

REVISED ECONOMIC IMPACT STATEMENT

Department of Administration

Division of Personnel Services

November, 2006

The following amended, new, and revoked regulations of the Department of Administration, Division of Personnel Services (DPS), are proposed for adoption. A description of each regulation and its economic impact follows. Amendments to existing regulations that are proposed in order to be consistent with regulatory style are not identified.

Except as specified below, none of these regulations are mandated by federal law, and therefore, they do not exceed the requirements of federal law. Likewise, no other less costly or less intrusive alternatives were identified unless otherwise stated below. (Note: Statements indicating that a regulation is “not anticipated to have any economic impact” or “is not anticipated to have any identifiable economic impact” are intended to indicate that no economic impact on the Department of Administration, other state agencies, state employees, or the general public has been identified.)

K.A.R. 1-2-46 – Length of service.

K.A.R. 1-2-77 – Retiree.

K.A.R. 1-2-46 defines the term “length of service” and identifies certain types of work for the state of Kansas that are excluded from that definition, including time worked as a “temporary employee.” For purposes of the civil service personnel regulations in Articles 1 through 14, K.A.R. 1-2-85 defines the term “temporary employee” as “a *classified* position which is limited to not more than 999 hours of employment in a 12-month period,” and K.A.R. 1-6-25 establishes further terms, conditions, and limitations on employment as a temporary employee. However, time spent working in an *unclassified*, temporary position as provided in K.S.A. 75-2935(1)(i), which does not impose a 999-hour employment limit, is explicitly included in the definition of length of service.

Subsection (a)(1) of K.A.R. 1-2-46 is being amended to clarify that only time worked as a *classified* temporary employee in accordance with the provisions of K.A.R. 1-6-25 is to be excluded from length of service. Despite the reference to K.S.A. 75-2935 (1)(i) in subsection (a), there have been some questions about whether the exclusion of time worked as a temporary employee covers unclassified temporary employees. Therefore, this amendment is being proposed to avoid any possible misreading of the exclusion. Since this proposed amendment is merely a clarification and is not substantive, there will be no economic impact from this proposal.

Based on comments from the Joint Committee on Administrative Rules and Regulations (the Committee), amendments are also being made to subsections (d) and (g) in order to clarify that the accrual of vacation leave, and not other types of accrued leave, is the only type of leave accrual affected by an employee’s length of service. These amendments are technical in nature and do not change the existing policy in any way.

Subsection (g) of K.A.R. 1-2-46 also sets out the effect on length of service of an employee’s retirement – it currently provides that “for purposes of leave accrual, layoff, and longevity bonus pay, the length of service of any *retiree* returning to state service” is to be reduced to zero and calculated on the same basis as that for a new hire.” Amendments to subsection (g) of K.A.R. 1-2-46 are proposed in conjunction with the proposed revocation of K.A.R. 1-2-77, which defines the

term “retiree.” K.A.R. 1-2-46 (g) is the only place where the term “retiree” is used in the personnel regulations, so a specific regulation defining the term was determined to be unnecessary.

In addition, revocation of the definition of “retiree” in K.A.R. 1-2-77 and the related amendment to subsection (g) remove a potential misreading created by a timing element contained in the definition of “retiree.” The existing definition of “retiree” is “an employee who, *at the time* the person terminates employment with the state, receives retirement benefits” under KPERS, KP&F or the Regents Retirement Plan. This timing element possibly could be read as limiting the definition of retiree to only those individuals who actually began receiving benefits immediately upon separation from state service. If that interpretation was to be applied to the provisions in subsection (g) of K.A.R. 1-2-46 regarding length of service, an employee who waited even a day after separating from state service before receiving retirement benefits might argue that the employee’s length of service should not be reset to zero if the employee returns to state service after retiring. However, this interpretation does not reflect the existing intent of K.A.R. 1-2-46(g) that, if an employee has retired from state service and subsequently returns to state employment, the length of service accrued by the employee before retiring will not be reinstated. Therefore, the revocation of K.A.R. 1-2-77 and related rewording of K.A.R. 1-2-46(g) eliminate a potential, unintended misreading and inequity, but do not change existing practices or the current application of those regulations.

This proposed amendment will ensure that the length of service of employee who have retired from state service and subsequently return to the State workforce is determined equitably. In practice, no instances have been identified in which an employee who retired from state service and subsequently returned to work for the state had the length of service accrued before retirement reinstated upon returning to work. Therefore, the proposed revocation of K.A.R. 1-2-77 and the proposed amendments to K.A.R. 1-2-46 (g) will have no economic impact.

K.A.R. 1-3-5 – Definitions.

K.A.R. 1-3-6 – Equal employment opportunity; affirmative action.

K.A.R. 1-9-18 – Equal employment opportunity, affirmative action; discrimination prohibited.

K.A.R. 1-9-18 is proposed to be revoked, and the contents of that regulation are being separated into two new regulations: K.A.R. 1-3-5 and 1-3-6. These proposed, new regulations would be placed in Article 3, the title of which is to be changed from “Workforce Planning and Control” to “Equal Employment Opportunity and Affirmative Action” in order to emphasize the importance of these policies.

The provisions of K.A.R. 1-3-5 and 1-3-6 are substantially the same as those found in K.A.R. 1-9-18, but the requirements and terms have been updated to reflect the evolution of the terminology and practices of the State that has occurred since K.A.R. 1-9-18 was last amended, including addition of a definition of “minority” as requested by the Committee. In addition, existing provisions in K.A.R. 1-9-18 prohibiting discrimination have not been included in these new regulations since these prohibitions are covered elsewhere in state law, and the investigation and enforcement of discrimination actions are within the purview of the State Human Rights Commission and not the Division of Personnel Services or any other division of the Department of

Administration. Further, the list of characteristics on which employment decisions may not be based, as contained in the definition of equal employment opportunity in K.A.R. 1-3-5, would be amended by adding “military or veteran status” as another characteristic and by adding the phrase “except as otherwise provided by law” in recognition of specialized employment laws that provide for one or more of these characteristics to be a factor in certain employment decisions, such as the veteran’s preference provided under Kansas law.

Because these new regulations do not contain new substantive issues or requirements and the prohibition with respect to discrimination remains in place elsewhere in state law, the revocation of K.A.R. 1-9-18 and the adoption of K.A.R. 1-3-5 and K.A.R. 1-3-6 are anticipated to have no economic impact.

K.A.R. 1-9-25 – Alcohol and controlled substances test for employees in commercial driver positions.

K.A.R. 1-9-26 – Pre-duty controlled substances testing for employees in positions assigned commercial driver functions.

Currently, these regulations consist primarily of a restatement of the provisions of the Federal regulations concerning alcohol and drug testing of applicants and employees in commercial driver positions along with provisions that establish a uniform, statewide standard for areas in which those Federal regulations give employers some discretion. For example, the Federal regulations detail the types of employees that must be tested and the reasons for which employees can and must be tested, but they leave flexibility to employers with respect to such things as the level of disciplinary actions that are to be taken against employees for certain violations of these policies.

Since the provisions contained in the Federal regulations are already set out in Federal law, much of these regulations are redundant. As a result, we are proposing to remove those portions of the regulations already found in Federal law so that these regulations only address the areas in which the State of Kansas has established its own policies and procedures for issues involving the alcohol and drug testing of applicants and employees in commercial driver positions.

The amendments to these regulations do not change the existing policies in any way, but there are a number of instances in where existing language was restated or restructured for clarity, including refining the citation to the portions of the applicable Federal law, as suggested by the Committee. Since there are no substantive changes, these amendments will have no identifiable economic impact.

The public hearing was held on July 25, 2006 at 10:00 a.m. in Room 108 of the Landon State Office Building. There were four people in attendance, including two attendees from the Department of Administration who were staffing the hearing. (A copy of the attendance sheet is attached.) The hearing closed at 9:15 a.m.