

# Supreme Court of Kentucky

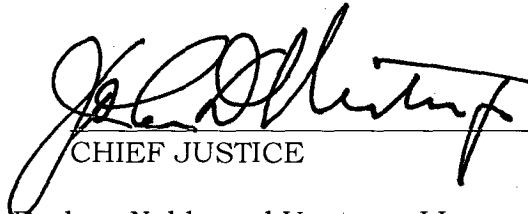
2015-19

**IN RE: AMENDMENTS TO THE RULES OF ADMINISTRATIVE PROCEDURE  
OF THE KENTUCKY COURT OF JUSTICE, AP PART III, PERSONNEL  
POLICIES**

Under Section 110(5)(b) and 116 of the Constitution of Kentucky, it is  
ORDERED that the Rules of Administrative Procedure of the Kentucky Court of  
Justice, AP Part III, Personnel Policies, is deleted in its entirety and replaced by the  
Personnel Policies attached hereto.

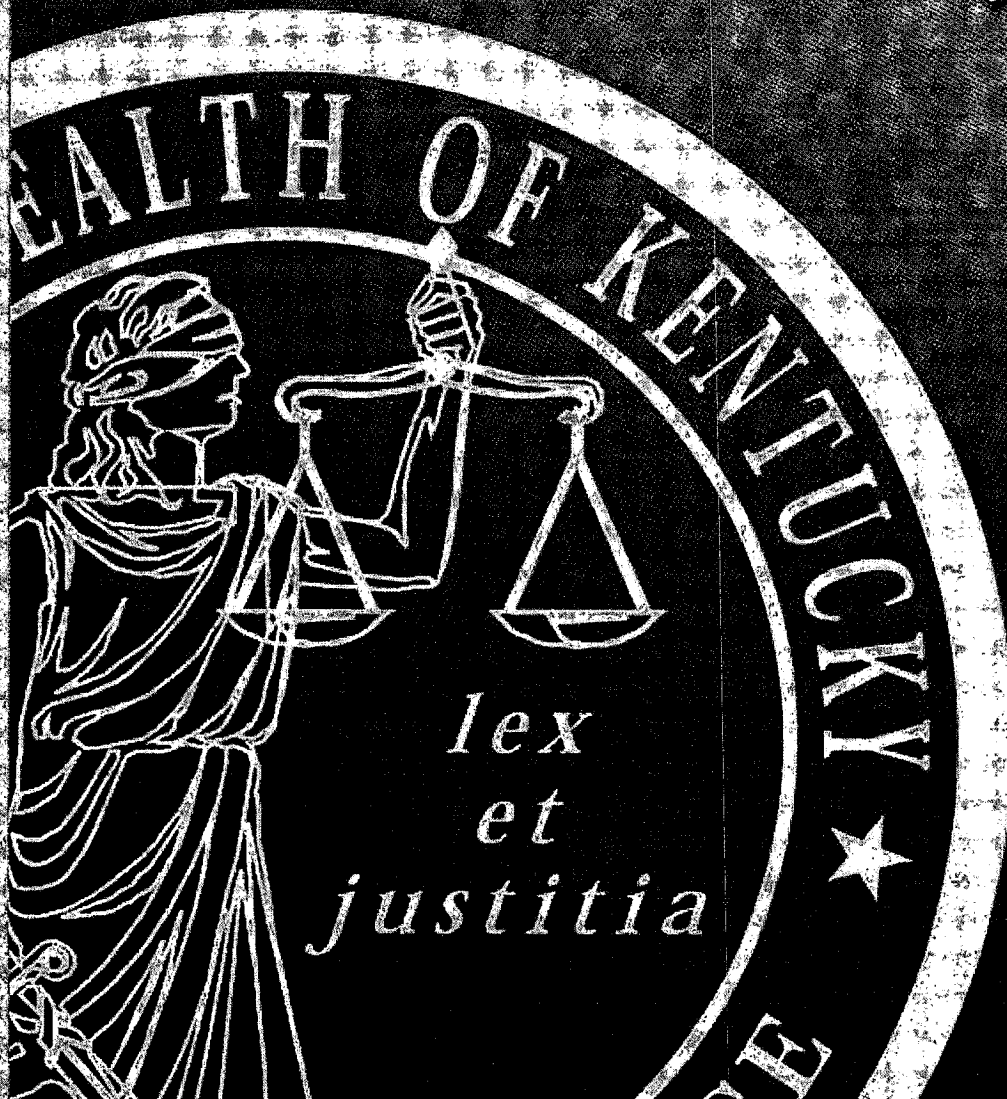
Entered this 21st day of October 2015.

This Order shall be effective September 15, 2015, *nunc pro tunc*.

  
CHIEF JUSTICE

All sitting; Minton, C.J.; Abramson, Barber, Noble and Venters, JJ., concur.  
Cunningham, J., concurs in part and dissents in part with respect to Sections  
1.04(8)(a), 2.06(2)(a), 3.01(1)(a), 5.01, and 7.04(2)(b)(vi), as acknowledged in Supreme  
Court Order 2014-10. Keller, J., concurs in part and dissents in part with respect to  
Section 5.06, and Sections 2.06(2)(a) and 3.10, as acknowledged in Supreme Court  
Order 2014-10.

PERSONNEL  
POLICIES  
*for the Kentucky Court  
of Justice*





## *KCOJ Personnel Policies:* Your guide to employment with the Kentucky Court of Justice

Elected officials and employees of the Kentucky Court of Justice carry out important work for the Commonwealth. Nearly 1 million cases flow through Kentucky courtrooms each year, affecting the lives of millions of citizens across the state. The Judicial Branch is committed to providing fair and equal treatment to its personnel and to the citizens who come before the courts.

I am pleased to introduce these revised personnel policies for tenured and non-tenured employees within the Kentucky Court of Justice. As a state employee, you are subject to these personnel policies as well as certain laws and regulations. You are also entitled to certain benefits. I encourage you to become familiar with these policies, which provide a comprehensive guide to your rights and responsibilities as an employee of the state court system.

If you have questions about these policies or other personnel matters, please contact the Department of Human Resources at the Administrative Office of the Courts.

Thank you for serving the Kentucky Court of Justice.

*John D. Minton, Jr.*  
*Chief Justice of Kentucky*



Administrative Office of the Courts  
1001 Vandalay Drive  
Frankfort, Kentucky 40601  
502-573-2350 or 800-928-2350  
<http://intranet.kycourts.net>

*The Kentucky Court of Justice does not discriminate on the basis of race, color, national origin, sex, sexual orientation, religion, age, disability, genetic information, smoker or nonsmoker status, veteran's status, or political affiliation in employment. The KCOJ Personnel Policies are available in an accessible format upon request to the Human Resources Administrator of the Department of Human Resources at the Administrative Office of the Courts.*

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**NOTE: THESE POLICIES ARE NOT A CONTRACT FOR  
EMPLOYMENT AND ARE SUBJECT TO CHANGE WITHOUT NOTICE.**

## **SECTION 1. General Information**

### **SECTION 1.01 Administration of the Policies**

The personnel administration of the Kentucky Court of Justice (KCOJ) is governed by these published Policies. All forms referenced herein can be found on the Administrative Office of the Courts (AOC) Human Resources (HR) Intranet website at <http://intranet.kycourts.net>.

### **SECTION 1.02 Applicability of the Policies**

These Policies are applicable to all employees in the KCOJ.

### **SECTION 1.03 Elected and Appointed Officials**

These Policies are not applicable to elected and appointed officials in the KCOJ, unless otherwise specified.

### **SECTION 1.04 Definitions**

As used throughout these Policies, the following definitions apply:

- (1) "AOC Director" means the Director of the AOC, who acts as the Chief Justice's designee with authority to administer these Policies, including, but not limited to, the enforcement of final disciplinary actions. The AOC Director is the appointing authority for personnel at the AOC.
- (2) "Appointed official" means an individual who is appointed as a trial commissioner, domestic relations commissioner, or master commissioner in the KCOJ. This does not include an appointed Judge or Circuit Court Clerk.
- (3) "Appointing authority" means an individual who is authorized to act on behalf of an agency or office of the KCOJ with respect to appointments, position actions, payroll documents, leave requests and disciplinary actions, in conformity with the Policies of the KCOJ set forth herein, subject to the best interests of the KCOJ as determined by the Chief Justice as the Chief Executive Officer of the KCOJ.
- (4) "Chief Deputy Clerk" means a deputy clerk who has the requisite abilities and knowledge of the operation of the Office of Circuit Court Clerk and serves in a general supervisory capacity in relation to all other deputy clerks. There may be one Chief Deputy Clerk for every 15 deputy clerks in an Office of Circuit Court Clerk. The AOC Director may set a maximum number of Chief Deputy Clerks for an office. The employee who is selected to serve as the Chief Deputy Clerk must formally accept such designation in writing, a copy of which will be forwarded to the AOC HR Department and placed in that individual's personnel file.
- (5) "Elected official" means an individual who is elected or appointed to a constitutional office in the KCOJ. The elected official is the appointing authority for the personnel in his or her office.

- (6) "Employee" means an individual hired into a position in the KCOJ, whether tenured or non-tenured (at-will), for which he or she is compensated on a full-time or part-time basis.
- (7) "Family" means the employee's spouse, child, parent, grandparent, brother, or sister, or a person of similarly close relationship defined as: (a) an intimate partner who has resided with the employee for at least one year; or (b) one for whom the employee is legally responsible.
- (8) "General Counsel" means the General Counsel for the AOC in Frankfort, Kentucky.
- (9) "Human Resources Administrator (HRA)" means the Human Resources Administrator at the AOC HR Department in Frankfort, Kentucky.
- (10) "Human Resources Director" means the Executive Officer for the HR Department at the AOC in Frankfort, Kentucky.
- (11) "Intern" means an individual who may receive academic credit and may also receive compensation. An Intern who receives compensation is governed under the same rules as temporary employees.
- (12) "Non-tenured employee" means an at-will employee who does not have the right to appeal disciplinary actions.
- (13) "Paid leave" means compensatory, annual, or sick leave earned by full-time employees as defined by Sections 5.03, 7.02, and 7.03 of these Policies.
- (14) "Supervisor" means the individual to whom the employee directly reports.
- (15) "Temporary employee" means a non-tenured (at-will) employee who has been appointed to an interim position that shall be less than nine months in duration.
- (16) "Tenured employee" means an employee who has grievance and appeal rights as described in Section 8 of these Policies.
- (17) "Volunteer" means an individual who assists a KCOJ employee or department without compensation for services and does not have the rights or benefits of paid employees.

### **SECTION 1.05 Non-Tenured Employees**

- (1) Non-tenured positions are as follows:
  - (a) Judicial staff, including administrative support assistants, administrative support specialists, legal assistants, and case managers hired on or after September 1, 2004; staff attorneys, court administrators, and employees of the court administrator's office;
  - (b) Chief deputy clerks within the Offices of Circuit Court Clerk;
  - (c) Principal administrative employees of the Supreme Court and Court of Appeals; and principal administrative employees of the AOC as follows: the AOC Director, Deputy Director, General Counsel, Deputy General Counsel,



Senior Legal Counsel, Legal Counsel, State Law Librarian, Executive Officers, Managers, Assistant Managers, Executive Assistants, Family Services Administrator, and Family Court Liaison, and;

- (d) Federally funded, time-limited positions;
  - (e) Temporary employees;
  - (f) Interns;
  - (g) Other new positions as designated in writing by the Chief Justice or designee.
- (2) Non-tenured employees serve at the pleasure of and at the will of their appointing authority for an unspecified period of time. The appointing authority may terminate an employee's employment for any reason or no reason, with or without notice, at any time. No provision in other KCOJ policies and procedures alters this status.
- (3) Non-tenured employees must sign the Non-Tenured Status Acknowledgment Form and submit it to the HR Department. Failure to submit the acknowledgment form does not change an employee's at-will status.

#### **SECTION 1.06 Tenured Employees**

- (1) All positions not addressed in Section 1.05 of these Policies are considered tenured positions.
- (2) Any employee hired into a tenured position may attain tenured status upon the successful completion of a probationary period as determined by the appointing authority. See Section 4.03 of these Policies.
- (3) Individuals designated as tenured as of the effective date of these Policies shall maintain their tenured status as long as they remain in the previously designated tenured position.

#### **SECTION 1.07 Internal Office Policies**

Each appointing authority may have internal office policies that are consistent with the Rules of the Supreme Court, including these Policies and all applicable statutes. All internal office policies must be reviewed and approved by the AOC Office of Legal Services.

## **SECTION 2. Code of Conduct**

*A court system that upholds high standards of integrity, impartiality, and independence is indispensable to justice in our society. As public servants, employees of the KCOJ have a duty to manage their professional and personal affairs in a manner that maintains and promotes public confidence in the judicial system. Therefore, employees must avoid situations that might lead to conflict, the appearance of conflict, or the appearance of impropriety between self-interest and their duty to the courts and the general public.*

### **SECTION 2.01 Applicability**

- (1) This Code of Conduct applies to all employees, interns, temporary employees, and volunteers working within the KCOJ.
- (2) Any violation of this Code of Conduct may result in disciplinary action, up to and including dismissal.
- (3) Matters involving Justices, Judges, Commissioners, and Circuit Court Clerks will be addressed by the appropriate disciplinary authority.
- (4) Employees are responsible for consulting with their appointing authority or the HR Administrator to resolve any issues that are not explicitly addressed in this Code of Conduct.

### **SECTION 2.02 Confidential Information**

- (1) Confidential information includes, but is not limited to:
  - (a) Information required to be kept confidential by federal law, state law, court rule, administrative regulation, or court order, including but not limited to, Social Security numbers, taxpayer identification numbers, dates of birth, financial account numbers, and medical information;
  - (b) Information on pending cases not already a matter of public record;
  - (c) Any other information learned or developed during the course of working within the KCOJ that derives independent economic value from not being generally known or readily ascertainable by other persons. Confidential information includes, but is not limited to, procedures, manuals, reports, communications, and financial information.
- (2) Employees, current and former, must not directly or indirectly:
  - (a) Use confidential information for personal gain or the personal gain of any other person; nor
  - (b) Disclose confidential information acquired during the course of employment except as required in the performance of official duties, or as otherwise required by law.

- (3) Employees must exercise discretion in their comments to avoid the appearance of partiality or abuse of position.
- (4) Employees must not remove KCOJ records and documents from judicial property without proper authorization from the appointing authority or designee.
- (5) Employees must:
  - (a) Avoid making public comment about a pending action;
  - (b) Not initiate or repeat communications with litigants, witnesses, attorneys, judges, jury members, or any other person involved with a pending action, unless necessary for official duties; and
  - (c) Refer all media requests to their appointing authority or the AOC Office of Public Information.
- (6) Employees may respond to inquiries from the public concerning court procedures but shall not provide legal advice.

### **SECTION 2.03 Performance of Duties**

- (1) Employees must perform official duties diligently during working hours.
- (2) Employees must perform their duties impartially:
  - (a) With courtesy and respect for the public and co-workers; and
  - (b) Without bias or prejudice, shown by words or conduct, based upon race, national origin, color, religion, sex, age, disability, sexual orientation, genetic information, smoker or non-smoker status, veteran's status, political affiliation, or any other characteristic protected by law.

### **SECTION 2.04 Abuse of Position**

- (1) Employees must avoid conduct that may give the appearance of impropriety or the appearance that the employee is using his or her position with the KCOJ to further private interests.
- (2) Employees must not use or attempt to use their work position to secure unwarranted privileges or exemptions.
- (3) Examples of unwarranted privileges or exemptions include, but are not limited to:
  - (a) Accepting, soliciting, or agreeing to accept any gift, favor, or anything of value from any person or business that may give the appearance of impropriety.
  - (b) Requesting or accepting any additional fee or gratuity over the employee's regular compensation for his or her KCOJ work duties.

## **SECTION 2.05 Conflict of Interest**

- (1) A conflict of interest or its appearance can seriously undermine the public's confidence and trust in the judiciary. KCOJ employees must identify and avoid conflicts of interest.
- (2) An employee must disclose any actual or potential conflicts of interest to his or her appointing authority for resolution.
- (3) A conflict of interest may exist when an employee participates in a decision that may directly or indirectly impact that employee or a member of his or her family.

## **SECTION 2.06 Political Activities**

- (1) Political Contributions and Campaigns
  - (a) No employee in the KCOJ may be coerced, forced, or required to make any contribution for political purposes.
  - (b) No employee in the KCOJ may be coerced, forced, or required to solicit or take part in soliciting for political purposes.
  - (c) Employees are prohibited from using KCOJ time or resources for the purpose of political solicitation. Employees shall not display campaign literature or other election material in any facility owned, leased, or otherwise occupied by the KCOJ.
- (2) Political Office
  - (a) All employees of the KCOJ shall terminate their employment prior to filing for election to any partisan political office.
  - (b) Employees who seek to hold a nonpartisan office are not required to terminate their employment prior to filing for election to the nonpartisan office as long as campaigning does not interfere with the performance of their duties. Any employee who intends to seek a nonpartisan office shall notify his or her appointing authority prior to filing for election.
  - (c) Pursuant to Kentucky Constitution §165 and KRS 61.080, there are certain offices considered incompatible by law. When considering any elected or appointed political office, these sources must be consulted. Acceptance of an incompatible office voids the first office as a matter of law.
- (3) Political Activities
  - (a) The KCOJ encourages employees to register and vote. Employees are allowed four hours of paid leave to vote during work hours. For more information regarding voting leave, refer to Section 7.05 of these Policies.
  - (b) The following political activities are permitted for employees, except while the employee is on duty:

- (i) Expressing opinions on all political subjects and candidates.
- (ii) Making voluntary cash contributions to political parties, candidates, or organizations.
- (iii) Joining a political club and attending its meetings.
- (iv) Attending political rallies, conventions, etc., and participating in the selection of committee members.
- (v) Wearing political badges, buttons, or other designations. Nothing in these Policies prohibits voluntarily displaying political stickers on private automobiles or displaying political pictures or signs on private property.
- (vi) Serving as precinct election officers at the polls.
- (vii) Actively working for or against constitutional amendments, referendums, or municipal ordinances in which they are interested, provided that state time and resources are not used for this purpose.
- (viii) Transporting friends or relatives to the polls.
- (ix) Soliciting or handling political contributions.
- (x) Soliciting the sale of or selling political party, faction, or candidate items or tickets. Employees may voluntarily purchase such items or tickets.
- (xi) Preparing, organizing, or conducting a political meeting or rally, or addressing such a meeting on any partisan political matter.
- (xii) Participating in a partisan activity at the polls (in primary or regular elections) in the position of checker, challenger, or watcher, or in soliciting votes and assisting voters to mark ballots.
- (xiii) Distributing campaign literature or material.
- (xiv) Initiating or circulating partisan political nominating petitions.
- (xv) Canvassing a district or soliciting political support from a party, faction, or candidate, either in person or in writing.

## **SECTION 3. Workplace Policies**

### **SECTION 3.01 Equal Employment**

- (1) Statement of Policy
  - (a) Equal employment opportunities are provided throughout the KCOJ in all employment practices, including recruitment, appointment, job assignment, promotion, compensation, training, and fringe benefits, without regard to race, national origin, color, religion, sex, age, disability, sexual orientation, genetic information, smoker or non-smoker status, veteran's status, political affiliation, or any other characteristic protected by law.
  - (b) The purpose of this Policy is to promote and assure equitable treatment of all persons who are now employed, who are being considered for employment, who are seeking employment, or who may be recruited for employment in the future.
  - (c) This policy applies with equal force to elected and appointed officials.
  - (d) Any employee who has concerns about possible discrimination in the workplace is encouraged to bring those concerns to the attention of the HR Director in writing on the KCOJ Employee Complaint Form. Employees can raise concerns and make good faith complaints without fear of reprisal. Anyone found engaging in any type of unlawful discrimination will be subject to disciplinary action up to and including immediate dismissal or referral to the appropriate disciplinary authority.

### **SECTION 3.02 Unlawful Workplace Harassment**

- (1) Statement of Policy
  - (a) It is the policy of the KCOJ to provide a work environment free of unlawful harassment or retaliation based on race, national origin, color, religion, sex, age, disability, sexual orientation, genetic information, smoker or non-smoker status, veteran's status, political affiliation, or any other characteristic protected by law. Harassment based on race, color, religion, sex, national origin, age, and disability is prohibited by Title VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act (ADA), as amended; the Age Discrimination in Employment Act (ADEA); and KRS 344.040 of the Kentucky Civil Rights Act, as well as various local ordinances.
  - (b) Employees engaged in any form of unlawful harassment in the course of their employment are subject to appropriate disciplinary action, including dismissal.
  - (c) This Policy applies equally to elected and appointed officials. Officials alleged to have engaged in any form of unlawful harassment in the course of their appointment or elected term will be referred to the appropriate disciplinary authority.

(2) Definitions

The following definitions only apply to this section:

- (a) "Unlawful Workplace Harassment" means unwelcome or unsolicited speech or conduct based upon race, color, religion, sex, national origin, age, disability, sexual orientation, political affiliation, or any other characteristic protected by law that creates a hostile work environment.
- (b) "Hostile Work Environment" means an environment that a reasonable person would consider to be hostile or abusive and the person who is the object of the harassment perceives to be hostile or abusive based on a characteristic protected by law as provided under Section 3.01(1)(a) of these policies. A hostile work environment is determined by looking at all of the circumstances including, but not limited to: (1) the frequency of the alleged harassing conduct; (2) the severity of the alleged harassing conduct; (3) whether the alleged harassing conduct was physically threatening or humiliating; and (4) whether the alleged harassing conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile, or offensive environment.
- (c) "Quid Pro Quo Harassment" means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or submission to or rejection of such conduct by an individual is used as the basis for an employment decision affecting the individual.
- (d) "Retaliation" means an adverse employment action taken against an employee because he or she has opposed any perceived unlawful workplace harassment or because he or she has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing conducted in connection with unlawful workplace harassment.

(3) Forms of Unlawful Workplace Harassment

Unlawful workplace harassment may include, but is not limited to:

- (a) Verbal
  - (i) Jokes that have the purpose or effect of stereotyping, demeaning, or making fun of an individual based upon race, color, religion, sex, national origin, age, disability, sexual orientation, political affiliation, or any other characteristic protected by law.
  - (ii) Derogatory comments, slurs, epithets, threats, or propositions about an individual's race, color, religion, sex, national origin, age, disability, sexual orientation, political affiliation, or any other characteristic protected by law.

- (iii) Verbal innuendo or insinuation that relates to or reflects negatively on a particular race, color, religion, sex, national origin, age, disability, sexual orientation, political affiliation, or any other characteristic protected by law.
  - (b) Nonverbal
    - (i) Displaying (including distributing or communicating through electronic systems such as email or text message) photographs, posters, drawings, suggestive objects, literature, cartoons, calendars, graffiti, or any item that is degrading to or reflects negatively on a particular race, color, religion, sex, national origin, age, disability, sexual orientation, political affiliation, or any other characteristic protected by law.
    - (ii) Making sexually suggestive or insulting noises or sexually obscene gestures.
    - (iii) Arranging to be alone with a person for the purpose of making sexual advances.
    - (iv) Nonverbal innuendo or insinuation that relates to or reflects negatively on a particular race, color, religion, sex, national origin, age, disability, sexual orientation, political affiliation, or any other characteristic protected by law.
  - (c) Physical
 

Intentional touching, pinching, or brushing the body, kissing, assault, coercing sexual contact, or interference with an individual's normal movements.
  - (d) Other
 

Making threatening reprisals as a result of a negative response to harassment, or harassment as a form of retaliation.
- (4) Patterns of Unlawful Workplace Harassment
- In accordance with the U.S. Equal Employment Opportunity Commission, the KCOJ recognizes that unlawful workplace harassment may include the following considerations:
- (a) A man or a woman may be the victim of sexual harassment, and a man or a woman may be the harasser.
  - (b) The victim does not need to be different from the harasser in race, color, religion, sex, national origin, age, disability, sexual orientation, political affiliation, or any other characteristic protected by law.
- (5) Reporting Unlawful Workplace Harassment
- (a) The KCOJ is committed to prohibiting unlawful workplace harassment before it rises to the level of a violation of state or federal law. All employees, elected



officials, appointed officials, managerial staff, and supervisory staff must immediately report all allegations of unlawful workplace harassment to the HR Director in writing on the KCOJ Employee Complaint Form, as required by Section 3.02(7).

- (b) The KCOJ will protect the confidentiality of unlawful workplace harassment allegations as practical and to the extent required by law. However, the KCOJ has a duty to investigate all complaints of workplace harassment, even if the complainant withdraws the complaint or does not wish to pursue the matter.

(6) Retaliation Prohibited

Employees, elected officials, and appointed officials are prohibited from retaliating against a person who, in good faith, reports or corroborates unlawful workplace harassment, or otherwise assists in the investigation.

(7) Complaint Process

- (a) Any person who has a good faith complaint of unlawful workplace harassment must notify the HR Director in writing on the KCOJ Employee Complaint Form. The KCOJ Employee Complaint Form must be submitted within two business days of the alleged harassment or as soon as practical. If the HR Director is absent, the General Counsel must be notified. If the HR Director or the General Counsel is the alleged harasser, then the employee or supervisor must notify the AOC Director or designee.
- (b) When a complaint is made, immediate and appropriate action must be taken to assure that the complaining party, alleged harasser, appointing authority, and any witnesses are aware of the KCOJ unlawful workplace harassment policy.
- (c) Upon receiving the complaint, the HR Director, with agreement of the General Counsel, may immediately take any protective measures necessary for the safety of the parties and affected employees. The HR Director or designee must inform the alleged harasser in writing that a complaint has been filed and to have no contact of any kind with the complaining party. The alleged harasser must also be informed to refrain from any retaliation and to not interfere with the investigation. The HR Director or designee will inform the complaining party in writing that an investigation will begin as soon as possible. If the alleged harasser is an elected or appointed official, the HR Director will forward the complaint to the appropriate disciplinary authority.
- (d) The HR Director or designee, in cooperation with the General Counsel or designee, will coordinate and conduct an investigation. In extraordinary circumstances, the AOC Director's Office may require that the investigation be conducted by an outside investigator. The investigation will include interviews with all relevant persons, including the alleged harasser. The HR Director or designee will have 45 calendar days to complete the investigation. Failure to meet this deadline will not invalidate the findings of the investigation. Information regarding the complaint must be kept as confidential as possible.

- (e) Within 15 calendar days of completing the investigation, the HR Director or designee, after consulting with the General Counsel or designee, will present his or her written report to the alleged harasser and allow the accused an opportunity to submit a written response, including the right to provide documentary evidence and identify individuals who may have relevant information. If the 15-day deadline is insufficient, the General Counsel may grant an extension of 15 calendar days.
- (f) The alleged harasser will have 15 calendar days to submit a written response and supporting documentation. Within 15 calendar days of receipt of the response, the HR Director or designee will present the final report, with findings and recommendations, and the alleged harasser's written response to the AOC Director.
- (g) Within 30 calendar days of receipt of the HR Director's or designee's final report, the AOC Director or designee will issue a written final decision to both the complaining party and the alleged harasser, which shall include the allegations, findings, conclusions, and disposition. The HR Director and General Counsel will be copied on the decision letter.
- (h) If the alleged harasser is an elected official, the AOC Director or designee will submit written findings, conclusions, and interim recommendations within 30 calendar days to the Chief Justice, or where appropriate the Deputy Chief Justice, who may take interim measures deemed necessary pending action by the appropriate disciplinary authority.
- (i) In the event that the AOC Director is the alleged harasser, the HR Director's final report will be presented to the Chief Justice to issue a written final decision to both the complaining party and the alleged harasser, which shall include the allegations, findings, conclusions, and disposition.
- (j) Upon a finding of harassment in violation of this policy, the harasser will be subject to disciplinary action, including dismissal, and immediate and appropriate corrective action pursuant to Section 8 of these Policies. Any resulting discipline is subject to the applicable grievance and appeal processes found in Section 8 of these Policies. If the harasser is an elected or appointed official, he or she may be subject to discipline by the appropriate disciplinary authority. A copy of the written final decision will be placed in the harasser's personnel file.
- (k) A finding of misconduct that does not amount to harassment shall proceed under Section 8.
- (l) If the complaining party is found to have intentionally made a false complaint, he or she will be subject to immediate and appropriate disciplinary action, including dismissal pursuant to Section 8 of these Policies. Any resulting discipline is subject to the applicable grievance and appeal processes found in Section 8 of these Policies.

## **SECTION 3.03 Disability Accommodations**

### **(1) Statement of Policy**

The KCOJ is committed to complying fully with the Americans with Disabilities Act (ADA) and the Kentucky Civil Rights Act, which prohibit discrimination based on disability and ensure equal opportunity in employment for qualified individuals with disabilities. The KCOJ ADA Coordinator processes requests for reasonable accommodations consistent with current ADA law and, where appropriate, ensures reasonable accommodations are provided in a prompt, fair, and efficient manner. The ADA Coordinator also processes grievances related to the ADA.

### **(2) Application**

This policy applies to elected and appointed officials, as well as all employees, interns, temporary employees, and volunteers.

### **(3) Definitions**

The following definitions apply to this section:

- (a) "Reasonable Accommodation" means modifications or adjustments to:

  - (i) A job application process that enables a qualified applicant with a disability to be considered for the position desired;
  - (ii) The work environment, or the manner or circumstances under which the position held or desired is customarily performed, to enable a qualified individual with a disability to perform the essential functions of that position; or
  - (iii) Enable an employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.
- (b) "Disability" means, with respect to an individual:

  - (i) A physical or mental impairment that substantially limits one or more of an individual's major life activities;
  - (ii) A record of such an impairment; or
  - (iii) Being regarded as having such an impairment.
- (c) "Major Life Activities" means activities that include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, interacting with others, and working. These also include the operation of a major bodily function, including but not limited to, functions of the immune system, special sense organs and skin, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory,

circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive functions.

- (d) "Qualified Individual with a Disability" means an individual with a disability who satisfies the requisite skill, experience, education, and other job-related requirements of the position that the individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position.
  - (e) "Essential Functions" means the fundamental job duties of an employment position. A function can be essential if, among other things the position exists specifically to perform that function; there are a limited number of other employees who could perform the function; or the function is specialized and the individual is hired based on his or her ability to perform it. This term does not include the marginal functions of the position.
  - (f) "Undue Hardship" means a specific accommodation would require significant difficulty or expense. Determination of undue hardship is made on a case-by-case basis, considering factors that may include, but not be limited to, the nature or cost of the accommodation needed and the impact of the accommodation on the operations of the office or agency.
- (4) Request for Reasonable Accommodation
- (a) An employee may request a reasonable accommodation from his or her appointing authority either verbally or by completing form AOC-ADA-1, Request for Accommodation. Upon receipt, the appointing authority or designee must submit the request and the completed form to the ADA Coordinator at the AOC office in Frankfort.
  - (b) A verbal request for an accommodation must be confirmed in writing by the employee within seven calendar days by completing form AOC-ADA-1. An employee must submit the completed form to his or her appointing authority.
  - (c) The KCOJ may require medical information when an employee has requested a reasonable accommodation to determine whether an employee has an ADA-covered disability and if the employee can continue to perform his or her essential job functions. When the disability and the need for accommodation are obvious, the KCOJ will not seek any further medical information. When the disability or need for accommodation is not obvious, the KCOJ may ask the individual for reasonable documentation about his or her disability and functional limitations.
  - (d) Upon request, the employee must have his or her licensed health care professional complete form AOC-ADA-2, Request for Accommodation Medical Report (Medical Report), with instructions that the health care professional forward the Medical Report to the ADA Coordinator. The employee also must complete form PER 5.1, Authorization to Release Medical Information, and provide it to his or her health care professional so that the health care professional may release the Medical Report to the ADA Coordinator.

- (e) Medical information obtained in connection with the reasonable accommodation process will be kept confidential and placed in a file separate from the employee's personnel file.
  - (f) Failure to provide appropriate documentation or to cooperate with the efforts of the ADA Coordinator to obtain such documentation may result in denial of the reasonable accommodation.
- (5) Disability Determination and Need for a Reasonable Accommodation
- (a) Before addressing the merits of the accommodation request, the ADA Coordinator first must determine whether the employee is a qualified individual with a disability under the ADA.
  - (b) If the ADA Coordinator or designee reasonably believes that the employee is a qualified individual with a disability, the ADA Coordinator will work with the employee to identify potential reasonable accommodations. The ADA Coordinator must determine:
    - (i) Whether the accommodation is needed;
    - (ii) The effectiveness each potential accommodation would have in enabling the employee to perform the essential functions of the position;
    - (iii) If the requested accommodation is effective and whether providing the accommodation would pose an undue hardship on the office or agency;
    - (iv) If there would be an alternative accommodation that would not pose an undue hardship on the office or agency;
    - (v) If there is no alternative accommodation, whether there is an equivalent vacant position for which the employee is qualified and may be reassigned, unless to do so would pose an undue hardship on the office or agency; and
    - (vi) If there is no vacant equivalent position, whether there is a vacant lower-level position for which the employee is qualified and may be reassigned, unless to do so would pose an undue hardship on the office or agency.
- (6) Notification to Grant or Deny Reasonable Accommodation Request
- (a) The HR Director or designee must provide the employee with written notification and an explanation of the decision to grant or deny the request.
  - (b) The reasonable accommodation granted may not be the accommodation requested by the employee. The HR Director or designee has the ultimate discretion to choose among effective accommodations. If the reasonable accommodation cannot be provided immediately, the HR Director or designee

must inform the employee when it will be provided.

- (c) If a reasonable accommodation request is denied and the employee is not satisfied with the result, the employee may file a complaint with the Equal Employment Opportunity Commission (EEOC), the Kentucky Commission on Human Rights, or the applicable local human rights commission.

### **SECTION 3.04 Drug-Free Workplace**

#### (1) Statement of Policy

- (a) The KCOJ is committed to promoting the safety, health, and well-being of all employees and other individuals in our workplaces. Additionally, the KCOJ is committed to carrying out the provisions of the federal Drug-Free Workplace Act of 1988.
- (b) Employees are prohibited from manufacturing, distributing, dispensing, unlawfully possessing, or unlawfully using a controlled substance while performing work duties.
- (c) This policy applies to elected and appointed officials. Officials in violation of any provision of this Section will be referred to the appropriate disciplinary authority.

#### (2) Drug-Free Awareness

The Chief Justice delegates to the AOC Director the responsibility to inform employees and officials about:

- (a) The dangers of drug abuse in the workplace;
- (b) The KCOJ's policy of maintaining a drug-free workplace;
- (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (d) The penalties that may be imposed upon employees and officials for drug abuse violations.

#### (3) Definitions

For the purpose of this section, the following definitions shall apply:

- (a) "Controlled Substance" means a controlled substance in Schedules I through V of 21 U.S.C. § 812 or KRS Chapter 218A.
- (b) "Conviction" means the final judgment on a verdict or finding of guilty, a plea of guilty, or a plea of *nolo contendere*.
- (c) "Workplace" means a site for the performance of work, including buildings and grounds for such sites. It also includes the location of any work-related travel

between worksites or work-related travel in the course and scope of employment.

(4) Criminal Charges and Convictions

Employees charged or convicted of a criminal offense under KRS Chapter 189A, KRS Chapter 218A, KRS Chapter 506, or 21 U.S.C. § 801 *et seq.* must report it to their supervisor or appointing authority pursuant to Section 3.06 of these Policies.

(5) Violation of Policy and Disciplinary Actions

(a) Violations of this policy include:

- (i) Unlawful manufacture, distribution, dispensation, possession, facilitation, solicitation, or use of a controlled substance in the workplace;
- (ii) Being under the influence of a controlled substance in the workplace;
- (iii) Inability to work efficiently and effectively because of off-duty use of a controlled substance;
- (iv) Violations of laws related to controlled substances; and
- (v) Failure to notify the appointing authority or supervisor of a conviction under KRS Chapter 189A, KRS Chapter 218A, KRS Chapter 506, or 21 U.S.C. § 801 *et seq.*

(b) Disciplinary Action

Violation of this policy may result in disciplinary action, up to and including dismissal.

### **SECTION 3.05 Workplace Violence**

(1) Statement of Policy

- (a) The KCOJ is committed to preventing workplace violence and maintaining a safe work environment. Accordingly, the KCOJ has adopted the following guidelines to address workplace violence. Violence in the KCOJ work environment will not be tolerated.
- (b) The KCOJ prohibits any employee from carrying a weapon, including licensed concealed weapons, into any portion of court buildings, courtrooms, related court buildings, places of employment, or educational sites that are leased, owned, or occupied by the KCOJ governmental unit. This does not include the legal possession of a weapon in a vehicle. Exceptions to this rule include Court Security Inspectors, Peace Officers, and Court Security Officers if it is necessary for their official duties; and Justices, Judges, and Circuit Court Clerks, including retired and senior status Justices and Judges actively serving on the bench, if they are licensed to carry concealed weapons.

- (c) Any employee in violation of this policy is subject to appropriate disciplinary action, up to and including dismissal.
- (2) "Workplace Violence" means the attempt, threat, or act of intimidation, harassment, physical violence, and abuse that endangers or is likely to endanger the health and safety of KCOJ employees, officials, and the general public while in KCOJ offices, facilities, worksites, and vehicles, or while conducting KCOJ business. Workplace violence may be perpetrated by an official, manager, supervisor, employee, co-worker, family member, or a member of the general public.
- (3) Examples of Workplace Violence
- Workplace violence includes, but is not limited to, the following:
- (a) Threatening to harm an official, an employee, or a member of the general public;
  - (b) Brandishing or displaying a weapon or an object that can be used as a weapon in a manner which would threaten, intimidate, or present a safety risk to an official, an employee, or a member of the general public;
  - (c) Intimidating, threatening, or harassing, another person either verbally, in writing, or by gesture;
  - (d) Stalking;
  - (e) Striking, slapping, or otherwise physically assaulting another person; or
  - (f) Using KCOJ resources and property such as work time, phones, fax machines or email to perpetrate workplace violence.
- (4) Reporting and Investigative Responsibilities
- (a) All elected officials, appointed officials, and employees are encouraged to be alert to the possibility of violence on the part of officials, managers, supervisors, employees, former employees, and members of the general public.
  - (b) Employees must notify their appointing authority or designee as soon as possible of any acts or threats of violence they have either witnessed or received. This includes any threatening statement, harassment, or behavior they have reasonable cause to believe is a potential risk to their health and safety, or to other officials, employees, or the general public. Employees should not place themselves in peril.
  - (c) The appointing authority must use the KCOJ Incident Report (AOC-PT-50) to report acts or threats of violence. The AOC-PT-50 will be submitted to the HR Director.
  - (d) To maintain workplace safety and the integrity of an investigation, the KCOJ may suspend employees, with or without pay, pending investigation.



(5) Retaliation Prohibited

Retaliation against any person for reporting or assisting in the investigation of violence in the workplace is prohibited.

### **SECTION 3.06 Criminal Charges and Convictions**

- (1) For purposes of this section, criminal offense means conduct for which a term of incarceration or a fine is provided by law.
- (2) Employees charged with a criminal offense must report it to their supervisor or appointing authority within 24 hours of being charged. The supervisor or appointing authority must report the charge to the HR Director or designee immediately. The employee may be suspended with or without pay, as determined by the HR Director and the General Counsel.
- (3) Employees convicted of a criminal offense must report it to their supervisor or appointing authority within 24 hours of being convicted. The supervisor or appointing authority must report the conviction to the HR Director or designee immediately. Employees may receive disciplinary action up to and including dismissal from employment upon conviction of a criminal offense. In determining the appropriate disciplinary action for the conviction, the HR Director and the General Counsel shall consider the nature of the offense and whether the employee can no longer perform his or her work duties because they are directly related to the offense, and whether public trust and confidence in the court system is undermined.

### **SECTION 3.07 Civil Matters**

Employees must notify their supervisor or appointing authority immediately upon learning of the initiation of any civil action that may come before the courts of the Commonwealth in which the employee or a member of the employee's family is a named party.

### **SECTION 3.08 KCOJ Property and Resources**

- (1) Employees, appointed officials, and elected officials must use public resources, property, and KCOJ funds for official business only.
- (2) Employees, appointed officials, and elected officials are subject to KCOJ policies relating to information technology, as approved by the Supreme Court.
- (3) The KCOJ policy prohibiting offensive, intimidating, or harassing material in the workplace applies with equal force to material accessed by, communicated through, or stored upon electronic systems.
- (4) Any violation of this policy may result in disciplinary action, up to and including dismissal. Matters involving Justices, Judges, Commissioners, and Circuit Court Clerks will be addressed by the appropriate disciplinary authority.

### **SECTION 3.09 Dress Code**

Employees must dress appropriately and maintain a professional appearance during all working hours and at all functions while representing the KCOJ. Prohibited attire includes,

but is not limited to, clothing exhibiting inappropriate language or graphic depiction of hate, discrimination, sexual innuendo, alcohol or drugs; flip flops or shoes made entirely of rubber or plastic; shorts or skorts of any variety or material; and excessively tight or revealing clothing.

### **SECTION 3.10 Anti-Nepotism Policy**

It is the policy of the KCOJ that all employees be hired based on demonstrated knowledge, skills, abilities, and bona fide work-related factors, and not based on favoritism or family relationship.

### **SECTION 3.11 Practice of Law**

While holding a position in the KCOJ, an employee or elected official who is an attorney must not engage in the practice of law outside the scope of his or her duties, except an employee or elected official may act *pro se* and may, without compensation, give legal advice to and draft or review documents for a member of his or her family. All employees and elected officials previously engaged in the practice of law shall cease all advertising upon employment by or election to the KCOJ.

### **SECTION 3.12 Outside Employment of Full-Time and Part-Time Employees**

- (1) The KCOJ must be the primary employer of each full-time employee and part-time employee.
- (2) Due to the obligation of all KCOJ employees to maintain and promote public confidence in the judicial system, outside employment will be reviewed to ensure conformity with this Code of Conduct.
- (3) All KCOJ employees are prohibited from:
  - (a) Outside employment that creates a conflict of interest, potential conflict of interest, or the appearance of a conflict of interest.
  - (b) Outside employment that cannot be accomplished before or after the employee's normal KCOJ working hours.
  - (c) Outside employment that is incompatible with the performance of the employee's KCOJ work duties.
  - (d) Outside employment with an entity that conducts financial business with the KCOJ, an entity that regularly appears in court, or an entity that requires the employee to have frequent contact with attorneys who regularly use the court system.
  - (e) Performance of work for any state governmental entity within the Commonwealth of Kentucky without the written consent of the AOC Director or designee.

- (f) Outside employment that abuses the employee's position with the KCOJ or uses confidential information acquired in the performance of the employee's work.
- (4) Approval or Denial of Request
- (a) An employee who wishes to engage in outside employment must provide a written request on the Secondary Employment Request Form to his or her appointing authority.
  - (b) All new employees who wish to continue their outside employment must provide a written notification of such employment to their appointing authority at the start of their employment with the KCOJ and receive written approval to continue such employment. New employees engaged in outside employment will be required to cease such employment if the employment does not comply with these Policies.
  - (c) Written requests and notifications for approval of outside employment must contain the following information:
    - (i) Name, address, and phone number of outside employer;
    - (ii) Duties and responsibilities of the position; and
    - (iii) Scheduled work hours for each week.
  - (d) The appointing authority, after consultation with the HR Director or designee, will determine if the request complies with these Policies.
  - (e) The employee may request reconsideration by submitting the request to the AOC Director or designee for a final determination.

(5) Change in Outside Employment Status

All employees with approved outside employment must immediately notify their appointing authority in writing when a change in their outside employment status occurs. Written notification of a change in outside employment status must be made when any of the following occurs:

- (a) Change in the identity of the outside employer;
- (b) Substantial change in the duties or responsibilities of the outside employment;
- (c) Substantial change in work schedule and hours of the outside employment; or
- (d) Reasonable belief that an actual or potential conflict of interest, as specified in Section 2.05 of the Policies, has developed.

After consulting with the HR Director or designee, the appointing authority will determine whether the change in outside employment status complies with these Policies.

## **SECTION 4. Appointments, and Classification and Compensation Plans**

### **SECTION 4.01 Types of Positions**

- (1) Full-time position with benefits:

A full-time position with benefits is a position requiring an employee to account for 37.5 hours in a business week.

- (2) Part-time position without benefits:

A part-time position without benefits is a position requiring an employee to work no more than 80 hours in a calendar month. The 80-hour limit may only be exceeded under extraordinary circumstances and only with prior written approval of the AOC Director. An employee in a part-time position without benefits will not be approved to work more than 99.5 hours in a calendar month.

- (3) Fee-based positions:

Fee-based positions are those funded through a restricted fee-based source including, but not limited to, judicial sales, criminal histories, driver's license fees, diversion fees, and court technology fees. Fee-based positions are dependent on the source of the revenue remaining available. Employees filling a fee-based position will be required to sign an acknowledgment form prior to starting employment with the KCOJ, accepting the availability of revenue as a condition of employment. The form will be submitted to the AOC HR Department.

- (4) Federally funded time-limited position:

A federally funded time-limited position is a position created by federal funding. The term of this position will not exceed the period of time for which the specific federal funding is provided. An individual who is appointed to a federally funded time-limited position may be entitled to employee benefits depending upon the hours worked. Employees filling this position will be required to sign an acknowledgment form prior to starting employment with the KCOJ, accepting these as conditions of employment. The form will be submitted to the AOC HR Department.

- (5) Temporary position:

A temporary position is a position, other than a senior clerk temporary position, created for a specified period of time not to exceed nine months within a 12-month period. Temporary employees do not receive benefits. Interns, whether compensated or not, are considered temporary employees and do not receive benefits.

### **SECTION 4.02 Criminal Record Reports**

- (1) The KCOJ supports the rehabilitation of offenders. However, certain convictions may render a person ineligible for employment in certain positions.
- (2) A criminal record report will be obtained on all applicants for any position with the KCOJ.

- (3) The AOC HR Department will determine whether an applicant is able to perform all functions of the position applied for based upon the criminal record report findings. If an applicant is unable to perform any function of the job because of the criminal record report findings, the applicant will be disqualified from serving in that position.
- (4) The appointing authority may request periodic criminal record reports for his or her employees to ensure they are properly reporting violations pursuant to Sections 3.04 and 3.06 of these Policies and to verify that there are no unreported violations that may pose a conflict. The HR Director or designee and the General Counsel must be consulted prior to the administration of any resulting disciplinary action.
- (5) All criminal record reports will be performed in accordance with the criminal record requirements of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*

### **SECTION 4.03 Probationary Period for Tenured Employees**

- (1) Probationary Period
  - (a) The purpose of a probationary period is to observe, evaluate, and determine whether an employee hired into a tenured position adequately performs the essential functions and responsibilities of the particular position in accordance with these Policies.
  - (b) Length of Probationary Period
    - (i) The first six months of service from the effective date of hire constitutes a probationary period for all tenured employees. This probationary period may be extended under the provisions of Section 4.03(1)(b)(iii).
    - (ii) If an employee serving a probationary period is granted leave in excess of 10 working days, the employee's probationary period may be extended for the same length of time.
    - (iii) The appointing authority may extend an employee's probationary period for up to six months if further evaluation is required. The appointing authority must notify the employee in writing, stating the length of the probationary extension and the expectations of performance improvement during the extension period. A copy of the notification will be sent to the AOC HR Department with a Personnel Action Request (PAR) extending the probation.
    - (iv) If an employee serving a probationary period transfers to another tenured position within the KCOJ, the probationary period begins anew.
  - (c) Expiration of Probationary Period
    - (i) Prior to the expiration of the probationary period, the appointing authority must determine whether an employee will become tenured or the probationary period will be extended.

- (ii) The probationary period will be considered successfully completed unless the appointing authority notifies the employee that he or she is dismissed or that the probationary period will be extended. This notification must take place prior to the expiration of the probationary period.
  - (iii) Upon completion of the probationary period, an employee may earn tenured status and receive a probationary increment.
  - (iv) If an employee is dismissed before the expiration of the probationary period, the appointing authority must comply with Section 4.04 of these Policies.
- (d) The successful completion of a probationary period entitles a tenured employee to appeal rights.
- (2) Current Employees

Any current employee of the KCOJ who is promoted or transferred to a tenured position must serve a probationary period as described in subsection (1) of this section. The first six months of service from the effective date of the promotion or transfer and any extensions as provided for in subsection (1)(b) of this section will constitute the probationary period, during which time an employee will not have appeal rights.

#### **SECTION 4.04 Dismissal During Probationary Period**

- (1) An employee serving a probationary period may be dismissed at any time prior to the expiration of the probationary period without the right of appeal or hearing.
- (2) The appointing authority must notify the employee of the dismissal by letter, hand-delivered with a witness present unless extenuating circumstances prevent hand delivery.
- (3) The appointing authority must forward a copy of all documentation relating to a dismissal to the AOC HR Department.

#### **SECTION 4.05 Classification Plan**

- (1) For each tenured position, the KCOJ classification plan includes a title, pay grade, description of duties and responsibilities, and requirements relating to education and experience.
- (2) Every position must be assigned to an appropriate classification prior to any administrative action on appointments, reclassifications, promotions, transfers, pay grade changes, or any other type of personnel or position action.

#### **SECTION 4.06 Compensation Plan**

- (1) The KCOJ Compensation Plan provides pay grades for all tenured positions listed in the classification plan. Each class of positions is assigned to a pay grade depending

upon the complexities and functions of the positions in the class as outlined in the classification plan.

- (2) Pay grades are based upon the level of duties and responsibilities of position classifications, current salary rates in other sectors of employment, and the financial resources of the KCOJ.

#### **SECTION 4.07 Salary Schedule**

- (1) The salary schedule is divided into pay grades, with an entry salary for each pay grade.
- (2) The appointing authority must appoint a new employee at the pay grade designated for that position pursuant to the salary schedule and pay practices. Any deviation from the salary schedule and pay practices must be submitted in writing to the AOC Director, who will have the final approval.

#### **SECTION 4.08 Position or Employee Actions**

- (1) Establishment

Each appointing authority has a personnel complement. Any change to the complement must be approved by the AOC Director.

- (2) Restructuring

- (a) Restructuring occurs when an employee is placed in a new classification and pay grade based on the overall needs of the organization. The action is at the direction of the appointing authority with the approval of the AOC Director.

- (b) If a position classification is assigned to a higher pay grade, employees in that classification will have their salaries adjusted to at least the entry salary of the new pay grade on the effective date of the change.

- (c) If a position classification is assigned to a lower pay grade, an employee's pay may be adjusted to reflect the new position and pay grade.

- (3) Reclassification

- (a) Reclassification occurs when an employee's job duties are evaluated and it is determined that the tasks associated with the position do not accurately reflect the classification in which the position is placed.

- (b) When a permanent and material change of the duties and responsibilities of a position occurs, the appointing authority may submit a written request to the AOC Director to reclassify the position.

- (c) Employees who are advanced to a higher pay grade through a reclassification of their position will have their salary raised to at least the entry salary of the higher pay grade. Any exceptions require the approval of the AOC Director.

- (d) Employees who are placed in a lower pay grade through reclassification of their position may have their salary adjusted to reflect that of like positions within that pay grade.
- (4) Promotion
- (a) A promotion is an adjustment to a higher grade level that carries greater discretion or responsibility for the promoted employee.
  - (b) Promoted employees will have their salary raised pursuant to the salary schedule and pay practices for the new position. Any exceptions require the approval of the AOC Director.
- (5) Demotion
- (a) A demotion is an adjustment to a lower grade level that carries less discretion or responsibility for the demoted employee.
  - (b) Demoted employees may have their salary reduced or may keep the salary received prior to the demotion if authorized in writing by the AOC Director.
  - (c) Demotions are subject to the appeal procedures set forth in Sections 8.05 and 8.06 of these Policies.
- (6) Voluntary Demotion
- (a) A voluntary demotion is when an employee expresses interest in and accepts a vacant position in a different classification at a lower pay grade.
  - (b) Employees who apply for and are awarded a position at a lower pay grade will have their salaries adjusted to reflect the pay grade of the position for which they have applied.
  - (c) Voluntary demotions are not subject to the appeal procedures set forth in Sections 8.05 and 8.06 of these Policies.
- (7) Transfer
- (a) A transfer is the movement of any employee from one position to another with or without a change in grade.
  - (b) Transfers may be subject to the grievance and appeal procedures described in Section 8 of these policies depending on the nature of the transfer and whether it results in a loss of pay, status, or other benefits of employment.
- (8) Assignment to Special Duty
- (a) Employees may be assigned to duties outside of their regularly assigned duties for up to 12 months. An assignment to special duty or an extension of special duty beyond a 12-month period may only be made with prior written approval of the AOC Director or designee.



- (b) An employee who is approved for special duty to a position in a higher pay grade may be raised to the entry salary of the pay grade for the class of the new position. Upon expiration of the special duty assignment, the salary of the employee will be adjusted to:
  - (i) The salary received prior to the special duty; and
  - (ii) Include all salary advancements and adjustments that would have been awarded if the employee had remained in his or her position prior to the assignment to special duty.
- (c) An employee who is approved for special duty to a position in the same or lower pay grade will retain his or her original salary.

#### **SECTION 4.09 Layoffs**

An employee of the KCOJ may be laid off whenever deemed necessary pursuant to the KCOJ Layoff Policy as approved by the Supreme Court for reasons including, but not limited to, shortage of funds or work, abolishment of positions, or a material change in duties or organization.

#### **SECTION 4.10 Furloughs**

A furlough is the placing of an employee in a temporary, non-duty, non-pay status because of lack of work, lack of funds, or other non-disciplinary reasons. An employee of the KCOJ may be furloughed whenever deemed necessary by the Supreme Court.

## **SECTION 5. Workplace Regulations**

### **SECTION 5.01 Minimum Age of Employment**

No appointing authority in the KCOJ may employ a minor.

### **SECTION 5.02 Hours of Business**

- (1) Business office hours may vary according to specific offices and work assignments. The appointing authority or designee will discuss exact business hours and work schedules with each employee.
- (2) Employees will not work seven consecutive days in any business week unless the employee receives prior written authorization from the appointing authority. The KCOJ business week is Sunday through Saturday.
- (3) The business week for permanent full-time employees is 37.5 hours.
- (4) Employees working seven consecutive days in any single business week will be compensated at the rate of time and one-half for all hours worked on the seventh day if they have worked at least 40 hours during that week.
- (5) Part-time employees must work 80 hours or less within a calendar month and cannot exceed this amount except under extraordinary circumstances and only with prior written approval from the AOC Director or designee, or the HR Director. An employee in a part-time position will not be approved to work more than 99.5 hours in a calendar month.
- (6) All employees must be given a reasonable lunch break and a 10-minute break period during each four hours worked as prescribed by law.

### **SECTION 5.03 Compensatory Leave**

- (1) The appointing authority must comply with the compensatory leave provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, and the Kentucky Wages and Hours law, KRS Chapter 337. An employee who works more than 37.5 hours per week must receive compensatory leave subject to the provisions of the FLSA, the Kentucky Revised Statutes and these Policies. No employee may work hours in excess of the prescribed hours of duty unless authorized by the appointing authority.
- (2) An employee who is authorized to work one or more hours in excess of the prescribed hours of duty will receive compensatory leave as follows:
  - (a) On an hour-for-hour basis for hours worked in excess of 37.5 hours and up to 40 hours during the business week; and
  - (b) One and one-half hours for every hour worked during the business week in excess of 40 hours.
- (3) No employee will be permitted to work in excess of 12 hours in one day without prior approval of the appointing authority.

- (4) Employees who accumulate 120 or more hours of compensatory leave must use compensatory leave instead of annual leave when a leave request is granted, with the exception of employees who have submitted their intent to retire within 12 months to the AOC HR Department.
- (5) Employees who reach compensatory leave balances exceeding 180 hours must reduce their balances by taking approved leave as soon as administratively possible. The employee's leave will be designated as compensatory leave when the leave is used.
- (6) The maximum amount of compensatory leave that may be earned by an employee is 240 hours. The appointing authority may not direct or authorize an employee who has accumulated 240 hours of compensatory leave to work one or more hours in excess of the prescribed hours of duty.
- (7) No employee is allowed to use compensatory leave prior to the compensatory leave being earned.
- (8) If the appointing authority fails to comply with the requirements of this section, he or she may be subject to disciplinary action by the appropriate disciplinary authority.
- (9) Employees will be paid for unused compensatory leave upon separation from employment with the KCOJ.
- (10) Upon the death of an employee, his or her estate will be entitled to payment for the unused portion of the employee's compensatory leave, up to a maximum of 240 hours.

#### **SECTION 5.04 Payroll**

- (1) The KCOJ is required by law to make specific deductions from payroll checks. The mandatory deductions are federal, state, and local taxes; Federal Insurance Contribution Act (FICA) tax; state retirement, if applicable; and court-ordered deductions.
- (2) Additional deductions may be requested in writing to the AOC HR Department (for example, deductions for group insurance plans).
- (3) Payroll dates are the 15th and 30th of each month unless those dates fall on a holiday or weekend, in which case the pay date will be the last business day of that pay period.
- (4) All elected officials and employees must enroll in direct deposit.
- (5) An employee who has received an overpayment affecting his or her W-2 earnings, taxes, retirement contributions, and other deductions must return the overpayment immediately to the AOC upon request. Adjustments to earnings, taxes, and other funds, including those requiring a corrected W-2, will not be made until full payment has been received.

## **SECTION 5.05 Timesheets**

- (1) Each full-time employee must complete and submit a timesheet within five working days from the end of the pay period. An employee's failure to submit a timesheet within the required period may result in future withholding of wages until hours worked can be verified and, therefore, earned.
- (2) Each part-time or temporary employee must complete and submit a timesheet within five working days from the end of the pay period.
- (3) The appointing authority or designee must review and submit an approved timesheet for each employee to the AOC HR Department. Failure to approve an employee's timesheet may result in future withholding of that employee's wages until worked hours can be verified.
- (4) Elected officials do not complete or submit a personal timesheet, nor do these elected individuals earn leave benefits under Sections 5.03, 6.02, 7.02, 7.03, 7.05, and 7.06 of these Policies.

## **SECTION 5.06 Inclement Weather Policy**

- (1) When inclement weather conditions prevent an employee from reporting to work at the normal time or when an employee decides not to report for work or to leave work early due to weather conditions, the following apply:
  - (a) If operational needs allow, appointing authorities should make every reasonable effort to arrange schedules to allow employees to make up time not worked. An employee has four months from the occurrence of the absence to make up any time missed due to inclement weather. At the end of the four month period, any time missed due to inclement weather will be deducted first from available compensatory leave and then from available annual leave. If the employee has no compensatory or annual leave available, the employee will have the missed time charged to leave without pay. If the employee transfers to another branch of government or is no longer employed by the KCOJ before the missed time is made up, the missed time will be deducted first from available compensatory leave and then from available annual leave or deducted from the employee's final pay; or
  - (b) Employees may use accumulated annual or compensatory leave time for a late arrival, missed work day, or early departure; or
  - (c) If compensatory and annual leave have been exhausted, the employee may take leave without pay for the late arrival, early departure or missed work day.
- (2) Any employee who is on leave that was arranged prior to the inclement weather shall use the leave as originally approved.
- (3) Inclement weather leave can only be used with the approval of the appointing authority and the HR Director or designee.
- (4) The Chief Circuit Judge may, after conferring with the Chief District Judge and the Circuit Court Clerk, decide to close a courthouse due to inclement weather. If the

Chief Circuit Judge closes a courthouse, employees must account for any time missed as provided under subsections (1)(a)-(c) above.

- (a) If a courthouse is closed by the Chief Circuit Judge, AOC personnel whose workstations are located in that circuit shall contact their appointing authority to determine if they should report to an alternate work station.
  - (b) Nothing in this subsection shall preclude an individual Judge within a circuit from holding court in instances of inclement weather. If a court remains open in instances of inclement weather, the Circuit Court Clerk shall have the sole responsibility for providing court staff from his or her office.
- (5) The AOC will make every effort to remain open during regular business hours. The AOC Director or designee may, after consulting with the Chief Justice, close AOC facilities if inclement weather prevents or limits access to AOC facilities. If the AOC Director closes AOC facilities, employees must account for any time missed as provided under subsections (1)(a)-(c) above.

#### **SECTION 5.07 Court Closures Unrelated to Weather**

- (1) Administrative Office of the Courts
- (a) The AOC will make every effort to remain open during regular business hours. The AOC Director or designee may, after consultation with the Chief Justice, close AOC facilities if extraordinary circumstances other than inclement weather prevent or limit access to AOC facilities.
  - (b) If the AOC Director or designee closes AOC facilities due to extraordinary circumstances:
    - (i) Full-time employees will accrue special leave for a maximum of 7.5 hours, less any hours actually worked, for each day the AOC facility is closed.
    - (ii) Any employee who is on leave that was arranged prior to the closure must use the leave as originally requested.
- (2) Courthouse Closures
- (a) The courts of the Commonwealth are considered open for business every day except as noted in the holiday schedule in Section 6.02. However, extraordinary circumstances other than inclement weather may render use of court facilities impractical or impossible, thus necessitating that an office be closed.
  - (b) The Chief Circuit Judge, after conferring with the Chief District Judge and the Circuit Court Clerk(s), will decide whether courthouses will be closed in the circuit.
  - (c) If the Chief Circuit Judge closes the courthouse due to an extraordinary circumstance other than inclement weather:

- (i) Full-time employees will accrue special leave for a maximum of 7.5 hours, less any hours actually worked, for each day the courthouse is closed.
  - (ii) Any employee who is on leave that was arranged prior to the closure must use the leave as originally requested.
  - (iii) The Chief Circuit Judge must notify the AOC HR Department, in writing within two business days, of the date, time, location, and reason for the closure. Failure to properly notify the HR Department will result in the loss of special leave for employees.
- (d) Nothing in this subsection shall preclude an individual Judge within a circuit from holding court in instances of extraordinary circumstances. If a court remains open, the Circuit Court Clerk shall have the sole responsibility for providing court staff from his or her office.
  - (e) If a courthouse is closed by the Chief Circuit Judge, AOC personnel whose workstations are located in that circuit shall contact their appointing authority. Only the AOC Director or designee may grant special leave to an AOC employee due to the closure of an AOC office.

#### **SECTION 5.08 Tenured Employee Evaluations**

- (1) The appointing authority or designee may prepare an annual written evaluation for each tenured employee. The employee will be provided a copy of the evaluation.
- (2) The appointing authority or designee should review and discuss the evaluation with the employee. The employee must sign the evaluation and be given the opportunity to provide a written response.
- (3) The appointing authority or designee will forward a signed copy of the evaluation and the employee's written response, if any, to the AOC HR Department for the employee's official personnel file. Employee evaluations are not subject to the grievance or appeal procedures set forth in Section 8 of these Policies unless the performance review results in the denial of benefits or wages.
- (4) Elected officials do not receive a written evaluation.

#### **SECTION 5.09 Personnel Files**

- (1) General
  - (a) The official personnel files of the KCOJ are open to public inspection only as provided below.
  - (b) The official personnel files will be maintained by the AOC HR Department.
    - (i) Each elected official and employee will have an official personnel file.
    - (ii) Official personnel files will not be removed from the AOC HR Department unless required by court order.

(2) Official Personnel Files

- (a) Each employee's official personnel file will include, but not be limited to: information regarding his or her name and name changes; address and address changes; title of positions held; classifications; and rates of compensation, including any documentation related to any change in compensation.

The official personnel file also will include the following:

- (i) A copy of the employee's application and resumé and all changes in the employee's status, including a copy of any evaluations, promotions, demotions, layoffs, transfers, or disciplinary actions and the employee's written responses;
  - (ii) The employee's commendations and awards;
  - (iii) A copy of all PAR forms and memoranda; and
  - (iv) A signed acknowledgment of having received the KCOJ and internal policies.
- (b) All employee medical information must be forwarded to the AOC HR Department. Medical records supplied to or received by the AOC HR Department will be maintained in a separate file from the employee's official personnel file. The release or inspection of any medical records will be in strict compliance with applicable law.
- (c) The appointing authority must provide the AOC HR Department with a copy of any disciplinary actions and the employee's written response, if any, for the employee's personnel file.
- (d) The appointing authority or designee will have access to personnel files of the employees and the applicants for employment in his or her office.
- (e) Upon request, an employee, former employee, or applicant shall have the right to inspect and to copy his or her official personnel file or application. Employees may comment in writing on any item in their personnel file. All comments will be made part of the official personnel file and attached to the specific record or document at issue.

(3) Inspection Procedures

- (a) An employee's request to personally inspect his or her personnel file must be submitted to the AOC HR Department in writing.
- (b) The following information contained in personnel files may be inspected only upon valid court order:
- (i) Information of a personal nature regarding another employee or any other person where public disclosure would constitute a clearly unwarranted invasion of personal privacy;

- (ii) Information that is prohibited by federal law or regulation from disclosure; and
- (iii) Information that is prohibited or restricted from disclosure or otherwise made confidential by the statutes and court rules of this Commonwealth.

(4) Third-Party Requests

- (a) All third-party requests for employee information must be submitted in writing to the AOC HR Department and clearly identify the current or former KCOJ employee or official. In response, the AOC HR Department will release an Employee Information for Public Release form. The Employee Information for Public Release form will contain only the following information:
  - (i) The employee's name;
  - (ii) The employee's dates of employment, including date of hire and separation, if any;
  - (iii) If the employee has separated from the KCOJ, the reason for separation as one of the following: resigned, retired or dismissed.
  - (iv) A listing of all the position titles the employee has held and the effective dates of each;
  - (v) A listing of all the classifications assigned to the employee and the effective dates of each; and
  - (vi) A listing of all the rates of compensation assigned to the employee and the effective dates of each.
- (b) The AOC HR Department will provide written notice to employees and to appointed or elected officials of any third-party request for their personnel information.



## SECTION 6. Fringe Benefits

### SECTION 6.01 Fringe Benefits

Employees in permanent full-time positions and elected officials of the KCOJ participate in fringe benefit programs provided by law for Kentucky state government officials and employees. The major fringe benefits may include state holidays, retirement systems, life insurance, health insurance, Social Security, workers' compensation insurance, and unemployment insurance, if applicable.

### SECTION 6.02 Holidays

- (1) The following days are the typical holidays adopted by the KCOJ but are subject to modification by the Chief Justice:

New Year's Day*	January 1
Martin Luther King, Jr. Day	Third Monday in January
Spring Holiday	One half day, to be designated
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day*	Fourth Thursday in November
Christmas Day*	December 25
Presidential Election Day	First Tuesday after the first Monday in November (when applicable)

\*An extra day each is allotted for Thanksgiving, Christmas, and New Year's.

- (2) When a holiday falls on a Saturday, the preceding Friday will be observed as the holiday. When a holiday falls on a Sunday, the following Monday will be observed as the holiday.
- (3) Each full-time employee who is in paid status the business day immediately preceding a KCOJ-approved holiday is entitled to 7.5 hours of compensatory leave.
- (4) Employees scheduled to work on a holiday will receive compensatory leave on an hour-for-hour basis for each hour worked on the holiday.
- (5) Employees on paid leave of any kind will not be required to use leave for a holiday that occurs while they are on paid leave.
- (6) As of the effective date of these Policies, holiday leave will no longer be banked as a separate leave benefit. If an employee works on a holiday, time will be earned as compensatory leave. Employees who have accrued holiday leave will be required to exhaust their holiday leave balance before designating any leave request as annual or compensatory leave.
- (7) The appointing authority must grant use of holiday leave in accordance with operating requirements and, if possible, with the requests of employees.

- (8) Employees will be paid for unused holiday leave upon separation from employment with the KCOJ in the same manner as compensatory leave.
- (9) Elected officials who earned holiday leave prior to being sworn into the elected office will be paid for their unused holiday leave in the same manner as compensatory leave is paid.
- (10) Upon the death of an employee, his or her estate will receive payment for the unused portion of any earned holiday leave.

### **SECTION 6.03 Retirement**

- (1) An employee with 20 or more years of service or who will be eligible to retire within one year may attend a retirement seminar or an individual retirement consultation without having to use annual or compensatory leave.
- (2) All other interested employees may attend a retirement seminar or an individual retirement consultation, but must use either annual or compensatory leave for the time spent attending the seminar or consultation.
- (3) Employees must obtain permission to attend a seminar or an individual consultation from their appointing authority.
- (4) Travel expenses, including mileage to and from a retirement seminar or an individual retirement consultation, will not be reimbursed.
- (5) An employee who wishes to retire must notify his or her appointing authority in writing at least 14 calendar days prior to the effective date of retirement. A Circuit Court Clerk who wishes to retire must notify the Chief Justice in writing and provide a copy to the AOC HR Department.
- (6) An employee who fails to notify his or her appointing authority in writing at least 14 calendar days prior to the effective date of retirement will lose earned annual leave for each day short of the 14 calendar-day notice unless waived by the appointing authority. Full-time employees will lose time at the rate of 7.5 hours for each calendar day.
- (7) If a prospective employee is retired from a position with the Commonwealth of Kentucky, it is the responsibility of the prospective employee to seek approval from Kentucky Retirement Systems before accepting employment with the KCOJ.
- (8) An employee who is hired by the KCOJ after retiring from any position with the Commonwealth of Kentucky will not have months of service restored for the purpose of leave accruals and will not have any unused sick leave balance restored.

### **SECTION 6.04 Health Insurance**

- (1) All employees and elected officials who receive benefits as described in Section 6.01 are eligible to participate in the health insurance plan offered by the Commonwealth.

- (2) Employees will be allowed two paid hours during each open enrollment period to attend one health insurance benefit fair during normal work hours. Time off to attend a health insurance benefit fair must be requested by the employee and authorized by the appointing authority. Travel expenses, including mileage to and from the health insurance benefit fair, will not be reimbursed.
- (3) Employees and elected officials covered under a health insurance plan offered by the Commonwealth may qualify for Consolidated Omnibus Budget Reconciliation Act (COBRA) benefits. COBRA allows employees and officials to extend health insurance coverage for themselves or any qualified beneficiary if any of the following qualifying events occur:
  - (a) Dismissal, except for gross misconduct;
  - (b) Hours reduced by the employee;
  - (c) Death of a covered employee;
  - (d) Divorce or legal separation from the covered employee;
  - (e) End of dependency status of an eligible dependent; or
  - (f) Total disability granted by the Social Security Administration.
- (4) If any of the qualifying events occur, the employee, elected official or other eligible beneficiary has 60 days from the qualifying event to apply for COBRA. To ensure timely processing, all applications should be submitted to the HR Department within 45 days of the qualifying event.
- (5) Employees who fail to meet the minimum monthly hours necessary to obtain benefits may be required to repay the state-paid portion of their health and life insurance.

## **SECTION 6.05 Workers' Compensation**

### **(1) Eligibility for Program Services**

Employees and elected officials of the KCOJ are eligible to participate in the state's self-insured Workers' Compensation Program, as provided in KRS Chapter 342.

### **(2) Benefits**

#### **(a) Medical Expenses**

Required medical expenses for services provided by hospitals, doctors, and for prescription medications due to a job-related injury or illness are paid subject to approval of a claim.

- (b) Absences Due to Job-Related Injury or Illness
  - (i) A percentage of the employee's average weekly wages will be paid when he or she is unable to work for an extended period due to a job-related injury or illness subject to the approval of the Workers' Compensation claim.
  - (ii) Compensation will not be payable for the first seven working days of disability unless the disability continues for longer than 14 calendar days, in which case compensation will be allowed from the first day of the disability.
- (c) Use of Accumulated Sick, Annual, or Compensatory Leave
  - (i) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, an employee may choose to use accumulated sick, annual, or compensatory leave in order to maintain regular full salary.
  - (ii) In cases of absence due to illness or injury for which Workers' Compensation benefits are received, sick leave may be used to make up the difference between the benefits and the employee's regular salary.
  - (iii) If an employee is eligible for leave restoration under Workers' Compensation benefits, the employee must sign over any Workers' Compensation benefits to the AOC and have their leave restored before being eligible to receive leave under this section.

(3) Notification Procedures

(a) Employee Responsibility

Employees who have sustained an on-the-job injury or work-related illness must notify their appointing authority or supervisor as soon as practical after the happening thereof.

(b) Appointing Authority Responsibilities

- (i) The appointing authority or designee must obtain all pertinent information about an employee's work-related injury or illness and immediately report the injury to the AOC HR Department. If the injury occurs during the evening hours or over the weekend, the injury must be reported by phone at the beginning of the next working day.
- (ii) The appointing authority or designee shall complete the First Report of Injury or Illness Form, providing specific information about the injury. The form must be submitted to the AOC HR Department within three working days after receiving notification of an injury or illness.

(4) Form Completion

(a) Employee Responsibilities

If the employee intends to seek medical treatment, the employee must request and complete the Medical Waiver and Consent Form and return it to the AOC HR Department.

(b) Appointing Authority Responsibilities

The appointing authority or designee is responsible for completing the First Report of Injury or Illness Form when an employee sustains a work-related injury or illness and submitting that information to the AOC HR Department.

**SECTION 6.06 Kentucky Employee Assistance Program**

(1) General

- (a) The Kentucky Employee Assistance Program (KEAP) is available to assist employees with problems that affect their job performance, personal life, or general well-being.
- (b) The KCOJ is not liable for counseling or treatment costs except for those provided through health benefits. KEAP services for information, assessment, and referral are free of charge to all employees and their families.
- (c) Employee involvement in KEAP will remain confidential as required by state and federal law, unless the employee provides a written authorization to release the information.
- (d) KEAP may be contacted at 502-564-5788 or 800-445-5327. To learn more about KEAP services, visit <https://personnel.ky.gov/Pages/KEAP.aspx>.

(2) Eligibility for Services

- (a) Any employee whose job performance is or may be adversely affected by personal problems may initiate a request for confidential personal or family services from KEAP.
- (b) Any employee obtaining services from KEAP shall do so without discrimination or retaliation.
- (c) An employee's participation in KEAP will not prohibit an appointing authority from taking action to resolve unprofessional behavior or job performance deficiencies.

(3) Referrals

- (a) The appointing authority or designee may offer an employee assistance through KEAP if the employee's behavior or work performance is unacceptable or worsening.

- (b) An employee's participation in KEAP services will be voluntary and confidential.
- (c) An employee may receive an assessment or referral from KEAP during working hours with prior approval from his or her appointing authority or designee.
- (d) An employee's participation in counseling or treatment must take place on the employee's time or while on approved leave.

## SECTION 7. Leave Policies

### SECTION 7.01 Months of Service

Only those months for which an employee has worked or been in pay status for at least 100 hours will be eligible for computing months of service for the purpose of earning annual or sick leave.

### SECTION 7.02 Annual Leave

(1) Accrual of Annual Leave for Full-Time Employees

Full-time employees earn annual leave at the following rates:

<u>Months (Years) of Service</u>	<u>Annual Leave Hours (Days) Accrued</u>
0-59 months (0-5 years)	7.50 hours per month (1 day)
60-119 months (5-10 years)	9.38 hours per month (1.25 days)
120-179 months (10-15 years)	11.25 hours per month (1.50 days)
180-239 months (15-20 years)	13.13 hours per month (1.75 days)
240 months (20 years) and over	15.00 hours per month (2.00 days)

(2) Retention of Annual Leave

- (a) Annual leave may be earned and carried forward from one calendar year to the next, not to exceed:

<u>Months (Years) of Service</u>	<u>Maximum Amount</u>
0-59 months (0-5 years)	225 hours
60-119 months (5-10 years)	277.5 hours
120-179 months (10-15 years)	337.5 hours
180-239 months (15-20 years)	390 hours
240 months (20 years) and over	450 hours

- (b) Accumulated annual leave in excess of the above maximum amounts will be converted to sick leave at the end of each calendar year.

(3) Use of Annual Leave

- (a) An employee must obtain approval from his or her appointing authority or designee prior to the use of annual leave, except as noted in subsection (c).
- (b) Use of annual leave will be granted by the appointing authority or designee based on operating requirements and, if possible, as requested by the employee. However, if an employee has accumulated 120 or more hours of compensatory leave at the time the approved leave is used, the approved annual leave will first be designated as compensatory leave (see Section 5.03 of these Policies).
- (c) Absence due to sickness, injury, or disability that exceeds an employee's earned sick leave balance may be charged against annual leave.

- (d) An employee may use annual leave for any absence on a day in which the employee would otherwise work and receive pay.
  - (e) Absence for part of a work day that is used as annual leave must be reported in 15-minute increments (.25 hours).
- (4) Payment of Unused Accumulated Annual Leave
- (a) Employees will be paid in a lump sum for annual leave, not to exceed the maximum amounts set forth in the table under subsection (2)(a), when separated from employment by proper resignation, layoff, dismissal, or retirement.
  - (b) Elected officials who earned annual leave prior to being sworn into the elected office will be paid for their unused annual leave at the time they take office.
  - (c) Upon the death of an employee, his or her estate will be entitled to payment for the unused portion of the employee's annual leave.
  - (d) An employee separated from employment by layoff will be entitled to payment for the entire unused portion of the employee's annual leave.

### **SECTION 7.03 Sick Leave**

- (1) Accrual of Sick Leave
- (a) Permanent full-time employees earn sick leave at the rate of 7.5 hours per month. Permanent full-time employees must work or be in pay status at least 100 hours in a month in order to earn sick leave.
  - (b) Permanent full-time employees who complete 120 months, or 10 years, of total service in Kentucky state government will be credited with an additional 75 hours of sick leave on the first day of the month following completion of 120 months of service.
  - (c) Permanent full-time employees who complete 240 months, or 20 years, of total service in Kentucky state government will be credited with another 75 additional hours of sick leave upon the first day of the month following completion of 240 months of service.
  - (d) Sick leave may be accumulated with no set maximum.
- (2) Retention of Sick Leave
- (a) Employees transferring to the KCOJ from another branch of state government will be credited with their accrued sick leave after submitting the appropriate documentation to the AOC HR Department.
  - (b) Upon retirement, an employee will be credited for sick leave in accordance with the state retirement system's regulations and policies.
  - (c) Upon resignation, layoff, or dismissal, sick leave will not be paid out.



- (d) Former employees who are reinstated or rehired will have their unused sick leave balances restored, with the exception of employees retired from a state position within Kentucky Retirement Systems.

(3) Use of Sick Leave

- (a) Except in cases of emergency or unforeseen illness, employees must request approval for sick leave in advance, including but not limited to, medical, dental, or optical examinations.
- (b) Employees must notify their immediate supervisor or designee as soon as possible in the event of an emergency or unforeseen illness.
- (c) An appointing authority will grant the use of sick leave when an employee:
  - (i) Is unable to work due to medical, dental, or optical examination or treatment;
  - (ii) Is disabled by sickness or injury;
  - (iii) Is required to care for or transport a member of his or her family in need of medical attention; or
  - (iv) Would jeopardize the health of himself or herself or others at his or her workstation because of exposure to a contagious disease or demonstration of behavior that might endanger the employee or others.
- (d) The appointing authority may require the employee to provide a treatment provider's statement certifying the employee's need for sick leave.
- (e) Upon returning from approved sick leave with pay, the appointing authority must return the employee to his or her former position.
- (f) Absence for part of a work day that is being used as sick leave must be reported in 15-minute increments (.25 hours).
- (g) In cases of absence due to illness or injury for which Workers' Compensation benefits are received for lost time, sick leave may be used to make up the difference between the benefits and the employee's regular salary.

(4) Sick Leave Sharing

- (a) General
  - (i) Sick leave may be donated from one state employee to another, including employees from another branch of government. All salary and wage payments donated under this section to an employee while on sick leave will be paid by the agency employing the person who receives the donated leave.

- (ii) Requests for donating and receiving sick leave must be made through the timesheet process and on approved forms provided by the AOC HR Department. The AOC HR Department will maintain records of sick leave donations and employees' use of donated sick leave.
  - (iii) An employee on shared sick leave will receive the same benefits as an employee on regular sick leave as described in Section 7.03(3).
  - (iv) The AOC HR Department may require an employee receiving sick leave sharing to provide initial and periodic medical certifications from their treating physician or advanced practice registered nurse showing the employee's continued need for sick leave due to an inability to perform the essential functions of his or her work duties.
  - (v) No employee shall directly or indirectly intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other employee for the purpose of interfering with the employee's right to voluntarily contribute sick leave when authorized under this section. For the purpose of this subsection, "intimidate, threaten, or coerce" includes, but is not limited to, promising to give or giving a benefit or effecting or threatening to effect any reprisal.
- (b) Responsibilities of Employee Requesting Sick Leave Sharing
- (i) An employee requesting sick leave sharing must complete and submit a Recipient Form to his or her appointing authority for approval and signature. The appointing authority will submit the form to the AOC HR Department for review and approval.
  - (ii) The HR Department will send out a notification based on the Recipient Form.
  - (iii) An employee may receive a maximum of 1,950 hours per qualifying event.
  - (iv) The employee must return to work at the end of the approved sick leave sharing period. Before returning to work, the employee must provide a medical release from a licensed physician to the appointing authority and the AOC HR Department.
  - (v) Upon receipt of the medical certification allowing the employee to return to work full-time, any remaining balance of donated sick time will be returned to the donor at the end of the month.
- (c) Request to Receive Sick Leave Sharing
- An appointing authority, including an elected official, may permit an employee to receive sick leave under this section if:
- (i) The employee or a member of the employee's family suffers from a medically certified illness, injury, impairment, or physical or mental condition that has caused, or is likely to cause, the employee to be on leave for at least 10 consecutive work days;

- (ii) The employee's need for absence and use of leave are certified by a licensed practicing physician or advanced practice registered nurse;
  - (iii) The employee has exhausted his or her sick, annual, holiday, and compensatory leave; and
  - (iv) The employee has complied with these Policies regarding the use of sick leave.
- (d) Request to Donate Sick Leave
- (i) Employees who have 82.5 or more hours of sick leave may donate 7.5 or more hours of their sick leave to another employee who is authorized to receive sick leave under subsection (c) above. Employees donating sick leave must maintain a minimum balance of 75 sick leave hours.
  - (ii) Sick leave donations to a KCOJ employee must be made by the donating employee on his or her timesheet. Sick leave donations to an employee in another branch of government must be made on the Sick Leave Sharing Donor Form and given to the appointing authority for review and signature. The appointing authority will forward the signed Sick Leave Sharing Donor Form to the AOC HR Department.
  - (iii) The donated sick leave will be subtracted from the donating employee's sick leave balance in the month of donation.
  - (iv) An employee donating sick leave is responsible for ensuring that his or her timesheet appropriately reflects the donation. The donating employee must contact the AOC HR Department within the month of donation to correct any errors on his or her timesheet.

(5) Sick Leave Abuse

Earned sick leave with pay is intended as a benefit when there is a bona fide need for it. The KCOJ has defined the terms for using sick leave very broadly, recognizing that there are many circumstances other than an employee's own unexpected illness when he or she might justifiably claim sick leave.

Sick leave cannot, however, be used for unnecessary occasions when it would be convenient for an employee to be absent. For those times, the employee must apply for annual or compensatory leave. The employee who abuses sick leave causes either a work slow-down or places an unfair strain upon fellow workers who must do the work in his or her absence. In consideration for fellow workers, the agency, and the people the KCOJ serves, employees should spend sick time wisely.

**SECTION 7.04 Family and Medical Leave**

(1) General

- (a) This section shall be construed in a manner consistent with the Family and Medical Leave Act of 1993 (FMLA), 29 U.S.C. § 2601 *et seq.*, as amended by

the National Defense Authorization Act, and 29 CFR Part 825, and any subsequent amendments.

- (b) The KCOJ recognizes that FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under the Act. FMLA also makes it unlawful for any employer to discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.
  - (c) All documents relating to family and medical leave will be maintained in a file separate from an employee's personnel file and will be confidential.
- (2) Employee Eligibility
- (a) FMLA applies to employees who have:
    - (i) Been employed for at least 12 months; and
    - (ii) Worked or been in paid status at least 1,250 hours during the 12-month period immediately before the use of family and medical leave is to begin.
  - (b) An employee is eligible for family and medical leave if the employee:
    - (i) Has a serious health condition that causes him or her to be temporarily unable to perform the essential functions of his or her position;
    - (ii) Has a child born to him or her, adopts a child, or has a child placed in his or her home for foster care;
    - (iii) Is caring for a newborn child, adopts a child, or has a child placed in his or her home for foster care, within one year of the birth, adoption or placement;
    - (iv) Is caring for his or her parent who has a serious health condition;
    - (v) Is caring for his or her child who has a serious health condition. "Child" is defined as a biological, adopted or foster child; stepchild; legal ward; or a child for which the employee is standing *in loco parentis*.
    - (vi) Is caring for his or her spouse, or person of similarly close relationship, who has a serious health condition. A person of similarly close relationship is defined as an intimate partner who has resided with the employee for at least one year prior to application;
    - (vii) Meets certain qualifying exigencies arising out of his or her spouse's, child's, or parent's deployment, covered active duty status, or notification of an impending call or order to covered active duty status, in or to a foreign country ("qualifying exigency leave"). Qualifying exigency leave only applies to families of members in the Armed Forces, including the National Guard and Reserves, and certain retired members of the military. Qualifying exigency leave includes

short-notice deployment, certain military events and related activities, certain childcare and school activities, addressing certain financial and legal arrangements, attending certain counseling activities, rest and recuperation, attending certain post-deployment activities, and additional purposes arising out of the call to duty, as agreed on by the employee and employer, or

- (viii) Is caring for his or her spouse, son, daughter, parent or next of kin (nearest blood relative) who is a covered service member. A covered service member is a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a serious injury or illness; or a veteran who was a member of the Armed Forces, including the National Guard or Reserves, at any time during the five years preceding the date on which the veteran underwent that medical treatment, recuperation, or therapy.
- (c) A serious health condition is an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.
- (d) Subject to certain conditions, the continuing treatment requirement may be met by:
  - (i) A period of incapacity of more than three consecutive calendar days that requires in-person treatment by a health care provider within the first seven days of the first day of incapacity, and:
    - 1. A second visit to a health care provider within 30 calendar days of the first day of incapacity unless extenuating circumstances exist; or
    - 2. A regimen of continuing treatment (i.e. prescription medication, further medical visits, etc.) under the health care provider's supervision;
  - (ii) Incapacity due to pregnancy;
  - (iii) Incapacity due to a chronic serious health condition that requires periodic visits for treatment (at least twice per year); or
  - (iv) Other conditions to the extent required by law.
- (e) A medical condition will be deemed a serious injury or illness for purposes of 2(b)(viii) if the injury or illness was incurred or aggravated in the line of active duty and causes the member to be medically unfit to perform the duties of the member's office, grade, rank, or rating, and for which the service member is:

- (i) Undergoing medical treatment, recuperation, or therapy;
  - (ii) In outpatient status; or
  - (iii) On the temporary disability retired list.
- (f) An eligible employee as defined in 2(b)(i-vii) is entitled to 12 weeks of family and medical leave during a 12-month period. An eligible employee as defined in 2(b)(viii) is entitled to 26 weeks of family and medical leave during a single 12-month period. Each 12-month period shall start from the date that family and medical leave is first used.
- (g) A week of family and medical leave will equal the amount of time an employee normally works each week.
- (h) For part-time employees, a weekly average of the hours worked during the 12 weeks before beginning family and medical leave will be used to determine their normal work week.
- (3) Request for Family and Medical Leave
- (a) An employee must provide the appointing authority with a request for family and medical leave at least 30 calendar days before the leave is to begin if it is foreseeable based on an expected childbirth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or a family member, or the planned medical treatment for a serious injury or illness of a covered service member.
  - (b) If the employee is unable to make the request at least 30 calendar days before the leave is to begin due to a medical emergency or change of circumstances, he or she must provide the appointing authority with a request for family and medical leave as soon as practical under the facts and circumstances of the particular case (generally the same day the employee learns of the need for leave or the next business day).
  - (c) An employee must request family and medical leave by completing the Application for Family and Medical Leave and submitting the application to his or her appointing authority absent unusual circumstances. The appointing authority must immediately forward the application to the AOC HR Department.
  - (d) In all circumstances, when giving notice of the need for leave, the employee must provide sufficient information for the KCOJ to determine if the leave qualifies for FMLA protection. Failure to provide sufficient notice may result in family and medical leave being delayed or denied.
  - (e) Once an employee has requested family and medical leave, the AOC HR Department will inform the employee within five business days, absent extenuating circumstances, whether he or she is eligible for such leave. If the employee is eligible, the employee will be instructed as to whether any additional information is required, and as to his or her rights and

responsibilities under FMLA. If the leave is not eligible, the AOC HR Department will provide at least one reason for the ineligibility.

- (f) An employee who requests family and medical leave for the purpose of tending to his or her own or a family member's serious health condition, or a seriously ill or injured covered service member, must supply a certification by a health care provider within 15 calendar days after the request for leave, using the appropriate Certification of Health Care Provider Form, which includes the following:
  - (i) The employee is in need of care;
  - (ii) The employee is needed to care for a family member; or
  - (iii) The presence of the employee is necessary to the immediate family member in need of care.

The AOC HR Department will notify the employee in writing if it finds the certification incomplete or insufficient and will specify what additional information is necessary to make the certification complete and sufficient. The employee will then have seven calendar days to provide a corrected certification (unless the deadline is not practical under the circumstances despite the employee's diligent and good faith efforts).

If the KCOJ has reason to doubt the validity of the certification provided, it may require the employee to obtain a second opinion from a physician selected by the KCOJ at the KCOJ's expense. If the second opinion is in conflict with the first, the KCOJ may require the employee, at the KCOJ's expense, to see a mutually agreed upon health care provider for a final and binding opinion.

Periodic recertification may be required to the extent permitted by law.

- (g) If an employee requests intermittent family and medical leave due to a serious medical condition of the employee or family member, the employee must supply a Certification of Health Care Provider Form from a licensed health care provider stating that intermittent leave is medically necessary and indicating the expected duration of the leave.

Employees taking intermittent leave must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the business of the KCOJ. To better accommodate an employee's need for intermittent leave, the KCOJ may transfer an employee to an alternate, available position for which the employee is qualified and allow the employee to maintain equivalent pay and benefits.

- (h) If the leave is to address a qualifying exigency, the eligible employee must complete a Certification of Qualifying Exigency Form, accompanied by the required supporting documentation and a copy of the covered military member's deployment and/or covered active duty orders within 15 calendar days after the request for leave.

- (i) An employee who fails to timely complete a sufficient certification form may be denied family and medical leave, and will be subject to the KCOJ's other applicable leave and/or attendance policies. Appropriate certification forms are available from the AOC HR Department.
- (j) A licensed health care provider is a:
  - (i) Doctor of Medicine;
  - (ii) Doctor of Osteopathy;
  - (iii) Podiatrist;
  - (iv) Dentist;
  - (v) Clinical Psychologist;
  - (vi) Licensed Clinical Social Worker;
  - (vii) Optometrist;
  - (viii) Chiropractor;
  - (ix) Nurse Practitioner;
  - (x) Nurse Midwife;
  - (xi) Physician's Assistant; or
  - (xii) Certified Christian Science Practitioner.

(4) Approval of Family and Medical Leave

- (a) An employee who has requested family and medical leave must be notified in writing if he or she has been granted or denied family and medical leave within five business days after the AOC HR Department receives the completed and sufficient medical certification and application. At that time, the AOC HR Department will inform the employee whether the leave will be designated as family and medical leave, and, if so, the amount of leave that will be counted against the employee's leave entitlement.
- (b) Family and medical leave and any paid leave must be used concurrently. Unpaid family and medical leave may only be granted after all other paid leave is exhausted.

(5) Benefits During Family and Medical Leave

- (a) Any combination of working days, paid leave, or family and medical leave used by the employee within a month will entitle the employee to state-paid contributions for life insurance and health benefits in the following month.
- (b) If unable to work, employees must use their family and medical leave days consecutively, and must elect to use family and medical leave as their only qualification for state contributions for life insurance and health benefits.
- (c) Employees on unpaid family and medical leave will be responsible for their share of contributions for life insurance and health benefits. The contributions will be due at the same time the contributions would be made by payroll deduction.
- (d) Employees who have used all of their paid leave and family and medical leave and remain unable to work for more than 100 hours in the month may only continue group health and life insurance benefits for the following month by



paying the total cost of the state's contribution and their self-contribution for the benefits.

- (e) For each month that an employee has not worked or been in paid status for 100 hours, the employee's annual or probationary increment will be postponed one month.
- (6) Return From Family and Medical Leave
- (a) Before returning from family and medical leave, the employee must submit a Notice of Intention to Return to Work Form to his or her appointing authority or directly to the AOC HR Department. The appointing authority must immediately forward the form to the AOC HR Department.
  - (b) An employee must present a fitness-for-duty certificate to the AOC HR Department prior to being restored to employment. If such certification is not timely received, the employee's return to work may be delayed until certification is presented.
  - (c) Upon returning from family and medical leave, the employee will be reinstated to his or her previous position or an equivalent position. An "equivalent position" will be virtually identical in terms of pay; benefits; and working conditions, including privileges, prerequisites, and status. The equivalent position will involve duties that are substantially similar to the employee's previous position.
  - (d) On the first day of the employee's return to work, his or her benefits will be reinstated as applicable.
  - (e) The KCOJ reserves the right to deny restoration to any key employee if it determines substantial and grievous economic injury will result if the employee is reinstated. Key employees are salaried employees and are among the highest paid 10 percent of all employees within 75 miles of the employee's worksite.
- (7) Enforcement
- (a) An employee may file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or may bring a private lawsuit against an employer.
  - (b) FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law or collective bargaining agreement that provides greater family and medical leave rights.
- (8) Questions
- All questions about the FMLA policy should be directed to the AOC HR Department.

## **SECTION 7.05 Voting Leave**

- (1) To be eligible for voting leave, an employee must:
  - (a) Be registered to vote in the county holding the election;
  - (b) Be scheduled to work on Election Day during the hours of 6:00 a.m. to 6:00 p.m. local time; and
  - (c) Notify the appointing authority prior to receiving voting leave.
- (2) Employees who are registered to vote are entitled to four hours of paid leave to vote or cast an absentee ballot.
- (3) The appointing authority may specify the hours during which an employee may be absent.
- (4) Any employee who exercises his or her right to leave for the purpose of voting under this section shall be subject to disciplinary action if the employee is not registered to vote or fails to cast his or her vote.
- (5) An employee is entitled to compensatory time instead of voting leave if the employee voted or cast an absentee ballot but did not miss any work hours to do so.
- (6) Employees on unpaid leave are not entitled to voting leave.

## **SECTION 7.06 Blood Donation Leave**

- (1) An employee who donates blood during regular business hours at a designated blood center certified by the Food and Drug Administration will receive four hours of compensatory leave.
- (2) In order to receive the compensatory time, an employee must schedule the time of the donation with his or her appointing authority prior to the donation.
- (3) An employee who attempts to donate blood and is turned away by the blood center will be excused for the time spent attempting to donate, but will not qualify for blood donation leave that day. The employee must provide proof of the attempt to donate blood to his or her appointing authority.
- (4) To receive the four hours of compensatory leave, employees must show proof of donation to their appointing authority before submitting their timesheet for the month in which the blood donation was made.
- (5) The appointing authority may set the number of times per year an employee may donate blood in exchange for the four hours of compensatory leave.

## **SECTION 7.07 Court Leave and Jury Duty Leave**

- (1) An employee will be allowed a leave of absence from duties without loss of time or

pay for the amount of time necessary to comply with subpoenas from any federal or state court that relate to his or her duties with the KCOJ.

- (2) An employee serving as a juror will be allowed a leave of absence from duties without loss of time or pay not to exceed his or her regular hours for a scheduled work day.
- (3) An employee is permitted to keep any compensation received for jury services.
- (4) If the employee is relieved from duty as a juror or witness during his or her normal working hours, the employee must return to work.
- (5) Court and jury duty leave include necessary travel time.

### **SECTION 7.08 Military Leave**

- (1) An active member of the U.S. Army Reserve, the U.S. Naval Reserve, the U.S. Air Force Reserve, the U.S. Marine Corps Reserve, the U.S. Coast Guard Reserve, the U.S. Public Health Service Reserve, or the Kentucky National Guard required to serve under order or for training duty shall be granted leave without loss of the regular compensation for a period not to exceed the number of working days specified in KRS 61.394, per federal fiscal year (October-September), provided the military orders require absence from work. Any additional military leave time must be charged to accumulated annual or compensatory leave balance or be charged as leave without pay.
- (2) The appointing authority may require a copy of the military orders requiring the absence from work before granting military leave.
- (3) Any employee who enters active military duty must be granted a leave of absence without pay for the period of that duty up to six years. Although the appointing authority must grant such leave, the employee must request it in order to avoid being dismissed for abandonment of position without obtaining official leave.
- (4) Upon return from active duty, the employee will be restored to a job of like seniority, status, and pay under KRS Chapter 61. An employee restored from military leave is treated as though he or she had been in continuous service.
- (5) Any employee who is the spouse of an active member of the U.S. Army Reserve, the U.S. Naval Reserve, the U.S. Air Force Reserve, the U.S. Marine Corps Reserve, the U.S. Coast Guard Reserve, the U.S. Public Health Service Reserve, or the Kentucky National Guard who is called upon to serve under federal orders (deployment) shall be granted one day paid leave prior to deployment and one day paid leave upon return from deployment, per federal fiscal year (October-September).
- (6) The appointing authority may require a copy of the spouse's military orders prior to approving the use of this leave.
- (7) While on military leave, the employee will not earn any annual or sick leave, but will earn months of service time. The employee's increment date will not change.
- (8) A former employee seeking reinstatement who has been rejected or otherwise penalized may, as applicable, file a grievance or appeal as provided in Section 8.

## **SECTION 7.09 Bereavement Leave**

Employees will be entitled to bereavement leave of up to three work days due to the death of a family member, as defined in Section 1.04 of these Policies, or other relatives of close association if approved by the appointing authority. Employees must use accrued paid leave (i.e. compensatory, annual, sick, or holiday time) or leave without pay during the absence. Upon the request of the employee, bereavement leave may be extended at the discretion of the appointing authority.

## **SECTION 7.10 Leave Without Pay**

- (1) Employees may request leave without pay if they have used all of their annual, holiday, and compensatory leave. An employee may request leave without pay by submitting a written request to his or her appointing authority.
- (2) The decision to approve or deny a request for leave without pay is within the discretion of the appointing authority or designee.
- (3) The appointing authority must timely submit a PAR reflecting approval of leave without pay to avoid overpayment to the employee.
- (4) If an employee is granted leave without pay, the employee must return to work the next business day after the leave expires.
  - (a) If the employee cannot return to work after the approved period of leave without pay expires, the employee must immediately notify the appointing authority or designee.
  - (b) Unless the appointing authority or designee has extended the period of leave without pay, failure to report to work after the authorized leave without pay ends will be considered a resignation from employment. This provision does not apply to family medical leave.
- (5) Employees cannot take leave without pay for more than six months.

## **SECTION 7.11 Absence Without Prior Approval**

- (1) Absence without prior approval means an unauthorized or unreported absence. An employee who is absent without prior approval must report the reason for the absence to his or her appointing authority or designee within one hour of the start of the employee's work day. This mandatory time period may only be waived by the appointing authority or designee if there are extraordinary circumstances.
- (2) Absence without prior approval may:
  - (a) Be treated as leave without pay for an employee covered by the provisions of the Fair Labor Standards Act; and
  - (b) Constitute grounds for disciplinary action, including dismissal.

## **SECTION 8. Separations, Disciplinary Actions, and Appeals**

### **SECTION 8.01 Resignation**

- (1) An employee who wants to resign his or her position with the KCOJ must notify his or her appointing authority in writing at least 14 calendar days prior to the effective date of the resignation. If the employee provides verbal notice of the resignation and is unwilling or unable to put the notice in writing, the appointing authority must document the verbal notice in writing and have the employee or a witness sign the notification. The appointing authority must notify the AOC HR Department immediately upon receipt of the resignation.
- (2) A resignation is considered accepted immediately upon notification to the appointing authority. However, a resignation may be cancelled after it is received if the appointing authority agrees to the cancellation.
- (3) An employee who fails to notify his or her appointing authority in writing at least 14 calendar days prior to the effective date of the resignation will lose annual leave for each day short of the 14 calendar days, unless waived by the appointing authority. Full-time employees will lose annual leave at the rate of 7.5 hours for each calendar day.
- (4) An employee who resigns his or her position while disciplinary action is pending will be considered to have resigned with prejudice and will not be rehired by the KCOJ without the written approval of the AOC Director or designee.
- (5) An employee who resigns his or her position will not be entitled to any grievance or appeal rights.
- (6) An employee who has been absent without prior approval for a period of three consecutive scheduled work days will be considered to have resigned from employment with the KCOJ and will not be entitled to any grievance or appeal rights.

### **SECTION 8.02 Grievance Policy**

- (1) General
  - (a) The KCOJ recognizes that problems and complaints may arise during the course of the work day. The KCOJ believes that every effort should be made to resolve these differences and concerns, and therefore has developed a grievance policy.
  - (b) A grievance is a complaint filed by an employee that concerns working conditions or employment actions other than a demotion, dismissal, or disciplinary action that results in a loss of pay or other benefits of employment for greater than three working days. Complaints concerning a demotion, dismissal, or disciplinary action that result in a loss of pay or benefits of employment for greater than three days must be brought pursuant to the appeal procedures set forth in Section 8.06 below.

- (c) An employee who has a grievance must first discuss it with his or her immediate supervisor or appointing authority unless it would not be appropriate under the circumstances. If the employee is unable to resolve the issue with his or her immediate supervisor or appointing authority, the employee may file a written grievance on the KCOJ Employee Complaint Form.
  - (d) An employee is entitled to file a grievance without interference, coercion, discrimination, or retaliation.
- (2) Grievance Procedure
- (a) A grievance must be filed in writing with the HRA on the KCOJ Employee Complaint Form on or before the fifth business day after the work condition or employment action arose or on or before the fifth business day after the employee becomes aware of the employment action or work condition. The written grievance should describe, in detail, the factual basis for the complaint, provide the names of any relevant witnesses, and describe any relevant documents.
  - (b) The HRA will investigate and evaluate the complaint. The HRA will consult with the employee filing the complaint, the appointing authority, and relevant witnesses, and consider any other pertinent submissions and sources of information prior to making a recommendation to the HR Director.
  - (c) The HR Director will notify the employee in writing of the decision on the grievance within 30 business days of receiving the grievance unless the AOC Director or designee grants a reasonable extension of time for good cause shown.
  - (d) If the employee is dissatisfied with the HR Director's decision, the employee may request a review by the AOC Director by filing a written request within five business days after receiving the HR Director's decision. The written request should describe in detail the basis for the review and the relief requested. The AOC Director or designee must issue a written opinion within 30 business days. The opinion will be final and not subject to appeal.
  - (e) If the grievance is against the HR Director or HRA, the General Counsel will act in place of the HR Director.

### **SECTION 8.03 Disciplinary Actions**

- (1) Disciplinary actions are generally progressive in nature to allow KCOJ employees an opportunity to improve their performance or their behavior and remain productive employees. The disciplinary actions below are described in a step-by-step method and are intended to provide guidance to the appointing authority. However, the appointing authority may deviate from the disciplinary process depending on the situation.

(a) Step One: Verbal Reprimand

Verbal reprimands are used as warnings for less serious disciplinary matters. Written documentation of the occurrence of the verbal reprimand will be placed in the employee's personnel file.

(b) Step Two: Written Reprimand

A written reprimand must clearly identify the conduct and circumstances for which the employee is being reprimanded, the corrective action to be taken by the employee, and the potential consequences of the employee's failure to correct his or her behavior. The HRA will prepare or review the written reprimand and present it to the appointing authority. The appointing authority or designee must present the written reprimand to the employee in person and in the presence of a witness, and have the employee read and sign the reprimand to confirm he or she received it. The employee has the option of adding his or her comment(s) to the written reprimand. If the employee refuses to sign the written reprimand, the document must indicate such refusal and must be signed by the appointing authority or designee and the witness. The written reprimand will be placed in the employee's official personnel file and will be labeled as a written reprimand.

(c) Step Three: Disciplinary Probation and/or Suspension

(i) Disciplinary Probation

- a. Disciplinary probation will consist of a period of regular employment during which the appointing authority re-evaluates the employee for the purpose of determining whether the employee's deficiencies are being corrected.
- b. An employee may be placed on disciplinary probation for a specified period not to exceed six months. If an employee who is serving a disciplinary probationary period is granted leave in excess of 10 working days, the employee's disciplinary probationary period may be extended for the same length of time as the granted leave.
- c. The HRA will prepare the disciplinary probation letter and present it to the appointing authority. The appointing authority or designee must present the disciplinary probation letter to the employee in person and, in the presence of a witness, have the employee read and sign it to confirm he or she received it. The employee also has the option of adding his or her comment(s) to the probation letter. If the employee refuses to sign the disciplinary probation letter, the document must indicate such refusal and must be signed by the appointing authority or designee and the witness.

- d. The disciplinary probation letter must contain:
  - 1. The effective date and length of the disciplinary probation period;
  - 2. The employee's conduct or work performance deficiencies that have resulted in the disciplinary probation;
  - 3. Corrective action to be taken by the employee; and
  - 4. A statement notifying the employee that his or her failure to correct the workplace deficiencies, or any additional workplace deficiencies during the probationary period, may result in dismissal from employment.
- e. A copy of the disciplinary probation letter must be placed in the employee's official personnel file.
- f. If a tenured employee is dismissed before the end of the disciplinary probation period, the appeal provisions of Sections 8.05 and 8.06 will apply.

(ii) Suspension

- a. An employee may be suspended with or without pay for a disciplinary cause, not to exceed three working days.
- b. The HRA will prepare the suspension letter and present it to the appointing authority. The appointing authority or designee must issue the suspension letter to the employee in person and, in the presence of a witness, have the employee read and sign it to confirm he or she received it. The employee has the option of adding his or her comment(s) to the suspension letter. If the employee refuses to sign the suspension letter, the document must indicate such refusal and must be signed by the appointing authority or designee and the witness.
- c. The suspension letter must contain:
  - 1. The effective date of the suspension and length of the suspension period;
  - 2. The employee's conduct and work performance deficiencies that have resulted in the suspension and the corrective action to be taken by the employee; and



3. A statement notifying the employee that his or her failure to correct the workplace deficiencies, or any additional workplace deficiencies during the probationary period, may result in dismissal from employment.

- d. A copy of the suspension letter and a PAR must be submitted to the HRA and placed in the employee's official personnel file.
- e. If the employee files a grievance pursuant to Section 8.02 and the suspension is reversed, the employee will be reinstated with full pay for all working days he or she was suspended without pay.

(2) Investigative Leave

Pending an investigation of any disciplinary matter, the Chief Justice or designee, after consulting with the appointing authority, may place an employee on paid investigative leave for a period not to exceed five working days. Investigative leave for more than five working days must be approved by the Chief Justice or the AOC Director and may be with or without pay. If the investigative leave is with pay, the employee will not be required to use any earned leave. In all instances of investigative leave, the appointing authority must submit a PAR to the HR Director indicating the effective dates of paid or unpaid leave.

**SECTION 8.04 Dismissal**

(1) Whenever the appointing authority has reasonable evidence that an employee under his or her management has substantially deviated from good behavior or satisfactory performance of duties, the appointing authority, after consultation with the HR Director, may dismiss the employee from his or her position.

(2) Grounds for dismissal include, but are not limited to, the following:

- (a) Conviction or plea of guilty to any misdemeanor or felony;
- (b) Refusal, failure or inability to perform reasonable work duties or legal duties required by the appointing authority;
- (c) Recurring absences or tardiness from duty without good cause or reasonable evidence of good cause;
- (d) Refusal or inability to follow the prescribed procedures for handling money or maintaining records as required by the KCOJ or by any internal department policies or guidelines;
- (e) Use of drugs, alcohol, or other intoxicants during working hours or the inability to work efficiently and effectively because of off-duty use of drugs, alcohol, or other intoxicants;

- (f) Unprofessional conduct or habitual rudeness toward fellow employees, supervisors, or the general public;
  - (g) Two or more instances of disciplinary actions taken against an employee during the 24 months before the present dismissal action;
  - (h) Insubordinate conduct or conduct that is intended to embarrass, harass, or bring disrepute to the KCOJ, its employees, or elected officials;
  - (i) Failure to cooperate with an AOC audit or investigation of any kind;
  - (j) Failure to comply with these Policies or other office policies of the employee's department;
  - (k) Theft, intentional damage, or destruction of KCOJ property;
  - (l) Falsification of records; or
  - (m) Unsafe behavior in the workplace including dangerous horseplay and fighting.
- (3) The Chief Justice, as the executive head of the KCOJ, has the constitutional authority and responsibility to act in the best interests of the KCOJ. Accordingly, when the Chief Justice determines that an employee has substantially deviated from good behavior or satisfactory performance of duties, an employee may be dismissed over the objection of the employee's appointing authority.
- (4) The appointing authority, including the Chief Justice when applicable, must follow these procedures when dismissing a tenured employee:
- (a) The appointing authority or designee, after consultation with and review by the HR Director, must present the employee, in writing, with his or her intent to dismiss. The intent to dismiss letter must be signed by the appointing authority or designee and must inform the employee of the following:
    - (i) The reasons for the dismissal including instances of poor work performance of duties, workplace misconduct, or unlawful activity;
    - (ii) Any disciplinary actions taken against the employee within the last 24 months;
    - (iii) The effective date of the impending dismissal;
    - (iv) That he or she is on paid administrative leave for five business days, during which time the employee has a right to a pre-dismissal meeting with his or her appointing authority or designee to refute the reasons for the dismissal; and
    - (v) An explanation of appeal rights available to the tenured employee should he or she disagree with the action of dismissal.

- (b) The intent to dismiss letter will be issued to the employee by the appointing authority in person with a witness present. If the employee is not available, efforts will be made to contact the employee by phone, electronic mail, and U.S. mail to inform the tenured employee of the proposed action.
- (c) The appointing authority or designee must conduct a pre-dismissal meeting within five business days of issuing the intent to dismiss letter, if requested by the employee.
- (d) Employment with the KCOJ will end after the five business days of administrative leave, unless the appointing authority withdraws his or her intention to dismiss. The employee will be notified in writing by U.S. mail.
- (e) Should the employee decide to appeal the dismissal, the procedures outlined in Section 8.06 apply.

**SECTION 8.05 Right to Appeal a Disciplinary Action Including Dismissal**

- (1) All tenured employees of the KCOJ have the right to appeal the following disciplinary actions within 14 calendar days after receiving written notice: demotions, dismissals, and other disciplinary actions that result in loss of pay or other benefits of employment for greater than three days.
- (2) An employee failing to file an appeal before the deadlines described in this Section waives his or her right to any further administrative remedies or actions under these Policies.

**SECTION 8.06 Appeal Procedures for Dismissal, Demotion, or Suspension Over Three Days**

- (1) Hearing Officers

The Chief Justice shall appoint five retired Judges or Justices in good standing with the Kentucky Bar Association to serve as Hearing Officers. The term of service for the appointed Hearing Officers will be two years. Only one appointee will serve as a Hearing Officer for an appeal. If the Chief Justice directly dismisses the employee involved in an appeal, a Special Hearing Officer will be appointed by the Deputy Chief Justice.

- (2) Appeal Procedures

- (a) A tenured employee seeking an appeal must submit a written appeal on the KCOJ appeal form to the HRA within 14 calendar days following receipt of the disciplinary action, dismissal, or final decision. The appeal form is the only document that may be submitted.
- (b) The appeal must state the specific reasons for the appeal and include a copy of the dismissal letter or notice of disciplinary action.

- (c) After receiving the appeal, the HRA will designate a Hearing Officer from the list approved by the Chief Justice. The HRA will make such designation after determining that the proposed Hearing Officer is available to serve and does not have a conflict of interest. The HRA will then provide the employee and appointing authority written notice of the designation.
  - (d) The Hearing Officer must conduct a hearing within 45 calendar days from the date that the appeal was filed with the HRA.
- (3) Pre-Hearing Conference
- (a) Upon reasonable notice to all parties, the Hearing Officer may convene and conduct a pre-hearing conference at his or her own discretion or at the request of a party to the appeal. The pre-hearing conference may take place in person or by phone. The purpose of the pre-hearing conference will be to explore mediation and settlement possibilities; prepare stipulations; clarify issues; issue subpoenas; and issue rulings regarding witnesses, evidence, and other matters that will promote the orderly and prompt conduct of the hearing. The Hearing Officer may require the parties to submit an overview of the testimony expected from the proposed witnesses.
  - (b) Upon conclusion of a pre-hearing conference, the Hearing Officer shall issue a pre-hearing order incorporating all matters determined at the pre-hearing conference. If a pre-hearing conference is not held, the hearing officer may issue a pre-hearing order, based upon the appeal documents, to regulate the conduct of the hearing.
  - (c) The pre-hearing conference will be closed to the public.
- (4) Conduct of Hearing
- (a) The Hearing Officer shall preside over the hearing and shall regulate the course of the proceedings in a manner that will promote the orderly and prompt conduct of the hearing. When a pre-hearing order has been issued, the hearing officer shall regulate the hearing in conformity therewith.
  - (b) The Hearing Officer, at appropriate stages of the appeal, shall give the parties an opportunity to file motions, objections, offers of settlement, proposed findings of fact, and a recommended order.
  - (c) The Hearing Officer may issue subpoenas and discovery orders at his or her discretion when requested by a party and address all matters thereto.
  - (d) To the extent necessary for the full disclosure of all relevant facts and issues, the Hearing Officer shall give all parties the opportunity to present opening and closing arguments, respond, present evidence and argument, conduct cross-examination, and submit rebuttal evidence, except as restricted by a pre-hearing order or a determination by the Hearing Officer that the proposed evidence is irrelevant, immaterial, unduly repetitious, or otherwise

inadmissible. If the facts of the matter would give rise to a criminal proceeding, no person shall be compelled to give evidence against himself or herself.

- (e) Any party to an appeal may participate in-person or be represented by counsel. The Hearing Officer may conduct all or part of the hearing or a pre-hearing conference by phone, if each party to the hearing has an opportunity to hear the entire proceeding as it occurs. The Hearing Officer shall make the determination of whether to permit all or part of the hearing to be conducted by phone. The Hearing Officer shall have the authority to administer oaths to witness(es) for each party, conduct investigations and other related fact-finding efforts, and interview the witness(es) presented by each party. The Hearing Officer shall ensure that an accurate and complete record of the hearing is made.
- (f) The employee and the appointing authority or designee may present witnesses and documentary evidence to be evaluated by the Hearing Officer. It shall be the sole responsibility of each party to assure the attendance of their respective witnesses. In the event that a proposed witness fails to appear or the employee fails to request a subpoena be issued by the Hearing Officer, a continuance will not be granted, except for extraordinary circumstances as determined by the Hearing Officer.
- (g) If a party fails to attend or participate in a pre-hearing conference or hearing, or fails to comply with the orders of the Hearing Officer, the Hearing Officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate, or may conduct the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A default order shall be considered a recommended order.
- (h) The hearing may be closed to the public for good cause shown, at the discretion of the Hearing Officer.
- (i) No later than 14 calendar days prior to the hearing, unless otherwise ordered by the Hearing Officer at the pre-hearing conference, each party shall provide to the HRA the documentary evidence to be introduced at the hearing, as well as a list of witnesses to be called. The HRA shall forward, as soon as practical, the documentary evidence and the list of witnesses to be introduced by each party to the Hearing Officer and the opposing party. Nothing in this section shall be construed as giving a party the right to examine or copy the personal notes, observations, or conclusions of the appointing authority or other KCOJ personnel, unless exculpatory in nature, nor shall it be construed as allowing access to the work product of counsel for the KCOJ.
- (j) In all hearings, unless otherwise provided by statute or federal law, the party proposing that the KCOJ take action has the burden to show the propriety of the action. The KCOJ has the burden to show the propriety of a disciplinary action imposed. The party asserting an affirmative defense has the burden to establish that defense. The party with the burden of proof on any issue has the burden of proof going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of proof in all hearings is met by a

preponderance of evidence in the record. Failure to meet the burden of proof is grounds for a recommended order from the Hearing Officer.

- (k) The Hearing Officer shall issue his or her findings of fact and conclusions based solely upon the evidence on the record. The Hearing Officer shall exclude evidence that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds or on the basis of evidentiary privilege recognized in the courts of this Commonwealth. Hearsay evidence may be admissible, if in the opinion of the Hearing Officer, it is of the type that reasonable and prudent persons would rely upon in their daily affairs.
- (l) All testimony shall be made under oath. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party. All objections to evidentiary offers shall be noted in the record.
- (m) The Hearing Officer shall issue the written findings and recommendation to the AOC Director within 60 calendar days from the date the appeal was filed. The Hearing Officer may request, in writing, an extension of time not to exceed 30 calendar days from the Chief Justice, or Deputy Chief Justice when appropriate, which may be granted based upon good cause shown.
- (n) The Hearing Officer's recommendation will be copied to all parties and the HRA for entry into the employee's personnel file. The Hearing Officer's final recommendation is not subject to further administrative appeal.
- (o) The AOC Director will evaluate the recommendation of the Hearing Officer and make the final decision in regard to the appeal. The AOC Director's final decision is not subject to further administrative appeal.
- (p) If either party is dissatisfied with the decision of the AOC Director, an original action may be filed within 30 calendar days after the date of the AOC Director's final decision in Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides.



Administrative Office of the Courts  
1001 Vandalay Drive, Frankfort, Kentucky 40601  
Phone 502-573-2350 • Fax 502-782-8703  
<http://intranet.kycourts.net>