

Joint Committee on Administrative Rules and Regulations

September 6, 2016

**Department of Administration
Office of Personnel Services**

**Proposed Amendments to 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**

Kraig Knowlton, Director of Personnel Services

Good morning and thank you for the opportunity to discuss these proposed amendments to six personnel regulations.

The first regulation that is being proposed for amendment is K.A.R. 1-2-74. This regulation defines “administrative leave” and establishes in what situations it can be used. Language currently restricts the use of administrative leave as a reward and the proposed amendment would eliminate that restriction, allowing State employees to receive paid time off as a reward when the agency’s appointing authority determines that such an action is in the best interests of the State. While the use of this leave as a reward will result in lost productivity due to employees being away from work, this should be a budget-neutral change, since employees’ wages are already budgeted and agencies can manage the use of this leave to avoid creating overtime problems or other staffing issues.

The next regulation being amended is K.A.R. 1-6-23, which 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. The remainder of the amendments are technical in nature, and include updates to language regarding current performance review ratings and a correction to the statutory citation for the State’s veterans’ preference program.

Currently, exceptions can only be granted when there is a clear indication that an individual exercising their preference could not successfully perform the duties and responsibilities of the position, after minimal training or a reasonable amount of experience on the job. The amendment removes both the reference to “a clear indication” as well as the requirement that individual exercising preference would be entitled to minimal training or a reasonable amount of experience on the job in order to be successful in the position for which they are exercising their preference.

Exceptions to this program have been granted only rarely, but one of the most critical issues in those instances where exceptions have been requested in the past has been the need for the employee to be able to perform the duties of the position in as short amount of time as possible. 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 in such a situation in order to hire the most

qualified applicant for the position, resulting in both a more competitive and effective hiring process as well as enhanced efficiencies for the agency.

The next regulation proposed for amendment is K.A.R. 1-7-11 which establishes classified employees' rights to appeal performance review ratings received through the State's performance management process. In addition to several technical amendments, the sole substantive amendment to this regulation limits the performance ratings that can be appealed by eligible employees to just the two lowest ratings of Unsatisfactory or Needs Improvement instead of any rating less than the highest possible rating of Exceptional, which is what is currently allowed.

The current language is a holdover from the previous incarnation of the State's performance management process that had only three possible ratings: Exceptional, Satisfactory and Unsatisfactory. The process now has five possible ratings: Exceptional, Exceeds Expectations, Meets Expectations, Needs Improvement and Unsatisfactory.

As originally proposed, employees were only able to appeal two ratings, and this amendment would restore that policy. Moreover, appeals are typically reserved for "negative" outcomes, not for all outcomes that don't result in the very best possible circumstances for the appellant. The current policy is unique in that respect, so this amendment would establish consistency with other appeal rights available to State employees.

With regard to economic impact, this amendment will result in efficiencies for State agencies. While Exceeds Expectations and Meets Expectations ratings are not appealed nearly as often as Needs Improvement or Unsatisfactory ratings, 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.

The fourth regulation being proposed for amendment at this time is K.A.R. 1-9-23, which establishes the State's shared leave program whereby eligible State employees can receive donations of accrued leave from other State employees. In addition to several technical amendments, 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.

This amendment was suggested in hearings before the House Commerce Committee during the 2015 Legislative Session, when the shared leave program was being discussed by the Committee. Several Legislators expressed concern about the practice of retiring employees donating sick leave to the shared leave program at the time of retirement. Many retiring employees who are eligible to be paid out for sick leave pursuant to K.S.A. 75-5517 will donate the remainder of their sick leave balance beyond what is necessary to qualify for a payout to the shared leave program. This amendment will therefore close a perceived loophole that has developed in the system by eliminating a practice perceived as "double dipping" at the time of retirement, and likely result in savings to State agencies.

The next regulation proposed for amendment is K.A.R. 1-14-8, which addresses the computation of layoff scores for classified 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 proposed amendment to the length of service variable is to change the value from months, as it is currently, to years, with partial years broken down to .25 increments. The amendment to the performance variable proposes to change 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. These proposed amendments work together to better balance the formula, which is currently skewed heavily in favor of longevity.

K.A.R. 1-14-8 also includes language on how to proceed with layoffs when two employees have an identical layoff score, and another proposed amendment to the regulation changes the third tiebreaker in such instances 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.

The final regulation being proposed for amendment at this time is K.A.R. 1-14-10, which establishes procedures for bumping and conferences with impacted employees during the process of a layoff. In addition to a number of technical amendments, the primary amendment proposed to this regulation would allow 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. The amendment includes the requirement that any such action must be approved by the Director of Personnel Services.

This proposed amendment 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 who may 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 the most vulnerable to layoff so this amendment would address one of the most frequent complaints from agencies going through a layoff by allowing them to retain employees who possess critical qualifications or skills in the midst of a workforce reduction.