employee evaluation program, as described in this section, shall not be subject to any provision of 902 KAR 8:096.
- (7) An agency, by vote of the Board of Health that elects to participate in the employee evaluation program of 902 KAR 8:096, shall notify the department at the beginning of the new fiscal year. The agency electing to participate under 902 KAR 8:096 shall not convert to another employee evaluation program.

#### Section 9. Initial Probationary Period.

- (1) An employee shall be required to serve a probationary period upon initial employment.
- (2) The initial probationary period shall be thirteen (13) pay periods except as provided in subsection (7) of this section.
- (3) If the employee has satisfactorily completed the initial probationary period based on a performance evaluation, the appointing authority shall notify the department fourteen (14) days prior to the expiration of the initial probationary period that regular status has been confirmed.
- (4) An employee may be separated from his position during the initial probationary period and shall not have the right to appeal except as provided by 902 KAR 8:110, Section 1(3).
- (5)
  - (a) Except as provided by paragraph (b) of this subsection, if an employee is to be dismissed during the initial probationary period, the employee shall be notified in writing at least seven (7) calendar days prior to the effective date of dismissal and prior to the expiration of the probationary period.
  - (b) If the employee commits a serious infraction of agency policy as defined by 902 KAR 8:100, Section 4, the employee shall be dismissed in writing immediately without pay.
  - (c) The dismissed employee shall not be placed on a register.
- (6) Unless the appointing authority notifies the employee in writing seven (7) calendar days prior to the end of the initial probationary period that the employee is separated, the employee shall be deemed to have served satisfactorily and shall acquire regular status in the classified service.
- (7) The initial probationary period may be extended, by informing the employee in writing, for one (1) of the following reasons:
  - (a) For the same length of time as leave granted to cover an absence due to medical reasons causing the employee to be absent from work for twenty (20) days or more during the probationary period;

- (b) If the employee, acting with due diligence, has been unable to complete a required job related training course during the probationary period; or
- (c) The appointing authority may require an initial probationary period in excess of thirteen (13) pay periods, not to exceed a total probationary period of twenty-six (26) pay periods, for determination of competency.
- (8) The employee serving a probationary period may be eligible for promotion to a position in a higher class. If an employee is promoted during a probationary period, the new probationary period shall begin with the date the employee was promoted.

#### Section 10. Resignations.

- (1) An employee who desires to terminate service with an agency shall submit a written resignation to the appointing authority.
- (2) A resignation shall be submitted at least fourteen (14) calendar days before the final working day. A copy of an employee's resignation shall be filed in the employee's personnel file.
- (3) An employee's lump sum payment for accumulated annual leave may be held by an agency until the employee who has resigned, retired, or been dismissed, returns agency credit cards, keys to buildings and automobiles, or other agency property in the possession of the employee.

#### Section 11. Voluntary and Involuntary Furlough.

- (1) An agency may implement a voluntary or involuntary furlough program as part of a layoff plan established in Section 12 of this administrative regulation.
- (2) A voluntary or involuntary furlough shall be considered a temporary non disciplinary leave without pay, for a specified period of time if major organizational program and funding changes occur that may result in work reductions of one (1) or more employees of an agency.
- (3) A furlough may apply to the entire agency, certain organizational units of the agency, or to one (1) or more employees as the need arises.
- (4) A furlough may be for periods of up to twenty-two (22) working days per fiscal year. The furlough may be designated as one (1) continuous period of twenty-two (22) working days or may be discontinuous days or periods, including portions of days.
- (5) Employees shall not be paid for days while on furlough. If the furlough is for a continuous period:
  - (a) An employee's benefits shall not be adversely affected except for the following:
    - 1. Retirement contributions shall be based on actual earnings;
    - 2. Holidays that occur during a consecutive furlough period shall not be paid;
    - 3. Annual leave, compensatory time, and sick leave shall not be used; and
    - 4. Medical, dental, life insurance, and flexible spending accounts shall continue to be in effect upon payment of required contributions by the employee; and
  - (b) Accrual of annual and sick leave, anniversary dates, and seniority shall be treated as if the employee is in pay status for the duration of the furlough.
- (6) An employee who is interested in being placed in a voluntary furlough status shall request prior approval from the appointing authority. The request shall include the reason for and the manner in which the employee proposes to use the furlough period that may include:
  - (a) Shorter work days;
  - (b) Intermittent days off; or
  - (c) Consecutive days off.
- (7) An appointing authority may direct an employee to be placed in a furlough status instead of a layoff status. The written notice of the required furlough shall:
  - (a) Be received at least fifteen (15) calendar days prior to the beginning date of furlough;

- (b) Include the period of the furlough and if the furlough is continuous or non-continuous;
- (c) Include the status of employee benefits; and
- (d) State that failure to return to work after the completion of the mandatory furlough may be grounds for disciplinary action, up to and including dismissal from employment.

#### Section 12. Layoffs.

- (1) An agency shall have a Board of Health approved workforce reduction plan on file with the department to lay off an employee in the classified service if necessary because of:
  - (a) Curtailment of work;
  - (b) Shortage of funds;
  - (c) Abolishment of a position;
  - (d) Modification of service requirements; or
  - (e) Other material change in the duties or organization of the agency.
- (2)
  - (a) Prior to the notification of an employee that he or she is subject to layoff and prior to the layoff of an employee, the appointing authority shall submit a layoff plan to the department for approval.
  - (b) The plan shall contain the names of the employees, months of service, and the reasons, in detail, for the layoff and criteria used to select those employees subject to layoff.
  - (c) Upon written approval of the plan by the department, the employee shall be notified that the employee is subject to layoff and of the:
    - 1. Reason for the layoff;
    - 2. Procedures established for the layoff of employees; and
    - 3. Rights granted employees subject to layoff.
- (3) An agency established under KRS 212.040 shall undertake the following procedures in assisting an employee subject to layoff:
  - (a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the agency.
  - (b) If a vacancy does not exist for a position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the agency, the employee shall be notified of all vacant positions within the agency for which the employee is qualified.
  - (c) The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another applicant or eligible on a register.
  - (d) If no position is available to an employee subject to layoff, the employee shall be notified in writing:
    - 1. That the employee is to be laid off effective at least fifteen (15) calendar days after receipt of the notice; and
    - 2. Of the rights and privileges granted laid-off employees.
- (4) An agency established under KRS 212.850 shall undertake the following procedures in assisting an employee subject to layoff:
  - (a) An employee subject to layoff shall be transferred to a vacant position of the same pay grade, level of duties and responsibilities for which the employee is qualified within the agency. The position shall be located in the same county as the position from which the employee is subject to layoff;

(b) If a vacancy does not exist for a position of the same pay grade, level of duties, and responsibilities for which the employee is qualified within the same county as the position from which the employee is subject to layoff, the employee shall be transferred to a vacant position within the agency for which the employee is qualified. The position shall be located in the same county as the position from which the employee is subject to layoff;

(c)

1. If a position is not available, the employee shall be notified of all vacant positions within the agency for which the employee is qualified.

2. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified.

3. The employee shall have the right to be appointed to a vacant position within the agency for which the employee is qualified before another applicant or eligible on a register; and

(d) If no position is available to an employee subject to layoff, the employee shall be notified in writing:

1. That the employee is to be laid off effective at least fifteen (15) calendar days after receipt of the notice; and

2. Of the rights and privileges granted laid-off employees.

(5) In the same agency, county and job classification, provisional, temporary, emergency, and probationary employees shall be laid off before regular full-time or regular part-time employees with status. An employee serving a promotional probation shall not be considered a probationary employee for purposes of layoff.

(6) If two (2) or more employees subject to layoff in a layoff plan submitted to the department have the same qualifications, the employee with the lesser seniority shall be laid off first.

(7) An employee who is laid off, upon written request, shall be considered for the class of position from which the employee was laid off and for any class for which the employee is qualified.

(8) For a period of one (1) year, a laid-off employee shall be given priority consideration by the agency before another applicant or eligible except another laid-off employee with greater seniority.

(9) For a period of one (1) year, a laid-off employee shall not be removed from a register unless the employee:

(a) Notifies the agency in writing that the employee no longer desires consideration for a position on a register;

(b) Declines two (2) written offers of appointment to a position of the same classification and salary, and located in the same county or agency, as the position from which the employee was laid off;

(c) Without good cause, fails to report for an interview after being notified in writing at least ten (10) calendar days prior to the date of the interview;

(d) Is unable to perform the duties of the class;

(e) Has been convicted of a job related misdemeanor; or

(f) Cannot be located by postal authorities at the last address provided by the laid-off employee.

### Section 13. Incorporation by Reference.

(1) " Employee Performance Appraisal", CH-40, 4/93, is incorporated by reference.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Public Health, Division of Administration and Financial Management, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

(19 Ky.R. 2768; 20 Ky.R. 373; 514; eff. 9-3-1993; 21 Ky.R. 587; eff. 9-21-1994; 24 Ky.R. 2200; 25 Ky.R. 113; 572; eff. 8-19-1998; 27 Ky.R. 2257; 2811; eff. 4-9-2001; 32 Ky.R. 985; 1437; 1670; eff. 3-9-2006; 37 Ky.R. 1776; 2168; eff. 4-1-2011; 46 Ky.R. 1704; eff. 2-27-2020.)