

State of Kansas
Department of Administration
Notice of Public Hearing on Proposed Administrative Regulations

July 21, 2016

A public hearing will be conducted on Tuesday, September 27, 2016 at 1:30 p.m. in Room 509 of the Landon State Office Building, 900 S.W. Jackson, Topeka, Kansas to consider the adoption of proposed amendments to rules and regulations of the Office of Personnel Services, Department of Administration, on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Office of Personnel Services, Landon State Office Building, 900 S.W. Jackson, Room 401-N, Topeka, Kansas 66612-1300 or by email to Kraig.Knowlton@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting John Yeary at (785) 296-2033 (or TYY 1-800-766-3777). The main entrance to the Landon State Office Building is accessible. Handicapped parking is available in metered spaces in front of the building on the east and west sides of Jackson Street as well as the north and south sides of 9th Street between Jackson and Kansas Avenue.

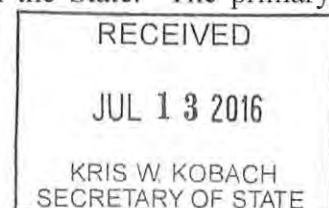
Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be viewed at the following website:

<http://admin.ks.gov/offices/personnel-services/agency-information>

Summaries of the proposed regulations follow.

K.A.R. 1-2-74 – Administrative leave. This regulation defines “administrative leave” and currently restricts the use of administrative leave as a reward. The proposed amendment would eliminate that restriction, thereby allowing State agencies to provide paid time off as a reward to State employees.

K.A.R. 1-6-23 – Reemployment. This regulation addresses the reemployment of State employees following a layoff and establishes the Kansas employee preference program, which provides eligible employees with a preference in reemployment with the State. The primary



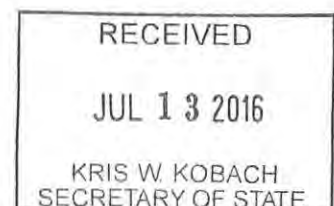
amendment to this regulation reduces restrictions on the granting of exceptions to the program while other technical amendments update language regarding performance review ratings and correct the statutory citation for the State's veterans' preference program.

K.A.R. 1-7-11 – Employees entitled to appeal performance reviews. This regulation grants employees the right to appeal performance ratings received through the State's performance management process as established in K.A.R. 1-7-10. The amendment to this regulation limits the performance ratings that can be appealed by eligible employees to just ratings of "unsatisfactory" or "needs improvement" instead of any rating less than the highest rating of "exceptional" which is what is currently allowed.

K.A.R. 1-9-23 – Shared leave. This regulation establishes the State's shared leave program, whereby eligible State employees can receive donations of accrued leave from other State employees. The primary amendment to this regulation limits the amount of sick leave that an employee can donate upon retirement to no more than 80 hours.

K.A.R. 1-14-8 – Computation of layoff scores. This regulation provides that layoff scores for State employees are calculated by multiplying an employee's average performance review rating by the employee's length of service. Amendments to this regulation change the value of the length of service component of the formula to be expressed in years rather than months, and also change the value of three of the performance review ratings as well. Other amendments to the regulation change the third tiebreaker in cases of identical layoff scores and eliminate a subsection establishing values for performance reviews conducted prior to the implementation of the current performance management process on October 1, 2009.

K.A.R. 1-14-10 – Procedures for bumping and layoff conferences. This regulation establishes procedures for bumping and conferences with impacted employees during the process of a layoff. The primary amendment to this regulation allows agencies to prevent an employee from being laid off regardless of the employee's layoff score if the loss of the employee's particular knowledge, skills, abilities, certification, licensure or combination thereof would substantially impair the agency's ability to perform its essential functions. Language requires that any such action must be approved by the Director of Personnel Services.



Proposed


1-2-74. Administrative leave. "Administrative leave" ~~means~~ shall mean leave with pay that is approved by the appointing authority for an employee pending the outcome of an investigation of that employee under K.A.R. 1-9-19 or for other situations in which the appointing authority determines that administrative leave ~~with pay~~ is in the best interests of the state. ~~Administrative leave shall not be used as a reward. This regulation shall be effective on and after June 5, 2005.~~

(Authorized by K.S.A. ~~2004~~ 2014 Supp. 75-2949 and 75-3747; implementing K.S.A. 2014 Supp. 75-2949, K.S.A. 75-3707, and K.S.A. 75-3746; effective Oct. 1, 1999; amended June 5, 2005; amended P-_____.)

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY 

APPROVED

JUL 06 2015

DEPT. OF ADMINISTRATION

Proposed

1-6-23. Reemployment. (a)(1) Except as provided in subsection (b), each employee who is laid off, or demoted or transferred in lieu of layoff, shall be placed in a reemployment pool by the director, unless the employee requests in writing to not be placed in the reemployment pool. Each employee in the reemployment pool shall be eligible to apply for any vacancy to be filled, including any internal vacancy, until the date the employee is reemployed or for three years from the date of the layoff, whichever occurs first.

(2) Each employee who is eligible for reemployment and who is also a veteran shall be offered an interview for any vacancy that meets all of the following conditions:

(A) The vacancy is for a regular position in the classified service.

(B) The vacant position is at the same pay grade or a lower pay grade than the pay grade at which the individual was paid at the time the individual received the notice of layoff.

(C) The employee meets the minimum requirements for the position.

(b)(1) Each individual who meets all of the following conditions shall be eligible for the Kansas employee preference program, as provided in this subsection:

(A) The individual received a written layoff notice in accordance with K.A.R. 1-14-9 ~~for~~ a layoff that was effective on or after June 8, 2002.

(B) The individual's most recent performance rating before receiving the layoff notice was "satisfactory meets expectations" or better.

(C) The individual was not suspended, demoted, or terminated ~~as provided in pursuant to~~ K.S.A. 75-2949, and amendments thereto, in the 12 months preceding the date on which the individual received the layoff notice.

(2) Each individual who qualifies under paragraph (b)(1) shall remain eligible for the Kansas employee preference program until any of the following events occurs:

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY



APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

(A) The individual is appointed to a classified or unclassified position that is eligible for benefits.

(B) An eligible individual who was laid off or is scheduled to be laid off from a regular position that was not eligible for benefits chooses to use the Kansas employee preference for any position, whether ~~or not~~ that position is eligible for benefits, and the individual then is appointed to that position.

(C) A period of 12 consecutive months has passed since the effective date of the layoff ~~or since July 30, 2003, whichever date is later~~. Each individual who is eligible for the Kansas employee preference program; but has not been reemployed under any of the circumstances identified in paragraph (b)(2)(A) or (b)(2)(B) at the end of that 12-month period shall remain eligible for reemployment as provided in subsection (a).

(D) The individual is suspended, demoted, or terminated ~~as provided in~~ pursuant to K.S.A. 75-2949, and amendments thereto, at any time after the individual becomes eligible for the Kansas employee preference program, but before the date on which the individual is actually laid off.

(3) Each individual who is qualified to receive a Kansas employee preference shall be eligible to apply for any vacancy that meets all of the following conditions:

(A) The vacancy is for a classified position that is eligible for benefits, except that when the individual who is eligible for the Kansas employee preference program was laid off from or has received a layoff notice for a regular position that is not eligible for benefits, the vacancy may be for any regular position in the classified service, whether ~~or not~~ the vacant position is eligible for benefits.

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *ja*

APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

(B) The vacant position is at the same pay grade or a lower pay grade than the pay grade at which the individual was paid at the time the individual received the layoff notice; and,

(C) The vacant position to be filled is one for which a notice of vacancy will be posted in accordance with the provisions of K.A.R. 1-6-2, including an internal vacancy.

(4) Upon receiving an application for the vacant position from an individual who is eligible for a Kansas employee preference, the appointing authority shall offer the position to the individual if the individual meets the minimum requirements for the position, subject to the following requirements:

(A)(i) If only one individual who is eligible for a Kansas employee preference applies for the position and is determined to meet the minimum requirements for the position, the appointing authority shall schedule an interview with the individual to provide the appointing authority with an opportunity to assess the employee's ability to successfully perform the duties and responsibilities of the position and to provide the individual with an opportunity to determine whether the position is of interest to the individual.

(ii) Following the interview, the appointing authority shall offer the position to the individual, unless the director determines that the individual cannot successfully perform the duties and responsibilities of the position under paragraph (b)(4)(C).

(iii) The individual who is offered the position as provided in this paragraph (b)(4)(A) shall inform the appointing authority whether the individual accepts or rejects the offer within two business days of the date on which the position is offered.

(B) If more than one individual who is eligible for a Kansas employee preference applies for the position and meets the minimum requirements for the position, the appointing authority

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *ga*

APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

shall apply additional, job-related selection criteria in accordance with K.A.R. 1-6-21 in considering the application of each of these individuals, subject to the following ~~conditions and~~ requirements:

(i) The appointing authority shall not be required to interview more than seven individuals, except that each individual who is a veteran shall be offered an opportunity for an interview.

(ii) After considering the additional, job-related selection criteria, the appointing authority shall offer the position to one of these individuals, except that the appointing authority shall not be required to offer the position to any individual who the director determines cannot successfully perform the duties and responsibilities of the position under paragraph (b)(4)(C).

(iii) ~~Any~~ Each individual who is a veteran shall be offered the position if that individual is determined to be equally qualified after applying the additional, job-related selection criteria.

(iv) The individual who is offered the position as provided in ~~this~~ paragraph (b)(4)(B) shall inform the appointing authority whether the individual accepts or rejects the offer within two business days of the date on which the position is offered.

(C) If the appointing authority submits written documentation to the director and, based on the documentation, the director determines in writing that ~~there is a clear indication that an~~ individual who is eligible for the Kansas employee preference could not, ~~after minimal training or a reasonable amount of experience on the job,~~ successfully perform the duties and responsibilities of the position, the appointing authority shall not be required to offer the position to that individual.

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *JA*

APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

(c) For purposes of this regulation, "veteran" ~~means~~ shall mean any individual who is eligible for a veteran's preference ~~under the provisions of~~ pursuant to K.S.A. ~~75-2955~~ 73-201, and amendments thereto.

(d) ~~This regulation shall be effective on and after July 30, 2003.~~ (Authorized by K.S.A. ~~2002~~ 75-2948 and K.S.A. 2014 Supp. 75-3747 and K.S.A. ~~75-2948~~; implementing K.S.A. 75-2948; effective May 1, 1979; amended May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 27, 1993; amended Dec. 17, 1995; amended May 31, 1996; amended, T-1-4-1-03, April 1, 2003; amended July 25, 2003; amended P-_____.)

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY



APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

1-7-11. Employees entitled to appeal performance reviews. (a) Any employee who receives a performance rating that is lower than the highest possible rating of “unsatisfactory” or “needs improvement” may appeal that rating if the employee meets either of the following conditions:

(1) The employee has permanent status, including an employee with permanent status who is serving a probationary period due to a promotion.

(2) The employee is serving a probationary period due to a rehire on the basis of reinstatement.

(b)(1) If an action concerning the end of probationary status is dependent upon the performance review, the appeal committee may make a recommendation to the appointing authority concerning whether ~~or not~~ to grant permanent status to the employee. However, the appointing authority shall have the right to make the determination of whether ~~or not~~ to grant permanent status, subject to whatever limitations are imposed by the performance rating of the performance review prepared by the appeal committee.

(2) ~~Notwithstanding~~ Despite the limits on the duration of probationary periods established elsewhere in these regulations, the appointing authority may extend the probationary period for a limited period of time as necessary to allow the appeal committee to prepare the final performance review. The total amount of time of this extension shall not exceed 60 calendar days.

(3) The appointing authority shall report to the director each extension of a probationary period made pursuant to this regulation.

(e) ~~This regulation shall be effective on and after October 1, 2009.~~ (Authorized by K.S.A. 75-2943, K.S.A. 75-3706, and K.S.A. ~~2008~~ 2014 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2946, 75-3707, and 75-3746; effective May 1, 1983; amended, T-86-17, June 17,

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY



APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

1985; amended May 1, 1986; amended Dec. 17, 1995; amended Oct. 24, 1997; amended June 5, 2005; amended Oct. 1, 2009; amended P-_____.)

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY



APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

1-9-23. Shared leave. (a)(1) Any employee in a classified, regular position or in an unclassified position that is eligible for benefits may be eligible to receive or donate shared leave as provided in this regulation.

(2) Except as provided in paragraph (d)(1)(D), shared leave may be granted to an employee if all of the following conditions are met and if the employee meets the criteria specified in paragraph (b)(1):

(A) The employee or a family member of the employee, as defined in K.A.R. 1-9-5 (e)(2), is experiencing a serious, extreme, or life-threatening illness, injury, impairment, or physical or mental condition.

(B) The illness, injury, impairment, or condition of the employee or the family member has caused, or is likely to cause the employee to take leave without pay or terminate employment.

(C) The illness, injury, impairment, or condition of the employee or the family member keeps the employee from performing regular work duties.

(b)(1) Each employee who meets the requirements of paragraph (a)(2) shall be eligible to receive shared leave if both of these conditions are met:

(A) The employee has exhausted all paid leave available for use, including vacation leave, sick leave, compensatory time, holiday compensatory time, and the employee's discretionary holiday.

(B) The employee has at least six continuous months of service, pursuant to K.A.R. 1-2-46.

(2)(A) An employee shall be eligible to donate vacation leave or sick leave to another employee if these conditions are met:

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *[Signature]*

APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

(A)(i) The donation of vacation leave does not cause the accumulated vacation leave balance of the donating employee to be less than 80 hours, unless the employee donates vacation leave at the time of separation from state service.

(B)(ii) The donation of sick leave does not cause the accumulated sick leave balance of the donating employee to be less than 480 hours, unless the employee donates sick leave at the time of separation from state service.

(C)(B) If the employee is retiring from state service and receiving compensation for sick leave upon retirement, the donated sick leave ~~consists only~~ shall be limited to no more than 80 hours of the accumulated sick leave in excess of the applicable minimum accumulation amount required for eligibility for a sick leave payout ~~in accordance with~~ pursuant to K.S.A. 75-5517, and amendments thereto.

(c)(1)(A) When requesting shared leave, an employee shall be required to provide a statement from a licensed health care provider or other medical evidence necessary to adequately establish that the illness, injury, impairment, or physical or mental condition of the employee or family member is serious, extreme, or life-threatening and keeps the employee from performing regular work duties. If the employee fails to provide the required evidence, the use of shared leave shall be denied.

(B) At any time during the use of shared leave, the appointing authority may require the employee to provide a statement from a licensed health care provider or other medical evidence necessary to establish that the illness, injury, impairment, or physical or mental condition of the employee or family member continues to be serious, extreme, or life-threatening or to establish

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY



APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

when the employee will be able to return to work. If the employee fails to provide the required evidence, the use of shared leave may be terminated by the appointing authority.

(2)(A) The appointing authority shall determine whether ~~or not~~ an employee meets the initial eligibility requirements in paragraph (b)(1) and, if applicable, whether ~~or not~~ the employee would be caring for an individual who meets the definition of a family member.

(B) Shared leave may be denied if the appointing authority determines that the requesting employee has a history of leave abuse.

(C) ~~Any~~ An employee who currently is receiving workers compensation for the illness, injury, impairment, or physical or mental condition that is the basis of the shared leave request or has submitted an application to the division of workers compensation for this illness, injury, impairment, or condition shall not be eligible to receive shared leave.

(d)(1)(A) A shared leave committee shall be established and coordinated by the director. The shared leave committee shall consist of three current employees in the executive branch who, in the director's judgment, have experience in making determinations regarding leave and who will be fair and impartial in discharging their responsibilities.

(B) Except as provided by paragraph (d)(2) ~~below~~, once the appointing authority determines that an employee meets the eligibility requirements ~~set-out~~ specified in paragraph (c)(2) ~~above~~, the shared leave committee shall determine whether ~~or not~~ the illness, injury, impairment, or physical or mental condition of the employee or the employee's family member meets the conditions established in paragraph (a)(2) ~~of this regulation~~.

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *[Signature]*

APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

(C) If the shared leave committee determines that the illness, injury, impairment, or physical or mental condition meets the requirements of paragraph (a)(2), the appointing authority shall grant all or a portion of the time requested.

(D) An appointing authority may approve an employee's request for shared leave regardless of the determination of the shared leave committee if the appointing authority determines that such a decision would be in the best interests of the state. Before approving the request, the appointing authority shall consult with the director about the factors that the appointing authority is relying upon in making the determination that approval of the shared leave is in the best interests of the state.

(2) If the appointing authority is an elected official, the appointing authority may determine whether ~~or not~~ the illness, injury, impairment, or physical or mental condition of the employee or the employee's family member meets the conditions established in paragraph (a)(2) or may submit the shared leave request to the shared leave committee for determination as provided in paragraph (d)(1).

(e) Employees shall not be notified of the need for shared leave donations until the request for shared leave has been approved as provided in subsection (d). No employee shall be coerced, threatened, or intimidated into donating leave or financially induced to donate leave for purposes of the shared leave program.

(f) The records of all shared leave donations shall remain confidential.

(g)(1) Shared leave may be used only for the duration of the serious, extreme, or life-threatening illness, injury, impairment, or physical or mental condition for which it the shared leave donation was collected. The maximum number of hours of shared leave that may be used

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *llc*

APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

by an employee shall be the total number of hours that the employee would regularly be scheduled to work during a six-month period.

(2) No employee shall be eligible to use shared leave after meeting the eligibility requirements for disability benefits under the Kansas public employees retirement system.

(3) Employees shall use shared leave in accordance with their regular work schedules.

(4) Exempt employees shall use shared leave only in half-day or full-day increments.

(h)(1) Shared leave may be applied retroactively for a maximum of two pay periods preceding the date the employee signed the shared leave request form.

(2) The employee shall no longer be eligible to receive shared leave for a particular occurrence if any of these conditions is met:

(A) The illness, injury, impairment, or condition of the employee or the employee's family member improves so that it is no longer serious, extreme, or life-threatening, and the employee is no longer prevented from performing regular work duties.

(B) The employee terminates or retires.

(C) The employee returns to work and works the employee's regular work schedule for at least 20 continuous working days.

(3) Any unused portion of the shared leave shall be prorated among all donating employees based on the original amount and type of donated leave and returned to those employees within two pay periods of the date on which it is determined that the employee receiving the donated leave is no longer eligible for shared leave. Shared leave shall not be returned to donating employees in increments of less than one full hour or to any person who has left state service.

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *AK*

APPROVED

APR 30 2015

DEPT. OF ADMINISTRATION

(i)(1) Shared leave shall be paid according to the receiving employee's regular rate of pay by the receiving employee's agency. The rate of pay of the donating employee shall not be used in figuring the amount of shared leave that the requesting employee receives.

(2) Shared leave shall be donated in full-hour increments.


(j) ~~Any~~ Each decision to approve or deny a request for shared leave ~~or~~ and any other determination regarding the extension or termination of shared leave shall be final and shall not be subject to appeal to the civil service board.

~~(k) This regulation shall be effective on and after June 5, 2005.~~ (Authorized by K.S.A. 75-3706, K.S.A. ~~2004~~ 2014 Supp. 75-3747, and K.S.A. 75-5549; implementing K.S.A. 75-3707, 75-3746, and 75-5549; effective, T-1-7-23-92, July 23, 1992; effective Sept. 14, 1992; amended July 26, 1993; amended, T-1-9-19-94, Sept. 19, 1994; amended Nov. 21, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended Sept. 18, 1998; amended, T-1-2-17-00, Feb. 17, 2000; amended June 16, 2000; amended June 5, 2005; amended P-_____.)

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY 

APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

1-14-8. Computation of layoff scores. (a) A layoff score shall be computed by the appointing authority for each employee in the agency who has permanent status and who either is in a class of positions identified for layoff or could be affected by the exercise of bumping rights.

(b) Layoff scores shall be computed according to the formula $A \times L$, where A and L have the following values:

(1) A = the average performance review rating of the employee, as described in subsection (d); and

(2) L = the length of service, as defined in K.A.R. 1-2-46 (a), expressed in months years, with three months of service equivalent to .25.

Length of service for a retired employee who has returned to work shall be calculated in accordance with K.A.R. 1-2-46 (g). The layoff scores shall be prepared in accordance with a uniform score sheet prescribed by the director.

(c) Layoff scores computed by the appointing authority shall be made available for inspection by each employee upon request at the time the agency gives written notice of a proposed layoff to the director and the secretary pursuant to K.A.R. 1-14-7. Upon request of any employee, the appointing authority shall review the manner in which the employee's score was calculated. Each dispute as to the proper calculation of a layoff score of any employee shall be resolved by the director.

(d) Except as otherwise authorized by this subsection, the performance review ratings used in computing the layoff score of an employee shall be the employee's five most recent ratings for the employee during the last five years up to and including five ratings, if the employee has as many as five ratings. However, a rating resulting from a special performance review that is given for a rating period ending within 90 calendar days of any notice of the layoff

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *gla*

APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

to the director shall not be counted. Performance reviews completed for rating periods ending on or after the date the appointing authority notifies the director in writing that a layoff is to occur shall not be considered in computing layoff scores; however, the appointing authority may designate a uniform earlier cutoff date to identify which performance review ratings are to be used in computing layoff scores.

(1) For the purposes of calculating layoff scores in accordance with the formula established in subsection (b), for performance reviews conducted on or before September 30, 2009, a rating of exceptional shall have a value of five, a rating of satisfactory shall have a value of three, and a rating of unsatisfactory shall have a value of zero.

(2) For the purposes of calculating layoff scores in accordance with the formula established in subsection (b), for performance reviews conducted on or after October 1, 2009, a rating of "exceptional" shall have a value of ~~five~~ seven, a rating of "exceeds expectations" shall have a value of ~~four~~ five, a rating of "meets expectations" shall have a value of three, a rating of "needs improvement" shall have a value of ~~two~~ one, and a rating of "unsatisfactory" shall have a value of zero.

(3)(2) If an employee does not have a total of five performance review ratings for use in computation of a layoff score, the layoff score shall be an average of the ratings that the employee has actually received.

(4)(3) If an employee has no performance review ratings that may be used to compute a layoff score, the employee shall be deemed to have been given a single performance review rating of "meets expectations," and the value of that rating shall be used to compute a layoff score. New hires and rehires employed on a basis other than reinstatement who are serving a

APPROVED

APR 30 2015

DEPT. OF ADMINISTRATION

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY



probationary period and employees in training classes shall be subject to subsections (e), (f), and (g).

~~(5)(4) In case of identical~~ If any layoff scores, are identical and if some, but not all, of the persons with the same score must be laid off, preference among these persons shall be given to any veteran, as defined in K.S.A. 73-201 and amendments thereto, and any orphan, as defined in this paragraph, in that order. For the purpose of this regulation, "orphan" shall mean a minor who is the child of a veteran who died while, and as a result of, serving in the armed forces.

If further ties remain, a method of breaking the ties ~~shall be established by the secretary~~ that is consistent with agency affirmative action goals and timetables for addressing underutilization of persons in protected groups shall be established by the secretary. If further ties remain, preference in retention shall be given to the person with the ~~greatest length of service as defined in K.A.R. 1-2-46~~ higher average performance review rating as used in calculating layoff scores in accordance with subsection (b). If a tie still exists, the next preference shall be given to the person with the greatest length of service, as defined in K.A.R. 1-2-46, within that agency. If a tie still exists, the appointing authority shall ~~be responsible for determining~~ determine an equitable tie-breaking system.

(e) New hires and rehires with probationary status shall not be granted permanent status on or after the date the appointing authority has notified the director of a proposed layoff. However, any new hire or rehire with probationary status in a position for which no employee subject to layoff meets the required selection criteria may be given permanent status. New hires and rehires with probationary status shall have their probationary period extended until it is certain that no employee with permanent status whose position is to be vacated by layoff or who

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY



APPROVED

APR 30 2015

DEPT. OF ADMINISTRATION

otherwise would be laid off through the exercise of bumping rights is claiming the position held by the employee with probationary status.

(f) Each employee serving a probationary period as a result of one of the following shall be considered to have permanent status for layoff purposes:

- (1) Promotion of an employee who has permanent status;
- (2) reallocation of a position if the incumbent has permanent status; or
- (3) promotion from a classified position with at least six months of continuous classified service.

(g) Each employee who is in training status in a governor's trainee position, or in any identified training position, and who has at least six months of continuous service shall be considered to have permanent status for layoff purposes only.

(h) The layoff list shall be based on the order of the layoff scores. The person with the lowest layoff score shall be laid off first. If more than one person is to be laid off, the persons to be laid off shall be selected on the basis of the lowest layoff scores.

(i) ~~This regulation shall be effective on and after October 1, 2009.~~ (Authorized by K.S.A. 75-2943, K.S.A. 75-3706, and K.S.A. ~~2008~~ 2014 Supp. 75-3747; implementing K.S.A. 75-2943, 75-2948, 75-3707, and 75-3746; effective May 1, 1984; amended, T-86-17, June 17, 1985; amended May 1, 1986; amended Dec. 27, 1993; amended Dec. 17, 1995; amended June 5, 2005; amended Oct. 1, 2009; amended P-_____.)

RECEIVED
 JUL 13 2016
 KRIS W. KOBACH
 SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY



APPROVED

APR 29 2015

DEPT. OF ADMINISTRATION

1-14-10. Procedures for bumping and layoff conferences. (a) Bumping shall occur within the layoff group identified in the agency's layoff notice, or ~~agency-wide~~ agencywide if the agency has not designated a layoff group. If the ~~criteria set forth~~ requirements in paragraphs (a)(1) and (2) ~~of this subsection~~ have been met, any employee with permanent status, or any employee considered permanent for layoff purposes only, who is scheduled for layoff shall ~~only bump~~ only into a lower class in which the employee previously had permanent status, unless the employee's position is in a class ~~which~~ that is part of a class series designated by the appointing authority in the agency's layoff notice. If such a class series is designated in the agency's layoff notice, then the employee shall be permitted to bump into a lower class in the class series. Except as authorized by subsection (b), in order for an employee with permanent status to exercise bumping rights, ~~the employee shall meet the following criteria:~~ requirements shall be met:

- (1) The employee to be bumped shall have a lower layoff score than the person exercising the bumping right.
- (2) The employee to be bumped shall have the lowest layoff score in ~~the~~ that employee's job class of anyone in a position not scheduled for layoff.

(b) No employee with permanent status shall be laid off if all of the following conditions are met:

- (1) There is a position filled by a probationary employee anywhere in the agency;
- (2) The employee with permanent status scheduled to be laid off is interested in the position; ~~and,~~
- (3) The employee with permanent status is eligible for transfer or demotion to the position pursuant to K.A.R. 1-6-24 and 1-6-27.

RECEIVED
 JUL 13 2016
 KRIS W. KOBACH
 SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *[Signature]*

APPROVED

APR 30 2015

DEPT. OF ADMINISTRATION

(c) If an agency's layoff notice permits bumping only into lower classes in which an employee had previous permanent status; and the class or classes in which the employee had previous permanent status have been abolished, the employee shall be afforded bumping rights to a similar job class in a lower pay grade; if a similar job class exists as determined by the director.

(d) Regardless of subsections (a), (b), and (c), subject to the approval of the director, any appointing authority may prevent any classified employee from being laid off if the appointing authority finds that the loss of the employee, due to the employee's particular knowledge, skills, abilities, certification, licensure, or combination thereof, would substantially impair the agency's ability to perform its essential operations.

(e)(1) Bumping procedures shall begin as soon as possible after layoff notices have been given pursuant to K.A.R. 1-14-9. The appointing authority or designee shall develop a schedule for an individual conference with each affected employee, starting with the employee having the highest layoff score. The schedule of conferences shall continue in this order until each affected employee has had such a conference.

(2) During the layoff conference, the employee shall be informed of the bumping options available to the employee and of the opportunity to select one such option. The employee may defer the selection no longer than one full working day, unless a longer period of time is authorized by the appointing authority. ~~When~~ If an employee is unavailable on the day the employee is scheduled for a layoff conference, the appointing authority shall reschedule the layoff conference. If the employee fails to appear at the rescheduled conference, the appointing agency shall not be required to hold a layoff conference with the employee and the employee shall forfeit bumping rights. ~~Any disputes stemming from the forfeiture of bumping rights shall be resolved by the director.~~

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL

JUL 13 2015

APPROVED BY *gla*

APPROVED

JUL 06 2015

DEPT. OF ADMINISTRATION

(3) In extenuating circumstances and when deemed to be in the best interest of the state service, group layoff conference sessions may be authorized by the appointing authority.

(e) (f) At the layoff conference, each employee shall be informed of the employee's right to seek reemployment opportunities with the state, including placement assistance provided by the division. Placement assistance shall be available to the affected employee for up to three years after the effective date of the layoff, unless the affected employee requests in writing that the employee does not want placement assistance.

(f) (g) Any employee who is not scheduled for layoff, but whose position will be vacated during the layoff and bumping process, and who refuses to accept a transfer or demotion to another position, may request to be laid off voluntarily. Any employee who has been granted a voluntary layoff shall have reemployment rights.

(h) All disputes resulting from the forfeiture of bumping rights shall be resolved by the director. (Authorized by K.S.A. ~~1995~~ 2014 Supp. 75-3747; implementing K.S.A. ~~1995~~ Supp. 75-2948; effective May 1, 1984; amended Jan. 18, 1994; amended Dec. 17, 1995; amended May 31, 1996; amended P-_____.)

RECEIVED
JUL 13 2016
KRIS W. KOBACH
SECRETARY OF STATE

ATTORNEY GENERAL
JUL 13 2015
APPROVED BY *[Signature]*

APPROVED
APR 29 2015
DEPT. OF ADMINISTRATION

**KANSAS DEPARTMENT OF ADMINISTRATION
ECONOMIC IMPACT STATEMENT
K.A.R. 1-2-74; K.A.R. 1-6-23; K.A.R. 1-7-11; K.A.R. 1-9-23;
K.A.R. 1-14-8 and K.A.R. 1-14-10**

I. Summary of Proposed Amendments to Regulations, Including Purpose.

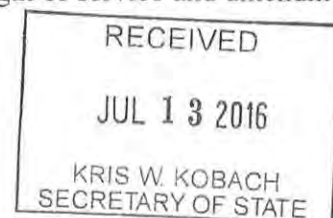
K.A.R. 1-2-74 is an existing regulation that defines “administrative leave” and establishes in what situations it can be used. The regulation currently restricts the use of administrative leave as a reward and the proposed amendment would eliminate that restriction, thereby allowing State agencies to provide paid time off as a reward to State employees.

K.A.R. 1-6-23 is an existing regulation which addresses the reemployment of State employees following a layoff. The regulation establishes the Kansas employee preference program, which provides eligible employees with a preference in reemployment with the State. The primary amendment to this regulation reduces restrictions on the granting of exceptions to the program while other technical amendments update language regarding performance review ratings and correct the statutory citation for the State’s veterans’ preference program.

K.A.R. 1-7-11 is an existing regulation which grants employees the right to appeal performance ratings received through the State’s performance management process as established in K.A.R. 1-7-10. The amendment to this regulation limits the performance ratings that can be appealed by eligible employees to just ratings of “unsatisfactory” or “needs improvement” instead of any rating less than the highest rating of “exceptional” which is what is currently allowed.

K.A.R. 1-9-23 is an existing regulation that establishes the State’s shared leave program, whereby eligible State employees can receive donations of accrued leave from other State employees. The primary amendment to this regulation limits the amount of sick leave that an employee can donate upon retirement to no more than 80 hours.

K.A.R. 1-14-8 is an existing regulation which addresses the computation of layoff scores for State employees. The regulation provides that layoff scores are calculated by multiplying an employee’s average performance review rating by the employee’s length of service and amendments



are proposed to both variables of the formula. The first such amendment provides that the value of the length of service used in the formula is to be expressed in years rather than months, with partial years broken down to .25 increments. The second amendment changes the value of three of the performance review ratings for the purposes of the formula as follows: the value of a rating of “exceptional” is increased from five to seven; a rating of “exceeds expectations” is increased from four to five; and a rating of “needs improvement” is decreased from two to one. Another amendment to the regulation changes the third tiebreaker in cases of identical layoff scores from the greatest length of service, to the higher average performance review rating used in calculating layoff scores. A final amendment to this regulation eliminates a subsection establishing values for performance reviews conducted prior to the implementation of the current performance management process on October 1, 2009, since such ratings are now outside the five-year period used to calculate layoffs.

K.A.R. 1-14-10 is an existing regulation that establishes procedures for bumping and conferences with impacted employees during the process of a layoff. The primary amendment to this regulation allows agencies to prevent an employee from being laid off regardless of the employee’s layoff score if the loss of the employee’s particular knowledge, skills, abilities, certification, licensure or combination thereof would substantially impair the agency’s ability to perform its essential functions. Language requires that any such action must be approved by the Director of Personnel Services.

II. Reason or Reasons the Proposed Regulation Is Required, Including Whether or Not the Regulation Is Mandated by Federal Law.

None of the regulations are mandated by federal law. K.A.R. 1-2-74 is necessary to define and authorize the use of a type of paid leave that is not accrued by the employee, to be used in situations involving investigations of the employee or in other circumstances in the best interests of the State, as determined by the agency appointing authority. K.A.R. 1-6-23 is required to establish policies and procedures regarding employees returning to State service after being laid off while



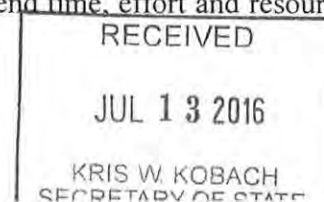
K.A.R. 1-7-11 is necessary to establish policies and procedures regarding the appeal of performance review ratings by eligible employees. K.A.R. 1-9-23 is necessary to implement the shared leave program for State employees mandated in K.S.A. 75-5549 and K.A.R.'s 1-14-8 and 1-14-10 are necessary to establish policies and procedures regarding the calculation of layoff scores and the bumping process to be followed when a layoff of State employees is required.

III. Anticipated Economic Impact

The economic impact of the proposed amendments to K.A.R. 1-2-74 will depend on how often administrative leave is provided as a reward for employees. Since such determinations are at the discretion of each agency's appointing authority, there is really no way to accurately estimate the amount of hours that will be used for this purpose. However, since employees' wages are already budgeted and this use of administrative leave can be managed to avoid overtime or other staffing issues for an agency, there will be no actual economic impact on agencies' budgets beyond the loss of productivity of the employee being away from work. In addition, this proposed amendment is anticipated to have a positive impact on employee morale.

The amendments proposed to K.A.R. 1-6-23 will result in efficiencies for State agencies, as they lessen the burden on agencies in seeking an exception to being required to hire a former employee who is not the most qualified applicant for a vacant position. As currently written, an agency would be required to offer a position to an employee exercising preference who is unable to successfully perform the duties of the position at the time of hire even if there was another, better qualified candidate who could begin performing those duties immediately. The amendments to this regulation will allow agencies to obtain an exception to the employee preference policy in such a situation, resulting in both a more competitive and effective hiring process as well as enhanced efficiencies for the agency.

The proposed amendments to K.A.R. 1-7-11 will also result in efficiencies for State agencies, as agency HR and management staff will no longer be required to expend time, effort and resources

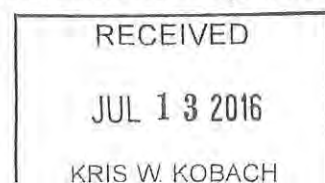


in preparing for and conducting performance review appeals of “meets expectations” and “exceeds expectations” performance ratings. While these ratings are not appealed very often, the appeal process and the hearing itself are time and information intensive, so eliminating any such proceedings will allow agency HR and management staff to focus on other duties instead of spending time and resources on such appeals.

By limiting the amount of sick leave that can be donated as shared leave by retiring employees, the amendment proposed to K.A.R. 1-9-23 will prevent what several Legislators viewed as “double-dipping” since many retiring employees are paid out for sick leave pursuant to K.S.A. 75-5517 and donate the remainder of their sick leave balance as shared leave at the time of retirement. This practice essentially results in a large shared leave “pool” being available to any employee seeking it rather than donations specifically from a specific donor to a specific recipient, as required in the program. This amendment will therefore close a loophole that has developed in the system, eliminate a practice perceived as “double dipping” at the time of retirement, and potentially result in savings to State agencies.

The proposed amendments to K.A.R. 1-14-8 amend the formula used to calculate layoff scores from being heavily weighted to longevity as it is currently, to a more equal balance between longevity and performance. While these amendments will not result in “bottom line” savings for agencies, as they have no impact on the amount of salary and benefits savings that will be achieved through the layoff process, the amendments will help to ensure that the workforce that is retained after a layoff is made up of an agency’s best performers.

The amendments proposed to K.A.R. 1-14-10 will allow agencies to retain employees with critical knowledge, skills, abilities, certifications or licensure who would otherwise be laid off. Currently, employees who were recently hired who may have been the result of months of recruitment and possess the most up-to-date and/or critical qualifications for an agency are the first ones to be laid off as a result of the way that layoff scores are calculated. Even with the changes to the formula proposed by K.A.R. 1-14-8, recently hired employees are still vulnerable to layoff so this



amendment will address one of the most frequent complaints from agencies going through a layoff by allowing them to retain these critical employees in the midst of a workforce reduction.

IV. Anticipated Financial Impact upon Other Governmental Agencies and upon Private Business or Individuals.

Not applicable. The proposed amendments would apply only to state employees.

V. Anticipated Economic Impact upon School Districts, Following Consultation with the Kansas Association of School Boards.

Not applicable. The proposed amendments would apply only to state employees.

VI. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection.

The Department considered, but rejected, not making the proposed amendments. It was determined that compelling reasons exist to amend the regulations as proposed in order to: 1) allow State agencies more flexibility in hiring and retaining employees; 2) eliminate unnecessary appeals and increase administrative efficiency; 3) eliminate perceived “double dipping” and align practices regarding the shared leave program with the intent and requirements of the program; and 4) establish a more balanced formula to calculate layoff scores and allow agencies the ability to retain critical employees during a reduction in workforce.

