

## **REVISED ECONOMIC IMPACT STATEMENT**

### **Department of Administration**

Division of Personnel Services

August 31, 2009

The following amended and new 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. 1-2-64 – Probationary employee.**

K.A.R. 1-2-64 is a new regulation that defines the term “probationary employee” as any individual serving a probationary period pursuant to K.A.R. 1-7-4 (a) or (d). This is a reference currently used in several regulations but has never been defined. Since this definition simply clarifies current policy, it will have no economic impact.

#### **K.A.R. 1-2-65 – Probationary status.**

Amendments to this regulation coincide with the new regulation above, and clarify that only probationary employees are in probationary status. Again, this is not a new policy or change in existing policy, but merely a clarification so these amendments will have no economic impact.

The Joint Committee on Administrative Rules and Regulations (JCARR) suggested that the use of a phrase other than “serving a probationary period” be considered. The JCARR felt that the phrase gave the impression of being punished for wrongdoing. After considering other possible terms, there were no better options identified that would convey the same meaning so it was decided to proceed with the language as proposed.

#### **K.A.R. 1-7-3 – Probationary period required.**

The amendments to subsection (b) of this regulation are being proposed to implement specific components of the State’s new Performance Management Process (PMP). The addition of the word “overall” in the second line of subsection (b) is being added to clarify that under the new PMP, while there are multiple criteria that receive “ratings,” it is the overall rating indicated on the front of the new PMP form and entered into the State’s payroll and accounting system that is relevant with respect to the completion of the probationary period. Similarly, the removal of the phrase “less than satisfactory” and the inclusion of the word “unsatisfactory” in subsection (b) reflects the fact that the new PMP will have five ratings, not three, and that only those employees who receive the lowest rating at the end of a probationary period are required not to be granted permanent status.

In addition, the new language at the end of subsection (b) clarifies that performance reviews conducted as part of an employee’s probationary period are not required to be performed within the

time period mandated for all other performance reviews in the new PMP. Since the timing of performance reviews required due to probationary periods is dependent on the dates of specific employment actions and probationary periods have a specific duration, this exception will continue to allow these performance reviews to be completed as they are now.

Finally, the amendments to the language in subsection (e) of the regulation are being added so that the effective date of the amended regulation will coincide with the effective date of the new PMP. Since the amendments to this regulation essentially preserve the current policies regarding probationary periods and performance reviews required by probationary periods, the amendments to this regulation have no economic impact.

**K.A.R. 1-7-4 – Duration of probationary period.**

All of the amendments proposed to this regulation are simply language changes or clarifications with no policy impact, including the amendment to the effective date of the regulation found in new subsection (l). These amendments include the addition of the word “consecutive” in subsection (e), which clarifies that in order not to count toward time served on probation, the 30 days of leave mentioned in that subsection must be consecutive. This is the current practice and coincides with a similar provision regarding length of service, but is being added to the regulation for clarification. Based on comments received during the public comment period, the proposed inclusion of the term “workdays” is being changed to “calendar” days as that distinction better coincides with existing policy. Since these amendments do not affect current policy, they will have no economic impact.

**K.A.R. 1-7-6 – Notices relating to probationary periods and extensions.**

All of the proposed amendments to this regulation are simply language changes or clarifications and do not make any substantive changes to current policy. While not specifically required at this time, the amendment to subsection (a) requiring that the notice provided to employees at the end of a probationary period be in writing reflects common practice. Based on comments received during the public comment period, the term “probationary” is being added in the first sentence of subsection (b) for the purposes of clarification. There is no economic impact associated with these proposed amendments.

**K.A.R. 1-7-7 – Removal of probationary employee by director.**

All of the proposed amendments to this regulation are language changes for the purposes of clarity and do not make any substantive changes to current policy. As a result, there is no economic impact associated with these proposed amendments.

**K.A.R. 1-7-10 – Performance reviews.**

The proposed amendments to this regulation implement many of the provisions of the new PMP for the State of Kansas. The language in the first sentence of subsection (a) is being added to clarify that the performance management process referenced is the one authorized and directed to be developed and implemented by the 2008 Legislature. The language in the last sentence of

subsection (a) is included to emphasize the purpose of the new process is not only to assess the effectiveness of employees, but also to clarify and inform employees of their expected performance outcomes.

The proposed language in paragraph (a)(1) provides that only immediate supervisors who have supervised an employee for at least 90 days can complete the employee's performance review. If an immediate supervisor has not supervised an employee for at least 90 days, the performance review must be completed by another qualified employee designated by the appointing authority. This situation was the subject of numerous complaints from employees, so it has been addressed in the regulation to help prevent any additional issues.

Comments received during the public comment period indicated that the proposed language did not coincide completely with the language from a memorandum of agreement from which served as the basis for this proposed amendment. As a result, language is being added to clarify that, for the purposes of the regulation, a "qualified person" must have significant knowledge of the job performance of the employee.

The amendments to paragraph (a)(2) specify that the required annual performance review be conducted on forms prescribed by DPS, but allows agencies to add additional, job-related performance criteria to those set out on the prescribed forms. The requirement that performance reviews are to be conducted on a specific form ensures a measure of consistency with respect to this process throughout the State workforce, something which is sorely lacking under the current system. However, the ability for agencies to add additional criteria to the required criteria set out in the prescribed form allows for agencies to tailor the new form to their own policies, practices and vision.

The new language in paragraphs (a)(3) and (a)(4) prescribe a specific timeframe during which annual performance reviews and required midyear reviews of employees are to take place under the new PMP. The language specifies that performance reviews are to be completed for all permanent employees in the 90-day period starting October 1 and ending December 31 of each year, and that the midyear review of these employees is to occur in the 90-day period starting April 1 and ending June 30.

In comments received during the public comment period, it was pointed out that the original proposed language for the 90-day period for the midyear review had been from May 1 to July 31. The comments stated that in order to be exactly six months apart, the 90-day period for the midyear review should start April 1 and end June 30, so the proposed language has been amended accordingly.

These "focal points" for the completion of performance reviews are common with many employers and have been adopted by the State of Kansas as a way to standardize the process and help to insure that performance reviews are provided on an annual basis. The requirement of a midyear review is a new measure that further emphasizes the need for communication between employees and supervisors.

New paragraph (a)(6) has to do with the two essential requirements of agency values and dependability, which are part of the new PMP and included in the prescribed form. All employees,

regardless of their actual position, will be evaluated on these essential requirements. The language of this paragraph provides that if an employee receives an unsatisfactory rating on either of the essential requirements of the new PMP, the employee's overall performance review rating must also be unsatisfactory. This is a brand new concept for the State of Kansas that was created during the development of the new PMP.

Based on comments received during the public comment period, the term "satisfactory" is being replaced with "meets expectations" to coincide with the rating used on the new PMP form. This was an undecided issue when the regulations were initially proposed, but based on comments and feedback from the State Human Resource (HR) Community, the decision was made to use the new terminology and amend the regulations accordingly.

The amendments to subsection (d) are predominantly for the purposes of clarification, with the addition of the word "overall" being added to clarify that under the new PMP, while there are multiple criteria that receive "ratings," it is the overall rating indicated on the front of the new PMP form and entered into the State's payroll and accounting system that is relevant with respect to this issue. The substitution of the word "unsatisfactory" in the last line of the subsection reflects the fact that the new PMP will have five ratings, not three, and clarifies that only those employees who receive the lowest possible rating are prevented from being granted permanent status.

The rest of the amendments are either technical or for the purposes of clarification. As a result, they do not change current policy or otherwise have any substantive impact.

There are several areas where the amendments to this regulation could have a potential economic impact. The new PMP's emphasis on greater communication and one-on-one work between the supervisor and employee, especially with respect to performance planning and feedback during the year, may result in some economic impact in that many supervisors may have to devote more time to these pursuits than they currently do, potentially taking them away from other facets of their job duties. Even if this is the case, this Administration believes that the enhanced performance management and communication that will be achieved throughout the State workforce through the implementation of the new PMP will more than make up for any inconvenience or additional time spent by supervisors implementing the new process.

Another amendment that may have a potential economic impact is the requirement that performance reviews and the midyear review be completed during set timeframes. There has been concern expressed that this will create a hardship on supervisors with numerous employees as well as on supervisors who have cyclical or seasonal work that falls within the periods of time set aside for completion of these measures. While it is understood that some agencies and employees may be busier or have specific responsibilities during these timeframes, it is believed that the 90-day window provides ample ability to plan and budget time accordingly to meet these requirements.

Finally, the last feature of these amendments that may have an economic impact is the requirement that an employee who receives an unsatisfactory on either of the two essential requirements must receive an overall unsatisfactory performance evaluation. This could potentially result in probationary employees not attaining permanent status or in permanent employees being considered for disciplinary action as a result of receiving an unsatisfactory performance evaluation.

While this may be the case, those who designed the new PMP believe that these essential requirements are fundamental to being effective employees of the State of Kansas, so employees who are not able to satisfactorily complete these essential requirements should not be allowed to be considered to be performing anything other than in an unsatisfactory manner.

**K.A.R. 1-7-11 – Employees entitled to appeal performance reviews.**

The proposed amendments to this regulation are predominantly technical in nature, and do not make any changes to current policy. The only amendment with substantive impact is at the end of paragraph (b)(2), where new language clarifies that the total amount of time that an employee's probationary period may be extended in order to allow an appeal committee to prepare the final performance review is 60 days. Based on an issue raised by the JCARR, the proposed language was amended by adding the word "calendar" to clarify that the time period is 60 calendar days.

This timeframe should be more than adequate for an appeal committee to complete their task, even in the most complicated of situations, so it should in no way be considered as an unnecessary or unrealistic limitation. These amendments are not anticipated to have any economic impact.

**K.A.R. 1-7-12 – Performance review appeal procedure.**

There are a number of amendments to this regulation, all of which clarify and codify issues that have been raised by agencies and employees in the recent past. The first of these amendments is in paragraph (b)(1), where language is being included to require that employees are to receive the date, time and place of the hearing when they are informed of names of the members of the performance review appeal committee.

The next amendment can be found in new paragraph (b)(2) and clarifies that, prior to the beginning of the hearing, an employee may object to any individual proposed to serve as a member of the employee's performance review appeal committee. The objection must be in writing and include the reason why the employee is making the objection. Once this is received, the appointing authority must either deny the objection or appoint another member of the committee, and must inform the employee of the determination in writing. Paragraph (b)(2)(D) provides that objections from employees and the determinations of the appointing authority are to be included as part of the documentation of the appeal.

Finally, the amendment to paragraph (b)(5) adds an employee's request for an extension to the list of reasons why an appointing authority may extend the time limits associated with the appeal of a performance review.

There are no further substantive amendments proposed for this regulation. None of the proposed amendments to this regulation are anticipated to have any economic impact.

The JCARR expressed concern with respect to the time frames referenced in this regulation. Specifically, the JCARR believes that clarification is needed as to whether the time frames include weekends or holidays. After further review of the matter, based on the plain meaning of the term "calendar days," the Department of Administration believes that no additional clarification is necessary.

**K.A.R. 1-14-8 – Computation of layoff scores.**

There are two substantive amendments proposed as well. The first of these are the amendments proposed to paragraphs (d)(1) and (d)(2), regarding the value of performance review ratings for the purposes of calculating layoff scores. Language clarifies that the current values associated with the three level rating scale are to be used for calculations involving performance review conducted on or before September 30, 2009, but proposes new values for the five ratings of the new PMP for performance reviews conducted on or after October 1, 2009. The progression for the new values follows the same for the current values, so this change merely reflects the addition of two additional ratings beyond the three that currently exist. As indicated in the summary of K.A.R. 1-7-10 above, the term “satisfactory” is being replaced with the term “meets expectations” in reference to performance review ratings conducted under the new PMP.

The second substantive change is to new paragraph (d)(5) of this regulation, which provides a preference for veterans in the case of identical layoff scores. This paragraph was incorrectly cited as paragraph (d)(4) previously, as the number of the paragraph was not changed in the initial version of the proposed regulations. Language correcting this oversight has now been added.

The provisions of the regulation that define the terms “person who served in the armed forces of the United States,” “veteran,” and “surviving spouse” are being replaced with a reference to K.S.A. 73-201. This statute was amended in 2008 and several changes were made to the State’s Veteran’s Preference program, including the expansion of the definition of “veteran.” So, this amendment will provide for consistency with respect to the definition of veterans’ status throughout the State’s personnel policies.

In addition, based on comments from the JCARR and received from agencies during the public comment period, the definition of the term “orphan” is being amended as the definition as originally proposed was unclear. Language from K.S.A. 73-201 is now being used to, for the purposes of this regulation, define an orphan as a minor who is the child of a veteran who died while, and as a result of, serving in the armed forces. The remainder of the amendments proposed to this regulation are language changes or for the purpose of clarification and do not change current policy.

The change from three to five performance ratings will result in greater variation in layoff scores among employees, which could potentially have an economic impact on those employees who are subject to a layoff after October 1, 2009. Similarly, the adoption of the definition of “veteran” set forth in K.S.A. 73-201 will mean that more employees will be considered a veteran for the purposes of receiving a preference in the case of identical layoff scores, which could potentially have an economic impact on the employees included in that layoff. Beyond these situations, there should be no further economic impact from the proposed amendments to this regulation.

The public hearing for these regulations was held on July 1, 2009 at 9:00 am in Room 106 of the Landon State Office Building. There were 13 people in attendance, including five staff from the Department of Administration. (A copy of the sign in sheet for the hearing is attached). The hearing was closed at 9:20 am.