

NEBRASKA DEPARTMENT OF ADMINISTRATIVE SERVICES

NOTICE OF PUBLIC HEARING

February 12, 2021

2:00 p.m. Central Time

Fourth Floor – Conference Room D

1526 K Street, Lincoln, Nebraska

The purpose of this hearing is to receive comments on proposed changes to Title 273, Chapters 1 through 18 of the Nebraska Administrative Code, State Classified System Personnel Rules and Regulations. These rules and regulations govern the state personnel system. The purpose of the proposed changes is to eliminate provisions that mirror statute(s), reduce regulatory burden, simplify and clarify the rules, and make amendments and updates deemed appropriate. These changes may include, but are not necessarily limited to, repealing and/or reorganizing of chapters and provisions. There is no expected fiscal impact on state agencies, political subdivisions, or persons being regulated.

The proposed rules as amended are available at the offices of the Secretary of State, Regulations/Licensing Division, Room 1305, State Capitol, Lincoln, Nebraska 68509, and online at <http://www.sos.ne.gov>.

All interested persons are invited to attend and make oral or written comments at the hearings. Interested persons may also submit written comments prior to the hearings, which will be made part of the hearing record at the time of the hearing if received by the Department of Administrative Services on or before the hearing time on February 12, 2021. Written comments should be sent to the General Counsel of the Department of Administrative Services by mail to 1526 K Street, Suite 140, Lincoln, Nebraska 68509 or by email to amara.block@nebraska.gov.

Due to COVID-19, members of the public may participate in the public hearing by calling the phone conference line at 888-820-1398; Participant Code 8181679#.

Reasonable accommodations will be provided to persons with disabilities by contacting Amara Block at (402) 471-4114 or amara.block@nebraska.gov by February 5, 2021.

FISCAL IMPACT STATEMENT

Agency: Department of Administrative Services	
Title: 273	Prepared by: Kenny Zoeller
Chapter: 1-18	Date prepared: 12/1/20
Subject: Personnel Rules and Regulations	Telephone: 531-207-2944

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(X)	(X)	(X)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & a Description of Impact:

State Agency: **No Fiscal Impact.**

Political
Subdivision: **No Fiscal Impact.**

Regulated
Public: **No Fiscal Impact.**

If indeterminable, explain why:

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 1 COVERAGE

001. APPLICABILITY. These rules apply equally to all agencies and employees covered by the State Personnel System unless otherwise noted. Agency heads are responsible for the application of these rules within their agency and ensuring all employees comply with provisions of these rules.

002. AGENCY RULES AND POLICIES: CONFLICTS. These rules do not limit the authority of any agency head to make rules governing the conduct of departmental employees and the performance of department functions, provided such departmental rules are consistent with these rules and any collective bargaining agreement entered into by the State.

003. MANAGEMENT AUTHORITY. Management retains all rights not granted to employees by these rules. Such rights include, but are not limited to, all authorities and responsibilities conferred to agency heads and management personnel pursuant to Neb. Rev. Stat. § 81-1311.

004. EMPLOYEES COVERED BY PERSONNEL RULES. All agencies and personnel of state government are considered subject to the State Personnel System except those identified in Neb. Rev. Stat. § 81-1316. Employees subject to certified Collective Bargaining Agreements as prescribed in Neb. Rev. Stat. § 81-1373 are not covered by these rules to the extent that wages, hours and other terms and conditions of employment are provided for by contract.

005. DISCRETIONARY NON-CLASSIFIED POSITIONS. Each agency head may have non-classified positions as identified in Neb. Rev. Stat. § 81-1316. Persons holding the non-covered position serve at the pleasure of the agency head and are paid salaries set by the agency head. In no case will a current state employee's career protections or coverage by Personnel Rules and Regulations be revoked without the prior written agreement of such employee.

005.01 CREATION OF DISCRETIONARY NON-CLASSIFIED POSITIONS. An agency head, when establishing a discretionary non-classified position, will submit to the Director a notification to create a new position or change a current position, including a listing of the number of employees in the agency for determination of the appropriate number of eligible discretionary non-classified positions. When non-classified positions are created under the provisions of Neb. Rev. Stat. § 81-1316(2), they will be established in a single non-classified code and title N00700, Discretionary Non-Classified.

005.02 WORKING TITLE. Discretionary non-classified positions may be assigned a working job title which describes the function of the position.

005.03 SALARY AND BENEFITS. The agency head has total discretion in setting the pay rate (hiring rate, increases and reductions) of an employee in a discretionary non-classified position.

005.04 AT WILL EMPLOYMENT. Individuals transferred or hired to fill discretionary non-classified positions are "at will" employees. "At will", for purposes of the discretionary non-classified positions, is defined as serving at the pleasure of the appointing authority not subject to the Rules and Regulations of the Classified Personnel System.

005.05 DISCRETIONARY NON-CLASSIFIED EMPLOYEE CONVERSION TO CLASSIFIED STATUS. An agency head may not convert a discretionary non-classified position to a classified position while the position is occupied.

006. AVAILABILITY. Each employee has the right to review these rules. A copy is available for review in the DAS-State Personnel Division office or online.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 2 DEFINITIONS

001. DEFINITIONS. For the purpose of these rules and regulations, the following definitions apply.

001.01 ADJUSTED SERVICE DATE. See Service Date.

001.02 AGENCY. Any legally constituted board, commission, department or other branch of state government in which all positions are under the same appointing authority.

001.03 AGENCY HEAD. The administrative head of an agency, such as Agency Director, Executive Director, Commissioner, Executive Secretary, etc., reporting directly to the Governor, a commission or board.

001.04 BONUS. Lump sum payment.

001.05 CATASTROPHIC EVENT. A serious illness or injury resulting in a prolonged absence of at least 30 work days during a six-month period.

001.06 CATASTROPHIC LEAVE. Vacation leave and/or compensatory time donated by one employee to another for the purpose of providing paid leave during an absence relating to a catastrophic event when the receiving employee has exhausted sick leave.

001.07 CLASS. One or more positions similar enough as to duties performed, degree of supervision exercised or received, knowledge, skills and abilities needed, and other characteristics so that the same title and salary grade assignment may be applied to each position in the group.

001.08 CLASS SPECIFICATION. The formal description of the work of a class, which defines the class and lists typical examples of work performed and the knowledge, skills and abilities associated with performing the work.

001.09 CLASSIFIED SYSTEM. All state agencies and positions covered by the State Classified Personnel System.

001.10 CLASSIFY. To assign a position to a specific class based upon duties, responsibilities and knowledge, skills and abilities.

001.11 COMPENSATORY TIME. Time off granted by an agency head to an employee in lieu of payment for overtime or holiday hours worked.

001.12 DIRECTOR. Unless otherwise annotated, "Director" refers to the Director of Personnel, DAS-State Personnel Division.

001.13 DISABLED VETERAN. A disabled veteran is defined by Neb. Rev. Stat. § 48-225.

001.14. DISCIPLINARY DEMOTION. Reassignment of an employee from one class to another class at a lower pay range as a result of disciplinary action requiring a reduction in salary.

001.15 DISCIPLINARY PROBATION. A special employment status imposed for disciplinary reasons; the period of time for such probation may not exceed one year.

001.16 DISMISSAL. Involuntary separation of an employee, excluding layoffs.

001.17 EMPLOYEE. Any person, except those excluded by statute, who works in any state agency in the State Classified Personnel System. For the purposes of these rules, employee refers to classified employees only.

001.18 EXEMPT. A class which is not covered by the time and one-half overtime provisions of the Fair Labor Standards Act and state law.

001.19 FAMILY MEMBER. A family member, as defined in Neb. Rev. Stat. § 49-1499.07(1)(a). For the purposes of sick leave, family member means spouse, child, and parent.

001.20 FULL-TIME. Employees who work a minimum of 40 hours per week or 80 hours in a two-week period on an ongoing and continuous basis.

001.21 FTE. Full time equivalent; 2080 work hours in a year, averaging 40 hours per week, equals 1.0 FTE. To calculate the percentage of FTE for part-time employees divide the average number of hours worked per week by 40.

001.22 FURLOUGH. A temporary non-duty, non-pay status because of lack of funds. This is an alternative to layoff that provides for the continuation of critical work and retention of valuable human resources.

001.23 HIRING RATE. Minimum rate of a pay range.

001.24 INTERN. A student who is formally enrolled at a secondary or post-secondary institution and is working on either a paid or unpaid basis via agreement with an individual agency and receiving academic credit or fulfilling a recognized requirement for a specific work training experience.

001.25 LAYOFF. Involuntary employee separation or reduction of hours because of economic reasons, elimination of funds, reduction in workload or reorganization of the agency.

001.26 LEAVE OF ABSENCE. Unpaid time off from work requested by the employee and granted by the agency head or appointing authority.

001.27 MAXIMUM RATE. Highest rate of a pay range.

001.28 MINIMUM PERMANENT RATE. The lowest pay rate of an employee who has satisfactorily completed their original probationary period.

001.29 NON-CLASSIFIED SYSTEM. All state agencies and positions not covered by the State Classified Personnel System.

001.30 NON-EXEMPT. A position which is covered by the time and one-half overtime provisions of the Fair Labor Standards Act and state law.

001.31 OCCUPATIONAL GROUP. A broad set of classes recognized as a field of employment.

001.32 ORIGINAL PROBATION. Evaluation period during which the employee is assessed for their ability to satisfactorily perform assigned duties.

001.33 PART-TIME. Employees who work an average of less than 40 hours per week on an ongoing and continuous basis. Work schedules may fluctuate by week, month or season.

001.34 PAY FOR PERFORMANCE INCREASES. Percentage or flat dollar increase which is added to the base rate, given in recognition of job performance.

001.35 PAY RANGE. A range of pay for each classification with a Hiring Rate and a Maximum Rate.

001.36 PAY STATUS. A condition whereby an employee is receiving pay from the employing agency.

001.37 PERMANENT POSITION. A full-time or part-time position worked on an ongoing and continuous basis.

001.38 POSITION. A group of specific duties and responsibilities to be performed by one or more employees and which may be part-time, full-time, permanent, temporary, seasonal, filled or vacant.

001.39 POSITION DESCRIPTION QUESTIONNAIRE (PDQ). Questionnaire used when requesting reclassification of a specific position or creation of a new position in an existing classification.

001.40 PROMOTION. Movement of an employee from one class to another class at a higher pay range with increased duties and responsibilities.

001.041 REASSIGNMENT. Involuntary movement of an employee from one position to another for business reasons.

001.42 REDUCTION IN FORCE. The elimination of occupied positions.

001.43. REINSTATEMENT. Act of rehiring a former employee who has been subject to a reduction in force.

001.44 RELOCATION. A reassignment requiring a move of more than 50 miles from the employee's place of residence.

001.45 SELECTION CRITERIA. The competencies, knowledge, skills, abilities, personal characteristics, job elements, experience, education, or other measurable qualities used in employee selection procedures; what a selection device measures.

001.46 SELECTION DEVICE. A valid, job-related instrument used to obtain an indication of the possession of the relative competencies, knowledge, skills, abilities, personal characteristics or other criteria that make a difference in job performance and are needed at

entry to a particular job (e.g., Training and Experience Rating Scale, Interview Questions, Supplemental Questionnaire).

001.47 SERIES. Two or more classes similar in duties, but differing primarily in level of difficulty, responsibility, knowledge, abilities and skills needed and supervision exercised or received. The Director determines what classes constitute a series.

001.48 SERVICE DATE. Date from which an employee's vacation and sick leave entitlement is computed. This is the date of hire minus the number of calendar days of unauthorized leaves of longer than one day, suspensions without pay, leaves of absences exceeding 14 calendar days (except military leaves) and/or any breaks in service as allowed by Chapter 9.

001.49 STATE PERSONNEL SYSTEM. All state agencies and positions not excluded by Neb. Rev. Stat. § 81-1316 or subsequent legal decisions.

001.50 SUSPENSION. An involuntary leave of absence with or without pay.

001.51 TEMPORARY EMPLOYEE. An employee hired for a limited period of time in one of three categories: (1) for less than six months; (2) for six to 12 months or 2080 hours; or (3) term for grant funded positions or special projects.

001.52 TEMPORARY POSITION. A full-time or part-time position is not worked on an ongoing and continuous basis.

001.53 TRANSFER OF EMPLOYEE. The voluntary movement of an employee from one position to another position within an agency or to another agency without a break in service.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 3 EMPLOYEE RECRUITMENT AND SELECTION

001. EQUAL EMPLOYMENT. It is the policy of the State that every individual is given fair and equal opportunity for employment and advancement. Discrimination in employment and advancement based on race, color, religion, national origin, ethnicity, age, sex, marital status or physical or mental disability is prohibited.

002. VACANT POSITIONS. Agency heads must notify DAS-State Personnel Division of all vacant positions for assistance in recruiting qualified applicants. DAS-State Personnel Division will initiate a recruiting program, at the requesting agency's expense, for the specified positions.

002.01 NOTIFICATION OF VACANCIES. DAS-State Personnel Division will be provided a requisition of positions to be posted that includes the position number, job code, position title, essential duties, required qualifications, salary, work location, shift and working schedule and closing date.

002.01(A) POSTING REQUIREMENT. All electronic requisitions must be transmitted to DAS-State Personnel Division by the prescribed time and date to ensure inclusion of the formal external announcement in the sponsored publications and web sites. Positions will be advertised for a minimum of six work days. An exception to the six work day posting requirement may be granted by the Director.

002.01(B) TEMPORARY EMPLOYMENT. Refer to Chapter 4 for rules covering recruitment, selection, and employment of temporary employees.

002.01(C) REPOSTING. Positions posted within the past 90 days need not be posted again externally if the hiring agency prefers to hire from the existing pool of interviewed applicants, provided that the new position is the same classification, has similar in duties with the same requirements, and at a location within the same proximity.

002.02 APPLICATIONS. All applications for positions within the Nebraska Classified System are received in the DAS-State Personnel Division.

002.02(A) APPLICATION DEADLINE. Applications for a specific vacancy that are received by the DAS-State Personnel Division no later than the announced closing dates (or the actual closing dates for positions listed with an "open" recruitment period) will be considered for that vacancy.

002.02(A)(i) OPEN RECRUITMENT PERIOD. When filling vacancies announced with an "open" recruitment period, hiring agencies will assign a specific closing date and notify DAS-State Personnel Division of that date, prior to a hiring decision being made. All applications for that open position which are received by the DAS-State Personnel Division on or before that closing date, will be considered for that position.

002.03 ADVERTISING. Agencies have the option to advertise position vacancies.

002.04 REIMBURSEMENT OF INTERVIEW EXPENSES. The agency head may reimburse the best qualified job applicants for travel, meals, and lodging expenses incurred when

traveling to and from the prospective interview location. Reimbursement will be made in accordance with policies established by the DAS-Accounting Division.

003 SELECTION. Agency heads must ensure that all applicants hired possess the necessary competencies (i.e., knowledge, skills, abilities, education, training, licenses/certifications) and meet any applicable statutory requirements. The hiring authority is also be responsible for reference and criminal records checks and verification of academic credentials.

003.01 All agencies should develop uniform selection criteria administered prior to beginning the selection process. DAS-State Personnel Division is available to assist in developing selection criteria. The hiring agency is responsible for documentation and validation of all selection activities involved in the hiring process.

003.02 Applicants who falsify or omit relevant qualifications or work history in their application material may be disqualified. Applicants hired to positions as the result of falsifying or omitting relevant information concerning their qualifications or work history may be disciplined up to and including termination.

004 DOUBLE-FILL. For the purpose of training, agency heads may hire a qualified applicant to double-fill an incumbent vacating a position for a period not to exceed 60 calendar days, unless approved by the Director.

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CHAPTER 4 TEMPORARY EMPLOYMENT

001. AUTHORITY. Neb. Rev. Stat. § 81-1307(6) establishes DAS-State Personnel Division as a clearinghouse for all State temporary employment.

002. REQUESTS TO HIRE TEMPORARIES. Request to hire any temporary employee(s) will be made to DAS-State Personnel Division, in accordance with guidelines established by the Division.

003. EXTENSIONS. Extensions of temporary employment need prior approval from the Director.

004. LEAVE. Temporary employees receive the following types of paid leave: injury, civil and military training, or emergency duty leave (see Chapter 9 for information on leave). Temporary employees are not eligible for sick leave, vacation leave, retirement or holiday pay. If a temporary employee works on a holiday or observed holiday, he/she will be paid for the time worked at his/her normal rate of pay. Temporary employees may receive unpaid leave at their supervisor's discretion.

005. INSURANCE. Temporary employees of the state who have a work assignment of at least six month's duration and who work at least 20 hours per week may purchase health insurance through Nebraska State Insurance Program. The state will pay the same proportion of the insurance premium for temporary employees as is established through the collective bargaining process for permanent employees.

006. LENGTH OF SERVICE. Length of service for temporary assignments are monitored by DAS-State Personnel Division. When a temporary employee leaves a position in one agency and goes to a position in a different agency, a new period of temporary employment begins. A transfer to another division or department within the same agency does not constitute the beginning of a new period of temporary employment. Temporary employees who complete assignments may return to the same assignment after a 30-calendar- day break in service.

007. SERVICE DATE. In the event a temporary employee obtains a regular position in state government, the period of temporary employment will not count toward service date or original probation period.

008. TERMINATION. Temporary employees are "at will" employees and may be terminated at any time.

009. GRIEVANCE RIGHTS. Temporary employees do not have grievance rights.

010. COMPENSATION. Employees hired into State temporary positions are compensated at the hiring rate for the classification assigned to the position according to the Pay Plan administered by DAS-State Personnel Division. Exceptions need approval of the Director.

010.01 REHIRING FORMER EMPLOYEES. A former permanent employee returning to work in a temporary capacity, in the same class within the State Classified Personnel System, may be rehired at the same rate the employee was receiving when he/she left State employment.

011. OVERTIME. Temporary employees eligible for overtime receive compensation in accordance with the Fair Labor Standards Act.

012. PERSONNEL RECORDS. Temporary employees have the right to review a copy of their personnel file.

013. TEMPORARY EMPLOYEES HIRED THROUGH PRIVATE EMPLOYMENT AGENCIES. These individuals are not considered state employees and, therefore, are not entitled to any rights or benefits afforded to state employees.

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CHAPTER 5 PROBATIONARY PERIODS

001. NEW HIRE. New hires are required to serve an original probationary period of six months from date of hire, rehire, or transfer and will be so notified. An employee will be removed from original probation status on the day following the end of the original probationary period, unless notified of extension (see 002) or separation (see 003) by the agency head. The agency head will notify the employee in writing of successful completion of the probationary period.

002. EXTENSION OF ORIGINAL PROBATION. An agency head may extend the original probation of an employee for reasons of performance, transfer, or promotion for a period not to exceed a total of one year from the date of hire, rehire, or transfer. The employee will be notified in writing of the extension before the expiration of the probationary period.

002.01 The notification of extension will include the specific period of extension. In cases of extension for performance reasons, the employee will be provided specific performance improvement requirements.

003. SEPARATION DURING ORIGINAL PROBATION. Employees may be separated at any time during the original probationary period. The agency head will notify the employee in writing of the date the separation is effective. The reason for separation will be documented in the employee's personnel file, and the employee will be informed regarding the reasons for separation. Employees who are separated while on original probation do not have grievance rights.

004. TRANSFERS. If a transferred employee under original probation is not performing adequately in a new position, the employee may be reverted back to the previous position and pay rate at the sending agency head's discretion. The employee may also apply for any open position for which he/she is qualified to hold. If no other position is available for transfer, the agency head may reassign the duties of the employee, reclassify the employee to a classification of a lower pay range or terminate the employee at the agency head's discretion.

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CHAPTER 6 CLASSIFICATION

001. CLASSIFICATION PLAN. The classification plan is based on a systematic review and analysis of the duties and responsibilities of all positions in the State Classified Personnel System. Classification is based on a variety of factors, including duties performed, the scope and level of responsibilities assigned, the nature and extent of supervision received and/or exercised, and the knowledge, abilities and skills required. All positions having similar duties and responsibilities are grouped into classes and are assigned to a pay range.

002. CLASS SPECIFICATIONS. Specifications are maintained for each class. The duties outlined in the specification are representative only and do not limit the assignment of other duties to a position.

003. CLASS TITLES. The assigned class title and class code are the official designations for every class for personnel, budget and payroll administration purposes. However, working titles may be used in day-to-day business, if desired.

004. AGENCY HEAD AUTHORITY AND RESPONSIBILITIES. When significant changes in duties and/or responsibilities are made to a position, or when a new position is created, the agency head will submit a current position questionnaire to the Classification and Compensation, DAS-State Personnel Division, for classification review.

005. CLASSIFICATION DELEGATION. The Director may delegate limited classification authority to agencies. Such classification authority must be in writing and will specify the classes, or series of classes, for which an agency has authority, the time period for which authorization is given, as well as the reporting requirements. The Director may revoke such authority at any time.

006. UNDERSTAFFING. For the purpose of training, an agency head may understaff a position with an employee of a lower class within the same series. The duties and salary must reflect the employee's classification. Understaffing a position is limited to one year unless an extension is authorized by the Director.

007. REQUESTS FOR CLASSIFICATION REVIEWS. Classification reviews may be requested by any of the following:

007.01 Employees may request a review of their classification at any time, provided that the position has not been reviewed and/or a classification decision letter issued by the DAS-State Personnel Division in the previous six months. Requests may be made by completing a Position Description Questionnaire (PDQ) and submitting it, along with a request to the immediate supervisor for review. The supervisor will review the information submitted by the employee and submit all materials to the next level within the agency, according to agency policy. The agency will have up to 45 work days to review such information and, if necessary, change the assignment of duties and responsibilities of a position, and will forward the employee's request to the DAS-State Personnel Division for review.

007.01(A) If an agency changes the assignment of duties and responsibilities of an occupied position, they will inform the employee, in writing, of the changes and effective date of the changes.

007.01(B) The employee may withdraw their request for reclassification at any time.

007.02 Agency heads may request a review of the classification of any position in their agency at any time. Requests are made by submitting a PDQ along with a letter requesting review to DAS-State Personnel Division.

007.03 DAS-State Personnel Division may review any position at any time by requiring an employee to fill out a PDQ. The DAS-State Personnel Division may access any information necessary for a classification review, including but not limited to: organizational charts, job descriptions, staffing reports and a personal visit to the employee at his/her workplace.

008. RECLASSIFICATION. No position may be classified or reclassified without written authorization of the DAS-State Personnel Division. The pay change takes effect from the date the agency changed the work and initiated the request reclassification process.

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CHAPTER 7 EMPLOYEE RECRUITMENT AND SELECTION

001. GENERAL. Utilization of the provisions in this chapter will be managed within existing budget limitations. All employees will be hired at the hiring rate of the pay range for their class, except as described below.

001.01 INCREASED HIRING RATES. When an applicant has training and/or experience which exceeds the entry level qualifications for the class or there are demonstrated recruitment difficulties, at an agency head's discretion, an applicant may be hired at a rate up to the minimum permanent rate.

001.02 WRITTEN PERMISSION REQUIRED. Agency heads may offer a salary above the minimum permanent rate with written authorization from the Director. Factors the Director may consider in authorizing an above-permanent rate offer include:

- (A) Recruiting difficulties for the position;
- (B) Unique skills and/or experience of the candidate that exceed a typical applicant;
- (C) How the requested salary compares to other agency employees occupying the same class or class series;
- (D) Salary market information; and
- (E) Operational impact to the State if this applicant is not hired.

001.03 RECRUITMENT DIFFICULTIES. If recruitment of applicants becomes difficult for compensation-related reasons, the Director may authorize an increased hiring rate for an entire class, for a series of classes, or for a set of classes within a specific geographic area.

001.04 REHIRING FORMER EMPLOYEES. A former employee returning to work in the same class within the State Classified Personnel System may be rehired at the same rate the employee was receiving when he/she left State employment, except that the rate may not be less than the hiring rate or higher than the maximum rate of the current pay range. If the employee was not in the State Classified Personnel System, he/she is considered as a new employee for hiring rate purposes.

002. SALARY INCREASES UPON COMPLETION OF ORIGINAL PROBATION. At the agency head's discretion, employees may be eligible for a 5% raise or a raise to the minimum permanent rate, upon completion of their original probationary period.

003. PAY RANGE CHANGES.

003.01 PROMOTIONS.

003.01(A) An agency head may promote an employee to a higher pay range under the following circumstances:

- (i) A non-supervisory employee has held same role for three years; or
- (ii) The employee exceeds expectations of current role and meets minimum qualifications of the pay range.

003.01(B) PROMOTIONAL CHANGES. Employees placed in a higher pay range may receive up to a 10% pay increase per pay range advanced, at the agency head's discretion, subject to the following provisions.

003.01(B)(i) The employee will be paid at least the minimum permanent rate of their new pay range.

003.01(B)(ii) Employees placed in a higher pay range cannot be paid above the maximum rate of their new pay range as a result of the pay increase.

003.01(B)(iii) Employees reclassified or transferred to a position of a lower pay range (with no salary reduction) and then promoted back to the same pay range may not receive a salary increase.

003.01(B)(iv) The Director may approve an agency head request for an increase in excess of 10%, as outlined in Chapter 7, subsection 001.02.

003.02 DEMOTION OR LATERAL CHANGES. Employees placed in the same or lower pay range because of a reclassification, involuntary transfer, or pay range adjustment may have their salary reduced.

003.02(A) Employees requesting voluntary transfer (lateral or down) may, at the agency head's discretion, have their salary reduced.

003.02(B) Disciplinary demotions require at least a 5% reduction in salary. The employee's salary may be reduced to the hiring rate, at the agency head's discretion.

003.02(C) If the new salary is below the minimum permanent rate, the employee may be given a salary increase to the minimum permanent rate at any time in the following six months, but will be paid at least the minimum permanent rate at the end of six months.

004. SALARY ADJUSTMENTS WITHIN GRADE. Agency heads may request salary adjustments (up or down) for their employees, from the Director. Reasons for such requests may include the following:

(A) Internal pay equity within an agency for similar jobs with disparity in pay;

(B) If hiring above minimum permanent due to superior qualifications causes inequity for current, equally qualified staff;

(C) If a single position within a class has unique responsibilities/skill requirements which significantly distinguish it from others in the class;

(D) Retention issues (i.e., high turnover, market issues);

(E) Increased workload that is considerable, yet does not warrant reclassification (i.e., lead worker responsibilities); or

(F) To reward sustained high performance.

005. TEMPORARY REASSIGNMENT TO A HIGHER SALARY GRADE. An employee temporarily promoted to a classified position to fill a vacancy, or to fill in for a leave period exceeding 15 calendar days, should be paid at least the hiring rate of the new pay range. The salary increase can begin on the first day of reassignment but will begin no later than the 16th day following the temporary promotion. At the end of this temporary reassignment, the employee's salary will be reduced to the amount paid prior to the temporary promotion, except that any performance-based pay increases and any general salary increases will be added back into the employee's base salary. Temporary promotions will not exceed one year unless authorized by the Director.

006. PERFORMANCE-BASED PAY INCREASES. The purpose of performance-based pay increases is to give agencies the opportunity to recognize performance which is documented in the annual performance appraisal. Performance-based pay increases shall comply with DAS-State Personnel guidelines, or with an agency's pay for performance plan approved by the Director.

007. BONUS PAYMENTS. In accordance with current administration policies/directives, agency heads may grant single or multiple bonus lump sum payments of up to a total of \$1000 per individual during a fiscal year.

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CHAPTER 8 WORK SCHEDULES & OVERTIME

001. WORK WEEK. Agency heads determine each employee's work week, which consists of seven consecutive calendar days, except for institutional, law enforcement or protection employees (Sections 004 and 005). The work week of each employee will be documented in the agency's files. Full-time employees eligible for overtime (non-exempt employees) must account for at least 40 hours of work or leave time per week. All employees will be informed of their work week. Employee leave hours used during the work week will be credited back to the employee before overtime may be earned.

002. WORK SCHEDULE. Management sets each employee's work schedule and may schedule employees to work evenings, weekends, and/or holidays. Overtime may be assigned to an employee based on immediate availability or special job qualifications.

003. OVERTIME COMPENSATION ELIGIBILITY. Agencies are responsible for making overtime eligibility determinations based on Fair Labor Standards Act (FLSA) requirements.

003.01 SALARY REQUIREMENT FOR EXEMPT STATUS. An employee paid on a salary basis is considered exempt from the overtime portion of the FLSA. An employee is considered to be paid "on a salary basis" if the employee regularly receives, each pay period, a predetermined amount constituting all, or part of, his or her compensation. This "salary" is not subject to reduction for absences of less than one day. The use of sick, vacation, or compensatory time for less than one-day absences is not considered a reduction in salary, but rather use of an employee benefit.

003.02 EXEMPT. Employees determined to be exempt from the FLSA are not eligible for overtime compensation. The agency head, at his/her discretion, may request approval from the Director to grant straight time overtime compensation to exempt staff for special circumstances or emergency situations.

003.03 NON-EXEMPT. These employees receive compensation at one and one-half times their hourly rate in the form of either pay or compensatory time off, at the agency head's discretion, for hours worked in excess of 40 hours in any work week. (Other standards apply for hospital, law enforcement and fire protection workers - Sections 004 and 005.) Leave time (vacation, sick, etc.) is not considered as hours worked. Holidays are be counted as hours worked.

003.04 RECONSIDERATION OF EXEMPT/NON-EXEMPT STATUS. Employees may request their agency reconsider the exempt/non-exempt status of their position.

003.05 AUTHORIZATION. Overtime hours will be authorized in accordance with agency policy.

004. INSTITUTIONAL OVERTIME. Agencies engaged in the operation of a hospital or an institution primarily engaged in the care of the sick, aged, mentally ill or developmentally disabled residents housed at state facilities may establish a period of eight hours per day and 80 hours per 14 consecutive calendar days for the purpose of determining overtime compensation (rather than the 40-hour-per-week standard).

005. LAW ENFORCEMENT AND FIRE PROTECTION OVERTIME. Agencies having police, law enforcement or correctional security personnel may establish a period of 171 hours in a consecutive 28-day period for the purposes of determining overtime compensation (rather than the 40-hour-per-week standard).

005.01 Agencies having fire protection personnel may establish a period of 200 hours in a consecutive 28-day period for the purposes of determining overtime compensation (rather than the 40-hour-per-week standard).

006. NON-EXEMPT COMPENSATORY TIME. Upon proper agency authorization, up to 240 hours of compensatory time (not more than 160 hours of actual overtime hours worked) may be accumulated by an employee. Fire protection, law enforcement employees and correctional security personnel may accumulate up to 480 hours of compensatory time (not more than 320 hours of actual overtime hours worked). Time accumulated over the above noted amounts will be paid for at time and one-half rates. Payment of overtime will be paid at the employee's current hourly rate, or at the average regular rate of pay for the final three years of employment, whichever is higher. Between December 25 and December 31 of each year, an employee may elect by notifying the Agency in writing, to receive payment for unused compensatory time accumulated during the prior State fiscal year. Compensatory time hours not paid will be continued in the employee's compensatory time balance.

007. TRAVEL TIME. Travel time of non-exempt employees who are directed to attend a meeting, conference, seminar, training course, etc., is considered compensable time.

008. DUAL EMPLOYMENT. Employees holding jobs in two agencies may be eligible for overtime compensation. To determine overtime obligations, agencies will contact DAS-State Personnel Division before employing an individual who is already employed by another agency of state government.

009. ALTERNATE WORK SCHEDULES AND TELECOMMUTING. Agencies may allow alternate work schedules or telecommuting, at their discretion.

010. JOB SHARING. With approval of the Director, agency heads may permit job sharing. Job sharing allows for a permanent part-time arrangement in which jobs can be restructured to accommodate two people working a total of 40 hours per week in one position.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 9 PROVISIONS FOR LEAVE

001. AUTHORIZED LEAVE. Authorized leave types include holiday, vacation, sick, injury, military, civil, bereavement, Family Medical, and leave of absence. Holiday, vacation, sick, and bereavement leave need supervisor authorization. The employee will provide appropriate documentation requested by the supervisor.

002. RECORD OF LEAVE. Each agency will maintain an attendance record for each employee, accounting for time worked and all absences from work.

003. HOLIDAYS. See Neb. Rev. Stat. § 84-1001.

003.01 WEEKEND HOLIDAYS. When a holiday falls on the first day of an employee's weekend, it will be observed on the preceding day. When a holiday falls on the second day of an employee's weekend, it will be observed on the following day. A weekend is two consecutive days off in the employee's normal work schedule.

003.02 WORK ON AN OBSERVED OR ACTUAL HOLIDAY. Full-time or part-time employees, not to include temporary employees, eligible for time and one-half overtime will receive time and one-half compensation, either in the form of pay or time off within the next 12-month period, for hours actually worked on the holiday (either observed or actual, but not both). This is in addition to holiday leave pay for hours scheduled to work that day. All hours worked on a holiday in excess of an employee's normally scheduled work day will be compensated at two times the employee's normal hourly rate. In no case will an employee receive both additional pay and time off for an observed or actual holiday.

003.03 ELIGIBILITY FOR HOLIDAY LEAVE. Unless excused by their supervisor, employees will be in a pay status on the work day immediately preceding and the work day immediately following an observed holiday in order to receive compensation for that day. Employees will not receive holiday pay or time off if the holiday occurs during a period of non-paid leave. However, if the holiday occurs during a paid leave, the employee is considered to be on holiday leave for the day of the holiday, rather than any other type of leave.

003.04 TRANSFERRING EMPLOYEES. Holidays which fall between the dates of transfer from one state agency to another are paid for by the agency from which the employee is transferring.

003.05 HOLIDAY LEAVE FOR TEMPORARY EMPLOYEES. Temporary employees are not eligible for holiday leave, and if directed to work on a holiday or observed holiday, are paid for the time worked at their normal rate of pay.

003.06 HOLIDAY LEAVE. Full-time employees will receive holiday compensation equal to one-fifth of their normal scheduled work week for each paid holiday.

003.06(A) HOLIDAY LEAVE FOR PART-TIME EMPLOYEES. Employees working part-time schedules will receive paid time off for holidays on a pro-rated basis. Agencies will use the budgeted percentage of the full time FTE (1.00) when calculating the amount of earnings(e.g., a .60 FTE employee would receive 4.8 hours holiday leave for each holiday (.60 FTE x 8 hours (for full-time) = 4.8 hours)).

004. VACATION LEAVE. See Neb. Rev. Stat. § 81-1328.

004.01 BALANCING OF VACATION LEAVE. All employees' accumulated vacation time in excess of 280 hours will be forfeited as of December 31 of each calendar year. Excess carryover leave may be approved by the agency head. In these cases, the agency head will assure hours carried over are used within the next six months. In no case will approved carry over vacation continue from year to year.

004.01(A) This subsection has been adjusted pursuant to Neb. Rev. Stat. § 81-1317.

004.02 VACATION LEAVE PAYMENT. Employees who leave state government employment for any reason will be paid for any unused accumulated vacation leave earned, calculated on their base hourly rate.

005. CATASTROPHIC LEAVE. When an employee experiences a catastrophic event, he/she may request catastrophic leave donations. Catastrophic Leave is available only to employees who have exhausted their own earned sick leave and only with approval of the agency head.

005.01 ELIGIBILITY OF RECIPIENT. Employees must meet the following criteria before request(s) for donations can be made:

- (A) Be suffering a serious illness or injury resulting in a prolonged absence of at least 30 work days during the past six months;
- (B) Produce satisfactory medical verification;
- (C) Have completed original probation;
- (D) Have exhausted all earned sick leave; and
- (E) Have not offered anything of value in exchange for the donation.

005.02 REQUESTING CATASTROPHIC LEAVE. Employees need to submit a written request for catastrophic leave donations to the agency/facility Human Resources office. The Human Resources' staff will be responsible to initiate the process to verify eligibility, seek agency head approval, request donations, apply the conversion formula to donations received, advise the employee of donations received and notify the appropriate payroll personnel of changes to receiving/donating employees' leave balances. Agency heads and/or their designee[s] need to approve catastrophic leave requests before solicitation for donations begin.

005.03 CATASTROPHIC ILLNESS/INJURY DONATION. Employees may contribute accrued vacation leave or earned compensatory time to benefit another State employee in the same agency suffering from a catastrophic illness. Vacation leave and earned compensatory time will be donated in no less than four-hour increments. The contributing employee needs to identify the specific amount of time donated and the name of the recipient of the donated hours. Hours donated and transferred to another State employee pursuant to this provision will be irrevocably credited to the recipient's catastrophic leave account.

005.03(A) Leave transferred will be converted to a dollar value and then converted to hours based on the recipient's hourly rate (i.e., the leave donor's salary is \$12.00 per hour and the recipient's salary is \$24.00 per hour, thus, in this case, twice the amount of hours is needed to achieve full conversion.) No more than equivalent of 1200 hours of donated leave may be received by an employee during a 12-month period.

005.04 ELIGIBILITY OF THE DONOR. Before donating leave, employees must meet the following criteria:

- (A) Only increments of four hours may be donated;
- (B) Have not solicited nor accepted anything of value in exchange for the donation; and
- (C) Have remaining to his/her credit at least 40 hours of accrued vacation leave. Earned compensatory time can be donated completely, leaving a zero balance.

005.05 If catastrophic leave donations exceed that which is needed to cover the catastrophic illness/injury related absence, it will remain in the catastrophic leave account for a period of one year from the employee's return to work. Remaining amounts may be used for future absences related to the catastrophic illness/injury (i.e., follow-up medical appointments/treatments). After one year from the date of the employee's return from the first period of extended absence, or upon death of the employee, any remaining catastrophic leave balance will be forfeited.

005.06 The provisions of this section are non-grievable.

005.07 This section has been adjusted pursuant to Neb. Rev. Stat. § 81-1317.

006. MATERNITY LEAVE DONATION (MLD) PROGRAM. When a mother needs to be away from work due to a birth of a child, she may request MLD. MLD is available only to employees who have exhausted their own earned sick leave, in conjunction with an approved Family Medical Leave (FML) under the Family Medical Leave Act and only with approval of the agency head and/or designee.

006.01 ELIGIBILITY OF RECIPIENT. Employees must meet the following criteria before request(s) for donations can be made:

- (A) Be the expectant or new mother of a newborn baby;
- (B) FML request has been approved by the agency;
- (C) Have exhausted all earned sick leave; and
- (D) Have not offered anything of value in exchange for the donation.

006.02 REQUESTING MATERNITY LEAVE DONATIONS. Employees need to submit a written request for MLD to the agency/facility Human Resources office. The request needs to include substantiating evidence as described in the Family Medical Leave Act. The Human Resources' staff will be responsible to initiate the process to verify eligibility, see agency head approval, request donations, apply the conversion formula to donations received, and notify the appropriate payroll personnel of changes to receiving/donating employees' leave balances. Agency heads and/or their designee(s) need to approve both the FML and MLD requests before solicitation for donations begin.

006.03 CONTRIBUTING MATERNITY LEAVE DONATIONS. Employees may contribute accrued vacation leave or earned compensatory time to benefit another State employee in the same agency who requests MLD. Vacation leave and earned compensatory time may only be donated in no less than four-hour increments. The contributing employee needs to identify the specific amount of time donated and the name of the recipient of the donated time on the appropriate forms for that purpose. Hours donated and transferred to another State employee pursuant to this provision will be irrevocably credited to the recipient's MLD account.

006.03(A) Leave transferred will be converted to a dollar value and then converted to hours based on the recipient's hourly rate (e.g., the leave donor's salary is \$12.00 per

hour and the recipient's salary is \$24.00 per hour, thus, in this case, twice the amount of hours is needed to achieve full conversion). No more than an equivalent of 480 hours of MLD may be received by an employee during a 12-month period. No more hours than needed during the approved FML period should be received (e.g., the employee has two weeks of paid sick leave accrued. After the two weeks of accrued sick leave is used, the employee can only request four weeks of donated leave to fill a six-week FML request). The agency will transfer donated leave to the recipient's account from the donor's accruals in chronological order based on the date the form was received and on as-needed basis.

006.04 ELIGIBILITY OF THE DONOR. Before donating leave, employees must meet the following criteria:

(A) Only increments of four hours may be donated;

(B) Have not solicited nor accepted anything of value in exchange for the donation; and

(C) Have remaining to his/her credit at least 40 hours of accrued vacation leave. Earned compensatory time can be donated completely, leaving a zero balance.

006.05 ADOPTIVE MOTHERS. Per Neb. Rev. Stat. § 48-234, adoptive mothers may be entitled to use MLD in certain situations. Adoptive mothers need to meet the eligibility requirements as outlined above. The provisions of this section are non-grievable.

006.06 This section has been adjusted pursuant to Neb. Rev. Stat. § 81-1317.

007. SICK LEAVE. See Neb. Rev. Stat. § 81-1320.

007.01 CONDITIONS FOR USING SICK LEAVE. The following conditions are the only valid reasons sick leave may be used:

(A) An employee is unable to perform his/her duties because of sickness, disability or injury. Pregnancy, post-natal recovery and miscarriage will be considered temporary disabilities;

(B) An employee obtains medical, surgical, dental or optical examinations or treatment;

(C) An employee's presence at work jeopardizes the health of others by exposing them to a contagious disease; or

(D) The illness, disability, injury or medical, surgical, dental or optical appointment of a family member demands the employee's presence. Family member means a spouse, child, or parent. At the agency head's discretion, the definition of family may be broadened. Employees may use vacation time for care of family members when their presence is helpful, but not essential, if approved by the agency head.

007.02 REQUESTS FOR SICK LEAVE. Sick leave must be requested in advance when possible. In the case of illness, injury, emergency or any other absence not approved in advance, the employee will inform the supervisor of the circumstances as soon as possible. An employee may be directed to submit substantiating evidence.

007.02(A) Sick leave shall be denied when the agency head has facts showing that the employee is abusing sick leave.

007.02(B) Sick leave cannot be used as vacation leave.

007.03 BALANCING OF SICK LEAVE. The sick leave account of each employee will be balanced to a maximum of 1440 hours on December 31 of each year. Sick leave may be

accumulated in excess of 1440 hours during a year, but the excess will be forfeited when balanced.

007.04 FORFEITING OF SICK LEAVE UPON SEPARATION; SICK LEAVE PAYMENTS UPON RETIREMENT OR DEATH. All sick leave will be forfeited upon separation from employment, except that an employee age 55 or above, or of a younger age if the employee meets all criteria necessary to retire under the primary retirement plan covering his/her State employment, or at death, will be paid one-quarter of his/her employee's accumulated sick leave.

007.04A This subsection has been adjusted pursuant to Neb. Rev. Stat. § 81-1317.

007.05 SICK LEAVE REINSTATEMENT. An employee who has left state service for other than disciplinary reasons and returns within five years will have reinstated to the sick leave account all earned sick leave not used at time of departure. Any employee who has retired or voluntarily separated in lieu of retirement will not have any sick leave reinstated.

007.05(A) This subsection has been adjusted pursuant to Neb. Rev. Stat. § 81-1317.

007.05(B) Employees eligible for retirement who are laid off have the option to defer the payment of one-quarter of their sick leave account for up to 12 months. Should the laid off employee return to state employment within 12 months, the employee's sick leave balance and service date will be reinstated (minus the time in a non-pay status). Should the laid off employee not obtain further state employment at the end of the 12-month period, the agency from which they left will pay them one-quarter of their sick leave account.

008. VACATION AND SICK LEAVE ADJUSTMENTS.

008.01 ADVANCEMENT OF VACATION AND SICK LEAVE. Agency heads may advance up to 80 hours of vacation and sick leave to employees (pro-rated for part-time employees). Employees must reimburse the state for all used unearned vacation and sick leave upon separation or transfer.

008.02 LEAVE FOR EMPLOYEES WORKING FOR MORE THAN ONE AGENCY. Employees working for more than one agency earn vacation and sick leave from each agency.

008.03 TRANSFERRING VACATION AND SICK LEAVE BALANCE TO ANOTHER AGENCY. Employees who transfer from one agency to another in the State Classified Personnel System will have their accrued vacation and sick leave transferred to the new agency and will not start with a negative balance. Upon mutual agreement between the two agencies involved and the employee, a portion of accumulated vacation leave may be transferred to the new agency, with the former agency paying the employee for the untransferred portion. Employees who transfer from a non-classified agency to the State Classified Personnel System will have transferred to the new agency the amount of vacation and sick leave they would have earned had they been in the State Classified Personnel System, minus the vacation and sick leave used, and will not start with a negative balance.

008.04 VACATION AND SICK LEAVE ACCUMULATION FOR EMPLOYEES. Employees will be in a pay status in order to earn vacation and sick leave. Part-time employees earn vacation and sick leave in proportion to their budgeted percentage of the full-time FTE. Leave

is not earned until after the pay period has ended and, therefore, is not available for use until the following pay period.

009. BEREAVEMENT LEAVE. Up to five days of bereavement leave may be granted to employees for death in the family. For purposes of this section, family means a spouse, father, mother, grandfather, grandmother, sister, brother, child, grandchild, spouse of any of these, or someone who bears a similar relationship to the spouse of the employee. Step-persons and unborn persons bearing these relationships are included. At the agency head's or his/her designee's discretion, the definition of family may be expanded to include other individuals with a similar personal relationship to the employee as that of a family member.

010. INJURY LEAVE AND WORKERS' COMPENSATION. Will be administered according to the guidelines established by the Risk Manager.

011. MILITARY LEAVE.

011.01 FEDERAL STATUS, ACTIVE SERVICE. State employees (including temporary employees) who are members of the Nebraska National Guard or any other reserve component will be entitled to a military leave of absence from their respective duties, without loss of pay as prescribed below, when employed with or without pay, under the orders or authorization of a competent authority in the active service of the State or of the United States. Members who normally work or are normally scheduled to work 120 hours or more in three consecutive weeks will receive a military leave of absence of 120 hours each calendar year. Members who normally work, or are normally scheduled to work, less than 120 hours in three consecutive weeks will receive a military leave of absence each calendar year equal to the number of hours they normally work or would normally be scheduled to work, whichever is greater, in three consecutive weeks. Such military leave of absence may be taken in hourly increments and will be in addition to the regular annual leave. ("Annual leave" is interpreted to mean "vacation leave" for state employees.) Such orders will be from the Adjutant General's office of the Nebraska National Guard or from a reserve component which has specific authority to issue military orders.

011.01(A) When an employee's active service period continues into a new calendar year, the employee becomes eligible for another 120 hours of military leave on January 1 of the new calendar year. The agency will contact the employee or a member of the employee's family to advise them of this eligibility. The employee may choose to utilize it or save it for later in the calendar year. In no case does the leave carry over into another calendar year. The employee, or duly delegated family member, will notify the agency, in writing, of their decision.

011.02 STATE ACTIVE SERVICE FOR EMERGENCIES. When the Governor of this state declares that a state of emergency exists and any of the persons named in this section (See 011.01) are ordered to active service of the State, a state of emergency leave of absence will be granted until such member is released from active duty of the State by competent authority. The emergency leave of absence is administered in the same manner as the military leave of absence, except without a 120-hour limitation.

011.02(A) Sick and vacation earnings and holiday pay are continued during this authorized absence.

011.03 ENLISTMENT OR EXTENDED DUTY. Employees, other than temporary, who leave their positions to undergo military training or extended duty with the armed forces of the United States or undertake military duty in the active service of the State are entitled to a leave of absence for a period of such training and/or service, not to exceed five years. This will be without loss of pay during the first 15 work days of the leave of absence, provided they have not already used the allotted time in that calendar year. All actions related to an employee's employment and benefits will be taken in accordance with the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA, 38 USC 4316 (2004), 38 USC 4317 (2004) and 38 USC 4318 (2004)) and amendments.

011.03(A) Upon returning from training and/or service within five years, employees are entitled to be reinstated in their former position or a similar position, at a salary level they would have been entitled to had they not been on leave of absence, if application is made in accordance with USERRA provisions (38 USC 4312 (2004)). The employee's service date will not be adjusted due to this type of leave of absence.

011.04 COPIES OF ORDERS. Proper documentation, including copies of orders for all military leave absences, will be retained at the agency level in the employee's personnel file.

012. CIVIL LEAVE.

012.01 JURY DUTY. If an employee is called to serve as a juror, he/she is entitled to paid civil leave in addition to jury duty pay. Employees must return to work when not actually serving as a juror on a daily basis.

012.02 ELECTION BOARD DUTY. If an employee is appointed on an election or counting board, he/she is entitled to paid civil leave in addition to pay for this service.

012.03 VOTING TIME. All employees will be given up to two hours for the purpose of voting, provided the employee does not have sufficient time before or after regular duty hours to vote.

012.04 COURT APPEARANCES.

012.04(A) Time spent by employees appearing in court as a function of their job are considered as hours worked. All witness fees and reimbursements received as a result of these court appearances will be returned to the State.

012.04(B) Employees attending court as a plaintiff, defendant or witness on non-work related matters may use vacation leave or earned compensatory time. In the event the employee is subpoenaed for non-work related matters and does not have vacation leave or compensatory time, the agency head will grant leave of absence. Any witness fees paid to the employee for these court appearances will be kept by the employee.

012.05 DISASTER RELIEF LEAVE. Employees who provide proof of their disaster relief volunteer certification may, with appropriate supervisory authorization, be granted paid civil leave not to exceed 15 working days in each calendar year to participate in specialized disaster relief services in Nebraska.

013. LEAVE OF ABSENCE. Agency heads may grant employees (including temporary employees) an unpaid leave of absence, not to exceed one year (except for military service and

some worker's compensation cases), when such absences will not interfere with the best interests of the State. An unpaid leave of absence longer than a year needs Director approval.

13.01 During the leave of absence, the temporarily vacated position may be filled by either employing a temporary employee or assigning another qualified employee to assume the duties of the position.

013.02 Sick and vacation leave will not accrue during a leave of absence.

013.03 Sick and vacation leave earned but unused prior to leave of absence will be carried forward upon the employee's return.

013.04 The employee's service date will be adjusted for the total of non-pay absences in excess of 14 consecutive calendar days, except when an employee is still eligible for worker's compensation payments.

014. EMERGENCY SITUATIONS. In case of emergencies which affect employees' working hours or conditions, the Director will issue clarifying personnel policies concerning work hours and appropriate leave.

015. LEAVE FOR PART-TIME EMPLOYEES. All types of leave are granted in proportional amounts for part-time employees. Agencies will use the budgeted percentage of the annual FTE when calculating leave earnings for part-time employees.

016. GOVERNOR APPOINTED COMMITTEES. When the Governor appoints an employee to serve on a committee, board or other body, time spent at meetings of the committee, board or other body crossing the employee's normal work hours will be considered hours worked.

017. FAMILY AND MEDICAL LEAVE.

017.01 ELIGIBILITY. Family and Medical Leave is unpaid time off from work except when an employee chooses to use vacation or sick leave as part of their 12 weeks of Family and Medical Leave. An employee needs to have at least 12 total months of service and at least 1250 hours of paid service in the previous 12-month period to be eligible for Family and Medical Leave. Temporary employment with the State of Nebraska counts toward an employee's eligibility.

017.02 CONDITIONS FOR USING FAMILY AND MEDICAL LEAVE. An employee may use Family and Medical Leave for the following reasons:

017.02(A) Because of the birth of a child of the employee.

017.02(B) Because of the adoption or placement of a foster care child with the employee.

017.02(C) In order to care for the serious health condition of the employee's spouse, child or parent.

017.02(C)(i) "Child" may include stepchildren, foster children or certain other children having more than a short-term residence in the employee's home, such as legal wards of the employee.

017.02(C)(ii) Care for mother-in-law or father-in-law is not included. However, "parent" may include individuals other than biological or adoptive parents who served in a long-term parental role for the employee.

017.02(D) Because of the serious health condition of the employee.

017.02(D)(i) Serious health conditions are defined as illness, injury, impairment or physical or mental conditions that involve: (1) in-patient care, (2) absence from work, school or other regular daily activities for more than three calendar days and continuing treatment by a health care provider, or (3) continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, or prenatal care.

017.03 CERTIFICATION OF SERIOUS HEALTH CONDITIONS. An employee requesting to use Family and Medical Leave due to a serious health condition needs to provide certification from a health care provider which includes:

- (1) the date on which the serious health condition commenced;
- (2) the probable duration of the condition;
- (3) any appropriate medical facts;
- (4) a statement containing specific information why the employee is needed to care for the child, spouse or parent, OR, a statement containing specific information why the employee is unable to perform the functions of the job; and
- (5) if the leave is to be intermittent, a statement containing specific information concerning planned medical treatments, the expected dates and duration of treatment.

017.03(A) MEDICAL SECOND OPINIONS. The Agency may require a second opinion (the agency's choice of health care provider) and needs to pay for the cost of the second opinion. If the second opinion differs from the first, a third opinion may be sought (from a mutually agreed upon health care provider, again, at the agency's expense). The results of the third opinion are final.

017.04 NOTICE OF INTENT TO USE FAMILY AND MEDICAL LEAVE. An employee will provide a minimum of 30-days' notice to the Agency before he or she may use Family and Medical Leave. Where 30-days' notice is not foreseeable, notice needs to be given as early as possible.

017.05 FAMILY AND MEDICAL LEAVE DURATION. Family Medical Leave commences the day leave was first taken for the qualifying condition and is limited to 12 weeks within the 12-month period following the commencement date.

017.06 FAMILY AND MEDICAL LEAVE NOT CUMULATIVE. Family and Medical Leave cannot be carried forward beyond the 12-month period and banked for future use.

017.07 INCREMENTAL USE OF FAMILY AND MEDICAL LEAVE. Family and Medical Leave may be taken in increments with proper medical certification. Federal law allows employees not eligible for overtime (exempt employees) to make incremental use of unpaid Family and Medical Leave without affecting their "salaried" status.

017.08 HEALTH INSURANCE WHILE ON FAMILY AND MEDICAL LEAVE. Employer health insurance contributions will continue during an employee's unpaid Family and Medical Leave

absence, provided the employee makes his/her required contribution. Employer contributions will be based as if the employee had continued to work his/her normal schedule. When an employee does not return from Family and Medical Leave for a reason other than: (1) the continuation, recurrence or onset of a serious health condition which would entitle the employee to Family and Medical Leave; or (2) other circumstances beyond the employee's control, the employee will be required to reimburse the State for the State's share of health insurance premiums paid on the employee's behalf during the Family and Medical Leave.

017.09 FAMILY AND MEDICAL LEAVE AND WORKER'S COMPENSATION. If an employee requests Family Leave due to an injury or illness qualifying for Workers' Compensation, the agency will contact DAS-Risk Management for coordination of Workers' Compensation and Family and Medical Leave benefits.

017.10 FAMILY AND MEDICAL LEAVE DENIALS. DAS-Employee Relations Division will be notified by the agency of any requests for Family and Medical Leave which are denied.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 10 PERFORMANCE MANAGEMENT

001. PERFORMANCE STANDARDS/EXPECTATIONS. Agencies shall establish performance goals and expectations for their employees and must communicate such to each employee. Performance feedback, whether favorable or unfavorable, should be communicated to the employee frequently and in writing whenever practical.

002. PERFORMANCE EVALUATIONS. Agencies shall regularly evaluate employee performance and provide feedback on performance to the employee. Performance evaluations will be prepared for all employees as indicated below.

002.01 Upon completion of the original probationary period.

002.02 At least on an annual basis with date to be determined by the agency or state-wide timeline for participation in pay for performance.

002.03 Performance reviews should be completed on the established state-wide performance management system.

002.04 On occasions when the supervisor desires to record performance worthy of recognition, either favorable or unfavorable. Reasons for submission of this type of special report will be explained in the report.

003. ADMINISTRATION.

003.01 After completion of the evaluation, it is recommended that the report be reviewed by the evaluator's supervisor(s) prior to discussion with the employee.

003.02 Performance evaluations should then be discussed with the employee, who will have the opportunity to add his/her comments. The signing of the performance evaluation by the employee does not signify the employee's agreement with the content, but only that he/she has reviewed the performance evaluation, that it has been discussed with the employee and that the employee has been given an opportunity to comment. The evaluator will sign and date the performance evaluation. If the employee refuses to sign, the supervisor and witness will document the employee's refusal on the employee's performance evaluation form. The employee may attach written comments regarding the evaluation if he/she desires. These comments will be submitted within 30 calendar days of the date of the report.

003.03 Each employee will receive a copy of his/her performance evaluation and a copy of each performance evaluation will be included in the employee's personnel record.

004. EVALUATORS. Employees will be evaluated by their immediate supervisor. If in the agency's judgement it is not practical for the immediate supervisor to complete the evaluation, the next level supervisor may do so.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 11 EMPLOYEE RECORDS

001. ACCESSIBILITY OF RECORDS. The records of the DAS-State Personnel Division are public and will be made available to the requesting parties in accordance with procedures prescribed by the Director and Neb. Rev. Stat. § 84-712.

002. MAINTENANCE OF RECORDS. Each agency covered by the State Classified Personnel System should maintain personnel records including:

- (A) Individual vacation and sick leave records;
- (B) Record of employee's performance report(s);
- (C) Record of all personnel transaction forms pertaining to individual employees; and
- (D) Record of documents initiated by the employee that affect pay.

002.01 Former employees' personnel files may be destroyed in accordance with all applicable Records Management records retention and disposal schedule(s) and each type of document within such files will need to be evaluated accordingly.

003. RIGHTS OF REVIEW. Employees and former employees may review their personnel file maintained at the employing agency during regular office hours. The review may be done in the presence of a supervisor or HR staff.

004. NEGATIVE DOCUMENTATION. Documentation (including performance reports) which reflects unfavorably on an employee or former employee should not be placed in their personnel file without their knowledge.

004.01 Employees or former employees have the right to file a written rebuttal within 30-calendar days from date of notice to any item placed in their personnel file with the exception of grievances settled in accordance with Chapter 13, Section 004. This written rebuttal will be placed in their personnel file.

004.02 Records of disciplinary action will be maintained in the employee's personnel file.

004.03 Records of disciplinary action will not be removed from an employee's personnel file after separation of the employee.

004.04 The provisions of the section are not applicable to temporary employees. See Chapter 4 for relevant information on temporary employees.

005. DIRECTOR'S AUTHORIZATION. The Director has the authority to obtain from any classified agency any documents relating to personnel administration that the Director deems necessary for the proper administration of the State Classified Personnel System.

006. MEDICAL INFORMATION. Any medical information concerning employees will be kept in a separate, secure file and will not be commingled with other personnel information.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 12 REDUCTION IN FORCE

001. GENERAL. The agency head has discretion to decide when a reduction in force is necessary, what form that will take, and what classes and positions will be affected. The purpose of this chapter is to outline procedures for reduction in force and provide alternatives.

002. FURLOUGHS. A furlough is defined as placing an employee in a temporary, non-duty, non-pay status because of lack of funds.

002.01 An employee may be placed on furlough for a period of consecutive days/weeks or discontinuously over a period of time (i.e., one work day per six-month period).

002.02 Furlough plans will be submitted to the Director for approval.

003. LAYOFFS. The agency will develop a layoff plan which complies with their reduction in force policy. The Director will review an agency's layoff plan prior to the initiation of any layoff. Layoff plans will provide detail on what basis retention privileges are to be determined.

003.01 Agency heads will decide on what basis retention privileges will be determined. The basis for retention will be based on any job-related factor

003.02 Employees to be laid off should be given as much notice as possible, but at least a 15 workday written notice prior to layoff. This period may be shortened by the agency head when emergency funding situations exist. Written documentation concerning the shortened notice will be attached to the layoff plan.

004. REINSTATEMENT. Employees or former employees are eligible for reinstatement to their previous class for 24 months after layoff. Employees desiring to be reinstated will, following notification of the availability of a position, notify the agency head in writing of the acceptance or refusal of the position within five work days.

004.01 It is the responsibility of the employee or former employee to inform the agency of any change in address. Failure to receive notification of a position's availability because of an address change will not cause the five work day reply period to be lengthened.

004.02 Agency heads may return reinstated employees at, or up to, their former salary, if reemployed within two years.

004.03 Employees reinstated after being laid off will not be made to serve an original probationary period.

004.04 Employees or former employees refusing a position of their previous classification and location, or not acting to notify the agency head and/or his/her designee of acceptance or refusal, forfeit any reinstatement rights.

004.05 Former employees who were laid off, or employees who transferred to another position in lieu of layoff, will be reinstated in the reverse order from which they were laid off or transferred.

004.06 The service date for reinstated employees will be adjusted by the number of days in a non-paid status.

004.07 Qualified employees will be given the opportunity to be reinstated to an available position in a lower class within the same series. Employees declining reinstatement to a position in a lower class within the same series will be given the opportunity to be reinstated to a position of their previous class, if positions become available within the 12-month period.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 13 DISCIPLINARY ACTION

001. DISCIPLINARY ACTIONS. Disciplinary problems are generally addressed in a progressive manner. However, the nature and severity of the violation will dictate the level of discipline imposed. More severe levels of disciplinary action may be imposed when a lesser action is deemed inadequate or has not achieved the desired results. Management may consider the type and frequency of previous offenses, the period of time elapsed since a prior offense and any extenuating circumstances in determining appropriate discipline. One or a combination of any of the following disciplinary actions may be imposed. If one or more of the prescribed disciplinary actions are imposed, it will be in writing on a single document and imposed at the same time.

001.01 WRITTEN WARNING. This action consists of a discussion with the employee during which the supervisor explains in detail the reasons for the warning and advises the employee of the action required to correct the unsatisfactory conduct. Documentation of such discussion will be placed in the employee's personnel file.

001.02 DISCIPLINARY PROBATION STATUS. A disciplinary probation may be imposed for a period of up to six months, but may be extended to a total of one year by the agency. This is a designated time period during which the employee must improve. Improvement standards and time frames will be set by the supervisor and put in writing, with a copy given to the employee. An extension of disciplinary probation will be considered as a separate disciplinary action following the procedure as outlined in Section 004 below.

001.02(A) Employees on disciplinary probation will not be promoted or granted performance-based pay increases.

001.02(B) Employees granted leave while serving disciplinary probation may have their probation extended by the number of days absent on leave.

001.02(C) An employee may be removed from disciplinary probation at any time.

001.03 SUSPENSION. Employees may be suspended without pay for disciplinary reasons. The period of suspension will be for one or more full days, not to exceed 20 work days. The document informing the employee of suspension will be dated and include the reason for the suspension and the period of the suspension.

001.03(A) The employee's service date will be adjusted by the number of calendar days absent during a suspension.

001.03(B) Employees on suspension will not be granted vacation, sick or holiday leave, nor unused compensatory time off during the suspension period.

001.04 DEMOTION. An agency head may demote an employee to a class of a lower pay range as a disciplinary action. The employee's duties will be changed to reflect the new classification. Upon demoting an employee for disciplinary reasons, an agency head will reduce the employee's salary a minimum of 5% and the salary will not be above the maximum rate of the new pay range. However, demoted employees' salaries may be reduced no lower than the hiring rate of the new pay range. (Note: If the employee's reduced salary is at the

hiring rate, the employee's salary will be increased to the minimum permanent rate within six months.)

001.05 REDUCTION IN SALARY WITHIN SALARY GRADE. Employees may have their salary reduced for disciplinary reasons. Agency heads may restore employees to their previous salary when circumstances justify. Employees' salaries may be reduced to no lower than the hiring rate of the pay range. (Note: If the employee's reduced salary is at the hiring rate, the employee's salary needs to be increased to the minimum permanent rate within six months.)

001.06 DISMISSAL. Employees may be dismissed for disciplinary reasons. A written document as described in 004.02 will be given to employees when they are dismissed for disciplinary reasons.

002. INVESTIGATORY SUSPENSION. Employees may be suspended for investigatory reasons. Such suspension may be with or without pay at the discretion of the Agency Head, based on the nature of the alleged offense. Suspensions for employees not eligible for overtime (exempt employees) will be in one day or multiple day increments. Investigatory suspension is not a disciplinary action. An employee who is under investigation either by an agency or civil authorities for, or charged with, criminal activity or who is alleged to have committed an offense which threatens the safety or health of another person, or an offense of sufficient magnitude that the consequence causes disruption of work, may be suspended pending outcome of the investigation or trial. If no immediate danger would result, an agency head, before suspending an employee under this section, should attempt to verify evidence with the employee and may afford the employee an opportunity to refute this information or present mitigating evidence. If a meeting takes place, the agency head will notify the employee prior to such meeting and will inform the employee of the purpose of the meeting. Employees will be notified of the general nature of the investigation.

002.01 An employee who is found not guilty through a court proceeding or agency investigation, or has no judicial action taken, may or may not be reinstated (to his/her position) by the agency head based on relevant facts acquired in the investigation. If reinstated to the former position, it will be with full back pay and service credit for the period of suspension. If evidence in an investigation shows that disciplinary action should be taken, the agency head will initiate disciplinary procedures.

002.02 Investigatory suspensions without pay may be grieved by employees.

003. REASONS FOR IMPOSING DISCIPLINARY ACTION. Disciplinary action may be taken for any of the following offenses:

- (A) Violation of, or failure to comply with federal laws, State constitution or statute, an executive order, published rules, regulations, policies or procedures of the employing agency or the State of Nebraska Classified Personnel System;
- (B) Failure or refusal to comply with a lawful order or to accept a proper assignment from an authorized supervisor;
- (C) Inefficiency, incompetence or negligence in the performance of duties;
- (D) Unlawful manufacture, distribution, dispensation, possession or use of a controlled substance or alcoholic beverage in the workplace or reporting for duty under the influence of alcohol and/or unlawful drugs;
- (E) Negligent or improper use of state property, equipment or funds, or conversion of same to one's own use;

- (F) Use of undue influence to gain, or attempt to gain, promotion, leave or favorable assignment for individual benefit or advantage;
- (G) Falsification, fraud or intentional omission of required information;
- (H) Unauthorized, improper use or abuse of any type of leave, meal or rest periods;
- (I) Absenteeism;
- (J) Failure to maintain satisfactory working relationships with the public or other employees;
- (K) Failure to obtain and maintain a current license or certification required by law or agency standards as a condition of employment;
- (L) Commission of a crime;
- (M) Insubordinate acts or language;
- (N) Acts or conduct (on or off the job) which adversely affects the employee's performance and/or the employing agency's performance or function;
- (O) Workplace harassment based, in whole or in part, on race, color, sex, religion, age, disability or national origin; or
- (P) Possession of materials and/or the utterance of comments in the workplace that are derogatory towards a group or individual based upon race, gender, color, religion, disability, age or national origin.

004. PROCEDURE FOR IMPOSING DISCIPLINARY ACTION.

004.01 Agency heads are responsible for, and will establish, a procedure for the administration of discipline which ensures the following minimum due process provisions for employees being disciplined.

004.01(A) Prior to imposing discipline, employees are entitled to written notice of the proposed allegations against them, which will identify the rule or policy violated and include an explanation of an agency's evidence against them. (Oral notice may be sufficient when written notice is not expedient.) The explanation will include a description of the incident involved and/or dates of occurrence to the extent the explanation would not impair the function or operation of the agency or expose the agency to legal liability.

004.01(B) Prior to imposing discipline the employee is entitled to an opportunity to present mitigating evidence or reasons why disciplinary action should not be taken. If the opportunity or explanation is in the form of a meeting, the agency head will afford the employee adequate notice as to time, place, and purpose of such meeting. 24- hour notice is considered adequate.

004.02 If a disciplinary action is imposed, the employee will be:

- (A) Advised in writing of the nature of the offense;
- (B) Advised of the disciplinary action being administered; and
- (C) If appropriate, notified of the time allowed for improvement and the consequences (including dismissal) of future violations or failure to improve. The employee's signature does not constitute agreement with the content of the document. If the employee refuses to sign, the supervisor and witness will sign a notation of the employee's refusal on the document. A copy of the document will then be placed in the employee's personnel file.

004.03 When an incident calls for the application of discipline, the discipline will be imposed only once for that incident. Further action may be imposed for any subsequent incidents.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 14 EMPLOYEE GRIEVANCE PROCEDURE

001. ELIGIBILITY. Except as provided here, all employees occupying a permanent position have grievance rights. Temporary employees, employees on original probation, employees exempted from the Personnel Rules by state law, and applicants do not have grievance rights.

002. GRIEVANCE OF APPLICATION OF PERSONNEL RULES OR CONDITIONS OF EMPLOYMENT. Eligible employees in the State Classified Personnel System who are aggrieved as a result of management actions in violation of these rules, agency rules and regulations or applicable labor contracts, may formally grieve such actions. Grievance decisions made by the agency may be appealed to the State Personnel Board by filing a grievance and completing the steps of the procedure described in this chapter.

003. NON-GRIEVABLE ISSUES. The State Personnel Board has final authority to determine whether or not an issue is grievable and may elect to hear any issue at its discretion. Issues determined to be non-grievable are subject to summary dismissal.

003.01 The following issues, when done in compliance with established law, rule or policy, are examples of non-grievable matters (the list below is not to be considered all-inclusive):

(A) Performance evaluations;

(B) Agency appointments, including promotions to positions;

(C) Involuntary transfers not requiring the employee to relocate, with no salary reduction;

(D) Leave of absence decisions;

(E) Payment of moving expenditures;

(F) Performance-based pay increase allocations; and

(G) Position classification, with no salary reduction.

004. EFFECT OF GRIEVANCE ON MANAGEMENT ACTION AND EMPLOYEE STATUS. Filing of a grievance does not delay the effective date of any management action. Filing of a grievance does not jeopardize the grievant's position, opportunities for advancement, or salary increases. No employee may be coerced by the agency head or by other employees into not proceeding with a grievance or not appearing as a witness at a hearing.

005. RECORD OF PREVIOUS DISCIPLINE. Agencies must maintain a record of all disciplinary actions. The grievant or his/her representative may request agency disciplinary records of their performance.

006. OBTAINING FORMS. Grievance and appeal forms may be obtained from agency personnel offices or from the DAS-Employee Relations Division.

007. SETTLEMENT. At any time during the grievance procedure, with the approval of the Director, the parties may reach a settlement and thereby terminate the process.

008. GRIEVANCE PROCEDURE AND TIME ALLOWANCES. If the agency in the first step fails to respond to the grievant within the specified time period, the grievance shall be considered denied, and the grievant may forward his/her grievance to the next step. If the grievant fails to advance a grievance to any step within the timelines specified, the grievance shall be considered discontinued by the grievant and the matter is considered closed. Time allowances at any step may be extended by mutual agreement of the parties.

008.01 STEP 1 - FORMAL WRITTEN GRIEVANCE. Within 15 work days of the occurrence of the grieved action (or from the day the employee could reasonably have known about the action) the employee must present an original formal written grievance to the agency head or designee. This document must contain a statement of the grievance by indicating the issue[s] involved, the relief sought, the date the incident or violation took place, if known, and the specific section(s) of the Rules involved. The agency head or designee will issue a decision in writing within 15 work days.

008.02 STEP 2 - APPEAL TO AGENCY HEAD. If dissatisfied with the resolution of Step 1, and if Step 1 was resolved by a subordinate of the agency head, the grievant has 10 work days to appeal the decision to the agency head or designee. The agency head will issue a decision in writing within 15 work days.

008.03 STEP 3 - APPEAL TO STATE PERSONNEL BOARD. The grievant may appeal the decision of the agency head to the State Personnel Board by filing the appeal with the DAS-Employee Relations Division within five work days of receipt of the agency head's decision. The original grievance record must be attached to the appeal.

008.03(A) HEARING OFFICER/STATE PERSONNEL BOARD HEARING. The State Personnel Board's ("Board") scope of review will be to determine whether or not the Personnel Rules have been violated and whether the agency's action was taken in good faith and for cause. The Board will decide the grievance in question based upon the issues presented by both parties in the written grievance filed pursuant to the grievance procedure. The Board may interpret relevant sections of the Personnel Rules and apply them to the particular case presented to it, but the Board has no authority to add to, subtract from, or in any way modify the Personnel Rules. The Board has the authority to order reinstatement and to award back pay. In cases involving discipline, the agency will present its case first and in all other cases the grievant will present his/her case first. Hearing officers will be appointed by the Board through the DAS-Employee Relations Division.

008.03(A)(i) The Administrator of the DAS-Employee Relations Division or their designee has the authority to set time limitations for:

- (1) The length of time within which a hearing officer needs to be chosen;
- (2) The amount of time the parties will have to present their case (each party will receive the same amount of time);
- (3) The time within which a case needs to be heard after a hearing officer is appointed; and
- (4) If allowed, the length of time that will be allowed for the parties to submit post hearing briefs.

008.03(A)(ii) Post hearing briefs will not be allowed in any case unless the parties and the hearing officer are all in agreement as to the need for such briefs.

008.03(A)(iii) The recommended decision of the hearing officer will be made in writing within 60 calendar days of the conclusion of the hearing and will include findings of fact and conclusions of law. The findings of fact will consist of a concise statement of the conclusions upon each contested issue of fact. The hearing officer will submit the recommended decision to the Board by sending it to the DAS-Employee Relations Division by first class U.S. Mail or by electronic means. The DAS-Employee Relations

Division will send the Board's decision to the parties. If the hearing officer does not render a recommended decision within 60 calendar days from the last day of the hearing or the date the last brief was received, whichever is later, a penalty of \$50 per day will be imposed and deducted from the hearing officer's fee for each day over the 60 calendar days the recommended decision is late, until the recommended decision is received. This penalty may only be waived upon mutual agreement of the parties and the Administrator of the DAS-Employee Relations Division or their designee.

008.03(A)(iv) Any meeting held pursuant to the grievance procedure may be recorded if the parties to said grievance mutually agree to the recording.

008.03(A)(v) Both parties shall provide the other party and the hearing officer with a listing of all exhibits to be introduced at the hearing, a copy of each exhibit, and a listing of individuals that the party plans to call as a witness in the hearing five calendar days prior to the hearing.

008.03(A)(vi) The pleadings in a contested case may include an appeal, notice, motion, stipulation, objection, order, or other formal written document filed in a proceeding before the Board. Any pleading filed in a contested case shall meet the following requirements:

- (1) The pleading shall contain a heading specifying the name of the agency and the title or nature of the pleading, shall state material factual allegations and state concisely the action the agency is being requested to take, shall contain the name and address of the appellant, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of the attorney;
- (2) The initial appeal shall also contain the name and address of the respondent;
- (3) All pleadings shall be typed or handwritten in ink;
- (4) All pleadings shall be filed at the DAS Employee Relations Division office. Filing may be accomplished by personal delivery or mail and will be received during DAS Employee Relations' Division regular office hours.
- (5) The appellant shall serve a copy of the appeal on each respondent listed on the appeal personally, by first-class or certified mail, or by electronic delivery. Written proof of such service shall be filed with the DAS Employee Relations Division.
- (6) All pleadings subsequent to the initial appeal shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class, or certified mail, or by electronic mail. Written proof of such service shall be filed with the DAS Employee Relations Division.

008.03(A)(vii) SUBPOENAS. If either party to a grievance hearing before the State Personnel Board or designated representative wishes to use any individual as a witness in the presentation of their case, they may request the hearing officer or a designee to subpoena the attendance of the witness. Request forms for subpoenas are available in the DAS-Employee Relations Division and need to be submitted to the Division at least eight calendar days prior to the hearing. Notice of less than eight calendar days will not guarantee witness attendance. At least four work days before the scheduled hearing, the requesting party will notify the other party of the names of any individual(s) who have been subpoenaed as a witness. The requesting party or their representative is responsible to serve the subpoenas on the person(s) sought to be a witness. The subpoenas are to be served on the individual at least four work

days before the scheduled hearing. The Board or designated representative may limit the number of witnesses either party may call to testify, considering relevancy of proposed testimony and whether or not it would be repetitious. The cost of serving any subpoenas will be paid by the requesting party. The parties will not be required to serve subpoenas by the process set out in statute, but may serve them in person or by first class U.S. mail.

008.03(A)(viii)(1) Employees who are subpoenaed to attend an appeal hearing will be granted time off from their assigned duties to appear and all hours in attendance will be considered paid work time, including travel time.

008.03(A)(ix) Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the DAS-Employee Relations Division record will constitute the exclusive basis for State Personnel Board action in contested cases under the act.

008.03(A)(x) Unless state law provides a hearing is not required, the Board/Hearing Officer will set a hearing date. Written notice of the time and place of the hearing and the name of the hearing officer, if known, must be given to the parties by the DAS Employee Relations Division. The notice must include proof of service.

008.03(A)(xi) CONTINUANCES. The Board chairperson/hearing officer may grant extensions of time or continuances of hearings upon the Board chairperson's/hearing officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

008.03(A)(xi)(1) GOOD CAUSE. Good cause for an extension of time or continuance includes, but is not limited to, the following:

- (a) Illness of the party, legal counsel, or witness;
- (b) A change in legal representation; or
- (c) Settlement negotiations are underway.

008.04 In computing time prescribed or allowed by Chapter 14 of these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

008.05 DISCOVERY.

008.05(A) At any stage after a grievance is put into writing, the employee and/or the agency has the right to request discovery relevant to the grievance. The employee and/or the agency may take the deposition of any witnesses or the other party and may make requests for admissions, documents or interrogatories which are relevant to the grievance. Discovery requests not made pursuant to a timely and properly filed grievance will be returned to the requesting party without action, other than a statement of the reason for such return. In matters where subpoenas are requested prior to the matter being filed at the third step, the Administrator of the DAS-Employee Relations Division or designee will have the authority to issue subpoenas.

008.05(B) Such requests and/or notice will be addressed to the party from which the discovery is sought. Only discovery requests which are relevant or would lead to relevant evidence for the grievance will be granted; however, in no case will discovery be granted which seeks evidence which is recognized as privileged by the Courts of this State.

008.05(C) Discovery requests need to be presented to the designated human resources representative/personnel contact and will be typed or printed legibly. Information sought in the discovery needs to be provided within 20 work days of receipt of request.

008.05(D) Either party may object to discovery requests. Objections to such requests need to be made, in writing, to the Administrator of the DAS-Employee Relations Division within 10 work days of receipt of the request. The Administrator of the DAS-Employee Relations Division or their designee will enter a written decision as to whether the objection will be granted or denied. Either party has 15 work days to comply/respond to a Decision/Order issued by the Administrator of the DAS-Employee Relations Division on an Objection to Discovery, unless the parties mutually agree to another date.

008.05(E) If the grievance is at Step 3 when the objection to discovery is made, and a hearing officer has already been appointed or the appeal is already scheduled to be heard by the State Personnel Board (Board), then the objections to discovery will be made to the hearing officer or the Board, as appropriate, and the hearing officer or Board will consider the matter and issue a decision by the same process and within the same time limits set out above for matters where the objection is submitted to the Administrator of the DAS-Employee Relations Division.

008.05(F) Notwithstanding the above provisions, when an objection to discovery is made concerning the release of employment applications, scoring devices, rankings of applicants, lists of criteria considered in filling a position, or applicant scoring sheets, the Administrator of the DAS-Employee Relations Division or their designee will have the authority to conduct a hearing and enter an order to resolve such objections. The Administrator of the DAS-Employee Relations Division or their designee will also have the authority to issue protective orders.

008.05(G) Within five work days of receipt of the response to the discovery requests, the requesting party will notify the answering party of any failure on the part of the answering party to properly respond to the request.

008.06(H) The failure to respond to any discovery requests may result in the answering party being denied the right to introduce the requested evidence during any appeal hearing or other appropriate sanctions may be imposed.

009. COSTS. Any party to a formal hearing before the State Personnel Board or hearing officer, from which a decision may be appealed to the courts of this state, may request that the parties bound by the rules of evidence applicable in district court by delivering to the DAS-Employee Relations Division, at least three days prior to the holding of the hearing, a written request. Such request will include the requesting party's agreement to be liable for the payment of costs resulting from such request and upon any appeal or review thereof, including the cost of court or court reporting services which the requesting party will procure for the hearing. There will be no charge to the employee for hearing officer services in cases where the employee is covered by the Personnel Rules.

010. Unless otherwise provided by statute, the procedures of Neb. Rev. Stat. § 84-917 govern the procedure for making an appeal to District Court.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 15 DECLARATORY ORDERS

001. GENERAL INFORMATION. This chapter pertains solely to the procedures to be used by any person or entity seeking issuance of a declaratory order by an agency.

002. DEFINITIONS. For the purpose of this chapter, the following definitions apply.

002.01 ARGUMENT. The oral statement of the petitioner or any other party which explains his or her view of the facts and issue to be decided, the law applicable to the question presented, and the reasoning that connects the facts and law.

002.02 DECLARATORY ORDER PROCEEDING. A proceeding initiated by a petitioner seeking issuance of a binding order by the agency as to the applicability of specified circumstances to a statute, rule, regulation or order within the primary jurisdiction of the agency.

002.03 HEARING OFFICER. The person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge or some other title.

002.04 INTERVENOR. The persons, political subdivisions, corporations, organizations or other entities who have or claim to have any interest, legal right, duty, privilege or immunity, which would be directly affected by the agency's issuance of a binding declaratory order.

002.05 NECESSARY PARTY. A person who or an entity which has a specific interest in the applicability of the statute, rule, regulation or order, as distinguished from a general interested such as may be the concern of the public at large. A necessary party is one which is or would be adversely affected in a legally cognizable way by the uncertainty sought to be resolved.

002.06 PARTIES. Persons, political subdivisions, corporations, organizations or other entities subject to the jurisdiction of the agency who are involved in a declaratory order proceeding according to the procedures set forth in this chapter.

002.07 PETITIONER. A party or parties who have filed a petition with the agency seeking issuance of a declaratory order.

002.08 PLEADING. Any written petition, answer or motion used in any declaratory order proceeding before the agency as set forth in this chapter.

003. PETITION FOR DECLARATORY ORDER. A request for a declaratory order must be made by a petition that meets the requirements below.

003.01 WHO MAY FILE. Any person may petition the agency for issuance of a declaratory order as to the applicability to specified circumstances of a statute, rule, regulation or order which is within the primary jurisdiction of the agency.

003.02 WHEN ORDERS ARE APPROPRIATE.

003.02(A) A declaratory order may be requested only on the applicability of existing statutes and rules and regulations. "Applicability" refers to the appropriateness of the relation of the law to the person, property or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies or which law applies.

003.02(B) A declaratory order may be requested to obtain a determination of proposed conduct, not to obtain a determination of the effect of conduct that has already occurred.

003.02(C) A declaratory order is not a mechanism for review or appeal of a decision made by the agency in a contested case.

003.02(D) A declaratory order may not be requested to obtain a declaration the agency that a statute or regulation is unconstitutional or that a regulation of the agency is invalid.

003.02(E) A declaratory order may not be issued by the agency that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

003.03 FORM OF PETITION. A petition for declaratory order shall be in the form of either a pleading or letter and shall be one-sided and legibly typewritten or handwritten in ink. Any documents attached to a petition shall be securely fastened to the pleading. The petition shall contain the following:

(A) A caption, which shall include:

(i) The venue: BEFORE THE [AGENCY], STATE OF NEBRASKA;

(ii) A heading specifying the subject matter and the name of the petitioner; and

(iii) The name of the pleading: PETITION FOR DECLARATORY ORDER.

(B) The signature of the petitioner, or when represented by an attorney, the signature of the attorney; and

(C) The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number and bar number of the attorney.

003.04 CONTENTS OF PETITION. To be considered, the petition shall include the following:

(A) The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation or order or who may be adversely affected by the issue sought to be resolved by the petitioner;

(B) The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding;

(C) The statute, rule, regulation or order upon which the petitioner seeks issuance of a declaratory order;

(D) A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

(E) All propositions of law or contentions asserted by the petitioner;

(F) A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the agency should rule and why the agency should rule in the manner requested; and

(G) Any documents pertinent to the petition that the petitioner wishes to be considered by the agency.

004. SUBMISSION AND SERVICE OF DECLARATORY ORDER PETITION. The original petition for declaratory order shall be filed with the agency director by mail or in person during the agency's normal business hours. The petition shall be deemed as filled when it is actually received by the agency. The agency shall date stamp all petitions upon receipt.

004.01 At the same time the petition is filed with the agency, the petitioner shall serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties.

005. DISPOSITION OF THE PETITION. Upon the filing of a petition, the agency director may consider the petition, refer the petition to an appropriate licensing or governing board or delegate the matter to a designated hearing officer, board or agency employee to consider the petition and recommend a decision to the agency director.

005.01 In reviewing the petition, the agency may, in its discretion, do one or more of the following:

- (A) Require that additional information be submitted before the petition will be further considered;
- (B) Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the agency;
- (C) Schedule a date, time and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition; or
- (D) Consider the petition and any attachments without oral presentation.

005.02 Within thirty (30) days after the petition is filed, the agency shall, in writing:

- (A) Issue an order declaring the applicability of the statute, regulation, rule or order in question to the specified circumstances;
- (B) Set the matter for specified proceedings as set forth in subsection 005.01 of this chapter; or
- (C) Decline to issue a declaratory ruling, stating the reasons for the agency's decision.

006. INTERVENTION IN DECLARATORY ORDER PROCEEDING.

006.01 Intervention by any person or entity in a declaratory order proceeding shall be allowed when the following requirements are met:

- (A) A petition for intervention must be submitted in writing to the agency at least five days prior to a hearing and copies must be mailed to all parties to the proceeding;
- (B) The agency determines that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention; and
- (C) The petition for intervention includes a statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law.

007. DECLARATORY ORDER PROCEEDINGS.

007.01 ORAL ARGUMENT, WHEN. Oral argument shall be had only on specific order of the agency. A petitioner, intervenor, necessary party or the agency may submit a request for oral argument to the agency director. Petitioner and all other parties or, when represented, their attorneys, shall be served by the agency with a notice of the date, time and location for

oral argument not less than seven (7) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

007.02 ORAL ARGUMENT, PROCEDURE. Oral argument will be made before a hearing officer or before any representative of the agency who is authorized to render or to recommend a decision to the agency. The hearing officer or agency representative shall be in control of the proceeding

008. ISSUANCE OF DECLARATORY ORDER. A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.

009. APPEAL. A declaratory order is subject to review in the manner provided for review of contested cases by the Administrative Procedure Act, Neb. Rev. Stat. 84-901 – 84-920. Specific procedures for appeal are set forth in Neb. Rev. Stat. 84-917.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 16 EMPLOYEE RECOGNITION PROGRAMS

001. RECOGNITION PROGRAMS. The State of Nebraska Recognition and Engagement Plan and Guidelines, approved by the Director, will serve as the enterprise level plan for state agencies and will set monetary and additional guidelines for the following categories:

- (A) Governor Recognition Programs;
- (B) Welcome/Farewell/Retirement Recognition;
- (C) Education Recognition;
- (D) Achievement and Innovation Recognition; and
- (E) State of Nebraska Mission/Values Recognition.

001.01 Agencies may implement recognition and engagement programs based off the set guidelines in the Recognition and Engagement Plan. Agencies with specific recognition not included in the approved guidelines will submit a plan addendum to the Director for approval prior to implementation.

002. Suggestion recognition programs awards will be set by Neb. Rev. Stat. §§ 81-1350, 81-1351, and 81-1353.

001.02 Employees recognized through this suggestion recognition program are permitted to attend and participate in all recognition program events on work time and will not be charged accrued leave time or leave without pay for attending such events.

003. FUNDING. Agencies who exercise authority under this chapter need to manage such within current budget limitations.

TITLE 273 STATE PERSONNEL DIVISION

CHAPTER 17 MISCELLANEOUS

001. CONFLICT OF INTEREST. Employees will follow the same process for identifying and disclosing conflicts of interests as outlined in Neb. Rev. Stat. § 49-1499.02(1), Nebraska Accountability and Disclosure Commission policy, and other policies or procedures specific to the employing agency.

002. INTERPRETATIONS. Any person may make a written request to the Director for an interpretation of any provision of these rules or written statement of policy.

003. NEPOTISM. An employee cannot employ or supervise the employment of a family member or someone with whom there is a romantic relationship.

004. OTHER EMPLOYMENT. An employee, with the prior notification of the agency head, may engage in additional employment or acquire private interest in business, provided such employment or interest does not interfere with the interest of the State, the agency, or violate the State statutes.

005. PETITION FOR RULES CHANGE. Any person may petition the Director requesting the promulgation, amendment or repeal of any State Classified System Personnel rule. The Director will respond to any such petition within 60 days.

006. PILOT PROGRAMS. Agencies may initiate human resource pilot program projects with the approval of the Director. The goal of any pilot project is to experiment with new and innovative approaches to facilitate the management of the State's human resource system and, thereby, its employees. The Director will establish criteria for pilot programs which will be used in the review and disposition of such requests.

006.01 Agencies will report on the progress of the pilot project at intervals established by the Director. The format of the reports will be determined by the Director.

006.02 The utility of any pilot project and the eventual implementation of alternative personnel policies and practices system-wide will be measured and evaluated. The Director will establish the process, criteria, format, frequency and reporting of these measurements and evaluations as part of each pilot project.

007. POLITICAL ACTIVITIES.

007.01 An employee may engage in any political activities except that an employee may not:

- (A) Participate in political activities while on State time or while performing official State duties;
- (B) Engage in political activity while wearing a uniform required by the State; or
- (C) Use or authorize the use of State personnel, property, resources or funds for campaign purposes, unless otherwise permitted by law.

007.02 An employee whose position is funded with federal money and is covered by the federal Hatch Act is barred from being a candidate for a partisan office.

007.03 For employees covered by these rules and also covered by the Hatch Act, the federal agency responsible for administering the Hatch Act should be consulted for specific restrictions on these employees. The agency responsible for administering and investigating violations of the Hatch Act is the Office of Special Counsel.

007.04 For political activities during normally scheduled work hours, the employee needs to arrange for leave (vacation, leave without pay, etc.) to cover the period of absence.

007.05 If an employee is elected to office and such office presents a conflict of interest with the employee's job or interferes with the employee's scheduled work hours, the employing agency has authority to change the terms and conditions of employment, up to and including, termination of employment.

008. PROHIBITED ACTS AND GIFTS.

008.01 Employees may not:

- (A) Use his or her State position or confidential information received through holding the State position for personal financial gain, or to benefit a family member, or that of a business or organization with which he or she is associated;
- (B) Accept anything of value from any person based upon an understanding or agreement that the official action or judgment of the employee would be influenced thereby; or
- (C) Accept from a lobbyist, a principal or anyone acting on behalf of either, any gifts with an aggregate value of more than 50 dollars in a calendar month. Lists of lobbyists and principals are maintained by the Nebraska Accountability and Disclosure Commission and the Office of the Clerk of the Legislature.

009. RESIGNATIONS. To resign in good standing, an employee needs to give written notice to the agency head at least 10 work days before separation, unless the agency head agrees to a shorter period.

010. REST PERIODS. Agency heads may grant employees rest periods not to exceed a total of 30 minutes during each workday. Rest periods may not be cumulative. Rest periods may not be taken before one hour after the employee arrives at work, nor less than one hour before the employee leaves work. Rest periods are considered work time.

011. RETIREE HEALTH INSURANCE. In addition to the provisions outlined in Neb. Rev. Stat. § 84-1601 through § 84-1615, employees who are eligible for retirement and do retire, will be afforded the opportunity to continue health insurance coverage in the group plan until they become Medicare eligible. The employee will be responsible for the entire cost of the premium for the plan chosen, which includes the normal employee contribution and the normal state contribution.

012. SEVERABILITY. If any section or portion of these rules or the applicability thereof to any person or circumstance is held to be invalid by a court, the remainder of these Rules will not be affected.