

State of Kansas
Department of Administration
Notice of Public Hearing on Proposed Administrative Regulations

May 15, 2014

A public hearing will be conducted on Monday, July 21, 2014 at 9:00 a.m. in Room 530 of the Curtis State Office Building, 1000 S.W. Jackson, Topeka, Kansas to consider the adoption of proposed amendments to rules and regulations of the Division of Personnel Services, Department of Administration, on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Office of the Chief Counsel, 1000 S.W. Jackson, Suite 500, Topeka, Kansas 66612-1300 or by email to John.Yeary@da.ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

Any individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting John Yeary at (785) 296-2033 (or TYY 1-800-766-3777). The main entrance to the Curtis State Office Building is accessible. Handicapped parking is available in metered spaces surrounding the building and adjacent parking garage on the west side of Jackson Street, the north side of 10th Street, the west side of Kansas Avenue and the north side of 11th Street.

Summaries of the proposed regulations and their economic impact follow. (Note: Statements indicating that a regulation is “not anticipated to have any economic impact” are intended to indicate that no economic impact on the Department of Administration, other state agencies, state employees, or the general public has been identified.)

Copies of the proposed regulations and the Economic Impact Statement for the proposed regulations can be viewed at the following website:

<http://admin.ks.gov/offices/personnel-services/agency-information>

K.A.R. 1-9-22 – Job injury leave. The proposed amendments to this existing regulation would broaden the definition of “qualifying job injury” by allowing agency appointing authorities to approve job injury leave where the injury was sustained in any situation in which an appointing authority determines that granting job injury leave is in the best interest of the state. The economic impact will depend on utilization but the job injury leave will be funded by the operating budgets of agencies granting such leave.

K.A.R. 1-14-11 – Furloughs. Amendments to this regulation are being made to distinguish planned administrative furloughs which require furlough plans to be submitted to the Director of Personnel Services at least 30 days before implementation of the administrative furlough from emergency furloughs resulting in an unanticipated interruption of funding to an agency where submission of a furlough plan 30 days prior to implementation would not be required. The economic impact of these changes is expected to be minimal due to the occurrence of emergency furloughs historically being relatively rare.

1-9-22. Job injury leave. (a) ~~Any~~ Each classified or unclassified employee who sustains a qualifying job injury, as determined by the employee's appointing authority, shall be eligible for job injury leave in accordance with this regulation.

(b)(4) "Qualifying job injury" ~~means~~ shall mean an injury ~~which that~~ meets the following conditions:

(A)(1) Renders the employee unable to perform the employee's regular job duties;

(B)(2) arose out of and in the course of employment with the state; and

(C)(i) (3)(A) Was sustained as a result of a shooting, stabbing, or aggravated battery, as defined in K.S.A. ~~21-3414~~ 21-5413 and amendments thereto, by another against the employee;

(ii)(B) was sustained as a result of a confrontation with a patient or client in a ~~mental health or mental retardation~~ facility or ward ~~wherein~~ for mental health, intellectual disability, or developmental disability in which the patient or client ~~either~~ inflicts great bodily harm, causes disfigurement, or causes bodily harm with a deadly weapon or in any manner ~~whereby~~ by which great bodily harm, disfigurement, dismemberment, or death can be inflicted; or

(iii)(C) ~~additionally for law enforcement officers, was sustained while in fresh pursuit of a person or while operating under the provisions of K.S.A. 8-1506~~ was sustained in any other situation in which the appointing authority determines that job injury leave is in the best interest of the state.

~~Qualifying job injuries shall not include injuries sustained as a result of the intentional actions of a co-worker.~~

(2) "Fresh pursuit" ~~means pursuit, without unnecessary delay, of a person who has committed a crime or who is reasonably suspected of having committed a crime.~~

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(c) Job injury leave shall not exceed six total months away from work. While an employee is on an approved job injury leave, the employing state agency shall continue to pay the employee's regular compensation. If the employee is awarded worker's compensation, the state agency shall pay the employee compensation in an amount ~~which~~ that, together with worker's compensation pay, equals the regular pay of the employee. The employee shall not be required to use accrued sick leave or vacation leave. The employee shall continue to accrue sick and vacation leave as long as the employee remains in pay status. Nothing ~~herein~~ in this regulation shall be construed as providing voluntary or gratuitous compensation payments in addition to temporary total disability compensation payments pursuant to the worker's compensation laws.

(d) The appointing authority may require an employee on approved job injury leave to return to full or limited duty if the employee is physically able to perform the duty as determined by a physician selected by the appointing authority or selected by a representative of the state self-insurance fund. However, any limited duty allowed shall not, in combination with time away from work on job injury leave, exceed the total six months allowed for job injury leave. If the employee remains unable to return to full duty, the appointing authority shall take ~~such~~ any action as deemed to be in the best interest of the state.

(e) ~~When~~ While an employee is on approved job injury leave, the appointing authority may require the employee to be examined by a physician selected by the appointing authority to determine the capability of the employee to return to full or limited duty.

(f) ~~Employees~~ Each employee on approved job injury leave shall be prohibited from being gainfully employed by any other employer.

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(g) The requirements of this regulation may be waived or modified by the director upon written request of the appointing authority. ~~Such a~~ Any waiver or modification may be granted only upon a finding by the director that both of the following conditions are met:

(1) Granting the requested waiver or modification would not be in conflict with any statutes pertaining to leave; ~~and~~.

(2) Failure to grant the requested waiver or modification would create a manifest injustice or undue hardship on the employee requesting the job injury leave. ~~This regulation shall be effective on and after December 17, 1995.~~ (Authorized by K.S.A. 1994 2013 Supp. 75-3747; implementing K.S.A. 75-3707 and 75-3746; effective, T-86-17, June 17, 1985; effective May 1, 1986; amended Nov. 21, 1994; amended Dec. 17, 1995; amended P-_____.)

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1-14-11. Furlough leave without pay. (a) ~~If an appointing authority desires to deviate from the standard workweek as provided in K.A.R. 1-9-1 in order to implement a furlough plan, the appointing authority shall implement the plan in accordance with this regulation. For purposes of this regulation, “furlough” shall mean mandatory leave without pay for a preset number of hours during each pay period covered by the furlough. There are two types of furloughs.~~

(1) An administrative furlough is a planned action by an agency that is designed to address budget reductions necessitated by reasons other than a lapse in appropriations. A furlough plan shall be required for each administrative furlough.

(2) An emergency furlough occurs if there is a lapse in appropriations due to a failure by any funding authority to appropriate funds or any other type of emergency that results in an unanticipated interruption of funding to the agency. In an emergency furlough, an affected agency could have to cease activities that are not excepted by law, typically with very little lead time. A furlough plan shall not be required for any emergency furlough.

~~(b) In accordance with subsection (c) of this regulation, if an appointing authority deems it necessary by reason of shortage of funds, the appointing authority may implement an administrative furlough or an emergency furlough without pay for all employees in the classified or unclassified service in designated classes, positions, organizational units, geographical areas, or any combination of those groups unless specific funding sources necessitate exceptions. “Furlough” shall be defined as leave without pay for a preset number of hours during each pay period covered by the furlough plan. An employee’s social security and retirement contributions shall be affected under a furlough, but all other benefits, including the accrual of vacation and sick leave, shall continue, notwithstanding despite any other regulations to the contrary. A~~

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furlough shall not affect the employee's continuous service, length of service, pay increase anniversary date, or eligibility for authorized holiday leave or pay.

(c)(1) For each administrative furlough, at least 30 calendar days before the date a the administrative furlough is to be implemented, the appointing authority shall prepare a furlough plan specifying the following information:

(1)(A) The cause of the funding shortage;

(2)(B) the effective date of the furlough and the date on which the furlough is to end;

(3)(C) the methods for notifying the affected employees;

(4)(D) the amount of advance notice that will be given to affected employees, which shall not be less than 10 calendar days;

(5)(E) the estimated cost savings;

(6)(F) each class, organizational unit, or geographical area to be affected;

(7)(G) the criteria used to select each class, position, organizational unit, or geographical area to be included in the furlough;

(8)(H) any exceptions to the furlough plan based on funding sources; and

(9)(I) the number of hours by which the workweek will be reduced, including separate categories detailing the proposed reduction in hours by standardized increments for exempt and nonexempt employees.

(d)(2) A copy of each furlough plan prepared in accordance with this subsection (c) shall be submitted to the director at least 30 days before the date the administrative furlough is to be implemented.

(d) For each emergency furlough, the affected employees and the director shall be notified by the appointing authority as soon as it is practical to do so.

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(e) ~~In no case shall~~ This regulation shall not be used as a disciplinary action against ~~an~~
any employee.

(f) ~~This regulation shall be effective on and after June 5, 2005.~~ (Authorized by K.S.A.
75-3706, K.S.A. ~~2004~~ 2013 Supp. 75-3747, and K.S.A. 75-5514; implementing K.S.A. 75-3707,
75-3746, and 75-5505; effective, T-88-5, Feb. 11, 1987; effective, T-89-1, May 1, 1988;
effective Oct. 1, 1988; amended May 31, 1996; amended June 5, 2005; amended P-
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**KANSAS DEPARTMENT OF ADMINISTRATION
ECONOMIC IMPACT STATEMENT
K.A.R. 1-9-22 and K.A.R. 1-14-11**

I. Summary of Proposed Amendments to Regulations, Including Purpose.

K.A.R. 1-9-22 is an existing regulation that allows for paid job injury leave for state employees who sustain qualifying job injuries. The regulation currently restricts what can be considered a qualifying job injury to only a few, very specific situations. This narrow definition has resulted in several situations where employees who have experienced serious injuries on the job have not been eligible for job injury leave due to the manner in which their injury was sustained. The proposed amendment would address this inequity by allowing agency appointing authorities to grant job injury leave where the injury was sustained in any situation in which an appointing authority determines that granting job injury leave is in the best interest of the state.

K.A.R. 1-14-11 is an existing regulation which addresses furloughs of state employees. The regulation currently provides for a single process to define and implement a furlough, regardless of the underlying nature of the need for the furlough. The proposed amendment would establish two different types of furloughs, an administrative furlough and an emergency furlough, and distinguishes and clarifies the requirements for each.

II. Reason or Reasons the Proposed Regulation Is Required, Including Whether or Not the Regulation Is Mandated by Federal Law.

Neither K.A.R. 1-9-22 nor K.A.R. 1-14-11 are mandated by federal law. K.A.R. 1-9-22 is necessary to allow state employees who sustain qualifying job injuries to be granted paid job injury leave for a period not to exceed six total months away from work, as opposed to being required to utilize their own accrued leave for an injury suffered as a result of their duties. K.A.R. 1-14-11 is required to allow agency appointing authorities to furlough state employees in appropriate circumstances.

III. Anticipated Economic Impact

The economic impact of proposed amendments to K.A.R. 1-9-22 will depend on the number of times that agency appointing authorities grant job injury leave for situations that would not currently constitute a qualifying job injury in accordance with the regulation. As noted previously, the Department of Administration (the Department) has been made aware of several instances where an employee was not eligible but an agency appointing authority felt that the employee should have received job injury, it is anticipated that the amendment will lead to increased utilization, but such increased utilization is not anticipated to be substantial. Regardless of the increased utilization, job injury leave approved pursuant to the proposed amendment will be funded within existing agency budgets.

The economic impact of the proposed amendments to K.A.R. 1-14-11 is also expected to be minimal. The proposed amendment allows for emergency furloughs to be implemented without submitting a furlough plan to the State's Director of Personnel Services at least 30 days prior to the implementation of the furlough in order to address situations such as a lack in appropriation of funds. While the occurrence of such emergency furloughs is anticipated to be relatively rare, it will ensure that agencies are able to react quickly in response to such situations, thereby avoiding possible financial harm.

IV. Anticipated Financial Impact upon Other Governmental Agencies and upon Private Business or Individuals.

The Department does not anticipate any economic impact on other governmental agencies, other than as described above, or on private businesses.

V. Anticipated Economic Impact upon School Districts, Following Consultation with the Kansas Association of School Boards.

Not applicable. The proposed amendments would apply only to state employees.

VI. Less Costly or Intrusive Methods That Were Considered, but Rejected, and the Reason for Rejection.

The Department considered, but rejected, not making the proposed amendments. It was determined that compelling reasons exist to amend the regulations as proposed in order to: 1) allow job injury leave to be approved in appropriate situations that are not allowed by the current regulation; and 2) distinguish planned administrative furloughs from emergency furloughs and clarify the differing requirements for each.