

1 GENERAL GOVERNMENT CABINET

2 Personnel Board

3 (Amendment)

4 101 KAR 1:365. Appeal and hearing procedures.

5 RELATES TO: KRS Chapter 13B, 18A.075, 18A.0751, 18A.095, 344.030

6 STATUTORY AUTHORITY: KRS 13B.170, 18A.075, 18A.0751

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to
8 promulgate administrative regulations to carry out the provisions of KRS Chapter 13B and enact
9 administrative hearing procedures. KRS 18A.075 provides that the Personnel Board shall
10 promulgate comprehensive administrative regulations consistent with the provisions of KRS
11 18A.005 to 18A.200. KRS 18A.0751 provides that the Personnel Board shall promulgate
12 comprehensive administrative regulations providing for the procedures to be utilized by the board
13 in the conduct of hearings. This administrative regulation establishes Personnel Board hearing
14 procedures.

15 Section 1. Definitions.

16 (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).

17 (2) "Qualified individual with a disability" is defined by KRS 344.030(1).

18 (3) "Reasonable accommodation" is defined by KRS 344.030(6).

19 (4) "Religion" is defined by KRS 344.030(7).

20 (5) "Undue hardship" is defined by KRS 344.030(9).

1 Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the
2 terms defined in Section 1 of this administrative regulation.

3 Section 3. Filing.

4 (1) An appeal or a document relating to an appeal shall be filed with the Personnel Board
5 through the office of the executive director within the time period established in KRS 18A.095.

6 (2)

7 (a) An appeal, motion, request, objection, exception, response, witness list or other
8 document may be filed by a party with the board by means of facsimile transmission or other
9 electronic means including email.

10 (b) If a party transmits a document to the board by facsimile transmission or other
11 electronic means, the party shall attempt to transmit the document to all parties by the same
12 method.

13 (3) To be timely filed, a document transmitted by facsimile or other electronic means shall
14 be received by the board within the statutory or regulatory times established for filing and be
15 received by the board no later than midnight on the last day for filing.

16 (4) The submission of an original copy of a facsimile transmission or email shall not be
17 required, unless requested.

18 (5) A state employee shall not use state time, equipment, materials, or personnel in
19 pursuing an appeal without the advance written permission of an appointing authority in their
20 employing Agency.

21 (6) An appeal shall be heard in Franklin County, Kentucky.

22 Section 4. Designation of Hearing Officer.

1 (1) Unless otherwise directed by the board, the executive director shall assign a hearing
2 officer or officers to an appeal.

3 (2) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief
4 hearing officer.

5 (3) If an appeal will be heard by the full board, the board shall designate a chief hearing
6 officer.

7 Section 5. Continuances.

8 (1) A continuance of a scheduled hearing may be granted by a hearing officer for good
9 cause.

10 (2) The Hearing Officer has the discretion to require that a request for continuance shall:

11 (a) Be written;

12 (b) State the reason for the request;

13 (c) Include proposed dates for rescheduling the hearing; and

14 (d) Be filed with the board.

15 (3) The Hearing Officer has the discretion to require that any objection to a request for
16 continuance shall:

17 (a) Be written;

18 (b) State the reason for the objection to the request for continuance; and

19 (c) Be filed with the board.

20 (4)

21 (a) At the direction of the hearing officer, the executive director may execute and transmit
22 to all parties an interim order either granting or denying the request for continuance.

1 (b) If the request for continuance is granted, the interim order shall state the date on which
2 the hearing has been rescheduled or that the hearing has been continued generally.

3 Section 6. Prehearing Procedures.

4 (1) A motion, request, or filing shall be in writing, filed with the board through the office of
5 the executive director, and served on all parties.

6 (2) Unless an interim order provides for review by the board prior to the conclusion of a
7 hearing, which shall only be granted at the sole discretion of the Hearing Officer, the board shall
8 review an interim order when it considers the recommended order, record, and exceptions.

9 (3) If an employee retains counsel subsequent to filing an appeal, that attorney may be
10 required to file a written entry of appearance.

11 (4) An employee shall notify all parties and the board in writing of a change of address.

12 (5)

13 (a) A Kentucky Personnel Board subpoena form shall be available in the office of the
14 executive director and shall be issued by the executive director.

15 (b) Preparation and service of the subpoena and compliance with the subpoena shall be the
16 responsibility of the party requesting the subpoena.

17 (6) A deposition may be taken in an extraordinary circumstance and upon authorization by
18 the hearing officer. A request to take a deposition shall be filed at least fifteen (15) calendar days
19 prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled
20 hearing.

21 (7) At the discretion of the hearing officer, two (2) or more appeals that involve the same or
22 similar facts may be consolidated. Upon motion of a party, or upon the hearing officer's own
23 motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

1 (8) An agreed settlement shall be submitted in writing for review by the Personnel Cabinet
2 Secretary and final action by the board.

3 Section 7. Conduct of Hearing.

4 (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the
5 appeal.

6 (2) A party shall provide at least four (4) copies of an exhibit that is to be introduced as
7 evidence. The parties may exchange documents through appropriate electronic means, including
8 email. The hearing officer shall have the discretion to appropriately fashion the evidentiary record
9 at all times.

10 Section 8. Board Review and Action.

11 (1) A response to a written exception to a recommended order may be filed by a party
12 within fifteen (15) calendar days after the date the written exception is filed with the board. A
13 response shall be:

14 (a) In writing; and

15 (b) Served on all parties.

16 (2) At the request of a party or on its own motion, the board may permit oral arguments
17 before the full board. A request for oral argument shall be:

18 (a) In writing; and

19 (b) Filed with the board within fifteen (15) days of issuance of a recommended order.

20 (3) A final order shall be prepared, executed, and entered at the direction of the board by
21 the secretary to the board.

22 Section 9. Incorporation by Reference.

23 (1) The following forms are incorporated by reference:

1 (a) "Kentucky Personnel Board Appeal Form (6-29-2023) [(1-2018)] "; and

2 (b) "Kentucky Personnel Board Subpoena Form (2-90.)"

3 (2) These forms may be inspected, copied, or obtained at the office of the Personnel Board,
4 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m.
5 to 4:30 p.m. and the website of the Personnel Board, personnelboard.ky.gov.

6

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Approved:



Mark A. Sipek,
Executive Director, Personnel Board

7-11-2023

Date



APPEAL FORM

For Official Use Only

*** ALL APPEALS TO THE PERSONNEL BOARD MUST BE ON THIS FORM. ***

This appeal to the Kentucky Personnel Board is hereby filed pursuant to the provisions of KRS Chapter 18A. By law, you are required to provide the following information in order to file a Personnel Board appeal.

[Redacted]

Name: _____
(Last First Middle Maiden)

PERNR or Employee ID: _____

[Redacted]

Personal Phone No.: _____ Workstation Phone No.: _____

Personal Email Address: _____

Home Address: _____
(Street City State Zip)

Workstation Address: _____
(Street City State Zip)

Check if being represented by an attorney, and complete the following:

Attorney Name: _____ Phone No.: _____ Email: _____

Mailing Address: _____
(Street City State Zip)

[Redacted]

Cabinet/Agency Name: _____

Appointing Authority Name: _____

[Redacted]

Date of receipt of notice of alleged action (i.e., Agency letter of dismissal, suspension, demotion, etc.), if applicable. If you did not receive a notice, please use "n/a" to indicate that you did not receive written notice about the alleged action and then please indicate the date you first learned about the matter you wish to appeal:

Please attach a copy of any written notice that you have received relating to this Appeal.

I am a: Classified Employee Probationary Employee Unclassified Employee Applicant for Employment

I am appealing the following action(s) [Check all that apply.]

- Dismissal Demotion Involuntary Transfer Suspension
 Promotion/Non-selection Discrimination: (i.e., religious, race, color, national origin, sex, age over 40, disability, political, or other protected category. **Please circle the type(s) of discrimination claimed and/or explain other, below**)
 FFTL claim(s) Veteran's claim(s) Employee Evaluation Other/Claim not listed:

Please further explain your claim(s), if not adequately/fully identified above: _____

List the specific statute, regulation, and/or policy that was allegedly violated (required, pursuant to KRS 18A.095(14)(d)):

- KRS 18A.095 101 KAR 1:345 101 KAR 1:400 101 KAR 2:095 101 KAR 2:102 101 KAR 3:050

Other: _____

The following is a short, plain, and concise statement of the facts, cause, and/or reason that relate to the action I am appealing (You may submit documents you believe to be important to your appeal now AND/OR as your appeal moves forward). **Remember you may only have thirty (30) calendar days to appeal the alleged action.**

Signature

Date

Attorney's Signature (if applicable)

Date

This form is to be mailed, emailed, or delivered to:

**Kentucky Personnel Board
1025 Capital Center Drive, Suite 105
Frankfort, KY 40601
Phone: (502) 564-7830
Fax: (502) 695-5799
PersonnelBoard@ky.gov**

For Official Use Only

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on September 21, 2023, 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 September 30, 2023. 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

Regulation No. 101 KAR 1:365

Contact Person: Stafford Easterling Phone: 502 564 7830 Email: stafford.easterling@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation governs the Personnel Board's appeal and hearing procedures.

(b) The necessity of this administrative regulation: This regulation is necessary in order to provide more granular detail as to the Personnel Board's procedures and guidelines as to how the Board will process appeals and conduct hearings.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 18A.075, 18A.0751, and KRS 13B.170 mandate that the Board promulgate administrative regulations that detail the procedures and guidelines that must be used by the Board when conducting hearings and processing appeals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This regulation will continue to enable the Board to ensure the effective administration of the merit system in addition to assisting the Board in meeting its statutory requirements to establish appeal and hearing procedures.

(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: The language of the administrative regulation itself will not change. This amendment merely effectuates alterations to the Personnel Board Appeal form already incorporated by reference.

(b) The necessity of the amendment to this administrative regulation: The Personnel Board's Appeal Form, which is incorporated by reference, need to be modernized.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 18A.075, 18A.0751, and KRS 13B.170 mandate that the Board promulgate regulations that detail the procedures and guidelines that must be used by the Board when conducting hearings and processing appeals. The updating of the form does not change the content of this regulation and the amendment of the form attached by reference conforms with the Board's mandate to effectively administer state government's merit system, as provided by KRS Chapter 18A.

(d) How the amendment will assist in the effective administration of the statutes: Updating the Personnel Board's Appeal form will allow the Board to capture more information about the nature of an appeal before an initial pre-hearing conference, which is a more efficient use of the Board's extremely limited resources, in addition to making it easier for those utilizing the Board's Appeal form to submit information relevant to their appeals, which should permit all participants in Board appeals to more effectively resolve appeal through a more transparent streamlined process.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation affects all state government agencies and all individuals with rights secured by KRS Chapter 18A, including, primarily, current state employees.

(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: No entity identified in the Board's response will be required to undertake any significant new actions in order to comply with the amendment. Such entities will merely be required to handle and distribute the new amended Personnel Board Appeal form in the exact same manner that they handled and distributed the Board's old, unamended Appeal form.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be minimal additional cost to the entities to comply with this regulation. The only foreseeable cost would be incurred in printing the new form to replace the old form to the extent that distribution of the form is not done electronically.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): In addition to the universal benefits conveyed by adopting more modern procedures and ensuring more uniformity in the appeal process and hearing procedures, by amending the Board's Appeal form to capture more information relevant to each appeal, all participants in Board appeals should benefit through a more transparent streamlined process.

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

(a) Initially: Minimal printing costs up front to replace the old Board Appeal form with the new form.

(b) On a continuing basis: After the initial expense, 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: Given the minimal costs involved, 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 and there is no necessity to secure a source of funding in order 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 fees nor will any entity endure increased fees, directly or indirectly.

(9) TIERING: Is tiering applied? Explain why or why not. No. This regulation, as amended assures hearings are held equally and appeals processed uniformly.

FISCAL NOTE

Regulation No. 101 KAR 1:365.

Contact Person: Stafford Easterling Phone: 502 564-7830 Email: stafford.easterling@ky.gov

(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? This regulation affects all state government agencies and all individuals with rights secured by KRS Chapter 18A, including, primarily, current state employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 18A.075, KRS 18A.0751, 18A.005 to 18A.200, and KRS 13B.170.

(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. No effect on expenditures and revenues to any state or local government agency.

(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? The minimal costs incurred to distribute new Board Appeal forms are so insignificant that the Board cannot provide detailed estimated costs to administer the amendments to this regulation, especially if participating state agencies chose to distribute the amended Personnel Board forms electronically.

(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. There are no estimated costs for subsequent years to administer the amendments to this regulation.

Revenues (+/-): Zero

Expenditures (+/-): Zero

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

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(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year? Zero

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years? Zero

(c) How much will it cost the regulated entities for the first year? Minimal.

(d) How much will it cost the regulated entities for subsequent years? Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): Zero

Expenditures (+/-): Zero

Other Explanation: There should be no increase or decrease in the cost for the regulated entities caused by this administrative regulation.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)].*

This administrative regulation will not have a major economic impact.

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SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

The "Personnel Board Appeal Form," Form #18, is the 2-page appeal form that appellants to the Personnel Board are required to file in order to initiate a Personnel Board appeal. KRS 18A.095 requires appellants to complete an appeal form prescribed by the Personnel Board.

SUMMARY OF CHANGES TO MATERIAL INCORPORATED BY REFERENCE

The "Personnel Board Appeal Form," Form #18, is the 2-page appeal form that appellants to the Personnel Board are required to file in order to initiate a Personnel Board appeal. The Personnel Board was required to create a new appeal form as a result of changes to KRS Chapter 18A contained in Senate Bill 153, including changing the information an appellant is required to provide upon initially filing a Personnel Board appeal. The appeal form in effect prior to the passage of Senate Bill 153 is now obsolete and will be replaced with the new appeal form. Changes to the appeal form include requiring the submission of a personal email address, requiring additional detail regarding the details of claim(s) being advanced in the appeal, and modification of the type of claim(s) an appellant is allowed to pursue at the Personnel Board.