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# CHAPTER 1 – INTRODUCTION

## 1.0 ABOUT THIS MANUAL

This manual is effective as of July 1, 2013. The most up-to-date version of this manual is always located on the Mississippi State Personnel Board web site at http://www.mspb.ms.gov. As an official product of state government, this document is in the public domain and may be copied or redistributed without restriction.

### 1.0.1 Scope and Intent of the Manual

This manual contains the policies and rules of the Mississippi state employment service and applies to all employees placed under the purview of the Mississippi State Personnel Board by Mississippi Code Annotated § 25-9-101, *et seq.*, and other pertinent laws. This volume supersedes all previous editions.

The purpose of this manual is to provide a standardized, comprehensive system of human capital administration consistent with Mississippi's laws. In addition, the policies, rules, and procedures contained herein should be followed in a manner consistent with any federal statutes or regulations which are applicable to a particular agency. If any part of this manual is inconsistent with such federal law or regulation, the federal law takes precedence.

The policies and rules contained in this manual and all other publications of the Mississippi State Personnel Board are in accordance with the following principles as listed in Mississippi Code Annotated § 25-9-103:

> Principle I: Recruiting, selecting, and advancing employees shall be based on their relative ability, knowledge, and skills including open consideration of qualified applicants for initial appointment.
>
> Principle II: Equitable and adequate compensation shall be provided.
>
> Principle III: Employees shall be trained, as needed, to ensure high quality performance.
>
> Principle IV: Employees shall be retained based on the adequacy of their performance. Provisions shall be made to correct inadequate performance and to separate employees whose inadequate performance cannot be corrected.
>
> Principle V: Fair treatment of applicants and employees in all aspects of personnel administration shall be ensured without regard to race, religious creed, sex, national origin, political affiliation, age, or disability.
>
> Principle VI: Employees shall be free from coercion for partisan or political purposes, and employees shall be prohibited from using their official authority to interfere with or to affect the result of election or nomination for office.

### 1.0.2 Amendments to this Manual

The Mississippi State Personnel Board may amend the policies, rules, and procedures, which establish and maintain the state human capital system as circumstances and conditions require. Any appointing authority, agency head, or member of the Personnel Advisory Council operating under the Mississippi State Personnel Board may recommend an amendment to policies and rules when a provision in the state personnel system causes unnecessary hardship or when the efficiency of the system may be improved.

## 1.1 MISSISSIPPI STATE PERSONNEL BOARD

The Mississippi State Personnel Board (hereinafter referred to as "MSPB") consists of five members appointed by the Governor for staggered five year terms. The MSPB holds meetings at least once a month as provided in Mississippi Code Annotated § 25-9-113. All MSPB meetings are open to the public unless an executive session is declared by an affirmative vote of a minimum of 3/5 of all members present. The MSPB may make and enforce reasonable rules and regulations for the conduct of persons attending its meetings. Minutes of all meetings are kept, whether the meeting is open or in executive session. The minutes will show members present and any final actions taken by the MSPB, and are available to the public during business hours a reasonable time after recess or adjournment.

The MSPB, as the governing authority for the statewide human capital system as established in Title 25, Chapter 9 of Mississippi Code Annotated, has delegated much of its authority to the MSPB Executive Director (hereinafter referred to as "Executive Director"), who may act on behalf of the Board when such action is necessary for the timely, effective, and efficient implementation of the state's human capital system; the day-to-day business of the MSPB is therefore carried out by the state agency also known as the MSPB.

Following an organizational restructuring in 2009, MSPB is divided into six sections. Agency directors, personnel officers, personnel assistants, and members of the public requiring assistance are urged to direct any inquiry to the MSPB staff section assigned the applicable responsibility. Functional assignments are outlined below. If you are unsure where to direct your inquiry, contact the MSPB switchboard at (601) 359-1406 or your agency's Human Capital Core Processes Consultants.

For a complete listing of MSPB employees, go to http://www.mspb.ms.gov.

**Executive Office** – (601) 359-2702

Agency Budget ♦ Annual Report ♦ Executive Support ♦ General Administration ♦ Strategic Planning ♦ Discipline ♦ Employee Handbook ♦ Policy Development and Interpretation ♦ Grievances ♦ Leave Administration ♦ Federal Employment Laws ♦ Legal Questions ♦ Statutes relating to Mississippi State Personnel Board Matters

**Employee Appeals Board** – (601) 359-2982

Appeals Filing ♦ Appeals Scheduling ♦ General Appeals Information

**Office of Human Capital Core Processes –** (601) 359-1406

Benchmarks ♦ Compensation Surveys ♦ Class Specifications ♦ Consultative Services ♦ Job Classifications ♦ Job Description Development and Validation ♦ Job Reclassification ♦ Staffing Management ♦ Organizational Charts ♦ Transactions Processing ♦ Program Budget ♦ Salary Certification ♦ Technical Assistance ♦ Application Evaluation ♦ Application Storage ♦ Certification of Eligible Applicants to Agencies ♦ Consultative Services ♦ Organizational Studies ♦ New Hire Flexibility ♦ Recruitment Flexibility ♦ Agency Head Flexibility ♦ Promotional Flexibility ♦ Recruitment Announcements ♦ Substitution of Education and Experience

**Office of Workforce Development –** (601) 359-1406

Agency Sponsored On-Site Training ♦ Career Pathing ♦ Consultative Services ♦ Electronic Training Center ♦ Internship Programs ♦ Management Certification Programs ♦ Organizational Design ♦ Performance Review ♦ Professional Development Courses ♦ Succession Planning ♦ Support Staff Certification Programs ♦ Talent Management ♦Technical Assistance ♦ Training Certification ♦ Training Evaluation ♦ Training Needs Assessments ♦ Training Programs ♦ Workforce Analysis

**Personal Service Contract Review Board** – (601) 359-6517

Personal Service Contract Procurement Policy Development ♦ Personal Service Contract Review and Approval ♦ Personal Service Contract Training

**Office of Information Technology –** (601) 359-2759

Data Management ♦ Special Reports ♦ Technical Assistance ♦ Information Systems

**Communications –** (601) 359-1406

Outreach ♦ Public Records Requests ♦ Media Relations ♦ Website Development

**Office of Administrative Services –** (601) 359-2758

MSPB Personnel Office ♦ MSPB Business Office ♦ Performance Measures ♦ Cost Center Budgeting ♦ Business Continuity ♦ Grant Writing

## 1.2 PUBLIC RECORDS ACT REQUESTS

The MSPB complies with requests for information under the Mississippi Public Records Act of 1983, Mississippi Code Annotated § 25-61-1, *et seq.*, according to the following policies:

A. Requests for information under the Mississippi Public Records Act of 1983 should be marked "Request for Public Records" and must be submitted in writing by U.S. mail or hand delivery to the MSPB Executive Director, Mississippi State Personnel Board, 210 East Capitol Street, Suite 800, Jackson, MS 39201; or transmitted by facsimile to 601-576-2741.

B. Requests should describe in reasonable detail the records sought, and, if possible, should include a description of the type of records, names, dates, dates of birth, social security numbers, job class and county, title of a publication, and other information which may aid in locating records.

C. Upon receipt of a request, the MSPB Executive Director shall determine whether the records sought are exempt from production under the Mississippi Public Records Act, and shall either produce or deny production of the records sought within seven (7) working days of the receipt of the request. If the MSPB Executive Director is unable to produce a public record by the seventh working day after the request is made, the MSPB Executive Director shall provide a written explanation to the person making the request. The explanation shall state that the records requested will be produced and will explain with specificity why the records cannot be produced within the seven-day period.

   The timeline for production may be extended beyond the seven (7) working days upon mutual agreement of the parties. Unless there is mutual agreement of the parties to extend the timeline, the MSPB Executive Director shall produce the requested records within fourteen (14) working days from the receipt of the original request.

D. If the MSPB Executive Director determines that the records requested are exempt or privileged under the law, he or she shall deny the request and shall send the person making the request a statement of specific reasons for the denial. Such denials shall be kept on file for inspection by any person for three years.

   Information gained from third parties containing trade secrets or confidential commercial or financial information will not be released until a reasonable time after notice has been sent to the third parties, unless the material is protected by a court order.

   Where possible, non-exempt material will be separated from exempt material, and only the exempt material will be withheld.

E. The request for information should be accompanied by sufficient funds, payable by cashier's check or money order, to defray the actual costs of searching, reviewing, copying and, if applicable, mailing the records. Fees charged for the records will not exceed the actual costs, and any overpayment will be refunded. Fees shall be collected prior to compliance with the request. The fees charged will be according to the following schedule:

   Employee time .....Salary rate plus 17% for fringe
   Photocopies.....$.13 per page
   Automated records search……..$90.00 setup charge, plus computer time and paper cost (Programming time in excess of one hour will be charged at $40.00 per hour)
   Data acquisition……Actual cost

Other printed materials ..... Actual cost
Mailing.....Actual cost

The MSPB Executive Director or designee shall promptly notify the person making the request of the estimated fees if the estimate exceeds the funds accompanying the request. The above schedule of fees will apply even if the search is unproductive.

## 1.3 STATEWIDE PAYROLL AND HUMAN RESOURCE SYSTEM

The Statewide Payroll And Human Resource System (SPAHRS) is the repository of record for agencies which fall under the purview of the MSPB. Transactions entered through SPAHRS are considered to be initiated and approved by the head of the submitting agency. Once entered, transactions are automatically forwarded to the proper reviewer at the MSPB for approval or disapproval. Transactions which are invalid, incorrect, or incomplete will be returned to the submitter without action, with notes attached indicating items that must be corrected prior to resubmission. SPAHRS is maintained by the Mississippi Management and Reporting System, hereinafter referred to as "MMRS," within the Department of Finance and Administration. For more information on SPAHRS, including training and reference materials, contact the MMRS Helpdesk at (601) 359-1343 or see the SPAHRS website at http://www.mmrs.state.ms.us/statewide_applications/SPAHRS.

## 1.4 DECLARATORY OPINIONS

This section sets forth the Mississippi State Personnel Board's rules governing the form, content, and filing of requests for declaratory opinions, the procedural rights of persons in relation to the written requests, and the Mississippi State Personnel Board's procedures regarding the disposition of requests as required by Miss. Code Ann. § 25-43-2.103.

A. The Mississippi State Personnel Board will issue declaratory opinions regarding the applicability to specified facts of:

    1. A statute administered or enforceable by the Mississippi State Personnel Board;

    2. A rule promulgated by the Mississippi State Personnel Board; or

    3. An order issued by the Mississippi State Personnel Board.

B. A request must be limited to a single transaction or occurrence.

C. When a person with substantial interest, as required by Miss. Code Ann. § 25-43-2.103, requests a declaratory opinion, the requestor must submit a printed, typewritten, or legibly handwritten request.

    1. Each request must be submitted on 8-1/2" x 11" white paper.

    2. The request may be in the form of a letter addressed to the Executive Director of the Mississippi State Personnel Board or in the form of a pleading as if filed with a court.

3. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).

4. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

5. Each request must clearly state that it is a request for a declaratory opinion.

D. Any party who signs the request shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative, or judicial tribunal.

E. Each request must contain the following:

1. A clear identification of the statute, rule, or order at issue;

2. The question for the declaratory opinion;

3. A clear and concise statement of all facts relevant to the question presented;

4. The identity of all other known persons involved in or impacted by the facts giving rise to the request including their relationship to the facts, and their name, mailing address, and telephone number; and

5. A statement sufficient to show that the requestor has a substantial interest in the subject matter of the request.

F. The Mississippi State Personnel Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to the following:

1. The matter is outside the primary jurisdiction of the Mississippi State Personnel Board;

2. There is a lack of clarity concerning the question presented;

3. There is pending or anticipated litigation, administrative action or anticipated administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;

4. The statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;

5. The facts presented in the request are not sufficient to answer the question presented;

6. The request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

7. The request seeks to resolve issues which have become moot or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute, or order on which a declaratory opinion is sought;

8. No controversy exists or is certain to arise which raises a question concerning the application of the statute, rule, or order;

9. The question presented by the request concerns the legal validity of a statute, rule, or order;

10. The request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;

11. No clear answer is determinable;

12. The question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;

13. The answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

14. The question is currently the subject of an Attorney General's opinion request;

15. The question has been answered by an Attorney General's opinion;

16. One or more requestors have standing to seek an Attorney General's opinion on the proffered question;

17. A similar request is pending before this agency, or any other agency, or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law; or

18. The question involves eligibility for a license, permit, certificate, or other approval by the Mississippi State Personnel Board or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.

G. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Mississippi State Personnel Board shall, in writing:

1. Issue an opinion declaring the applicability of the statute, rule, or order to the specified circumstances;

2. Agree to issue a declaratory opinion by a specified time but no later than ninety (90) days after receipt of the written request; or

3. Decline to issue a declaratory opinion, stating the reasons for its action.

The forty-five (45) day period shall begin on the first business day after which the request is received by the Mississippi State Personnel Board.

H. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinion and requests shall be indexed by name, subject, and date of issue. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

## 1.5 ORAL PROCEEDINGS

This section applies to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations or written input on proposed new rules, amendments to rules, and proposed repeal of existing rules before the Mississippi State Personnel Board pursuant to the Administrative Procedures Act, specifically Miss. Code Ann. § 25-43-3.104.

A. When a political subdivision, an agency, or ten (10) persons request an oral proceeding in regards to a proposed rule adoption, the requestor must submit a printed, typewritten, or legibly handwritten request.

1. Each request must be submitted on 8-1/2” x 11” white paper.

2. The request may be in the form of a letter addressed to the Executive Director of the Mississippi State Personnel Board or in the form of a pleading as if filed with a court.

3. Each request must include the full name, telephone numbers, and mailing address of the requestor(s).

4. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.

B. Notice of the date, time, and place of all oral proceedings shall be filed with the Secretary of State’s Office for publication in the Administrative Bulletin. The agency providing the notice shall provide notice of oral proceedings to all persons requesting notification of proposed rule adoptions. The oral proceedings will be scheduled no earlier than twenty

(20) days from the filing of the notice with the Secretary of State. The Executive Director of the Mississippi State Personnel Board or designee who is familiar with the substance of the proposed rule shall preside at the oral proceeding on a proposed rule.

C. Public participation shall be permitted at oral proceedings, as follows:

1. At an oral proceeding on a proposed rule, persons may make statements and present documentary and physical submissions concerning the proposed rule.

2. Persons wishing to make oral presentations at such a proceeding shall notify the Executive Director of the Mississippi State Personnel Board at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not contacted the Mississippi State Personnel Board prior to the proceeding.

3. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.

4. The presiding officer may place time limitations on individual presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

5. Persons making presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may be submitted at the oral proceeding.

6. Where time permits and to facilitate the exchange of information, the presiding officer may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding. No participant shall be required to answer any question.

D. Physical and documentary submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Mississippi State Personnel Board, part of the rulemaking record, and are subject to the Mississippi State Personnel Board's public records request procedure. The Mississippi State Personnel Board may record oral proceedings by stenographic or electronic means.

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# CHAPTER 2 – DEFINITIONS

## 2.0 INTRODUCTION

This chapter contains definitions which are used throughout this manual. However, if anything in this chapter is found to be inconsistent with any state or federal statute, the statute takes precedence.

## 2.1 STATE SERVICE

"State Service" shall mean all employees of state departments, agencies, and institutions as defined in Mississippi Code Annotated § 25-9-101, *et seq.*, except § 25-9-107(c).

> SPAHRS shall automatically place all state service employees in a probationary status upon original appointment and reemployment. The probationary period shall be the initial twelve months of service. State service employees who have served a full twelvemonth probationary period shall retain permanent status as long as they maintain continuous state service. (Mississippi Code Annotated § 25-9-127.)
>
> A probationary period shall be required when transferring a current non-state service status employee into a permanent state service position within the same agency or into a different agency. Time spent in a non-state service position of the same classification or of a higher classification within the same job class series may be counted toward the probationary period upon approval by the MSPB Executive Director. (Mississippi Code Annotated § 25-9-143.)
>
> Extended probationary status shall be assigned only to those employees previously exempted from the selection process as a result of pending litigation. (Mississippi Code Annotated §§ 25-9-139; 143.)

### 2.1.1 Conferment of Permanent State Service Status

Employees not otherwise excluded from the state service, with at least twelve months continuous state service in an agency and who have not been assigned extended probationary status, shall have permanent state service status. (Mississippi Code Annotated §§ 25-9-127; 143.) SPAHRS will automatically update the status of employees who have completed the twelve-month probationary period.

Upon original appointment into state service, each incumbent shall automatically receive a status date the same as the hire date. This date reflects the beginning date of the incumbent's status in state service. The term "Probationary" will automatically be placed in the "Employee Status" field when the transaction is processed. Upon completion of twelve months of continuous state service, each employee shall attain permanent state service status and the term "Permanent" will automatically be placed in the "Employee Status" field by SPAHRS.

Once an employee has attained permanent state service status, the status date shall remain the same on any requests for in-service movement except in the following cases: state service to non-state service; non-state service to state service; and litigated classes to state service.

Any request processed for in-service movement in the above-mentioned cases shall automatically reset the status and the status date of the employee to the effective date of the transaction.

## 2.2 NON-STATE SERVICE

All personnel transactions in the non-state service shall be effected through appointments to authorized employment positions by the appointing authority. The Office of Human Capital Core Processes shall be notified of each appointment and may acknowledge the appointment. (Mississippi Code Annotated § 25-9-107(c).)

To ensure that the Office of Human Capital Core Processes is informed of all appointments to authorized vacant non-state service positions under the salary setting authority of the MSPB, all human capital transactions pertaining to personnel in these non-state service positions shall be submitted through SPAHRS in accordance with the procedures contained herein. Requests for salary certifications shall be acknowledged, rather than certified, by the MSPB for non-state service employees not under the salary setting authority of the MSPB.

### 2.2.1 Non-state Service Appointment

Unless otherwise provided for by law, the appointing authority shall determine job qualifications for non-state service employees. "Nonstate service" is defined by Mississippi Code Annotated § 25-9-107(c) as follows:

> "Non-state service" shall mean the following officers and employees are excluded from the state service by this chapter. The State Personnel Director acknowledges the appointing authority actions for the following, which are excluded from the state service:
>
> (i) Members of the State Legislature, their staffs and other employees of the legislative branch;
>
> (ii) The Governor and staff members of the immediate office of the Governor;
>
> (iii) Justices and judges of the judicial branch or members of appeals boards on a per diem basis;
>
> (iv) The Lieutenant Governor, staff members of the immediate office of the Lieutenant Governor and officers and employees directly appointed by the Lieutenant Governor;
>
> (v) Officers and officials elected by popular vote and persons appointed to fill vacancies in elective offices;
>
> (vi) Members of boards and commissioners appointed by the Governor, Lieutenant Governor, or the State Legislature;

(vii) All academic officials, members of the teaching staffs and employees of the state institutions of higher learning, the State Board for Community and Junior Colleges, and community and junior colleges;

(viii) Officers and enlisted members of the National Guard of the State;

(ix) Prisoners, inmates, student or patient help working in or about institutions;

(x) Contract personnel; provided, that any agency which employs state service employees may enter into contracts for personal and professional services only if such contracts are approved in compliance with the rules and regulations promulgated by the State Personal Service Contract Review Board under Section 25-9-120(3). Before paying any warrant for such contractual services in excess of One Hundred Thousand Dollars ($100,000.00), the Auditor of Public Accounts, or the successor to those duties, shall determine whether the contract involved was for personal or professional services, and, if so, was approved by the State Personal Service Contract Review Board;

(xi) Part-time employees; provided, however, part-time employees shall only be hired into authorized employment positions classified by the board, shall meet minimum qualifications as set by the board, and shall be paid in accordance with the Variable Compensation Plan as certified by the board;

(xii) Persons appointed on an emergency basis for the duration of the emergency; the effective date of the emergency appointments shall not be earlier than the date approved by the State Personnel Director and shall be limited to thirty (30) working days. Emergency appointments may be extended to sixty (60) working days by the State Personnel Board;

(xiii) Physicians, dentists, veterinarians, nurse practitioners and attorneys, while serving in their professional capacities in authorized employment positions who are required by statute to be licensed, registered or otherwise certified as such, provided that the State Personnel Director shall verify that the statutory qualifications are met prior to issuance of a payroll warrant by the auditor;

(xiv) Personnel who are employed and paid from funds received from a federal grant program, which has been approved by the Legislature or the Department of Finance and Administration whose length of employment has been determined to be time-limited in nature. This paragraph shall apply to personnel employed under the provisions of the Comprehensive Employment and Training Act of 1973, as amended, and other special federal grant programs which are not a part of regular federally funded programs wherein appropriations and employment positions are appropriated by the Legislature. Such employees shall be paid in accordance with the Variable Compensation Plan and shall meet all qualifications required by federal statutes or by the Mississippi Classification Plan;

(xv) The administrative head who is in charge of any state department, agency, institution, board or commission, wherein the statute specifically authorizes the Governor, board, commission or other authority to appoint said administrative head; provided, however, that the salary of such administrative head shall be determined by the State Personnel Board in accordance with the Variable Compensation Plan unless otherwise fixed by statute;

(xvi) The State Personnel Board shall exclude top-level positions if the incumbents determine and publicly advocate substantive program policy and report directly to the agency head, or the incumbents are required to maintain a direct confidential working relationship with a key excluded official. Provided further, a written job classification shall be approved by the board for each such position, and positions so excluded shall be paid in conformity with the Variable Compensation Plan;

(xvii) Employees whose employment is solely in connection with an agency's contract to produce, store or transport goods, and whose compensation is derived there from;

(xviii) Repealed;

(xix) The associate director, deputy directors, and bureau directors within the Department of Agriculture and Commerce;

(xx) Personnel employed by the Mississippi Industries for the Blind; provided, that any agency may enter into contracts for the personal services of MIB employees without the prior approval of the State Personnel Board or the State Personal Service Contract Review Board; however, any agency contracting for the personal services of an MIB employee shall provide the MIB employee with not less than the entry level compensation and benefits that the agency would provide to a full-time employee of the agency who performs the same services; and

(xxi) Personnel employed by the Mississippi Department of Wildlife, Fisheries, and Parks and the Mississippi Department of Marine Resources as law enforcement officer trainees (cadets); such personnel shall be paid in accordance with the Colonel Guy Groff State Variable Compensation Plan.

Other non-state service employees include:

(i) Non-state service positions of deputy superintendents, associate superintendents and directors within the State Department of Education [Mississippi Code Annotated § 37-3-13(2)], and

(ii) Non-state service positions of associate directors, deputy directors and bureau directors within the Mississippi Development Authority [Mississippi Code Annotated § 57-1-5(3)(c)(xi).]

### 2.2.2 Salary Certification

Salaries for appointment to non-state service positions shall be certified in accordance with the provisions governing appointments. (See Mississippi Code Annotated § 25-9-119 (2)(c)(i) and (ii)).

Salary certification for administrative officers, deputies, bureau chiefs, and directors who report directly to the department, agency, institution, or commission, unless otherwise set by statute shall be determined by the appointing authority and the MSPB not to exceed the end of the salary range assigned.

### 2.2.3 Notification of Non-State Service Status

Each applicant who accepts appointment to a non-state service position shall be given written notice by the appointing authority prior to the appointment that permanent state service status will not be attained while employed in that position and that the State of Mississippi is under no obligation to continue their employment in such a position.

Permanent state service status employees who accept appointment to a non-state service position lose their permanent employment status at the time of the appointment, except under the provisions of Mississippi Code Annotated § 25-9-125, and shall be so notified in writing prior to the appointment.

### 2.2.4 Hiring under Emergency Conditions

Authority to hire under emergency conditions is defined as hiring personnel in order that appropriate care and protection for life or property may be implemented or maintained. Salary certification for emergency appointments shall be at the start salary of a given classification.

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# CHAPTER 3 - RECRUITMENT

## 3.0 INTRODUCTION

The Executive Director of the Mississippi State Personnel Board shall administer a recruitment program as referenced in the Mississippi Code Annotated § 25-9-119 (2)(c). This program shall ensure the fair and equitable treatment of all applicants without regard to political affiliation, race, color, handicap, genetic information, religion, national origin, sex, religious creed, age, or disability. [Mississippi Code Annotated § 25-9-103 and § 25-9-149, and Intergovernmental Personnel Act Programs: Standards for a Merit System of Personnel Administration, 5 C.F.R. §§ 900.603; 900.604 (1983).] Any questions regarding these functions should be addressed to your Human Capital Core Processes Consultants.

## 3.1 RECRUITMENT PROGRAMS

Recruitment shall be tailored to the number and nature of positions to be filled and to labor market conditions. The recruiting efforts of the Office of Human Capital Core Processes and agencies will be coordinated and carried out in a timely manner.

### 3.1.1 Open Consideration of Qualified Candidates

The Executive Director of the Mississippi State Personnel Board shall respond to agency needs by developing methods of reaching qualified applicants. Recruitment efforts for initial appointments shall be planned and carried out in a manner that ensures open competition and equal consideration of all qualified candidates, except as provided in Chapter 4. Recruitment activities may include, but not be limited to, contact with institutions and organizations, personal contact, and public announcements.

### 3.1.2 Regular Recruitment

The Executive Director of the Mississippi State Personnel Board shall initiate recruitment efforts in response to current or projected agency staffing requirements. Agencies that anticipate vacancies due to circumstances such as a termination, transfer of an employee, or authorization for additional positions, may request that those positions be placed on recruitment.

Agencies will use the Mississippi State Personnel Board's recruitment and selection software system to request recruitment (called a requisition in the system) for vacancies. Agencies will submit the requisition at least three (3) working days prior to the opening date of the recruitment posting in the system.

### 3.1.3 Special Recruitment

The Executive Director of the Mississippi State Personnel Board may initiate additional recruitment efforts for certain difficult-to-fill job classifications or upon agency requests. In order for the Executive Director of the Mississippi State Personnel Board to coordinate agency recruitment efforts, agencies will advise the Executive Director of the Mississippi State Personnel Board three (3) working days in advance, when planning is initiated for any and/or all recruitment efforts and/or advertising. Notification is essential to enable the Executive Director

of the Mississippi State Personnel Board to ensure that the agency recruitment efforts are in accordance with state policy and procedure.

Agencies that require assistance from the Executive Director of the Mississippi State Personnel Board in developing special recruitment plans must notate in the recruitment and selection software system the obstacles that inhibit recruitment. Information must include, in detail, any special qualification required, and the reason for the requirement, noted in the requisition. The Executive Director of the Mississippi State Personnel Board determines the dates and length of the special recruitment period.

### 3.1.4 Authority to Take a Position off Recruitment

Positions placed on recruitment may be assigned a closing date due to, but not limited to, the following circumstances:

A. a vacancy has been filled;

B. a class specification revision has been initiated; or

C. there is a request by the appointing authority.

Positions placed on recruitment for an indefinite period may not be assigned a closing date until a vacancy is filled. The authority to take a position or occupational class off recruitment rests with the Executive Director of the Mississippi State Personnel Board.

### 3.1.5 Determination to Place a Position on Recruitment

The decision to recruit for a position or occupational class may be determined by the special qualifications under which an agency desires recruitment.

The final determination to place a position on recruitment shall rest with the Executive Director of the Mississippi State Personnel Board.

### 3.1.6 Length of Recruitment

Once a position has been placed on recruitment, it may be recruited continuously in accordance with Sections 3.2 and 3.3 until it is taken off recruitment in accordance with Section 3.1.4. The Executive Director of the Mississippi State Personnel Board may elect to take the position off recruitment when deemed appropriate.

### 3.1.7 Non-State Service Recruitment

The Executive Director of the Mississippi State Personnel Board does not determine recruitment programs for non-state service positions. However, recruitment or advertising for these positions must be coordinated with the Executive Director of the Mississippi State Personnel Board in accordance with the advertising requirements below.

Agencies with non-state service positions that wish to recruit may request assistance from the Executive Director of the Mississippi State Personnel Board. Staff will be available to assist in

the development of a plan for recruitment that addresses procedures such as posting of announcements, advertising, evaluation, and referral procedures for applicants.

## 3.2 RECRUITMENT ANNOUNCEMENTS

Recruitment announcements shall, at a minimum, be listed on the Mississippi State Personnel Board web site. All recruitment announcements shall be advertised for not less than three (3) working days.

## 3.3 CONTENT OF ANNOUNCEMENT

Recruitment announcements may contain the Mississippi State Personnel Board class specification of the vacancy or the equivalent of a Mississippi Department of Employment Security job announcement, including the following: title of the position, summary of education and experience requirements, beginning and ending dates of recruitment, salary, and geographic location.

## 3.4 ADVERTISING

For special recruitment purposes, the Executive Director of the Mississippi State Personnel Board may utilize advertising to supplement the public notice requirements above.

### 3.4.1 Agency Advertising Efforts

Agencies may coordinate their advertising efforts with the Executive Director of the Mississippi State Personnel Board. Commercial advertising shall be at the expense of the requesting agency unless the Mississippi State Personnel Board sponsors the advertising and provides the agency with prior written confirmation of sponsorship. Items required by MSPB to be included in the advertising are listed below:

A. the official MSPB job title;

B. the education and experience requirements (Minimum Qualifications) as written in MSPB job description;

C. any special qualifications requested by the agency and approved by the Office of Human Capital Core Processes (when applicable);

D. the statement “An Equal Opportunity Employer”;

E the MSPB website information where the applicant may submit the application if the position is posted on the system; and

F. The agency address where applications are to be sent if the position is not being posted on the MSPB website.

Agencies may add other job information or agency specific information as deemed necessary. Agencies may coordinate recruitment efforts with the Mississippi State Personnel Board by forwarding a copy of the advertisement to their assigned Office of Human Capital Core Processes Consultant via email. This will ensure that MSPB staff is aware of the agency’s

intentions and will be able to provide information to applicants regarding the advertisement. If the position being advertised is not exempt from the MSPB selection process, the agency will also be required to comply with section 3.1.2, Regular Recruitment, and should coordinate the posting dates with MSPB to ensure that the position is placed on open recruitment on the MSPB website at the same time it is to be advertised by the agency.

### 3.4.2 Notice of Advertising

For those agencies requesting MSPB assistance pursuant to 3.4.1, the appointing authorities will notify the Executive Director of the Mississippi State Personnel Board at least three (3) working days prior to all recruitment advertising, whether the advertising is donated, paid for by the agency, or sponsored and paid for by the Mississippi State Personnel Board.

## 3.5 RECRUITMENT AND COUNSELING

The Mississippi State Personnel Board will provide information and assistance to state agencies and applicants. These services may include, but are not limited to: recruitment efforts; the processing of applications; and counseling/assistance regarding the evaluation and selection processes.

## 3.6 EXEMPT STATUS RECRUITMENT AND SELECTION

The Executive Director of the Mississippi State Personnel Board does not determine recruitment programs for job classes or positions exempted under Rule 4.2.9. However, recruitment or advertising for these classifications may be coordinated with the Executive Director of the Mississippi State Personnel Board in accordance with the requirements above.

Source: Miss Code Ann. §25-9-103, -119, -147.

# CHAPTER 4 – SELECTION

## 4.0 INTRODUCTION

This chapter contains information regarding the application and selection process. Any questions regarding these functions should be addressed to your Human Capital Core Processes Consultants.

## 4.1 APPLICANT PROCESSING

The Mississippi State Personnel Board shall set forth standardized procedures for processing applications, uniformly evaluating education/training and experience, and certifying and providing Eligible Lists.

## 4.2 THE APPLICATION PROCESS

### 4.2.1 Application Form

A. All applications for state service positions and the non-state service positions in Section 4.4.1 shall be on the State of Mississippi Application, either electronic or paper.

B. The Executive Director of the Mississippi State Personnel Board shall be responsible for the format and may amend the State of Mississippi Application as needed.

C. The Executive Director of the Mississippi State Personnel Board may require that only the original State of Mississippi Application be accepted by the Mississippi State Personnel Board for evaluation.

### 4.2.2 When Applications Shall Be Filed

A. The Executive Director of the Mississippi State Personnel Board may establish procedures, which allow the following employees and/or applicants to file applications for Promotional Opportunities:

1. current employees with at least six (6) months of continuous service;

2. persons who were terminated from the state service due to a Reduction in Force (RIF) within the last twelve (12) months;

3. former employees who left the state service in good standing within the past twelve (12) months, and who had completed at least six (6) months of continuous employment.

B. Applicants not meeting the criteria for the above must file an application during a period when the job class is listed on the Mississippi State Personnel Board's Job Opportunities List.

C. Applicants for jobs on open recruitment shall file all applications on or prior to the closing date specified in the announcement.

### 4.2.3 Locations Where Applications May Be Filed

A. Applications for state service positions may be completed online, filed at the Mississippi State Personnel Board in Jackson, the Mississippi Department of Employment Security Workforce Investment Network (WIN) job centers statewide, or at any other location where the necessary technology is made available. The Mississippi State Personnel Board may provide for the filing of applications at additional locations.

B. An individual is not considered a bona fide applicant until the application is received by either the Mississippi State Personnel Board or the Mississippi Department of Employment Security. Individuals who file an application directly with a state agency/board, etc., are not considered a bona fide applicant until the application is received by the Mississippi State Personnel Board.

C. Applications for positions and job classifications falling under Section 4.2.9 shall be exempt from this section.

### 4.2.4 Who May Apply For State Employment

A. An applicant is defined as any individual who files his or her State of Mississippi Application in accordance with Sections 4.2.1, 4.2.2, and 4.2.3.

B. All State of Mississippi Applications shall be signed by the applicant, and the truth of the statements contained within the Record shall be certified by the applicant's signature. If the application is submitted electronically, all statements in the application are considered true and correct by the applicant clicking the "Accept" button.

C. The Executive Director of the Mississippi State Personnel Board shall have final authority in determining the validity of the application.

D. A State of Mississippi Application determined to be invalid shall be returned to the applicant.

E. A State of Mississippi Application returned as invalid and subsequently re-submitted must meet the validity requirements effective on the last date received.

F. Agencies may submit a State of Mississippi Application for agency-only non-competitive promotions with a formal petition for approval.

### 4.2.5 Evaluation of Education/Training and Experience

A. All prospective or current state service employees shall have their State of Mississippi Application formally evaluated prior to appointment or promotion except as provided in these rules. The Mississippi State Personnel Board shall uniformly evaluate the qualifications of applicants as stated in their State of

Mississippi Application. Applicants shall be evaluated without regard to political affiliation, race, color, national origin, sex, religion, religious creed, age, genetic information or disability except as provided by law.

B. All State of Mississippi Applications received at the Mississippi State Personnel Board are reviewed to assess the applicant's education/training and experience as listed in the application to determine qualifications for the job class for which the applicant is applying. All college education and training related to the position for which application is made shall be assessed at a maximum of 120 semester hours (or the equivalent) for a Bachelor's degree; a maximum of 150 semester hours (or the equivalent) for a Master's degree; a maximum of 180 semester hours (or the equivalent) for a Specialist degree; and 210 semester hours (or the equivalent) for a doctoral degree. Additionally, college hours will be counted for up to 119 semester hours in increments of 30, 60 or 90 hours. All experience entries listed on the application related to the position for which the application is made, including military, paid, and unpaid volunteer work, shall be assessed at a maximum of forty (40) hours per week. This forty (40) hour limit will also apply where a combination of related work is gained through concurrent jobs. The applicant must meet the minimum requirements outlined in the current active class specification.

### 4.2.6 Additional Documentation Supplied for Evaluation

A. Applicants may be required to submit proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification required by state law or class specification. Applicants may be disapproved for failure to provide the requested documentation.

B. Applicant(s) will be notified regarding additional information or documents necessary to complete processing of application(s).

### 4.2.7 Verification of Education/Training and Experience

A. An applicant's educational record and work history may be investigated by the Executive Director of the Mississippi State Personnel Board or the hiring agency.

B. Investigative procedures may include but not necessarily be limited to contacting present and previous employers and/or schools, colleges, or other institutions to verify information contained in the State of Mississippi Application or related documents supplied by the applicant and/or the hiring agency.

C. The appointing authority may require the applicant to submit proof of the possession of any license, certificate, degree, or other evidence of eligibility or qualification required by state or federal law or class specification.

D. The hiring agency shall ultimately be held accountable for verifying the correctness of information recorded in the State of Mississippi Application.

### 4.2.8 Falsification of State of Mississippi Application

A. Should an agency, after investigation, discover an applicant's State of Mississippi Application to be falsified, the agency should immediately inform the Executive Director of the Mississippi State Personnel Board of such falsification in writing. The State Personnel Director may remove the applicant from consideration as provided for in Section 4.5.2.

B. The falsification of a State of Mississippi Application by a state employee is considered a Group Three Offense in the approved Schedule of Offenses and Authorized Disciplinary Action, and may result in dismissal, suspension for up to thirty (30) days, demotion to the previous position and pay level, or a combination thereof. (See Section 9.1.C.)

C. When such action is taken, written notification will be mailed to the applicant's last known mailing address.

### 4.2.9 Non-Competitive Initial Appointment

**Occupational Classes (State Service), under Mississippi Code Annotated § 25-9-105**

A. Non-competitive appointments to occupational classes exempted from the selection process by state law or by action of the Mississippi State Personnel Board are not required to be made from an Eligibles List. The Executive Director of the Mississippi State Personnel Board only certifies the candidates referred by the appointing authority who meet the minimum requirements for the occupational class.

B. Exempt classifications may consist of, but are not limited to, the following: (1) skilled or semi-skilled labor, domestic or custodial work; (2) classifications which involve professional or technical skills not normally available in the general applicant population and for which recruiting procedures produce recurring deficiencies; (3) classifications which include a small number of positions; (4) classifications which are unique to a particular agency; (5) classifications which have high turnover rates, and (6) classifications which require professional licensure and/or certification.

C. The Executive Director of the Mississippi State Personnel Board shall review agency proposed classifications or positions and make recommendations to the Mississippi State Personnel Board to develop a list of job classifications exempt from the use of an Eligibles List. The list of exempt classifications may be furnished to the agencies.

D. Agencies may request classifications be reinstated to a competitive appointment basis and may recommend changes to the list of exempt classifications.

E. Exempt classifications may apply to entire classifications or specific positions assigned to a classification.

F. The appointing authority shall submit a current State of Mississippi Application to the Executive Director of the Mississippi State Personnel Board. The applicant is required to meet the minimum qualifications to be certified for the class or position.

G. Incumbents in state-service positions exempt from the selection process by actions of the Mississippi State Personnel Board have the same rights as any other state-service employee.

H. Each agency is responsible for ensuring that its workforce complies with all state and federal laws, guidelines, and court orders regarding Equal Opportunity Employment.

## 4.3 EVALUATION OF APPLICANTS BASED ON MINIMUM QUALIFICATIONS

Applicant's qualifications shall be evaluated to determine if they meet the minimum requirements for the position for which they applied. Established standards shall be uniformly applied to all applications without regard to the applicant's political affiliation, race, color, national origin, sex, religion, religious creed, age, genetic information or disability.

### 4.3.1 Minimum Qualifications

The minimum qualifications for an occupational class shall consist of the minimum qualifications listed on the class specification plus any special qualifications, known as job specific supplemental questions, for the position applied for as requested by an agency and as approved by the Executive Director of the Mississippi State Personnel Board.

A. An applicant's education/training and experience background, as stated on the State of Mississippi Application, is reviewed in detail to determine qualifications for the position applied for, in line with the approved minimum requirements in the class specification, and any job specific supplemental questions levied by the user agency as approved by the Executive Director of the Mississippi State Personnel Board.

B. The Executive Director of the Mississippi State Personnel Board shall determine a formula for the evaluation of the training and experience qualifications of applicants. This formula shall give due regard to relatedness as well as quantity of the training and experience.

### 4.3.2 Notification of Failure to Meet Minimum Qualifications

A. A standardized notification approved by the Executive Director of the Mississippi State Personnel Board shall be sent to all applicants who do not meet the minimum qualifications of the occupational class for which they have made application.

B. An applicant shall have the right to make a written request for the review of the disapproval by the Director of the Office of Human Capital Core Processes.

### 4.3.3 Qualifications

An appointing authority within the state service may formally request in writing that the Mississippi State Personnel Board waive the minimum education/training and experience requirements required for entry into an occupational class, thereby allowing the appointment of an individual who does not meet the minimum qualifications as listed on the class specification.

Where employees do not possess the minimum qualifications necessary for promotions, demotions, transfers, or reallocations, agencies shall submit the prescribed forms necessary to document possession of knowledge, skills, and abilities necessary to perform in the proposed position. Requests for waiver of minimum qualifications must be approved by the Mississippi State Personnel Board.

A. There shall be no consideration given to waiving minimum requirements for original appointments.

B. The Mississippi State Personnel Board shall review all requests by state agencies to waive minimum qualifications of a class specification to accomplish movements within state service.

C. The Mississippi State Personnel Board shall consider but shall not limit its consideration to the following when reviewing a request to waive minimum qualifications:

1. The amount of related experience as demonstrated by a current State of Mississippi Application; the Job Content and the Technical Competencies sections of the Performance Development Assessment (PDA);
2. The number of related college credit hours;
3. The number of years of related experience;
4. The availability of qualified employees and applicants;
5. The feasibility of a trainee classification; and
6. Applicable federal and state statutes, licensure, certification, and registration requirements.

D. A waiver of minimum qualifications approved by the Mississippi State Personnel Board applies only to the classification for which the waiver was requested.

E. Decisions of the Mississippi State Personnel Board shall be final and no further consideration of a request for waiver shall be afforded.

F. Requests for waivers of minimum qualifications by state agencies shall include:

1. Relevant position-employee data;
2. State of Mississippi Application;
3. Job Content and the Technical Competencies sections of the Performance Development Assessment (PDA) (current and proposed position);
4. Letter of Justification including but not limited to: demonstration that no qualified employee or applicant is available; explanation of why subject

employee was chosen and/or best qualified; and discussion of alternative actions.

5. Organizational Chart of the unit where the position is located along with functional statements for the unit; and
6. Performance Development System (PDS) duties and competencies/ Performance Standards (proposed position).

### 4.3.4 Substitution of Minimum Qualifications

An employee or applicant who possesses the substantial equivalent of the minimum qualifications may request in writing that the Executive Director of the Mississippi State Personnel Board substitute the substantial equivalent of education/training and experience for the minimum qualifications required for entry into an occupational class, thereby allowing the certification to an Eligibles List or in-service movement of an individual not otherwise meeting the stated minimum qualifications.

A. There shall be no consideration given to the substitution of equivalent education/training or experience where relevant licensing, certification, or similar requirements, or where state or federal statutes or regulatory guidelines preclude evaluation on this alternative basis.

B. The Executive Director of the Mississippi State Personnel Board shall appoint a committee of staff members to review all requests.

C. The review committee shall consider, but not limit its consideration to, the amount of related experience and formal education/training as documented by a State of Mississippi Application.

D. Decisions of the review committee shall be binding; however, final consideration may be made by the Executive Director of the Mississippi State Personnel Board upon written justification submitted by the employee, applicant, and/or agency.

E. Requests for substitutions of the substantial equivalent of education/training and experience by applicants, employees, or agencies may include:

1. Detailed and current State of Mississippi Application;
2. Letter of request;
3. Transcript of related college credit hours;
4. Certificates of completion of any related training courses where applicable; and
5. Other pertinent documents deemed necessary by the review panel.

### 4.3.5 Special Qualifications/Job Specific Supplemental Question(s)

A special qualification/job specific supplemental question(s) is a requirement used in conjunction with the minimum qualifications of a job class to designate specific skills, abilities, education, and/or experience necessary for a particular position.

A special qualification/job specific supplemental question(s) may be utilized when requesting apposition be placed on recruitment. The job specific supplemental question(s) must be approved by the Executive Director of the Mississippi State Personnel Board prior to usage. Names of applicants meeting the job specific supplemental question(s) will be placed on the Eligibles List in accordance with Mississippi State Personnel Board policies. The Eligibles List, along with copies of the applications, will be forwarded to the requesting agency.

When requesting the use of a special qualification/job specific supplemental question(s), the following shall be in effect:

A. In no case shall the job specific supplemental question(s) exceed the minimum qualifications as outlined on the class specification for the job class. For example, the minimum qualifications might read: A bachelor's degree from an accredited four-year college or university and seven (7) years of experience. A valid job specific supplemental question might read: A bachelor's degree in biology and four (4) of the seven (7) years of experience must have been in a laboratory environment.

B. Special qualification/job specific supplemental question(s) requests must contain the following documentation:

A detailed explanation of the need for a job specific supplemental question(s) which includes a description of the specific skills, abilities, education, and/or experience required and why;

Copies of any federal or state regulations, guidelines, statutes or case law which are relevant to qualifications of the position; and

Additional documentation as may be specified by the Executive Director of the Mississippi State Personnel Board.

C. The Executive Director of the Mississippi State Personnel Board shall have the authority to modify and/or deny any request for special qualifications/job specific supplemental questions.

D. Exceptions to this policy will be reviewed on a case-by-case basis by the Executive Director of the Mississippi State Personnel Board.

## 4.4 MISSISSIPPI STATE PERSONNEL BOARD STATUTORY SELECTION AUTHORITY OVER NON-STATE SERVICE PERSONNEL

### 4.4.1 Non-State Service Personnel Evaluation

The Executive Director of the Mississippi State Personnel Board only acknowledges the appointment of non-state service personnel except as provided by statute and regulations prescribed pursuant to statute.

A. Part-Time Positions - The appointing authority shall submit position-employee data along with a copy of a current State of Mississippi Application and other required documentation to the Executive Director of the Mississippi State Personnel Board when appointing to part-time positions. The individual to be appointed must meet the minimum qualifications for the occupational class as set by the Mississippi State Personnel Board and be certified as such prior to appointment unless otherwise authorized by the Executive Director of the Mississippi State Personnel Board.

B. Physicians, dentists, veterinarians, nurse practitioners and attorneys, while serving in their professional capacities in authorized employment positions who are required by the State to be licensed, registered, or otherwise certified as such, shall submit State of Mississippi Applications and other documentation as needed to substantiate their professional status. The Executive Director of the Mississippi State Personnel Board shall verify such licensure, registration, or certification as being current and valid prior to acknowledging the appointment of such personnel. The appointing authority shall submit position-employee data along with a copy of a current State of Mississippi Application and other required documentation to the Executive Director of the Mississippi State Personnel Board when appointing to such positions.

C. Time-Limited Positions - The appointing authority shall submit position-employee data along with a copy of a current State of Mississippi Application to the Executive Director of the Mississippi State Personnel Board when appointing to time-limited positions. The individual to be appointed must meet the minimum qualifications for the occupational class as set by the Mississippi State Personnel Board as well as qualifications required by federal laws and regulations and be certified as such prior to appointment unless otherwise authorized by the Executive Director of the Mississippi State Personnel Board [Mississippi Code Annotated § 25-9-107(c)(xiv).]

D. Applicants for top-level positions excluded from the state service by Mississippi Code Annotated § 25-9-107(c)(xvi) shall submit a State of Mississippi Application to the appointing authority. The appointing authority shall submit position-employee data along with a copy of a current State of Mississippi Application to the Executive Director of the Mississippi State Personnel Board.

E. With the exception of those positions stipulated in sections A, B, and C above, the Executive Director of the Mississippi State Personnel Board only acknowledges the appointment of non-state service personnel. In those instances when the appointee fails to meet the minimum qualifications of the occupational class as set by the Mississippi State Personnel Board, the Executive Director of the Mississippi State Personnel Board shall notify the appointing authority of the failure of the applicant to meet minimum qualifications.

## 4.5 EVALUATIONS OVERVIEW

A. Applicants for occupational classes must be evaluated and found minimally qualified by the Executive Director of the Mississippi State Personnel Board prior to being placed on the Eligibles List.

B. The Executive Director of the Mississippi State Personnel Board shall maintain uniform standards for evaluating the education/training and experience of minimally qualified applicants for positions.

C. The established uniform standards shall be applied to all applications without regard to the applicant's political affiliation, race, color, national origin, sex, religion, religious creed, age, genetic information or disability except as provided by law.

D. All State of Mississippi Applications for the same occupational class are afforded uniform and equal treatment in all phases of the evaluating process.

### 4.5.1 Evaluation of Applications

A. After applicants are determined to have met the minimum qualifications for a position's allocated job classification, they shall be assigned a passing disposition.

B. Evaluations shall be determined by the amount of the education/training and experience documented on the applicant's State of Mississippi Application as compared to the minimum qualifications, characteristics of work, description of duties contained in the class specification for which application has been made, and by the job specific supplemental questions, if any.

C. The Executive Director of the Mississippi State Personnel Board shall determine a formula for the evaluation of the education/training and/or experience qualifications of the applicants. This formula shall give due regard to job relatedness as well as quantity of the education/training and/or experience.

D. Any applicant claiming credit for education/training and/or experience gained through unpaid and/or volunteer activities and/or military service shall receive appropriate credit for such education/training and/or experience when it is related to the duties of the occupational class for which application is made.

### 4.5.2 Disqualification of Applicants

The Executive Director of the Mississippi State Personnel Board may refuse to evaluate an applicant or, after evaluating, may disqualify the applicant, remove the applicant's name from the Eligibles List, refuse to certify an applicant on an Eligibles List, or may consult with the appointing authority in taking steps to remove a person already appointed if the individual:

A. Has provided job-related information which indicates inability to perform the tasks assigned to the occupational class for which evaluated;

B. Has made a false statement of material fact in the State of Mississippi Application;

C. Has used or attempted to use political pressure or bribery to secure an advantage in the evaluation process;

D. Has directly or indirectly obtained information regarding the evaluation process to which an applicant is not entitled;

E. Has failed to submit the State of Mississippi Application correctly or within the prescribed time limits;

F. Has taken part in the compilation, administration, or correction of the selection procedures applied;

G. Has otherwise willfully violated the provisions of these rules; and/or

H. Does not meet any one (1) of the minimum qualifications established for the occupational class for which evaluated.

**4.5.3 Notification of Evaluation Results**

A. Applicants will be notified of their evaluation results in a timely manner.

B. Agencies authorized to maintain Eligible Lists shall be responsible for furnishing qualified applicants with notification of evaluation results.

C. The Executive Director of the Mississippi State Personnel Board may prohibit the disclosure of evaluation results by phone, in person, or by any other means except electronically or by mail.

**4.5.4 Adjustment of Errors**

A. The Executive Director of the Mississippi State Personnel Board shall take whatever action deemed necessary to correct a manifest error in the evaluation of an applicant's qualifications for the occupational class for which application is made. Due consideration will be given to the circumstances surrounding the cause of the error.

B. Such corrective action may include, but is not limited to, removing an applicant's name from the Eligibles List and/or canceling any Eligibles List deemed flawed due to the manifest error.

C. Such corrective action shall not invalidate an appointment previously made unless the applicant fails to meet qualifications imposed by federal or state law, or does not possess licensure, registration, or certification required for the job class to which appointed.

## 4.6 DESIGNATION OF VETERANS' STATUS

The veteran status of an applicant shall be designated on the Eligibles List, if the applicant is otherwise qualified to be placed on an Eligibles List. Veterans' designations shall not be awarded for periods of active duty when duty was for "training purposes only" to meet obligations in the Reserve Forces, National Guard, etc. Terms in this section are as follows:

A. Veteran: A person who has served in the active Armed Forces of the United States for a period of ninety (90) days during a period of war or armed conflict and was granted an honorable discharge there from; or was discharged there from for a service-connected injury in less than ninety (90) days. Mississippi Code Annotated § 25-9-301(a),

B. Disabled Veteran: A veteran whom the Veterans Administration has certified within the last ninety (90) days to have a service-connected disability. Mississippi Code Annotated § 25-9-301(b), and

C. Proof of Eligibility: A certified copy of the veteran's discharge papers and separation record or certification from the Veterans Administration or the Department of Defense will be accepted as proof of veteran status. Applicants requesting disabled veteran status shall submit, on such forms as may be required by the Executive Director of the Mississippi State Personnel Board, proof of disability certified by the Veterans Administration.

## 4.7 SELECTION PROCEDURE DEVELOPMENT AND VALIDATION

### 4.7.1 Development of Selection Procedures

A. A comprehensive system of evaluation for all occupational classes within the state service is maintained.

B. The Executive Director of the Mississippi State Personnel Board determines the need for technical assistance to supplement staff expertise in the development of valid selection procedures. Subject to approval by the Mississippi State Personnel Board, the Executive Director of the Mississippi State Personnel Board may contract for selection procedure services or purchase selection procedure material or may utilize qualified technical consultants. When technical assistance is required to supplement staff expertise, criteria for selecting said assistance shall consist of, but is not limited to, the lowest cost proposal, meeting time requirements set forth by the Executive Director of the Mississippi State Personnel Board, methodology to be used, and the amount of time of professional level staff, which is allocated to the project.

### 4.7.2 Validation of Selection Procedures

A. It is the intent of the Mississippi State Personnel Board to validate selection procedures used as the basis for making employment decisions with regard to choosing prospective employees for employment or current employees for in-service placement. Selection procedures will be validated by methods and

techniques that are feasible, practical, and consistent with federal guidelines and professional standards, as permitted by necessary levels of funding and staff.

B. Important elements of job content shall be determined through interviews and/or the completion of appropriate questionnaires. Employees and/or supervisors and other subject matter experts shall identify and rate job tasks and related knowledge, skills, and abilities, as necessary.

C. Employees and/or supervisors and other subject matter experts are required to evaluate potential selection procedure items under strict security provisions.

D. Objective methods using employees' and/or supervisors' and other subject matter experts' ratings of selection procedure items are used to establish minimum qualifications for each selection procedure validated.

## 4.8 REFERRAL OF APPLICANTS TO AGENCIES

The appointing authority of hiring agencies shall appoint applicants to positions as follows:

A. The Executive Director of the Mississippi State Personnel Board may determine to be invalid any appointments not made in conformance with Mississippi State Personnel Board procedures.

B. All appointments to the state service shall be from an Eligibles List and made on a competitive basis, except as provided in 4.2.9.

C. Names on Eligibles Lists shall be derived from applicants that have met the selection criteria for an occupational class.

## 4.9 ELIGIBLES LISTS

It is the policy of the Mississippi State Personnel Board to certify applicants who meet the minimum qualifications to fill vacancies within the state service. Eligibles Lists shall be maintained in accordance with policies, rules and procedures promulgated by the Mississippi State Personnel Board. Selection and procedural requirements shall be balanced with the interest of economy. It is the applicant's responsibility to review the policies and procedures pertaining to the maintenance of Eligibles Lists. The Mississippi State Personnel Board shall make such policies and rules accessible to all applicants. The Mississippi State Personnel Board may respond to applicant requests for information or assistance. A separate, original State of Mississippi Application is required for each job opening posting for which application is made.

### 4.9.1 Establishment and Maintenance of Eligibles Lists

The Executive Director of the Mississippi State Personnel Board establishes and maintains Eligibles Lists necessary to provide a list of qualified candidates for positions in state service.

The appointing authorities shall notify the Executive Director of the Mississippi State Personnel Board as far in advance as possible, but a minimum of three (3) working days, of a job opening to be posted for recruitment. The Executive Director of the Mississippi State Personnel Board is responsible for the establishment and maintenance of appropriate lists for all state service

position openings postings except as provided for in Section 4.2.9. Eligibles Lists are categorized in NeoGov as:

A. Regular and Promotional – state employees and the general public may apply;
B. Departmental Promotional Only – agency employees only may apply; and
C. Transfer – state employees only may apply.

**4.9.2 Preparation of Eligibles Lists**

A. After the Executive Director of the Mississippi State Personnel Board has determined that an applicant has met the evaluation criteria for an occupational class, the applicant's name is added to the appropriate Eligibles List.

B. The names of eligible applicants shall be placed on the list in alphabetical order. Applicants who have a Veterans or Disabled Veterans status will be designated as such on the Eligibles List.

C. Promotional lists and Transfer lists shall be for all state service status employees.

D. Reduction-In-Force (RIF) applicants, who apply within twelve (12) months of their separation date, shall be designated as RIF on the Eligibles List as provided in Section 4.9.3.

**4.9.3 RIF/Reemployment Applicants**

A. Reduction-In-Force (RIF) Applicants

1. Any employee in a state service position, who has been laid off while in good standing in accordance with the rules governing RIF, may, upon submission of a current State of Mississippi Application within twelve (12) months of the termination date, be designated as RIF on the Eligibles List established for the job classification for which application is made. It is the responsibility of the terminated employee to notify the Executive Director of the Mississippi State Personnel Board of his or her RIF status for each application filed.

2. Reemployment into occupational classes exempted from the selection process shall be made in the same manner as original appointments to the occupational classes.

3. An applicant's pass/fail disposition for the job class from which terminated and for lower job classes in that class series will be determined by a rating of his/her education/training and experience. If for any reason the employee does not meet the current minimum qualifications for the job class or lower job classes in the class series from which terminated, he/she may still be placed on the Eligibles List. However, any requirement set by state or federal laws or guidelines, or any requirement for a license, certification, or certificate of training must be met.

4. Applicants for higher job classes within the class series from which terminated or other job classes must meet the current minimum qualifications.

B. Reemployment Applicants

1. A former state service status and/or those probationary state service, part-time, time-limited and/or other Mississippi State Personnel Board purview non-state service employees, who have completed at least six (6) months of continuous employment and who voluntarily terminated in good standing may apply for the Promotional and Transfer openings through submission of a current State of Mississippi Application within twelve (12) months of their termination date.

2. Reemployment into occupational classes exempted from the selection process shall be made in the same manner as original appointments to the occupational classes.

3. Applicants must meet the current minimum qualifications.

**4.9.4 Promotional Eligibles Lists**

A. A permanent state service status, probationary state service, part-time, time-limited and/or other Mississippi State Personnel Board purview non-state service employee, who has been continuously employed for six (6) months in the agency where the opening occurs, may apply for a Promotional opening through submission of a current State of Mississippi Application.

B. Promotion into occupational classes exempted from the selection process (See Section 4.2.9) shall be made in the same manner as original appointments to the occupational classes.

C. Applicants must meet the current minimum qualifications.

**4.9.5 Transfer Eligibles Lists**

A. A permanent state service status, probationary state service, part-time, time-limited, and/or other Mississippi State Personnel Board purview non-state service employee who has been continuously employed for six (6) months, may apply for a Transfer opening through submission of a current State of Mississippi Application.

B. Transfer into occupational classes exempted from the selection process (See Section 4.2.9.) shall be made in the same manner as original appointments to the occupational classes.

C. Applicants must meet the current minimum qualifications.

### 4.9.6 Open Eligibles Lists

A. The applicant must file a valid State of Mississippi Application during an announced job posting.

B. Applicants must meet the current minimum qualifications.

C. Applicants are placed on an Eligibles List after meeting the minimum qualifications.

### 4.9.7 Agency Only Non-Competitive Promotional Eligibility

A. Agency only non-competitive promotions shall include: (1) promotion of state service employees to state service positions, and (2) promotion of state service, part-time, time-limited and/or other Mississippi State Personnel Board purview non-state service employees to non-state service positions. Agencies may consider only employees who are employed by the appointing authority and who have completed at least six (6) months of continuous service.

B. Agencies shall submit a current copy of a State of Mississippi Application along with the appropriate position-employee data for those employees to be considered for agency only non-competitive promotion.

C. Only those employees meeting the applicable selection criteria shall be approved for non-competitive promotion by the Executive Director of the Mississippi State Personnel Board.

### 4.9.8 Duration of Eligibles List

A. The term of an applicant's name on the Eligibles List begins on the date of placement of the applicant's name on the Eligibles List and expires once the position is filled.

B. The applicant's time on a list shall expire automatically at the end of the appropriate validity period, which is one hundred twenty (120) calendar days.

### 4.9.9 Delegation of Authority to Maintain Eligibles Lists

A. The Mississippi State Personnel Board may delegate to agencies the authority to establish and maintain Eligibles Lists.

B. The Mississippi State Personnel Board reserves the right to modify or rescind the maintenance authorization.

C. Agency procedures are subject to review by the Executive Director of the Mississippi State Personnel Board for consistency with statutes and Mississippi State Personnel Board policies and procedures.

D. The agency is responsible for determining and implementing, within the guidelines established by the Mississippi State Personnel Board, standardized

criteria, and procedures to establish and maintain the Eligibles Lists and maintain records, which support and reflect all activities.

E. The Executive Director of the Mississippi State Personnel Board shall administer the selection criteria.

F. Except as otherwise provided, State of Mississippi Applications shall be transmitted to the Executive Director of the Mississippi State Personnel Board for evaluation using the Agency Transmittal Form, which is available from the MSPB website at http://www.mspb.ms.gov.

G. The Executive Director of the Mississippi State Personnel Board shall be responsible for adding the Veteran's or Disabled Veteran's designation for qualified applicants.

H. The agency shall indicate by submission of the position-employee data that merit principles have been followed.

I. Applicants approved for placement on an AGENCY MAINTAINED Eligibles List ARE NOT placed on the Mississippi State Personnel Board Eligibles Lists for the same Job Classification.

**4.9.10 Request for Eligibles Lists**

A. To fill vacancies for positions, which are not exempt from the selection process, the appointing authority shall submit a request (requisition) for Eligibles recruitment, which will result in the issuance of an Eligibles List after the closing date of the job announcement.

B. Initial appointments to full-time, state-service positions or job classes which are not exempt from the selection process shall be accomplished through Eligibles Lists.

C. A single request for an Eligibles List may be made for one (1) or more positions provided each position is for the same classification and in the same county or counties.

D. A request for an Eligibles List shall be submitted by an individual duly authorized by the agency.

E. Part-time appointments and appointments to time-limited positions shall be accomplished by the submission of position-employee data and a current copy of the State of Mississippi Application to the Executive Director of the Mississippi State Personnel Board. Candidates for these appointments are to possess the minimum requirements contained in the class specification and are not required to be appointed from an Eligibles List.

F. Agencies may request Eligibles Lists for filling time-limited or part-time vacancies. Final authority for issuing Eligibles Lists rests with the Executive Director of the Mississippi State Personnel Board.

G. Demotion of state service employees shall be accomplished by the submission of the position-employee data and a current copy of a State of Mississippi Application to the Executive Director of the Mississippi State Personnel Board. Candidates for demotion are to possess the minimum qualifications contained in the class specification.

H. Emergency appointments shall be made in accordance with Mississippi Code Annotated § 25-9-107(c)(xii); and shall be accomplished by the submission of the position-employee data to the Executive Director of the Mississippi State Personnel Board. Except where otherwise required by federal or state law, licensure, certification or registration, such appointments are made without regard to minimum requirements contained in the class specification. Emergency appointments shall not exceed sixty (60) working days.

I. In-service placement of incumbents as a result of reallocations or reclassifications shall be accomplished by the submission of position-employee data. Reallocations or reclassifications shall not be approved where incumbents do not meet minimum requirements for the new classifications except where an agency request has been approved under Sections 4.2.3 or 4.2.4. All reallocation requests shall be accompanied by a current copy of a State of Mississippi Application except when otherwise authorized by the Executive Director of the Mississippi State Personnel Board. All reclassification requests shall be annotated in the SPAHRS Notes Section as to the amount of education, experience, and/or certification/licensure possessed by the employee as is required for the request.

J. A lateral transfer of a permanent state service employee, or a state service employee who has completed six (6) months of his/her probationary period, into the same job class may be accomplished by the submission of the appropriate position-employee data.

K. Permanent appointments to full-time positions in job classes or positions, which are exempt from the selection process, shall be accomplished in accordance with 4.2.9.

**4.9.11 Procedures for Completing a Recruitment Request (Requisition)**

When requesting recruitment to fill a vacancy, the following shall be in effect:

A. Please reference the Mississippi State Personnel Board's Recruitment and Selection software Training Manual for detailed instructions regarding the procedures to enter a recruitment request (requisition).

B. The Mississippi State Personnel Board's Recruitment and Selection software will automatically assign the Eligibles List request number.

C. Indicate requested recruitment type:

Open - To be used when the agency desires to recruit all qualified applicants.

Promotional - To be used when the agency desires to recruit qualified applicants employed by the particular master agency and meeting the criteria for placement on the promotional list (See Section 4.9.4.)

Transfer - To be used when the agency desires to recruit qualified applicants employed by the state and meeting the criteria for placement on the transfer list (See Section 4.9.5)

D. Special requirements should be noted. All requests for job related supplemental questions must be accompanied by appropriate justification and must be approved by the Executive Director of the Mississippi State Personnel Board prior to usage.

E. Travel Schedule **MUST** be identified as: Some day only; Often day only; Some overnight; Often Overnight; or None.

Shift Schedule **MUST** be identified as: Day only; Evening only; Night only.

F. When employees are hired into vacant positions and will be required to work in multiple counties, all counties must be selected.

G. The requisition shall be submitted by an individual duly authorized to sign for the agency.

H. The requisition will be returned without action if not properly submitted.

**4.9.12 Selective Certification**

Requests for selective certification of eligibles are considered upon adequate justification submitted to the Executive Director of the Mississippi State Personnel Board.

A. The Executive Director of the Mississippi State Personnel Board may provide for an individual participating in a Mississippi State Personnel Board approved agency co-op program, upon completion of the approved co-op program and subsequent graduation, to be selectively certified to fill a position on a non-competitive basis, provided the individual meets the minimum educational and/or experience requirements of the position.

B. Requests for selective certification shall be made by the appointing authority or his or her designee.

1. The special requirements for selective certification must be clearly stated and justification for the request must be attached.

2. The Executive Director of the Mississippi State Personnel Board shall have the authority to modify and/or deny any request for selective certification.

### 4.9.13 Supplying of Eligibles Lists

A. No Eligibles List shall be issued unless the agency has a vacancy or an impending vacancy. The receipt by the Executive Director of the Mississippi State Personnel Board of a notice of termination with a specific date of termination within 60 days shall signify a vacancy or an impending vacancy.

B. Upon receipt of a properly filed requisition, an Eligibles List shall be submitted to the appointing authority within three (3) working days after the closing date of the associated job announcement. The Eligibles List shall contain the names of all applicants meeting the qualifications of the position and any job related supplemental questions specified by the agency.

### 4.9.14 Appointments from Eligibles Lists

A. The appointing authority may appoint any applicant certified to the agency on the Eligibles List.

B. Initial appointments to full-time state service positions shall be made from those eligibles on the Eligibles List.

C. The agency shall submit to the Executive Director of the Mississippi State Personnel Board notification of intent to appoint from an Eligibles List. Such notification shall consist of the actioned Eligibles List and position-employee data.

D. The life of an Eligibles List shall be one hundred twenty (120) calendar days from the date of issue unless the time is otherwise extended by the Executive Director of the Mississippi State Personnel Board.

E. The expiration date is printed on each issue of the Eligibles List.

F. The appointing authority may return the Eligibles List, without any action taken, prior to the one hundred twenty (120) day expiration period. The reason for such cancellation should be noted in the appropriate space provided.

### 4.9.15 General Instructions for Actioning an Eligibles List

When filling vacant positions through open job announcements, an Eligibles List is issued by the Executive Director of the Mississippi State Personnel Board in response to a properly filed requisition. The following shall be in effect:

A. An Eligibles List can be used only for positions (PINS) identified on the requisition.

B. Action taken concerning each eligible should be noted in the appropriate space on the Eligibles List according to the proper codes. Please reference the Training Manual for detailed instructions regarding specific codes.

C. If selection is not made, a new requisition and posting is required.

D. The agency is responsible for maintaining documentation for each eligible actioned on the Eligibles List.

E. The date of appointment may not be earlier than the date the Eligibles List is issued. The Executive Director of the Mississippi State Personnel Board may consider earlier dates when justified by the agency.

F. The life of an Eligibles List is one hundred twenty (120) days.

**4.9.16 Consideration of Reduction in Force and Reemployment Applicants**

A. Agencies are encouraged to consider any applicant whose name is designated as RIF on the Eligibles List.

B. Agencies should give full consideration to any applicant who was terminated from the state in good standing within the past year.

**4.9.17 Concurrent Recruitment**

The Executive Director of the Mississippi State Personnel Board shall initiate concurrent recruitment procedures when a requisition is received by the Executive Director of the Mississippi State Personnel Board for a position for which an active recruitment has been issued for the same geographical location, unless different job specific supplemental questions are requested for either requisition.

**4.9.18 Correction of Errors In Certification Process**

A. When errors are corrected by the Executive Director of the Mississippi State Personnel Board, they may not nullify an active Eligibles List or appointment, but may result in the removal of an eligible's name from the Eligibles List.

B. In the event that an Eligibles List is flawed through error and the error is discovered before an appointment is made from the Eligibles List, the erroneous list may be withdrawn and a correct list issued.

C. In the event that an Eligibles List is flawed through error and is discovered after an appointment is made from the list, the list shall not be withdrawn, except by the direction of the Executive Director of the Mississippi State Personnel Board.

**4.9.19 Confirmation of Availability for Appointment**

A. Agencies may make written, facsimile, electronic or telephone inquiries to those eligibles it chooses to interview.

B. Agencies are solely responsible for maintaining supporting documentation concerning action taken on individuals whose names appear on an Eligibles List.

C. Agencies are required to maintain documentation of compliance with the requirements of Mississippi Code Annotated § 25-9-351 (Selective Service Registration). Males between the ages of 18 and 26 must submit proof of Selective Service Registration as a condition for appointment and/or promotion.

## 4.10 APPLICANT'S REVIEW PROCEDURE

The Executive Director of the Mississippi State Personnel Board shall establish a review procedure for assistance to applicants pertaining to the selection process.

### 4.10.1 Review of Action

Individuals or eligibles requesting a review of actions of the Office of Human Capital Core Processes shall make a written request to the Director of the Office of Human Capital Core Processes. Such written request shall stipulate the reason the review is requested and shall contain documentation supporting the applicant's position.

Should the decision of the Director of the Office of Human Capital Core Processes not prove satisfactory to the applicant, the applicant shall make a written request to the Executive Director of the Mississippi State Personnel Board for review of the action.

### 4.10.2 Appeals

Applicants may appeal only as provided for in Section 10.9.

## 4.11 MEMORANDA OF AGREEMENT

Notwithstanding the policy and procedures outlined in Sections 3.0 through 4.10, the Executive Director of the Mississippi State Personnel Board may enter into agreements with state agencies and/or other entities to accomplish the tasks specified herein.

## 4.12 APPLICANT INTERVIEWS

Any agency employee interviewing an applicant for a vacant position, whether for original or promotional appointment, should document each interview by making notes and maintaining a file of the following information: job title, interviewer's name, date and time, names of those interviewed, questions asked, major topics covered, whether or not applicant was hired, and reasons for hire or non-hire.

## 4.13 QUESTIONS ASKED IN INTERVIEWS

Agencies should not ask applicants any questions, which may be discriminatory or are prohibited by state or federal law. Federal laws and regulations applicable to employment discrimination include but are not limited to Title VII of the Civil Rights Act of 1964, The Equal Employment Opportunity Act of 1972, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act, the Older Workers Benefit Protection Act, and the Uniform Guidelines on Employee Selection Procedures.

### 4.13.1 Questions to Avoid Asking Applicants

Unless job relatedness can be established as a bona fide occupational qualification, interviewers should not ask applicants leading questions including but not limited to: age or date of birth, arrest, or conviction records, credit or garnishment records, family matters such as number and age of children, childcare requirements, marital status, health history, political affiliation, or religious preference.

The interviews should focus primarily on a discussion of the essential functions of positions and a consideration of the applicable written position descriptions as compared to the ability of the applicant's to perform the essential functions of the position with or without reasonable accommodations. Agencies are permitted, nevertheless, under the Americans with Disabilities Act, to establish a standard that no individual poses a direct threat to the health or safety of other individuals in the work place. Agencies are responsible for making certain that interviewers and other employees are knowledgeable of the prohibitions imposed by the above-referenced federal laws regarding pre-employment activities.

## 4.14 EMPLOYMENT AUTHORIZATION

### A. Employment Requirements Under the Immigration Reform and Control Act of 1986 (IRCA)

Under the Immigration Reform and Control Act of 1986, Public Law No. 99-603, November 6, 1986 (IRCA), it is unlawful for an employer in the United States to hire an alien or to continue employing an alien, knowing the alien is an unauthorized alien. It is also unlawful for an employer to employ any individual without complying with certain provisions for verification of both identity and eligibility for employment. To comply with IRCA, state agency employers must examine certain documents, after an individual has been hired (the term "hire" under IRCA means the actual commencement of employment for wages or other remuneration), and attest on a form called the Form I-9, that the documents provided by the employee have been examined and that they establish both the employee's identity and eligibility for employment. The employer must then retain the Form I-9, which is subject to inspection by both the U.S. Immigration and Naturalization Service (INS) and the U.S. Department of Labor (DOL).

IRCA also prohibits discrimination against applicants and employees because of national origin or citizenship status in matters involving hiring, recruitment, job referrals where a fee is involved, and discharges. However, persons lacking lawful status are not protected.

For detailed instructions on completing the Form I-9, refer to the Handbook for Employers published by the INS, which can be found at http://www.uscis.gov/files/form/m-274.pdf. All state agency employers must adhere to IRCA and the rules and regulations pertaining thereto.

## B. Employment Requirements pursuant to Mississippi Code Annotated § 71-11-3 (2009).

Effective July 1, 2008, state agencies under the purview of the Mississippi State Personnel Board shall verify the employment authorization for any person or entity that is hired to perform work within the State of Mississippi and to whom a United States Internal Revenue Service Form W-2 or Form 1099 must be issued and any person or company that provides workers for another company, including but is not limited to leasing companies and contract employers.

Verification of employment authorization must be conducted in accordance with the Federal E-Verify Program and it shall be the responsibility of the employing agency to verify employment authorization and to maintain records of employment verification as required by state and federal laws.

Source: Miss Code Ann. §25-9-103, -119.

## C. Hiring Prohibition

State agencies "may not employ a person who has been convicted or pled guilty in any court of this state, another state, or in federal court of any felony in which public funds were unlawfully taken, obtained or misappropriated in the abuse or misuse of the person's office or employment or money coming into the person's hands by virtue of the person's office or employment."

Source: Senate Bill 2625 (Regular Session 2013).

## D. Background Checks

While conducting a background check, MSPB encourages agencies to determine if an applicant owes a debt, particularly fraudulent debts, to the State which should be repaid. To determine if an applicant has been overpaid unemployment benefits by the State, the hiring authority may request access from the Mississippi Department of Employment Security to the web-based system "Access Mississippi".

# CHAPTER 5 – CLASSIFICATION AND COMPENSATION

## 5.0 INTRODUCTION

Following an organizational restructuring of the MSPB in 2009, the functions of classification and compensation have been subsumed into the Office of Human Capital Core Processes. Any questions regarding these functions should be addressed to your Human Capital Core Processes Consultants.

## 5.1 CLASSIFICATION

The MSPB Executive Director shall maintain the statewide classification plan, which shall be based upon objective analysis of the duties of each employment position. The MSPB Executive Director shall assign each position an occupational class from the inventory of classes based upon the duties performed. The statewide classification plan shall apply to state service as well as non-state service positions under the purview of the MSPB. The plan shall be arranged so that positions essentially alike are grouped into an appropriate occupational class, thereby ensuring uniform treatment; likewise, positions not so alike shall be grouped into distinctive occupational classes, thereby ensuring recognition of the nature and extent of any differences.

The assignment of a position to an occupational classification shall be based upon job analysis data, to include the Job Content section of the Performance Development Assessment (PDA) or the Role Description Questionnaire (RDQ), professionally accepted principles and guidelines for position classification, and review of class specifications.

The MSPB shall have the sole authority to limit, increase, combine, or delete occupational classes in the statewide classification plan. Upon recommendation by the Director of the Office of Human Capital Core Processes, an occupational class may be deleted from the statewide classification plan if another occupational class already adequately describes the class, or if there are no employees in that occupational class. Further, upon evidence that two or more occupational classes have substantially the same tasks, duties, responsibilities and minimum qualifications, the Director of the Office of Human Capital Core Processes may recommend that occupational classes be combined.

### 5.1.1 Class Series

The Director of the Office of Human Capital Core Processes shall provide for class series within the classification plan. Class series are arrangements of two or more related occupational classes, sufficiently similar in types of work that they are assigned identical occupational titles except for terminology, which reflects distinct class levels differing in complexity and importance of duties and responsibilities. Class series shall provide an established framework to recognize the increased value of an employee who has acquired additional experience, skills, and/or education, which are directly related to the job, and to provide for career mobility within the manning level for the positions.

The Director of the Office of Human Capital Core Processes shall establish a staffing level for each position allocated to an occupational class which is part of a job class series.

### 5.1.2 Creation of New Occupational Classes

The MSPB shall have the sole authority to create new occupational classes. To discourage the proliferation of unnecessarily similar occupational classes, requests for new occupational classes shall be approved by the MSPB only upon the production of compelling documentation in support of the need to create new classes. In the absence of compelling documentation, such requests shall result in the positions being assigned to already existing occupational classifications in the MSPB's schedule of occupational classes.

A. Class establishment requests must include the following documentation:

   1. A detailed letter of justification addressed to the MSPB Executive Director, which includes:

      i. the total number of affected positions;

      ii. the types of occupational classifications affected, if any;

      iii. the exact nature by which the job has evolved, and/or internal and external conditions precipitating establishment of the new class;

      iv. clearly drawn distinctions between the proposed class and the most similar classes in the existing MSPB inventory of job classes;

      v. the precise consequences of not establishing the new class;

      vi. why current job classifications do not meet current needs.

   2. The proposed class specification for the requested class.

   3. All current regulatory and legal authority materials (including citations) governing performance of job functions or which mandate or require the creation of a new class.

   4. Valid salary survey data submitted on a completed Agency Salary Survey Data Sheet.

   5. Any other documentation requested by the Human Capital Core Processes Consultant.

B. Class establishments shall be effective following approval by the MSPB.

### 5.1.3 Class Specifications

Each occupational class shall have a unique class specification, which includes the minimum qualifications an individual should possess to perform the duties of the particular position at entry. Statements of job duties and responsibilities do not limit the authority of the appointing official to assign, direct, and control the work of employees. The use of a particular illustration of duties does not exclude others that are similar in nature, nor do the specifications dictate that each position allocated to the class will be assigned all the duties outlined. In determining the

proper classification of a position, each class is considered to have entry-level characteristics as well as characteristics exhibited at full performance.

No minimum qualification shall be established which excludes individuals based on age, sex, physical requirement or disability unless such qualification constitutes a bona fide occupational qualification necessary for performance of essential functions.

**5.1.4 Class Specification Revision**

When revision of an existing classification is requested by a user agency either through a change in the title, characteristics, examples of work, or minimum qualifications, the Director of the Office of Human Capital Core Processes shall evaluate the justification for the request. Only those revisions approved by the MSPB Executive Director shall be implemented.

A. Class specification revision requests must include the following documentation:

    1. Detailed letter of justification to the Director of the Office of Human Capital Core Processes which indicates:

        i. the total number of positions and type(s) of occupational classifications affected in the agency;

        ii. quantitatively documented recruitment difficulties experienced (if any);

        iii. the exact nature by which the job has evolved, including clearly drawn distinctions between current specifications and proposed changes;

        iv. the precise consequences of not revising the class specification; and

        v. why the existing job classification does not meet current needs.

    2. The agency must annotate the proposed revisions on the current MSPB class specification.

    3. A current (less than twelve months old), legible Job Content section of the Performance Development Assessment or Role Description Questionnaire signed by the employee (if any) and current or prospective supervisor, for each affected position. A representative PDA or RDQ, appropriately signed, may be submitted when all incumbents perform substantially the same work.

    4. All current regulatory and legal authority materials (including citations) governing performance of job functions.

    5. Any other documentation requested by the Human Capital Core Processes Consultants.

B. Revisions to class specifications for occupational classes currently on recruitment shall not be effective until the class is taken off recruitment.

C. Agencies will be notified when the validation process begins for occupations utilized by the agency. Should an agency request revision to a classification after the validation process is complete, the agency may be required to incur the cost of such revision.

### 5.1.5 Mandated Changes to Class Specifications and Minimum Qualifications

It is the responsibility of the user agency to notify the MSPB of changes to class specifications or minimum qualifications necessitated by state or federal laws, regulations, guidelines, or other lawful requirements for those respective classes utilized by the agency.

### 5.1.6 Class Specifications of Multiple User Agencies

When two or more agencies utilize or wish to utilize the same job classification, the MSPB Executive Director shall evaluate the needs of all user agencies in determining the content of the class specification.

## 5.2 COMPENSATION

The Variable Compensation Plan (VCP) shall be the primary instrument establishing compensation policy. The MSPB shall administer appropriate compensation plans and additional compensation schedules in accordance with the policies established by the VCP for each fiscal year, congruent with the intent of the Legislature as expressed in appropriations language and all other pertinent rules, regulations, procedures, and statutes.

The compensation plans adopted by the MSPB shall govern adjustments to the base salaries of employees and positions under its purview. In addition, these compensation plans shall govern the establishment of the base salary of newly hired employees, employees returning to state service after separation in good standing (reemployment), and employees returning to state service after an authorized leave of absence without pay (reappointment) and shall provide salary adjustments for in-service movement (e.g., promotions and demotions).

### 5.2.1 Pay Range Assignment

The MSPB Executive Director shall assign salary ranges to occupational classes in recognition of the relative level of duties and responsibilities assigned to positions in an occupational class. Salary ranges for new occupational classes will be based on valid salary survey data or established relative to comparable job classifications or classification series.

In the absence of valid salary survey data, the salary range for a new occupational class shall not exceed the salary range of the most similar occupational class already existing for a year or more in the MSPB's schedule of occupational classes, unless the tasks, duties, responsibilities or minimum requirements of the new occupational class substantially exceed those of the most similar class.

### 5.2.2 General Compensation Rules

The rate of compensation certified by the MSPB Executive Director under these provisions constitutes total remuneration for services rendered. No supplementary compensation for

additional work performed for the state is paid except as authorized under policies governing additional compensation. (Mississippi Code Annotated § 25-9-119(2)(c)).

A. All requests for salary certification shall be submitted to the Office of Human Capital Core Processes.

B. The MSPB Executive Director certifies all salaries within the state service and non-state service unless otherwise authorized by the MSPB or by statute.

C. In no case shall a salary increase or other action result in the incumbent exceeding the end salary of the job classification, unless specifically provided for in legislation.

D. In coordination with appointing authorities, the MSPB may set the annual salaries of those appointed officials whose salaries are not otherwise set by statute who work on a full-time basis in the capacity of agency head, executive director or administrator of any state department, agency, institution, board or commission under the jurisdiction of the MSPB as provided in Mississippi Code Annotated § 25-9-101, *et seq*., in conformity with the MSPB's compensation plan. Salaries of such officials who serve in their professional capacity as a physician, dentist, nurse practitioner, veterinarian, or attorney shall be set in accordance with Mississippi Code Annotated § 25-9-107(c)(xiii).

E. No employee under the salary setting authority of the MSPB shall receive an annual salary or compensation greater than one hundred fifty percent (150%) of the maximum salary fixed in law for the Governor, except for the Executive Director of the Mississippi Development Authority as set by the Governor; and no employee within an agency shall receive an annual salary greater than the agency head. However, in accordance with Mississippi Code Annotated § 25-3-39(2), the MSPB, based upon its findings of fact, may exempt physicians and actuaries when the acquisition of such professional services is precluded based on the prevailing wage in the relevant labor market. Compensation, for the purposes of this section, is defined as the employee's base salary and any additional or special compensation, less paid fringe, authorized by state or federal law or as otherwise provided in MSPB policy. Further, agencies are required to ensure that no employees subject to the overtime provisions of the Fair Labor Standards Act of 1938, as amended, are scheduled to work hours that could cause the employee's total annual compensation to exceed that of the governor or the agency director.

F. Payment of retroactive pay shall be certified by the MSPB Executive Director for employees in the state service in accordance with the Constitution of Mississippi, Article 4, Chapter 96 (1890).

G. The salary range of an employee in a supervisory status should be superior in salary range to that of the employees being supervised. Exceptions will be considered by the Office of Human Capital Core Processes on a case-by-case basis. So as not to violate the principle of seniority or time-in-service, a subordinate employee may have an actual salary equal to or greater than the supervisor.

H. The rate of compensation to be paid an employee or prospective employee shall be certified on the basis of the standard work period for full-time employment and in

conformity with the salary range assigned the job class for which employed. Payment for part-time service shall be certified on this basis and in proportion to time actually worked. An employee's starting salary shall be set in accordance with the salary range of the job class to which he or she is assigned. The monthly rate of the corresponding salary is to be used for positions authorized to work forty hours per week and the hourly rate is to be used for positions authorized to work less than forty hours per week.

### 5.2.3 Implementation of Salaries

An appointing authority shall notify the Director of the Office of Human Capital Core Processes of the need to establish a salary or to adjust an existing salary as the result of an approved employment position or personnel transaction in accordance with reporting procedures. (Mississippi Code Annotated § 25-9-119(2)(c)).

A. Only those salary increases resulting from approved position and personnel transactions for which provisions have been made during the legislative appropriations shall be implemented during the fiscal year, except where the MSPB authorizes implementation outside the condition of this rule.

B. All salary adjustments shall be effective on the first day of the month. The transaction may be transmitted to the MSPB before the requested effective date or in the month of the requested effective date.

## 5.3 ALLOCATION OF EMPLOYMENT POSITIONS

State service positions and those non-state service positions under the purview of the MSPB shall be allocated by the MSPB Executive Director to an appropriate occupational class based on the level and complexity of tasks, duties and responsibilities assigned to that position.

### 5.3.1 Reallocation of Positions

The MSPB provides for the adjustment in classification of a position through the reallocation process when the Office of Human Capital Core Processes determines that significant job content changes have occurred.

Downward and lateral reallocation requests are processed throughout the year. Upward reallocations are typically requested through the legislative budget process in accordance with the provisions of the Staff Management Planning Instructions for the appropriate fiscal year. However, each agency head shall have the opportunity to document the need for a non-budgeted reallocation by demonstrating that a bona fide staffing need exists that cannot be adequately addressed through normal budget procedures. The MSPB will consider reallocations outside the legislative process only upon certification by the agency director that adequate funds are available. The submission of any transaction through SPAHRS shall be considered an official request from the agency head or appointing authority. Such submission shall serve as certification that adequate funding is available.

### 5.3.2 Requests for Reallocations (Upward, Downward, Lateral)

Requests for reallocations must be submitted through SPAHRS and supporting documentation sent to the agency's Human Capital Core Processes Consultants. In addition, reallocation requests for filled positions which exercise supervisory responsibilities and meet salary criteria identified in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year, should also be submitted to the MSPB Executive Director in a detailed letter of justification, together with the appropriate documentation, and will be presented to the MSPB for its approval. For all other reallocation requests, the notes as entered into SPAHRS serve as the request's justification; however, when deemed necessary, the agency's Human Capital Core Processes Consultants may request additional justification.

All reallocation requests approved by the MSPB will be effective on the date specified by the MSPB. All other approved reallocation requests will be effective no earlier than the first day of the month in which the request and its supporting documentation were received by the agency's Human Capital Core Processes Consultants. In extraordinary circumstances, the MSPB Executive Director or the Director of the Office of Human Capital Core Processes may at their discretion approve an earlier effective date.

Downward and lateral reallocations may be approved by the agency's Human Capital Core Processes Consultants. Upward reallocations of vacant positions must be approved by the Director of the Office of Human Capital Core Processes. Upward reallocations of filled positions which do not require MSPB approval must be approved by the MSPB Executive Director.

The justification for the downward or lateral reallocation of a vacant position request must be entered into SPAHRS with the following information entered into the SPAHRS Notes Section:

A. A description of how the position's duties have substantially changed,

B. Why the agency believes the proposed classification better describes the new duties, and

C. A description of the consequences, if any, of disapproval of the request.

The justification for an upward reallocation or downward or lateral of a filled position request as entered into SPAHRS or in a letter to the MSPB Executive Director must include:

A. A description of how the position's duties have substantially changed,

B. Why the agency believes the proposed classification better describes the new duties, and

C. A description of the consequences, if any, of disapproval of the request.

The following is required with every upward reallocation and for the downward or lateral reallocation of a filled position request:

A. A valid Job Content section of the Performance Development Assessment (PDA) or Role Description Questionnaire (RDQ), completed within the last twelve months and signed by the position's incumbent and direct supervisor, or, if vacant, by the direct supervisor only,

B. Organizational chart pages, signed by the appointing authority or an authorized designee, depicting both the current and the proposed placements for which reallocation is requested, as well as the placement of any other relevant positions,

C. Copies of any federal or state regulations, case law, or statutes that have bearing on the proposed action,

D. Justification for any change from non-state service to state service, or the reverse. In either case, statutory authority must be cited. (Mississippi Code Annotated § 25-9-107(c)). Incumbents of filled positions changing from non-state to state service status must be selected from an Eligibles List, except where the proposed classification is exempt from the initial competitive selection process.

E. Any additional documentation requested by the Human Capital Core Processes Consultants.

On-site desk audits, conducted by MSPB staff, may be required as a component of the analysis of upward reallocation requests.

In addition, the following is also required for filled positions:

A. A current (completed within the last twelve months) State of Mississippi Application,

B. A written acknowledgement signed by the affected employee, if the request is a downward reallocation, and

C. A written acknowledgement signed by the affected employee indicating agreement with loss of state service status, if applicable.

Before the request can be approved, the incumbent must have a valid performance review rating. Following approval, SPAHRS will create a new 365-day performance review period beginning the effective date of the reallocation.

The authorized salary for an upward reallocation of a filled position shall be in accordance with the provisions for the Promotional Formula indicated in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

### 5.3.3 Reclassification

A reclassification is a change in the classification of a position to a higher occupational class within the same occupational class series, where the change in job title is a result of the

individual obtaining certification or licensure or acquiring proficiency in job duties. It is the policy of the MSPB to provide for reclassification of a position belonging to a class series by recognizing the increased value of an employee who has acquired additional experience, skills, and/or education which is directly related to this job. Reclassification provides a career ladder affording mobility for qualified individuals to advance to higher classified positions, which are substantially similar in the type of work performed. Each year, on an announced date prior to the fiscal year conversion, the MSPB accepts requests for additions and deletions to the authorized schedule of reclassifications. Once reclassification authority is approved by the MSPB, reclassification actions may be implemented at the discretion of the agency head. The reclassification authority also allows the agency to reverse the reclassification.

Employees reclassified to higher levels within a series retain their current status, status date, and hire date in the new classification to which reclassified. The authorized salary for a reclassification shall be in accordance with the provisions for the Promotional Formula indicated in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year. In no case shall an employee's salary be certified at a salary higher than the end salary of the new classification.

Before the reclassification can be approved, the incumbent must have a valid performance review rating. Following approval, SPAHRS will create a new 365-day performance review period beginning the effective date of the reclassification.

## 5.4 APPOINTMENTS

Vacancies which are not filled by transfer, promotion, or demotion shall be filled by probationary appointment, reemployment, or emergency appointment. Salaries paid upon appointment shall be the minimum that will attract suitably qualified applicants for job openings consistent with the provisions set forth in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

### 5.4.1 Original Appointment and Salary Determination

Original appointments are made competitively from an Eligibles List, or are made non-competitively where exempt from the selection process. (See Chapter 4.)

### 5.4.2 Standard New Hire Salary

At no time will an employee be paid below the federally mandated minimum wage. See the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year to determine the authorized salary for a new hire.

### 5.4.3 New Hire Flexibility

New Hire Flexibility, not to exceed ten percent, may be awarded when the education, experience, or professional certification possessed by the applicant exceeds the minimum requirements for the job classification to which appointed. See the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year for provisions detailing the awarding of New Hire Flexibility.

### 5.4.4 Agency Head Flexibility

Agency Head Flexibility may be awarded to individuals who are classified as non-state service and report directly to the agency head or a key excluded official, or advocate substantive agency policy. See the policy memorandum, *Administration of the Variable Compensation Plan* for the current fiscal year for provisions detailing the awarding of Agency Head Flexibility.

### 5.4.5 Recruitment Flexibility

Recruitment Flexibility, in excess of the assigned start salary, may be awarded when an agency can document recruitment difficulties. A request for Recruitment Flexibility must be submitted for MSPB approval prior to a job offer or appointment of an applicant in accordance with the provisions outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

### 5.4.6 Open-Competitive New Hire

When hiring personnel to fill a vacancy, the following shall be in effect:

A. The hire date cannot be earlier than the date of issue of the Eligibles List.

B. The salary shall be set in accordance with provisions outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

C. All competitive new hires shall be probationary and the status code "20" will populate in the "service status" field on the Maintain Employee Agency Info screen in SPAHRS.

D. For an open-competitive new hire of a probationary employee, the employee shall retain his/her status date and is required to complete the balance of the existing probationary period.

E. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

F. The following documentation is to be submitted to the Office of Human Capital Core Processes for a competitive new hire request:

   1. The Eligibles List must be actioned; and

   2. Detailed justification if New Hire Flexibility is requested. (Refer to the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.) After the appointment process is complete, display the action and press F5 to add notes describing the extent to which the employee exceeds the minimum education and/or experience requirements for the occupation.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultants for more detailed information regarding the hiring of an employee.

### 5.4.7 Overlap New Hire and New Hire Flexibility

In rare circumstances, an agency may elect to hire a replacement up to ninety days prior to the termination of an employee in order that the terminating employee may provide specialized training to the new employee.

The effective date of the Overlap New Hire cannot be greater than ninety calendar days from the effective date of separation by the terminating employee.

The following documentation is to be submitted for competitive overlap new hire requests:

A. The actioned Eligibles List; and

B. Detailed justification if New Hire Flexibility is requested. (See the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.) After the appointment process is complete, display the action and press F5 to add notes describing the extent to which the employee exceeds the minimum education and/or experience requirements for the position.

The following documentation is to be submitted for non-competitive overlap new hire requests:

A. A completed State of Mississippi Application; and

B. Detailed justification if New Hire Flexibility is requested. (See the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.) After the appointment process is complete, display the action and press F5 to add notes describing the extent to which the employee exceeds the minimum education and/or experience requirements for the occupation.

### 5.4.8 Non-Competitive New Hire and New Hire Above Start

When non-competitively hiring to fill a vacant position, the following shall be in effect:

A. The hire date for an exempt appointment cannot be earlier than the date received by the MSPB; the individual must meet selection criteria.

B. The hire date for a non-competitive new hire will be the date the individual begins work. The request must be received by the MSPB before or within five working days after the individual begins work.

C. The authorized salary for a non-competitive new hire shall be set in accordance with provisions outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

D. Appointments to state-service positions for exempt job classes shall be probationary, and the status code “20” will populate in the “service status” field on the Maintain Employee Agency Info screen.

E. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

F. The following documentation is to be submitted for a non-competitive new hire request:

1. A completed State of Mississippi Application; and

2. Detailed justification if New Hire Flexibility is requested. (See the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.) After the appointment process is complete, display the action and press F5 to add notes describing the extent to which the employee exceeds the minimum education and/or experience requirements for the occupation.

### 5.4.9 Part-Time and Time-Limited New Hire

The appointment of an individual scheduled to work less than forty hours a week and/or less than twelve months per year constitutes an hourly or part-time appointment. When hiring personnel to fill a part-time position, the following shall be in effect:

A. The hire date is the date the individual begins work. The request must be received by the MSPB before or within five working days after the individual begins work.

B. The authorized salary for a part-time new hire shall be in accordance with the provisions outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

C. All part-time employees must meet selection criteria.

D. All part-time positions shall be non-state service in accordance with Mississippi Code Annotated § 25-9-107(c)(xi). The status code "11" will populate in the "service status" field on the Maintain Employee Agency Info screen in SPAHRS.

E. All time-limited positions shall be non-state service in accordance with Mississippi Code Annotated § 25-9-107(c)(xiv). The status code "14" will populate in the "service status" field on the Maintain Employee Agency Info screen in SPAHRS.

F. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

G. The following documentation is to be submitted for a part-time new hire request:

1. A completed State of Mississippi Application, where required; and

2. Detailed justification if New Hire Flexibility is requested. (See the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.) After the appointment process is complete, display the action and press F5 to add notes describing the extent to which the employee exceeds the minimum education and/or experience requirements for the occupation.

### 5.4.10 Emergency Appointment

An emergency appointment is defined as the employment of an individual for a specified period of time to perform tasks which directly or indirectly involve the continuing care and protection of life or property.

A. Emergency appointments shall be limited to classes and positions normally filled competitively from an Eligibles List. The Office of Human Capital Core Processes shall evaluate each request for emergency appointment prior to certification based on the following criteria:

    1. Justification provided by agency;

    2. Patient and/or security support;

    3. Number of vacancies in the class within the requesting agency; and

    4. The period of time those vacancies have existed.

B. The effective date cannot be earlier than the date approved by the Office of Human Capital Core Processes.

C. The authorized salary for an emergency hire shall be the start salary of the class to which appointed.

D. Individuals hired on an emergency basis shall be designated by a status code of "12" in the "service status" field on the Maintain Employee Agency Info screen.

E. An emergency appointment shall not exceed sixty working days. The appointing authority shall be responsible for initiating appropriate action to preclude any emergency appointment extending beyond the limit of sixty working days.

F. The following documentation must be submitted with an emergency appointment request:

    1. Detailed justification outlining the emergency nature of the appointment; and

    2. Proof of valid licensure, registration, or certification when required under state or federal statute for the job class to which appointed.

### 5.4.11 Reappointment (Return from Authorized Leave of Absence)

An individual separated on an authorized leave of absence, e.g., military, extended illness, education, and leave of absence under provisions of Mississippi Code Annotated §§ 25-3-93, 25-3-95, 25-9-125, and 33-1-21 is eligible for reappointment.

When reappointing an employee RETURNING FROM AUTHORIZED LEAVE OF ABSENCE, the following shall be in effect:

A. For non-military leaves of absence, eligibility for reappointment is valid for one year from the date of the beginning of leave. For reappointment eligibility for leaves of

absence due to military duty, the provisions of the federal Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 apply.

B. Reappointment under these provisions shall be restricted to the same occupational class as occupied at the time of separation, except as provided for by USERRA.

C. Upon reappointment, the employee's status shall be the same as it was at the time of separation and shall be reflected by the status code in the "service status" field and the status date. If the employee was permanent state service at separation, the status date shall not be altered. If the employee had not completed the twelve month probationary period, a new status date shall be determined by adding the number of days out of state service to the status date at the time of separation to allow the individual to complete twelve months of supervised probation.

D. The effective date shall be the date requested by the agency. The request must be received by the MSPB before or within five working days after the individual begins work.

E. The authorized salary for a reappointment shall be no more than the current salary at the time of the separation unless general compensation adjustments were effected since the date of the separation. Such adjustments shall be added to the current salary where applicable.

F. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

**5.4.12 Reemployment Into the State Service**

An individual separated in good standing for reasons other than an authorized leave of absence may be reemployed into the same job class from which terminated.

A. Individuals reemployed into a different job class from which terminated shall be hired under the provisions for Appointments in this chapter.

B. The appropriate selection criteria shall apply.

C. The effective date for the employees shall be:

1. RIF Reemployment List - cannot be earlier than the date the Certificate of Eligibles was issued;

2. Alternative Reemployment List - cannot be earlier than the date the Certificate of Eligibles was issued;

3. Exempt Class - cannot be earlier than the date received by the MSPB, provided the individual meets selection criteria; and,

4. Non-competitive New Hire - the date the individual begins work. The request must be received by the MSPB before or within five working days after the individual begins work.

D. The authorized salary for reemployment shall be no more than the current salary at the time of separation unless salary realignments were effected since the date of the separation. Such adjustments shall be added to the current salary where applicable.

E. Upon reemployment due to a Reduction-In-Force, the employee's status date and hire date shall be the same as it was at the time of separation. If the employee was permanent at separation, the status date and hire date shall not be altered. If the employee had not fully completed the probationary period, a new status date shall be determined by adding the number of days out of state service to the status date at the time of separation. Reemployment for reasons other than a Reduction-In-Force shall receive a new status date equal to the new hire date.

F. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

G. The following documentation must be submitted with a reemployment request:

    1. An actioned Eligibles List, where applicable; and

    2. A completed State of Mississippi Application, where applicable.

**5.4.13 Retiree Employment**

When requesting the reemployment of a retired state employee, not necessarily returning to the same job class from which retired, and for (1) a period of time not to exceed one-half of the normal working days for the position during which the employee will receive no more than one-half of the salary for the position, or (2) for a period of time in any fiscal year sufficient in length to permit a retiree to earn not in excess of twenty-five percent of retiree's average compensation (Note: If a retiree is hired outside the guidelines noted above, the retirement benefit of such retiree must be terminated immediately and the employer must immediately begin reporting that individual to PERS as any other active member would be reported.) (See Mississippi Code Annotated § 25-11-127.)

A. The effective date shall reflect a minimum of ninety (90) days from the date of Retirement. PERS Regulation 34 provides that if the retired member is reemployed by the same or another covered employer in any capacity, including that of an independent contractor as well as service without pay, within ninety (90) days from the effective date of retirement, or is guaranteed such reemployment, the member shall be considered to have continued in the status of an employee and not to have separated from state service.

B. The authorized salary shall be no more than the salary paid to the individual prior to the employee's retirement, except that the salary shall not exceed the end salary of the pay range of the job class to which appointed.

C. Upon reemployment of a retired employee, the status and hire date shall reflect the new date of hire and status.

D. The employer is required to notify PERS of the reemployment of a retiree under one of the above exceptions within five days of reemployment on a Form 4B, Certification/Acknowledgment of Reemployment of Retiree.

E. SPAHRS will create a new 365-day performance period beginning the effective date of the personnel transaction. (See Chapter 8.)

F. The following documentation must be submitted with reemployment of a retired employee request:

   1. An actioned Eligibles List, where applicable;

   2. A completed State of Mississippi Application, where applicable;

   3. Detailed justification, which describes the circumstances surrounding the reemployment of a retiree. After the appointment process is complete, display the action and press F5 to add notes.

### 5.4.14 Dual Employment and Salary Determination

An individual may be employed by more than one state agency or by a state agency and an institution of higher learning in two part-time positions, or one full-time and one part-time position. Policies, rules, and procedures governing appointments shall apply.

Under Fair Labor Standards Act (FLSA) regulations, the State of Mississippi is considered to be one employer. Therefore, eligible (non-exempt) employees who work for two entirely different agencies in state government in the same workweek are considered joint employees, and must be paid overtime or must be provided compensatory time off for a combination of hours worked in excess of forty (40) hours. Overtime payment or provision of compensatory time should be computed according to current FLSA rules issued by the U. S. Department of Labor.

## 5.5 IN-SERVICE MOVEMENT

All in-service movement is subject to the provisions of the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year. In addition, the following provisions apply.

### 5.5.1 Promotions

Promotions may be made in one (1) of three (3) ways subject to approval of the Director of the Office of Human Capital Core Processes (See also Chapter 4.):

A. Agency-only competitive;
B. Agency-only non-competitive; and
C. State service competitive.

### 5.5.2 Promotion (Intra-Agency)

When requesting the promotion (within agency/master agency) of a state service employee who has satisfactorily completed six months of service, the following shall be in effect:

A. A valid performance review rating shall be required prior to processing the transaction. (See Chapter 8.)

B. Promoted employees retain status date and hire date in the new position to which promoted.

C. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

D. The following documentation is to be submitted with an intra-agency promotion request:

    1. A completed State of Mississippi Application, if a non-competitive promotion.

**5.5.3 Promotion (Inter-Agency)**

When requesting the promotional transfer (inter-agency) of a state service employee, the following shall be in effect:

A. The requested effective date must coincide to reflect no break in service and may be as follows:

    1. Competitive State Service - effective any time during the month provided it is no earlier than the date the Eligibles List was issued;

    2. Exempt - cannot be earlier than the date the request was received by the MSPB provided the individual meets selection criteria;

    3. Non-Competitive New Hire - the date the individual begins work. The request must be received by the MSPB before or within five working days after the individual begins work.

B. Promoted employees retain status date and hire date in the new position to which promoted.

C. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

D. The following documentation is to be submitted with a promotion request:

    1. An Eligibles List, if a competitive promotion; and

    2. A completed State of Mississippi Application, if a non-competitive promotion.

E. It is the transferring agency's responsibility to enter into SPAHRS the separation indicating an employee's transfer on the correct day.

**5.5.4 Lateral Transfer (Intra-Agency)**

When requesting the lateral transfer (within agency/master agency) of a state service employee to a position in state service, the following shall be in effect:

A. A valid performance review rating shall be required prior to processing the personnel transaction. (See Chapter 8.)

B. Laterally transferred employees retain their status date (except as otherwise stated in Section 2.1.1) and hire date in the new position to which transferred.

C. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

D. The following documentation is to be submitted with a lateral transfer (intra-agency) request if the transfer is to a different occupational class:

    1. The actioned Eligibles List, where applicable; and

    2. A completed State of Mississippi Application, where applicable.

**5.5.5 Lateral Transfer (Inter-Agency)**

When requesting the lateral transfer (inter-agency) for a state service employee to a competitive or non-competitive position in state service, the following shall be in effect:

A. The requested effective date may be as follows:

    1. Competitive State Service - effective any time during the month, provided it is no earlier than the date the Eligibles List was issued;

    2. Exempt - Cannot be earlier than the date received by the MSPB provided the individual meets selection criteria;

    3. Non-Competitive New Hire - the date the individual begins work. The request must be received by the MSPB before or within five working days after the individual begins work.

B. Laterally transferred employees retain status date (except as otherwise stated in section 2.30.1) and hire date in the new position to which transferred.

C. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

D. The following documentation is to be submitted with the lateral transfer (inter-agency) request if the transfer is to a different occupational class:

    1. The actioned Eligibles List, where applicable; and

    2. A State of Mississippi Application, where applicable.

E. It is the transferring agency's responsibility to enter into SPAHRS the separation indicating an employee's transfer on the correct day.

### 5.5.6 Demotional Transfers

An employee may be demoted because of inadequate performance, disciplinary reasons, a reduction in force, or voluntarily. When the affected employee is a permanent state service status employee, written notice of intent to effect any demotion and the reason for such action shall be given to the employee at least ten working days prior to the effective date of the demotion. All actions adversely affecting compensation or employment status require that the permanent state service status employee be given an opportunity for a conference with the appointing authority or designated representative and to respond in writing prior to any such action.

### 5.5.7 Demotional Transfer (Intra-Agency)

When requesting the demotional transfer (intra-agency) of an employee (voluntary or for cause), the following shall be in effect:

A. A valid performance review rating shall be required prior to processing the transaction as requested from the agency. (See Chapter 8.)

B. Demoted employees retain status date and hire date in the new position to which demoted.

C. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

D. The following documentation is to be submitted with a demotional transfer (intra-agency) request:

    1. A completed State of Mississippi Application;
    2. A statement signed by the employee acknowledging the demotion (voluntary only); and
    3. Detailed justification if demotion with extraordinary circumstances is requested. After the demotion process is complete, display the action and press F5 to add notes describing the need to retain the employee's current salary.

### 5.5.8 Demotional Transfer (Inter-Agency)

When requesting a demotional transfer (inter-agency), the following shall be in effect:

A. The requested effective date shall be as follows:

    1. Competitive State Service - effective any time during the month provided it is no earlier than the date the Eligibles List was issued;

    2. Exempt - cannot be earlier than the date received by the MSPB provided the individual meets selection criteria;

    3. Non-Competitive Appointment - the date the individual begins work. The request must be received by the MSPB before or within five working days after the individual begins work.

B. Determination of salary for a demotional (inter-agency) transfer shall be in accordance with the policies and procedures outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

C. Transferred and demoted employees retain their status date and hire date in the new position to which transferred and demoted.

D. SPAHRS will create a new 365-day performance review period beginning the effective date of the personnel transaction. (See Chapter 8.)

E. The following documentation is to be submitted with a demotional transfer (inter-agency):

   1. The actioned Eligibles List, where applicable; and

   2. A completed State of Mississippi Application, where applicable.

   3. It is the transferring agency's responsibility to enter into SPAHRS the separation indicating an employee's transfer on the correct day.

### 5.5.9 Dual Transfer (Intra-Agency)

When transferring positions between two current employees, the applicable preceding policies, rules, and procedures governing promotions, lateral transfers, and/or demotions shall apply.

## 5.6 DETAIL TO SPECIAL DUTY

When the services of an employee are temporarily needed in a position within the employing agency other than the position to which regularly assigned, the employee may be required, at the discretion of the appointing authority, to perform the tasks of such a position for a period not to exceed 180 days without a change in position title or employee status.

A. A probationary employee in a state service position assigned to special duty shall not be required to serve an additional probationary period.

B. When an employee is assigned the duties of a position that is in an equal or higher pay range, a temporary salary award up to ten percent (10%) above the detailed employee's current salary may be awarded when justified and approved by the Director of the Office of Human Capital Core Processes. The position to which the employee is being detailed must be vacant or filled by an incumbent who is not available for duty due to an authorized leave.

C. In unusual circumstances, a detail beyond 180 days may be authorized by the Director of the Office of Human Capital Core Processes upon written request by the appointing authority.

D. If an employee is being detailed to a filled position, the incumbent of the filled position must have been absent for at least thirty days prior to the request for detail. In extraordinary circumstances, the agency may request Director of the Office of Human Capital Core Processes approval of actions which do not meet this 30-day requirement.

E. Any salary increase certified for special duty shall be withdrawn upon completion of special duty.

F. No more than one employee may be awarded Detail to Special Duty Pay for assuming the responsibilities and functions of a single position.

G. The following documentation is to be submitted to the agency's Human Capital Core Processes Consultant with a Request for Detail to Special Duty:

   1. Detailed justification which indicates the position to which the employee is being detailed and the duties to be assigned while performing in the detail capacity;

   2. A statement from the employee acknowledging the temporary salary increase and the subsequent salary withdrawal upon completion of special duty; and

   3. Organizational chart pages, signed by the appointing authority, depicting both the employee's position and the position to which the employee will be detailed.

   4. If an employee is being detailed to a filled position, the date on which the absent employee is expected to return.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultants for more detailed information regarding the submission of Detail to Special Duty Pay requests.

### 5.6.1 Governor's Chief of Security and DFA Pilots

A. The Department of Public Safety position assigned as Chief of Security to the Governor's Office shall be paid a salary as set by the Commissioner of Public Safety equal to or lower than the highest paid incumbent currently holding the rank of Captain at the Department of Public Safety and approved by the MSPB. However, in no case shall a salary increase awarded as a result of such an assignment be used as a benchmark for salary equity adjustments. The salary of an employee following the termination of assignment as Chief of Security to the Governor's Office shall be determined in accordance with the policies and procedures outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

B. The Executive Director of the Department of Finance and Administration has authority to set the salaries of all licensed jet pilots assigned to the Office of Air Transportation within the salary range set by the MSPB. Such pilots are not eligible for Pilot's Pay Additional Compensation. Further, all licensed jet pilots assigned to the Office of Air Transportation Services shall serve at the will and pleasure of the Executive Director of the Department of Finance and Administration.

## 5.7 ADMINISTRATION OF ADDITIONAL COMPENSATION SCHEDULES

The MSPB shall establish and administer additional compensation schedules to accommodate the full and efficient operation of an agency in the delivery of essential services within or outside of the standard work schedule or the standard work place.

### 5.7.1 Application of Additional Compensation

In accordance with the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year, the MSPB Executive Director may recommend to the MSPB those occupational classes certified for payment under provisions governing additional compensation. The MSPB Executive Director, with the approval of the MSPB, shall amend additional compensation schedules based upon evaluation of labor market conditions and the economic value of comparable services within relevant public sectors and the relevant private labor market, if any.

### 5.7.2 Agency Authorization for Additional Compensation

A. To request authorization of additional compensation, the appointing authority shall submit a letter to the MSPB Executive Director fully explaining and justifying the request.

B. Determination as to agency authorization for additional compensation shall be subject to approval by the MSPB.

### 5.7.3 Certification of Employees for Additional Compensation

The appointing authority shall indicate in SPAHRS those positions to be certified payment of additional compensation and of the need to decertify employees no longer working under the conditions set forth in the provisions governing additional compensation.

### 5.7.4 Occupational Class Authorization or Rescindment of Additional Compensation

A. The appointing authority shall indicate in SPAHRS which occupational classes are necessary to accommodate the full and efficient operation of the agency in the delivery of essential services within or outside the confines of the standard work period and the standard work schedule as defined below:

   1. Standard work period: an eight hour workday, a forty hour workweek, a 173.929 hour work month, and a 2087.143 hour work year.

   2. Standard work schedule: the hours of work established by an appointing authority for individuals employed within the agency, which typically begin at 8:00 a.m. and end at 5:00 p.m. each day with a one hour interval for a lunch period.

B. Any position change affecting the classification of a position certified for additional compensation will cause the certification to be automatically removed from the position.

C. Where certification is required as a prerequisite for authorization of additional compensation for an occupational class, the agency is responsible for verifying receipt of certification by the individual for which additional compensation is requested and indicating in the SPAHRS payroll segment the hours worked which qualify for additional compensation.

D. An individual shall not be certified to receive more than three types of additional compensation during a single pay period.

## 5.8 SPECIAL COMPENSATION PLANS

The MSPB may establish, maintain, and amend special compensation plans within the Variable Compensation Plan to compensate employees within selected occupational classes based on a demonstrated inability to compete satisfactorily for employees in terms of pay or availability. Only special compensation plans reviewed prior to the start of the fiscal year and approved by the MSPB for implementation or continuation during the fiscal year shall be certified.

When requesting a salary increase under a special compensation plan, the following shall be in effect:

A. The requested effective date of a salary increase shall be the first day of the requested month.

B. The new salary after award of an increase through a special compensation plan should correspond to the plan's salary scale and the incumbent's experience level.

C. Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultants for more detailed information regarding salary increases through special compensation plans.

## 5.9 COOPERATIVE EDUCATION COMPENSATION PLANS

Upon requests by appointing authorities, the MSPB may establish and maintain compensation plans to remunerate individuals enrolled in designated fields of study at institutions of higher learning, junior colleges, community colleges, or technical schools who alternate between intervals of state service or non-state service employment followed by unpaid intervals during training for the designated occupational class.

## 5.10 EDUCATIONAL BENCHMARKS

The MSPB shall have exclusive authority to approve/disapprove educational benchmarks for certifications, licenses, and/or degrees and determine the maximum benchmark percentage amounts awarded. To be eligible for an Educational Benchmark salary increase, an employee must complete requirements which exceed the level of minimum qualifications for education, licensure, or certification listed for the employee’s present job class which the employee possessed at the time of appointment into his or her present job class.

The MSPB will appoint, from a list of nominees submitted by the Executive Director, a Professional Development Review Committee (PDRC) to review agency requests for monetary benchmarks for completion of employee training and development programs. The PDRC will provide recommendations for action to the MSPB and act in an advisory capacity to the MSPB.

The MSPB Executive Director is authorized to approve requests to award educational benchmark increases on a case-by-case basis, in accordance with policies and procedures outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

## 5.11 PAY RANGE REALIGNMENT

The MSPB shall recommend to the Legislature the realignment of pay ranges in recognition of economic changes in the prevailing pricing of manpower for a job category within the relevant labor market. The purpose of realignment is to determine a competitive salary range for each occupational class.

### 5.11.1 Appropriated Realignment

The MSPB Executive Director shall determine and recommend the appropriate realignment of pay ranges for an occupational class to the MSPB. The MSPB shall make recommendations to the Legislative Budget Office and the Department of Finance and Administration regarding pay range realignment [See Mississippi Code Annotated § 25-9-133(1).] The Legislative Budget Office and the Department of Finance and Administration forward the recommendations to the Legislature and the Governor as a part of the annual appropriations process.

Realignment of pay ranges must be appropriated within the legislative budget process. Realignment shall be awarded in accordance with the policies provided in the Promotional Formula outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

### 5.11.2 Non-Appropriated Realignment

Each agency head shall have the opportunity to document the need for non-appropriated realignment by demonstrating that a bona fide staffing need exists which cannot be adequately addressed through the normal budget procedures. The MSPB may authorize realignments necessary to fill the staffing need only upon certification by the agency director that adequate funds are available. In such instances, the agency must provide salary survey data compiled from an acceptable relevant labor market and must justify that delayed implementation of the regular realignment would seriously threaten critical agency services. Where more than one agency utilizes a job class proposed for non-appropriated realignment, all affected agencies must certify their acceptance of the realignment. Implementation of salary increases authorized under this section is at the discretion of the appointing authority. Realignment shall be awarded in accordance with the policies provided in the Promotional Formula outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year.

## 5.12 PRODUCTIVITY

Productivity increases are performance based salary increases awarded at the discretion of the agency director and management. Productivity allows an agency director to reward excellence among agency employees. Productivity awards must be thoroughly documented by current performance evaluations and are awarded in accordance with policies and procedures outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year, if the Legislature appropriates specified funds for this purpose.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultants for more detailed information regarding requests for productivity increases.

## 5.13 LONGEVITY

Longevity awards are lump sum payments awarded to employees who have reached the maximum salary (end salary) for their respective job classes. Longevity payments are awarded in accordance with policies and procedures outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year, if the Legislature appropriates specified funds for this purpose.

## 5.14 EMPLOYER REQUIREMENTS UNDER FLSA

The Fair Labor Standards Act of 1938, as codified at 29 U.S.C. § 201 and following (hereinafter referred to as "FLSA"), is a federal law which is applicable to all state agency employers. The FLSA provides that all covered, or non-exempt, employees must be paid at least a minimum wage, and must be paid at the rate of one and one-half times, or time-and-a-half, their regular rate of pay for each hour over forty worked during a single workweek. State agency employers may, in lieu of cash payment for overtime, pay their non-exempt employees in compensatory time at the rate of one and one-half hours for each hour over forty worked during a single workweek. Police and firefighters, emergency response personnel, and employees engaged in seasonal activities may accrue up to 480 hours of compensatory time. Other non-exempt employees may only accrue up to 240 hours of compensatory time. After a non-exempt employee has accrued the maximum amount of compensatory time, the employer is required to pay the employee overtime for the additional overtime hours worked in cash.

A state agency employer may require a non-exempt employee requesting leave to exhaust an FLSA compensatory leave balance prior to use of any personal and/or medical leave, and a state agency employer may compel a non-exempt employee to use FLSA compensatory time and take time off work to reduce a compensatory time balance below the 480 or 240hour thresholds.

The U. S. Department of Labor (DOL) is responsible for the enforcement of the FLSA, and may investigate and gather data concerning wages, hours, and other employment practices. For assistance in complying with the FLSA, state agency employers may contact the area office of the Wage and Hour Division of the DOL.

The federal regulations governing FLSA applicable to state agency employers in the area of compensatory time and other areas may be found at 29 C.F.R. § 500.

When requesting authorization under FLSA for payment of overtime compensation to non-exempt employees, the following shall be in effect:

A. Each agency must petition the MSPB and be approved to receive overtime compensation.

B. Each occupational class to receive overtime compensation must receive prior approval by the MSPB.

C. Positions must be determined to be non-exempt from FLSA provisions, and so marked in SPAHRS, before overtime compensation can be paid.

## 5.15 EMPLOYEE DATA CHANGES

When requesting changes to employee data, the following shall be in effect:

A. Employee data changes include changes in social security number, last name, first name, middle name, date of birth, race, sex, years of education, agency hire date, pin entry date or status date.

B. Supporting documentation may be required in changing date of hire, PIN entry date, status date, social security number, and performance development rating.

## 5.16 SEPARATIONS

The effective date of separation shall be the last day the employee worked or utilized authorized leave. For a complete list of the Separation Reason Codes to enter into SPAHRS, reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or contact your Human Capital Core Processes Consultants.

## 5.17 DELEGATION OF REALLOCATION AND REORGANIZATION AUTHORITY

### 5.17.1 Purpose and Authority

In accordance with Mississippi Code Annotated §§ 25-9-101, *et seq.*, the MSPB, as the governing authority for the statewide personnel system authorizes the MSPB Executive Director to enter into formal agreements with department executive directors and agency directors in which employment positions within their agencies may be reallocated and organization charts amended without prior MSPB approval; provided, however, that such agreements shall be revocable by the MSPB, and continuation shall be contingent upon the reallocations and reorganizations being conducted in accordance with rules and regulations promulgated by the MSPB. In the event the MSPB has delegated reallocation authority to an agency, this delegation does not remove the requirement that agencies submit personal services budget requests each fiscal year for the purpose of preparing personal services continuation budget projections. Such budget requests shall be prepared in accordance with the policies, rules, and regulations promulgated by the Department of Finance and Administration, the Legislative Budget Office and the MSPB. Prior to making any reallocation or reorganization effective, each appointing authority who has entered into an agreement as provided herein shall certify to the MSPB that the total annualized cost of any reallocation, or reorganization, shall be equal to or less than the cost savings generated through downward reallocation or position abolishment of vacant positions.

The MSPB will maintain a record of every personnel transaction executed pursuant to any agreement as provided herein and will annually report the total cost of these transactions, by agency, to the Legislative Budget Office and the Department of Finance and Administration.

The MSPB Executive Director shall perform, or cause to be performed, a compliance audit and evaluation of personnel transactions executed under the authority delegated pursuant to said agreement, and to publish a report of the audit listing exceptions taken by the MSPB Executive Director not later than the first of October each year. In the event the MSPB determines that an agency has misclassified an employee or position as a result of this delegated authority, the

MSPB will correct such misclassification regardless of the state service status of the employee holding such position. Authority to correct such misclassifications of filled positions shall be limited to one year from the date which the MSPB receives written notice of the reallocation.

### 5.17.2 Overview

The authority to reallocate employment positions carries with it the demand that rigid professional standards be applied to maintain and administer an equitable statewide job classification plan. Reallocations are valid only when the duties and responsibilities of an employment position have sufficiently changed such that its current job classification is no longer accurate and another job classification more accurately depicts the duties and responsibilities of the position. Reallocations are not substitutes for promotions or tools to secure salary increases for selected individuals. They are to be performed only when supported by objective job analysis.

The criteria for delegated reallocation agreements set forth below are designed to encourage consistent management of the reallocation delegation program while promoting an efficient, effective, and uniform statewide job classification system.

### 5.17.3 Formal Agreements

Upon authorization from the MSPB, the MSPB Executive Director may enter into formal reallocation and reorganization delegation agreements with state agency directors. These agreements shall be in writing and shall be signed by the MSPB Executive Director and the agency director requesting the delegated authority. They shall contain such terms and conditions deemed appropriate by the MSPB Executive Director.

The agreements may include authorization for the delegation of reallocation authority alone, or delegation of reallocation authority along with the authority to amend organizational charts. To ensure correct organizational placement of job classifications and to ensure the validity of MSPB budget recommendations made to the Legislature, delegation of the authority to amend organizational charts shall be approved only for those agencies in which reallocation authority has been delegated.

Authorization by the MSPB for its the MSPB Executive Director to enter into delegated reallocation or delegated reorganization agreements shall also carry with it the authority for the MSPB Executive Director to modify, suspend, or terminate reallocations or reorganization delegation agreements.

Delegation agreements may be revoked upon a finding that the delegate agency failed to uphold its responsibility in the formal agreement or failed to comply with MSPB policies, procedures, and guidelines. All salary setting provisions as outlined in the policy memorandum, *Administration of the Variable Compensation Plan*, for the current fiscal year, shall remain in effect for delegate agencies.

### 5.17.4 Staff Requirements and Training

Agencies desiring delegated reallocation authority must designate among their human capital staff one primary job analyst and one alternate job analyst. Prior to assuming delegated

reallocation authority, these designated job analysts shall receive training by the MSPB in job analysis, job classification, and organizational development concepts as well as MSPB policies and procedures.

All delegated reallocations must be recommended and endorsed by the primary job analyst based on a thorough and independent review of all relevant data.

A. The primary job analysts must be available to devote their full time and effort to their job analysis duties. They may be assigned other duties collateral to their primary job analysis responsibilities; however, whenever they are to be engaged in their job analysis duties they shall not be assigned other duties outside the scope of job analysis.

B. The primary and alternate designated job analysts must attend initial training and follow-up training conducted by the MSPB staff. If for any reason the primary analyst cannot attend follow-up training, the alternate must attend the scheduled training. In such case, the primary analyst must schedule a make-up training session with the MSPB Office of Human Capital Core Processes within thirty days of the regularly scheduled training that was missed.

C. Failure to attend job analysis training or to make up missed training as specified above shall result in the suspension or cancellation of the delegation agreement. Failure to pass any written examinations may result in the disqualification of the designated job analyst and suspension of the delegation agreement.

D. The primary job analyst shall be a Personnel Officer I-V with at least two years of human capital experience. In agencies without Personnel Officers, the MSPB may permit other related job classes to perform job analysis work, but there shall be no substitution for the experience requirement.

E. The alternate job analyst may be in any human capital job classification or professional administrative job class, subject to MSPB approval. However, if, in the judgment of the MSPB Executive Director, an agency has insufficient human capital support staff and job classification expertise to conduct valid job analysis, the MSPB Executive Director may refrain from entering into a delegation agreement.

F. In agency human capital offices with a Human Resources Director and at least one Personnel Officer, the subordinate Personnel Officer may be designated as the primary job analyst. No supervisor of the Human Resources Director, or supervisors, shall be designated as a job analyst.

G. The agency Human Resources Director and management must agree not to influence the judgment of the designated job analyst and must provide assurance to the job analyst and the MSPB that absolutely no retaliation, direct or indirect, shall result if the job analyst's judgment in a reallocation action is contrary to management's preferences.

H. Upon transfer or termination of the primary job analyst, delegated reallocation authority shall be suspended until his/her replacement completes initial training.

I. If an agency has been delegated authority to amend organizational charts, the agency-designated job analyst(s) shall advise the Human Resources Director and agency management on MSPB rules, regulations, guidelines, and procedures concerning organizational issues.

### 5.17.5 Job Classifications Authorized for Delegated Reallocations

Delegate agencies shall be authorized to reallocate employment positions to those classes in the current MSPB job inventory, with the exception of classes which are denoted in their title or the class specification as being unique to particular agencies. The MSPB Executive Director may also require that reallocations be suspended in particular job classifications if those job classifications are undergoing revision.

### 5.17.6 Documentation and Record Keeping

A. Only those reallocations which are fully justified by an objective job analysis and fully documented according to these procedures shall be considered valid.

B. Delegate agencies shall establish a central PIN reallocation file for each PIN which is reallocated pursuant to delegation authority. Refer to "Checklist and Analysis Tool for Agencies Delegated Reallocation Authority," (See Section 5.17.9 for a description of the documentation required to be completed and retained by the agency in their PIN reallocation file.)

C. All documentation associated with a delegated reallocation shall be filed and retained by the delegate agency for a period of five years from the effective date of the reallocation. This requirement shall apply whether the reallocation is ultimately approved or not.

D. The MSPB Job Content section of the Performance Development Assessment (PDA) or Role Description Questionnaire (RDQ) shall be the primary instrument for recording the job analysis data in support of a reallocation. The PDA or RDQ must be complete and legible. No other form shall substitute for the PDA or RDQ.

E. If a filled position is to be reallocated, an original State of Mississippi Application must be submitted to the agency's Human Capital Core Processes Consultants for evaluation to ensure the incumbent meets the minimum qualifications of the job **prior to submitting the transaction for processing.**

F. For those agencies who have been granted authority to amend organizational charts, the delegate agency's most current, complete, and valid organizational chart shall be on file and readily available to designated agency job analysts and MSPB auditors.

### 5.17.7Audits

A. The MSPB staff shall perform audits of delegate agencies to ensure that only fully justified reallocations are performed. The audit team may also conduct desk audits of reallocated positions, and shall be alert to any practice or action, which is contrary to sound public personnel management or job analysis practice.

B. Those agencies which have been delegated authority to amend their organizational chart shall have the most recent, complete, and valid organizational chart available for inspection by MSPB auditors. In addition, delegate agency employees shall be available for desk audits, and performance development documentation shall be available to verify organizational placement.

C. Failure to comply with MSPB policies, procedures, and guidelines shall result in corrective action, including the reversal of erroneous reallocations, and may result in suspension, termination, or modification of the delegation agreement by the MSPB Executive Director. Whenever possible, the MSPB Executive Director shall take informal remedial steps with delegate agencies to resolve minor classification problems. However, all audit exceptions shall be reported to the Legislature by October 1 of each year.

D. Delegate agencies shall receive no less than twenty-four hours notice prior to the audit. The delegate agency's primary job analyst and the agency Human Resources Director shall be available to answer questions from the MSPB auditors. Incumbents of positions reallocated and reclassified within twelve months prior to the audit should be available for desk audits of their positions.

### 5.17.8 Notice to Employees in Reallocated Positions

Delegate agencies shall give written notice to an employee whose employment position is reallocated pursuant to delegation agreements that the job classification may be changed and the salary adjusted to reflect the correct job classification should the MSPB determine that the delegate agency misclassified the position. This written acknowledgment must be obtained prior to submitting the reallocation to the MSPB. Incumbents of these positions shall acknowledge in writing that for a period of one year, the MSPB has statutory authority to review any delegated reallocation, to correct any erroneous delegated reallocation and, if warranted, to reduce their salary to the level it was prior to the erroneous reallocation**.** This shall apply to filled positions that are reallocated, as well as vacant positions that are reallocated and subsequently filled. Authority to correct such misclassifications shall be limited to one year from the date the MSPB receives written notice of the reallocation. Agency heads shall document said acknowledgment in agency files and forward a copy to the MSPB Office of Human Capital Core Processes.

### 5.17.9 Checklist and Analysis Tool for Agencies Delegated Reallocation Authority

I. **Inventory**:

A. *Justification of reallocation must include the following*:

____ 1.Position Identification Number (PIN);
____ 2.Current occupational title;
____ 3.Proposed occupational title;
____ 4.Status of the position (filled or vacant);
____ 5.Reason(s) for reallocation;
____ 6.Justification must state whether federal or state case law, regulations, guidelines or statutes impact upon action;
____ 7.If reallocation requires change from state service to non-state service, justification must be provided. Alternatively, a change from non-state service to state service must be adequately justified. In both cases, statutory authority must be cited;
____8.Incumbents of downwardly reallocated positions shall in all cases be notified of their reduction in salary range and a copy of the employee's written acknowledgment of salary range reduction shall be attached;

B. *Organizational Chart(s)*:

____ 1.All organizational charts must be for the current Fiscal Year (FY);
____ 2.Organizational chart page(s) for current placement of PIN(s);
____ 3.Organizational chart page(s) for proposed placement of PIN(s);
____ 4.All organizational chart pages related to the position must be attached;
____ 5.Current/proposed organizational charts must be signed by Agency Head for reorganizations and agency authorized signatory for reallocations;

C. *Job Content section of the Performance Development Assessment (PDA) and Role Description Questionnaire (RDQ). PDA's or RDQ's and structured desk audits are the primary means by which job analyses are documented*:

____ 1.PDA or RDQ is current (e.g., must be less than twelve months);
____ 2.All sections are complete;
____ 3.Duty and task statements contain sufficient information for analysis;
____ 4.The largest percentage or 40%, whichever is greater, of the duties of the position as described in the PDA, reflect the duties described in the proposed classification;
____ 5.Signed by incumbent (if filled);
____ 6.Signed by supervisor;

D. *Reallocations requiring change from state service to non-state service status require a letter signed by incumbent acknowledging same and is to be attached. (Statutory limitations apply.)*

II. **Analysis of Reallocation**:

A. *Review history of PIN*:
When was the last time the PIN was reallocated? If the position was reallocated within the last six to twelve months, denote reasons for change.
_____
_____

B. *Review agency vacancies for positions in proposed class*:
____ 1.No vacancies in required class;
____ 2.Vacancy in requested class PIN(s): _____;
____ 3.If there is a vacancy in proposed class, explain why such position(s) could not be utilized in lieu of a reallocation:
Comments: _____

C. *Ensure proposed salary range is less than supervisor's*

D. *Ensure proposed salary range is greater than all subordinates*

E. *Ensure proposed salary range does not exceed agency head's or Governor's*

F. *Review the following statutes and published material and denote impact on reallocation*:
____ 1. Agency's Statutes. At a minimum;
____ (a) Statutory qualifications of employees;
____ (b) Statutory organizational structure;
Comments: _____

____ 2. MSPB Statutes.
Comments: _____

____ 3. MSPB Policies and Procedures.
Comments: _____

____ 4. Current FY Variable Compensation Plan (VCP).
Comments: _____

____ 5. Laws and appropriation bills not yet codified from a current Legislative Session.
Comments: _____

____ 6.Federal laws, regulations, or guidelines, which impact the subject classes or positions;
Comments: _____

G. *Send applications for filled positions to the MSPB Office of Human Capital Core Processes to determine if incumbents are qualified for the proposed classification. If an incumbent is not qualified, the reallocation cannot be performed except as provided by law.*
Date sent to MSPB: _____ MSPB Determination: _____

H. *Determine if PIN is presently classified as state service or non-state service*:
____ 1.State service;
____ 2.Non-state service;
____ 3.Check to see if there is a job classification;
____ 4.Check to see if incumbent was appointed from a certificate (Y/N)

I. *Agency shall retain copies of all relevant documentation in PIN file*
Note: To determine the proper classification of a position, a desk audit is recommended when there are questions arising from the Personnel Officer's analysis of the PDA. When a desk audit is performed, a copy of the audit form and any additional information should be retained in the position file.

## III. Agency Personnel Office Recommendation

The Primary Job Analyst will make a recommendation as to the appropriateness of the reallocation to the Agency Head for final approval/disapproval.

A. *Primary analyst's recommendation (initial)*:
____ Approval Effective date: _____
____ Disapproval

B. *Agency Head's Action*:
____ Concur with staff recommendation
____ Do not concur with staff recommendation

## IV. Disposition of Reallocation

____ Reallocation approved
____ Forward position employee data to MSPB date action is finalized in accordance with the *Mississippi State Personnel Board Policy and Procedures Manual*;
____ Agency shall retain a copy of the checklist.
____ Reallocation disapproved

_____
Human Resources Director's Signature/Date

## 5.18 SELECTIVE SERVICE REGISTRATION

Mississippi Code Annotated § 25-9-351 provides that every male between the ages of eighteen and twenty-six who is required to register under the Federal Military Selective Service Act, 50 USC App. 453, and seeking employment with the State of Mississippi shall submit to the person, commission, board or agency to which his application is submitted satisfactory documentation of his compliance with the draft registration requirements of the Military Selective Service Act prior to appointment.

In accordance with Mississippi Code Annotated § 25-9-127, every male between the ages of eighteen and twenty-six who is required to register under the Federal Military Selective Service Act, 50 USCS App. 453, and who is an employee of the State, shall not be promoted to any higher position of employment with the state until he submits to the person, commission, board or agency by which he is employed satisfactory documentation of his compliance with the draft registration requirements of the Military Selective Service Act prior to promotion.

To verify a registration or for information regarding who is and is not required to register, see the Selective Service System's website at http://www.sss.gov.

| | MISSISSIPPI STATE PERSONNEL BOARD<br><br>**AGENCY SALARY SURVEY DATA SHEET** |
|---|---|

| | | | |
|---|---|---|---|
| **Agency Conducting Salary Survey** | | **Date** | |
| **MSPB Occupational Class** | | **Occu Code** | |
| **Certification of Appointing Authority: I certify that the salary survey information compiled below is true, accurate, and complete.** | | **Date** | |

**RELEVANT LABOR MARKET INFORMATION**

**The relevant labor market includes the four contiguous states (Alabama, Arkansas, Louisiana, and Tennessee) and the public and private sector in Mississippi. Data collected from sources outside these areas will be considered on a case- by- case basis, only when sufficient data is not otherwise available.**

| Title of Comparable Job Classification Surveyed (Attach Class Specification or Complete Minimum Requirements) | Minimum Hiring Rate for Classification | Average Annual Salary of all employees in classification | Number of full-time employees in Surveyed Job Classification | Name and Address of Employer Surveyed And Contact Person With Telephone # |
|---|---|---|---|---|
| | | | | |
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# CHAPTER 6 – STAFFING MANAGEMENT POLICIES

## 6.0 INTRODUCTION

The Staff Management Program is authorized by Mississippi Code Annotated § 25-9-101, *et seq*., and applies to all agencies and positions within agencies under the purview of the MSPB (See Mississippi Code Annotated § 25-9-107(d)).

### 6.0.1 Purpose

The Staff Management Program authorizes the MSPB to monitor, control, and implement short and/or long-range organizational planning to achieve the most efficient and economical use of staffing positions within agencies. In support of the stated purposes, the Staff Management Program provides for the following:

A. The establishment, consolidation, or abolishment of agencies and employment positions;

B. The submission, approval, and determination of compliance of agency organizational and staffing plans, payroll, program budget data, and other essential personnel data; and

C. The provision of timely reports or recommendations on agency organizations and staffing cost projections to the Department of Finance and Administration and the Legislative Budget Office during the budget process regarding the status of employment positions within agencies.

## 6.1 AGENCY'S ROLE IN THE STAFFING MANAGEMENT PROGRAM

Each agency director is responsible for the continual evaluation of the agency's mission and workload to ensure that staffing resources are consistent with legal authority, mission priority, and sound staffing management principles. Actions taken to ensure the maximum utilization of staffing positions include, but are not limited to, the following:

A. Conducting long-range agency organizational planning in which organizational changes, additions or deletions of positions, or similar actions affecting budgetary requirements are anticipated and/or recommended for future fiscal years;

B. Recommending elimination of non-essential agencies or positions;

C. Recommending consolidation of agencies, positions, and activities when duplication of functions is indicated; and

D. Establishing and maintaining a system of agency staffing management documentation and collection and retention of data (See Mississippi Code Annotated § 25-9-133).

### 6.1.1 Reporting Data

The director of each agency shall submit to the MSPB all information deemed necessary by the MSPB for the provision of required reports to the Governor, Legislature, Federal Government and general public (See Mississippi Code Annotated § 25-9-135(2)).

## 6.2 ESTABLISHMENT AND ABOLISHMENT OF AGENCIES

Legislative appropriation of funds, Executive Order, Department of Finance and Administration budget escalation, the receipt of federal funds, or loss of funding or authorization shall require the submission of documentation to the MSPB for the establishment and/or abolishment of agencies and/or master agencies prior to requesting additions, deletions or changes in employment positions resulting there from. All agencies established or abolished in accordance with the provisions herein shall be based on legislative intent and authorization, appropriation or escalation of funds or loss thereof, and current fiscal policy.

### 6.2.1 Establishment of a New Agency

When legislative appropriation or other authority provides for the creation of a new agency, the agency director shall submit the following to the MSPB:

A. A copy of the enabling legislation or other authority that created the new agency and/or master agency; and

B. A copy of the appropriation bill or other authority that funds the new agency and/or master agency.

The Office of Human Capital Core Processes employees will perform all functions in SPAHRS related to the creation, maintenance, inactivation, and reactivation of an agency. Once the agency records have been created in SPAHRS (to include the fiscal year records), the agency shall create a Program Budget record for each new agency to be reviewed and approved by the Office of Human Capital Core Processes. Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultant for more detailed information regarding the establishment of new agencies.

### 6.2.2 Consolidation of Existing Agencies

Agencies directed by appropriation acts or other legislative authority to consolidate existing agencies shall submit the following to the MSPB:

A. A letter of request to the MSPB Executive Director describing by name and agency code number, which agencies are expanding and which agencies are being abolished. The letter shall also address the disposition of former agency directors, bureau directors and division directors along with possible duplication of functions such as clerical support, print shops, computer centers, etc.;

B. A copy of the enabling legislation or other authority that directed the consolidation to be accomplished;

C. A copy of the appropriation bill or other authority that funded the consolidation of the agencies;

D. A revised organizational chart identifying the precise location, after consolidation, of all authorized positions prepared in accordance with established procedures;

E. Any updates to the expanded agency's Program Budget record should be submitted in SPAHRS to the Office of Human Capital Core Processes for review and approval; and

F. Any other relevant supporting documentation.

NOTE: Once all positions have been transferred to the expanded agency, the relevant agencies shall be inactivated by the Office of Human Capital Core Processes.

### 6.2.3 Inactivation of Agencies

Agency inactivation becomes necessary when the Legislature does not pass an appropriation act to continue or fund any positions within an agency. Petitions for inactivation of an agency shall be submitted a minimum of sixty (60) days prior to the proposed effective date. Note that all positions must be abolished before the agency may be inactivated.

### 6.2.4 Agency Program Budget Data

The agency program budget data is submitted to the Office of Human Capital Core Processes in SPAHRS for each agency. This information must be submitted to the Office of Human Capital Core Processes at the following times:

A. During conversion from the current fiscal year to the newly appropriated fiscal year;

B. As part of the annual Personal Services Budget Request for the next fiscal year;

C. When adding an agency or program during the operating fiscal year; and/or

D. When changing the workers' compensation rate during the operating fiscal year.

General Instructions for submitting agency program budget data:

A. Fiscal Year

1. For FY Conversion - Use appropriated fiscal year;

2. For Budget Request - Use fiscal year for which Budget Request is made;

3. For Addition of Agency or Program and/or Change in Workers' Compensation Rate - Use Operating Fiscal Year.

B. Program Number and Description - Program Numbers and Names as assigned by the Legislative Budget Office and the Department of Finance and Administration. Change, deletion, or addition of a program during the operating fiscal year or for the budgeted fiscal year will require re documentation of Legislative Budget Office and Department of Finance and Administration concurrence.

C. General Fund, Federal Fund, Other Fund

1. For FY Conversion or Change in Workers' Compensation Rate - Indicate amount of total appropriated personal services dollars assigned to each fund within each program;

2. For Budget Request - Indicate amount of total personal services dollars necessary to fully fund existing positions and requested actions assigned to each fund within each program;

3. For Addition of Agency or Program - Indicate amount of total personal services dollars authorized by the Department of Finance and Administration assigned to each fund within each program.

D. Current Workers' Compensation Rate - The numerical rate, expressed in a four (4) digit decimal form, used to compute the total amount needed to cover the operating or budgeted fiscal year's Workers' Compensation Insurance.

E. Requested to Cover Cost

1. For FY Conversion, Addition of Agency or Program, and/or Change in Workers' Compensation Rate - Use total amount needed to cover Workers' Compensation for operating fiscal year;

2. For Budget Request - Use total amount needed to cover Workers' Compensation for the fiscal year for which the budget request is made.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultant for more detailed information regarding adding/modifying agency program budget information.

## 6.3 ORGANIZATIONAL PLANNING AND POSITION MANAGEMENT

The MSPB shall recommend policies and procedures for the efficient and economical use of each employment position. The appointing authority of each agency shall be responsible for directing organizational planning and position management intended to manage the number and distribution of staffing resources through:

A. Efficient and effective organization and staffing plans to accomplish the agency mission and program requirements;

B. Effective utilization of all personnel resources, considering such factors as available staffing, positions, supervisory spans of control, lines of supervision, supervisor/employee ratios, functional responsibility and delegation of authority; and

C. Continuing review of organizational structure, staffing plans and position utilization.

(See Mississippi Code Annotated § 25-9-119(2)(h)-(i)).

### 6.3.1 The Staffing Planning Cycle

The staffing planning cycle is a continuous process reflecting the current, ongoing planning phase and the advanced planning phase required to be in concert with the personal services budget and appropriation cycles. The staffing planning cycle is divided into three units of time:

A. Current fiscal year encompasses the present appropriation acts under which agencies are operating;

B. Next fiscal year is the fiscal year immediately following the current fiscal year and for which the appropriation acts are approved by the current year's legislative session for implementation and use after the current fiscal year;

C. Future fiscal year means the fiscal year(s) immediately following the next fiscal year for which agencies prepare budget requests to effect advanced planning for position(s), organizational changes and future appropriations.

### 6.3.2 Budgeting for Staffing Positions

All agency requests and justification for additional staffing positions shall be submitted in SPAHRS to the Office of Human Capital Core Processes for recommendation to the Department of Finance and Administration and the Legislative Budget Office as part of the annual budget process. Budget requests for the future fiscal year must be submitted in accordance with the Department of Finance and Administration/Legislative Budget Office Budget Instructions and MSPB Staff Management Planning Instructions. These instructions are issued annually. Requests for additional positions shall not be recommended for authorization when there are existing long-term vacancies within the organization of the same, similar or related classes. The MSPB shall annually monitor each agency's budget request and appropriation bill through the legislative appropriations process (See Mississippi Code Annotated § 25-9-133(1)).

### 6.3.3 Organizational Planning

The Staffing Management Program of each agency shall incorporate existing and proposed agency and position data into organizational charts indicating each position authorized. All current or proposed organizational charts shall be reviewed by the agency for completeness and accuracy of data to ensure inclusion of actions approved for next fiscal year implementation and conformance to the agency's next fiscal year appropriation act. The following shall be in effect with respect to agency organizational charts:

A. Agencies shall submit an original and one file copy of the organizational chart in the format indicated in the examples at the end of this chapter for approval by the Office of Human Capital Core Processes prior to the start of each fiscal year. Upon approval by the Office of Human Capital Core Processes, the organizational structure and codes shall become the official organizational structure of the agency for current and/or succeeding fiscal years and the basis for all requested position and organizational changes;

B. Constant internal review of any agency organizational structure is an agency responsibility. Agencies may make minor alterations or movement of individual positions, including county code changes, in their organizational charts for efficiency or to balance staffing workload (generally singular moves below the division level) during the fiscal year. When requesting organizational chart revisions, the Agency shall submit the request for organizational code or county code change online through SPAHRS on the Position Screen. The following information shall be forwarded to the MSPB in support of the organizational change:

1. Organizational chart pages signed by the appointing authority, or his or her designee, depicting both current and proposed structures; and

2. Additional documentation as may be specified by the MSPB Executive Director.

C. Agencies shall request the MSPB to review major changes or movement of positions within the organizational structure. Major alterations, movements, or changes within the agency organizational structure must be approved by the MSPB prior to implementation by the agency. Contact your Human Capital Core Processes Consultant to determine the format in which to submit your proposed reorganization for formal presentation before the MSPB.

### 6.3.4 Organizational Coding

The organizational location code is usually a five to ten digit code used in conjunction with the PIN, occupational class title, FLSA Code, Service Status Code (if non-state service) and start salary of the occupational class to depict the exact location of every authorized position within the agency organizational hierarchy.

The agency head typically shall be designated by six zeros. However, because the size of the agency dictates the number of supervisory levels required, some agencies will need to utilize more than six or less than six zeros. Please contact your MSPB Human Capital Core Processes Consultant for assistance. All members of the agency head's immediate and personal staff shall begin with a zero digit on the left and appear as number 000001 through 099999.

Where larger agencies have a complicated organization and span of control, the Office level is the level beneath the agency head. Office Directors shall be numbered 100000, 200000, 300000, through 900000. The limit is nine offices. Each Office Director has an organizational code with the requisite number of zeros on the right to designate the number of levels supervised.

Where authorized, or required, the bureau level is the level beneath the office level. Bureaus are normally authorized in the larger agencies or in those agencies where applicable statutes stipulate the agency shall have bureaus. Bureau Directors shall be numbered 110000, 210000, 310000, etc., through 990000. The limit is nine bureaus per office. Each Bureau Director has an organizational code with the requisite number of zeros on the right to designate the number of levels supervised.

Where authorized, the division level is directly beneath the bureau level. Division Directors are numbered 111000, 211000, 311000, etc., through 911000. The limit is nine divisions per bureau. Each Division Director has an organizational code with the requisite number of zeros on the right to designate the number of levels supervised.

The Branch level is the level under the division level. Where agencies are not authorized bureaus or divisions, branches may be directly beneath the agency head. Branch Directors shall be numbered 111100, 211100, 311100, etc., through 911100. The limit is nine branches per division. The Branch Director has an organizational code with the requisite number of zeros on the right to designate the number of levels supervised.

The section level is under the branch level. Section Chiefs are numbered 111110, 211110, 311110, etc., through 999990. The limit is nine sections per branch. The Section Chief has an organizational code with the requisite number of zeros on the right to designate the number of levels supervised. Section Chiefs have no personal staff. Sections Chiefs exercise supervision over work units.

Unit is the worker level of the agency organization. These individuals have no supervisory responsibility and receive their supervision from the Section Chief. The last digit of the unit organizational code can be numbered one through nine. (See the charts at the end of Chapter 6.)

**6.3.5 Agency Organizational Chart**

A. The overview page of an organizational chart is applicable to the larger agencies that require several pages of organizational charts to depict all authorized positions. Items to be included on the overview page include:

   1. Agency Head;
   2. Agency Head's immediate staff; and
   3. Program functions depicted by separate squares using lines to indicate related functions by supervision.

B. Mandatory items that shall be included on the agency organizational chart:

   1. All authorized positions;
   2. Each square shall include the following data as depicted in the examples at the end of this chapter:

      i. The official occupational class title of the position at the top of the square;

      ii. The functional title for the position at the bottom of the square (optional);

      iii. The start salary (rounded to the nearest hundred dollars) of the occupational class in the lower left side of the position box (i.e., $37,856.48=37.9 and $37,829.74=37.8);

      iv. The position identification number (PIN) in the lower right side of the position box (agency code numbers may also be indicated for agencies utilizing multiple agency codes.);

      v. The organizational code number;

      vi. The FLSA classification in the bottom center of the position box. FLSA Codes are identified below:

| Classification | Code |
|---|---|
| Exempt | E |
| Non-Exempt/Hospitals | H |

| | |
|---|---|
| Non-Exempt/Other | O |
| Non-Exempt/Public Safety | P |

vii. The page number where each PIN can be found when there are follow-up pages;

viii. The service status code (if the position is non-state service, i.e. x-16).

C. In the example at the end of this chapter, the chart only goes down through bureau level, indicating precisely those individuals directly supervised by, or reporting directly to, the agency head. Agencies not authorized offices or bureaus shall use divisions directly under the agency head.

D. All organizational charts shall show the lines of supervision within the agency hierarchy. Lines of supervision reveal a supervisor's span of control and clarify the raters and reviewers in the agency's performance development system.

E. The information in the upper right corner of the organizational chart example shall be placed on each page. However, the agency director need only sign the first page.

### 6.3.6 Staffing Guides/Plans/Standards

Each agency director, in conjunction with the MSPB, shall be responsible for development of staffing guides, plans and standards to justify and substantiate staffing position requirements. Agency staffing plans shall be utilized to formulate uniform staffing standards applicable to designated employment positions and classes within agencies. (See Mississippi Code Annotated § 25-9-133(1)).

### 6.3.7 Agency Reorganization

Agency requests for reorganization shall be accomplished:

A. In accordance with the provisions of MSPB rules, regulations and procedures;

B. According to authorization of positions in appropriation acts or budgetary escalations;

C. In accordance with current fiscal policy and legislative intent; and

D. Through submission of a detailed letter of compelling justification from the agency director to the MSPB Executive Director. Attachments to this letter shall include:

1. Current and proposed organizational charts;

2. All required documentation for requested downward, lateral, and upward reallocations. (See Section 5.3.);

3. All required documentation for any requested class establishments. (See Section 5.1.2.); and/or

4. All required documentation for any requested realignments. (See Section 5.12.)

### 6.3.8 Establishment of Positions

The establishment of positions occurs either at the start of the fiscal year at conversion for newly appropriated positions or during the operating fiscal year when mandated by special circumstances such as budget escalation authorized by the Department of Finance and Administration or deficit appropriation.

A. The following documentation shall be submitted in support of all requests to establish new positions:

    1. A copy of the appropriation bill or Department of Finance and Administration escalation authority authorizing the position establishment;

    2. An organizational chart depicting the precise location of all authorized positions, including ones to be established;

    3. A Job Content section of the Performance Development Assessment (PDA) or Role Description Questionnaire (RDQ) for each position requested. A representative PDA may be submitted when all positions are to be allocated to the same job class and will be assigned substantially the same work.

B. Requests for new positions in a new job class shall also include documentation required for a class establishment. (See Section 5.1.2.)

C. Each new position's Position Identification Number (PIN) may be assigned by the requesting agency, or SPAHRS will assign the next available number.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultant for more detailed information regarding position establishments.

### 6.3.9 Abolishment of Positions

Each agency shall enter vacant position abolishments online in SPAHRS when the number of actual positions is in excess of the number of positions authorized by the agency's appropriation act for the next fiscal year. (See Mississippi Code Annotated §§ 25-9-119(i) and 25-9-133).

Routine position abolishments shall be submitted online in SPAHRS as soon as practical prior to the proposed effective date unless such abolishment would result in agency reorganization. Agencies effecting reductions in positions resulting in reorganization shall submit required forms and revised organizational charts to the MSPB at least sixty (60) days prior to deleting the positions.

Petitions for position abolishment to effect a reduction in force shall be submitted to the MSPB for review. (See Section 7.7) Reductions in agency staffing shall be proportionate among positions within the hierarchal structure so as not to adversely affect supervisory or non-supervisory classes of positions.

Agencies shall apply a study of the essential needs of the organization, including the need for supervisory positions, when planning a reduction in employment positions. Changes in agency program shall be constantly analyzed with the intent of effecting maximum efficiency with minimum staffing. Agencies should note the possibility of changes in the Job Content section of the Performance Development Assessment (PDA) for other continued positions impacted by reductions. Agencies effecting reductions in employment positions shall submit required documents on MSPB approved forms in accordance with the instructions contained herein.

NOTE: Individuals cannot receive payment for accrued annual leave unless SPAHRS reflects termination from the requesting agency.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultant for more detailed information regarding Position Abolishments.

**6.3.10 Swap or Transfer of Positions within Legislative Authority**

A Position Transfer is the movement of an authorized position from one agency to another agency. A full-time/part-time swap is the change in the part-time/full-time status of two (2) positions accomplished within legislative authority. The swapping or transferring of positions may occur either at the start of the fiscal year as a part of conversion or during the operating fiscal year as follows:

A. Agencies may be mandated by legislative action to transfer positions from one master agency to another master agency, or from one agency to another agency within the same master agency at the start of the fiscal year, or as a part of conversion. Position transfers from one agency to another agency within the same master agency should be requested through SPAHRS using the Intra-Agency Position Transfer screen. At the same time position transfers are requested for approval, the following documents must be submitted in support of all such requests:

    1. A copy of the bill authorizing position transfers; and

    2. Pages of the appropriate organizational chart depicting the proposed placement of the position(s) to be transferred.

B. Certain agencies are given authority each fiscal year in their appropriation bill to transfer positions between authorized agencies. Authority to transfer positions between agencies is granted by the legislature to specified agencies in the annual appropriation to the agency. Position transfers from one agency to another agency within the same master agency should be requested through SPAHRS using the Intra-Agency Position Transfer screen. Approval to implement transfers during the current fiscal year must be requested and received from the Department of Finance and Administration prior to submitting online in SPAHRS submission to the MSPB. The following attachments must be included with all such requests:

    1. A copy of the letter of authorization from the Department of Finance and Administration; and

2. Appropriate organizational chart pages depicting the placement of the positions before and after the swap.

C. Any agency authorized both part-time and full-time positions may change the status of a position from part-time to full-time at any time during the operating fiscal year. In such instances, the agency must provide a companion action changing the status of a full-time position to part-time to maintain its appropriated position count. A Full-time/Part-time swap should be requested using the Full-Time/Part-Time Swap screen within the Position Segment of SPAHRS.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultant for more detailed information regarding Intra-Agency Position Transfers or Full-time/Part-time Position Swaps.

**6.3.11 Annual Registration of Authorized Positions**

A. Registration of authorized positions shall apply to the following agencies and employment positions:

1. State service agencies and positions; and

2. Non-state service agencies and positions excluded from the state service (see Mississippi Code Annotated § 25-9-107(c));

3. Agencies voluntarily operating under limited provisions of the MSPB; and/or

4. Time-limited positions. (See Mississippi Code Annotated § 25-9-107(c)(xiv)).

B. Registration shall be completed by the close of business on the last day of the fiscal year. All inconsistencies between next fiscal year authorization and current MSPB agency, position and employee data shall be resolved by this date, including the completion of any plan to adjust positions (adjustments; reauthorizations; establishments; abolishments; transfers; consolidations; changes of status from part-time to full-time or full-time to part-time; or changes of status from permanent to time-limited or time-limited to permanent), execute a reduction in force or implement a legislatively mandated reorganization. There shall be no exceptions to this policy. (See Mississippi Code Annotated §§ 25-9-103(g) and 25-9-135(1)).

C. All agencies and employment positions authorized in each agency's appropriation act shall be updated to reflect actual next fiscal year program budget data by program and fund source by the date specified in the Conversion and Registration of Authorized Agencies, Positions, and Program Budget Data Instructions updated prior to the beginning of each fiscal year.

D. Organizational charts shall be revised to reflect position adjustments required to conform to the next fiscal year authorization and submitted to the MSPB by June 1 of each fiscal year. A legislatively mandated reorganization shall be monitored by the MSPB to ensure compliance with legislative intent. A reorganization initiated by the

agency or necessitated to conform to the agency's next fiscal year position authorization, or an adjustment to an existing staffing plan, shall require prior MSPB approval.

### 6.3.12 Continuation of Position(s)

A. Documentation will not be required to continue established permanent positions within the agency where no change has occurred.

B. Time-limited positions should be marked for continuation in the next fiscal year using the FY Time-Limited Position Re-Authorization screen within the Position Segment of SPAHRS.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.usor your Human Capital Core Processes Consultant for more detailed information regarding the reauthorization of time-limited positions.

### 6.3.13 Change in Position Status

Authority to change the status of an established position from part-time to full-time (or full-time to part-time) will require an online revision of the months and/or hours fields as well as revising the service type of the position on the Maintain Position Information screen within SPAHRS.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultant for more detailed information regarding position status changes.

### 6.3.14 Position Program Budget Data Change

Changes to the program budget data of positions during the operating fiscal year shall be submitted online using the Position Program Budget Information screen within SPAHRS.

Please reference the SPAHRS User Training Workbook at http://www.mmrs.state.ms.us or your Human Capital Core Processes Consultant for more detailed information regarding changes to position program budget.

## 6.4 POSITION COST PROJECTION AND POSITION VALIDATION

Agencies cannot view or print position cost projections using the Maintain Budget Projection Parameters screen within SPAHRS. Information found in any projection provided by the Office of Human Capital Core Processes should be reviewed by the agency for accuracy and be looked upon as the basis for any future position additions, changes, or abolishments.

NOTE:The authorized appropriated position data in the MSPB database must be kept up-to-date at all times.

## 6.5 CONTRACTS FOR PERSONAL SERVICES

### 6.5.1 Policy Statements

A. No person shall be employed by any agency for any period for any purpose except in an employment position authorized by legislative appropriation or by the body authorized

by law to escalate budgets and approve employment positions under the guidelines established by the Legislature except those authorized to be employed under the provisions of Mississippi Code Annotated § 25-9-107(c)(x) as contract personnel for personal and professional services. (See Mississippi Code Annotated § 25-9-133(2)).

B. Any agency which employs state employees may enter into contracts for personal and professional services only if such contracts are approved in compliance with the rules and regulations promulgated by the Personal Service Contract Review Board under Mississippi Code Annotated § 25-9-120(3). (See Mississippi Code Annotated § 25-9-107(c)(x)).

C. Prior to paying any warrant for contractual services in excess of one hundred thousand dollars ($100,000.00), the auditor of public accounts shall determine whether the contract involved was for personal or professional services, and, if so, shall determine whether it was approved by the Personal Service Contract Review Board; provided, however, that any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any personal service contracts entered into by the Mississippi Department of Transportation, and any contract for attorney, accountant, auditor, actuary, physician, dentist, architect, engineer, veterinarian, and utility rate expert services are exempt. (See Mississippi Code Annotated §§ 25-9-120(3)(a); 25-9-107(c)(x)).

Note: Mississippi Code Annotated § 27-104-105 states that the Department of Finance and Administration shall not process any warrant requested by any state agency for payment for legal services without first determining that the services and contract were approved by the Attorney General and the MSPB; contracts for legal services performed for the State Highway Department in eminent domain cases shall not require approval by the MSPB.

**6.5.2 Coverage and Scope of the Policies**

A. These policies shall govern personal and professional contract services which cannot reasonably be expected to be performed by current or future employees in authorized employment positions within state service agencies. Non-state service agencies are not required to comply with these policies unless they are contracting with a state service agency.

B. Except as provided for in Mississippi Code Annotated § 27-104-105, any personal service contracts entered into for computer or information technology-related services governed by the Mississippi Department of Information Technology Services, any personal service contracts entered into by the Mississippi Department of Transportation, and any contract for attorney, accountant, auditor, physician, dentist, architect, engineer, veterinarian, and utility rate expert services shall be excluded from the provisions of this policy. (See Mississippi Code Annotated § 25-9-120(3)(a)).

C. Contracts between agencies under the MSPB system are excluded.

D. Mississippi Code Annotated § 25-4-105(3)(a) prohibits an employee from rendering personal and professional services on a contractual basis to the agency by which he or she is employed:

   "No public servant shall: (a) be a contractor, subcontractor, or vendor with the governmental entity of which he is a member, officer, employee, or agent other than in his contract of employment, or have a material financial interest in any business which is a contractor, subcontractor or vendor with the governmental entity of which he is a member, officer, employee, or agent."

E. The MSPB Executive Director and the State Personal Service Contract Review Board authority under Mississippi Code Annotated §§ 25-9-133 and 25-9-120(3)(a) does not negate the bid, purchase, review or approval of policies and procedures established by statutory authority of any other regulatory agency.

F. For detailed information about administrative procedures regarding personal services contracts, please refer to the Personal Service Contract Review Board Rules and Regulations.

## 6.6 LEGAL SERVICES CONTRACT APPROVAL REQUESTS

The following procedures are for legal services contracts which must be approved by the Mississippi State Personnel Board.

Mississippi Code Annotated § 27-104-105 states:

> The Department of Finance and Administration shall not process any warrant requested by any state agency for payment for legal services without first determining that the services and contract were approved either by the Attorney General and the State Personnel Board, or as authorized under Section 7-5-39(3); contracts for legal services performed by the State Highway Department in eminent domain cases shall not require approval by the State Personnel Board. The State Auditor shall test for compliance with this section.

Therefore, state agencies must obtain approval of legal services contracts from both the Attorney General's Office and the MSPB in order to be able to make payment for legal services provided to the agency. This requirement applies to any written or oral contract between an agency and any person or entity for the performance of legal services wherein payment for such services is to be processed by the Department of Finance and Administration.

Certain legal services contracts are exempt from this statutory requirement, including contracts for legal services entered into by the Mississippi Department of Transportation involving eminent domain activities and contracts for legal services entered into by the Attorney General's Office with state agencies for assignment of Special Assistant Attorneys General and contracts for legal services authorized pursuant to Mississippi Code Annotated § 7-5-39(3).

To facilitate the approval request process, the MSPB delegates to the MSPB Executive Director the authority to review and approve or disapprove legal services contracts with a maximum contract value of $100,000.00 or less, including any modifications thereto. The MSPB retains

sole authority to review and approve or disapprove legal services contracts with a maximum contract value of more than $100,000.00.

The MSPB has adopted standardized procedures to assist state agencies in requesting approval in compliance with Mississippi Code Annotated § 27-104-105, and this policy provides the administrative procedures to be followed when requesting legal services contract approval from the MSPB. This policy applies to all legal services contracts under the purview of the MSPB effective on or after October 1, 2010 and all renewals or modifications of existing legal services contracts under the purview of the MSPB effective on or after October 1, 2010.

### 6.6.1 Consideration Timelines

Any agency desiring to contract for legal services should ensure that it requests appropriate approval of such a contract from any required regulatory board governing the agency's contracts, the Attorney General's Office and the MSPB in advance of any deadline as set forth in this section. To the extent legal services are performed under a proposed contract before appropriate approval is obtained, an agency does so at its own risk that the contract may not be approved. *See* MS AG Op.93-0488, Stringer (July 9, 1993).

Approval requests for contracts with a maximum contract value of more than $100,000.00 that are received from the Attorney General's Office at least 15 working days prior to a regularly scheduled MSPB Board meeting will be considered for approval at that month's meeting. Contracts received after this deadline that require Board consideration will be considered at the next month's regularly scheduled meeting. Approval requests for contracts with a maximum contract value of $100,000.00 or less will be considered for approval within 15 working days of receipt from the Attorney General's Office. **These timelines are applicable at all times, including the end of each fiscal year.**

Any request for expedited consideration of a legal services contract must be submitted in writing to the MSPB Executive Director and must contain a detailed account of the circumstances justifying the request. The written request must be executed by the Agency Head. All such requests will be considered and granted or denied at the discretion of the Executive Director.

### 6.6.2 Procedures for Requesting Approval

Prior to requesting MSPB's approval of a legal services contract, an agency must obtain approval of the contract from any applicable regulatory board and the Attorney General's Office. If the Attorney General's Office approves the contract, the Attorney General's Office will then forward the contract to MSPB for consideration.

Agencies should submit a request for approval of a legal services contract to the Attorney General's Office online through the SPAHRS system. The agency must also provide a printed original *Request for Contract Personnel Services Approval* Form, executed by all required agency personnel, and the original proposed legal services contract, executed only by any appropriate agency personnel, to the Attorney General's Office. The contractor should not execute the contract until the contract is approved by both the Attorney General's Office and the MSPB. The agency should also submit through the SPAHRS system a justification of the need for the legal services to be provided under the contract.

If an agency desires to amend or modify an existing and previously approved contract, the agency should submit a request for approval to the Attorney General's Office online through the SPAHRS system. The agency must also provide a printed original *Request for Contract Personnel Services Approval* Form, executed by all required agency personnel, and a copy of the executed approved contract to the Attorney General's Office. **Agencies should be aware that the MSPB does not have the authority to approve any modification, renewal or extension of an expired contract.**

### 6.6.3 Contract Format and Required Clauses

All legal services contracts submitted for approval must be effective for a definite term with maximum period of three years. All such contracts must also contain a maximum expenditure provision and all clauses required by the Department of Finance and Administration for all service contracts other than the E-Payment clause. Contracts that are effective for more than one budget appropriations period must contain the following provision:

> **Availability of Funds.** It is expressly understood and agreed that the obligation of the agency to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to the agency, the agency shall have the right upon ten (10) working days written notice to the contractor to terminate this agreement without damage, penalty, cost or expenses to the agency of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

Any attorney or law firm providing services under the contract should be identified in the contract by name and address. Each contract should also provide a description of the scope of services to be provided under the contract. Finally, each contract should provide signature space for any required agency personnel, the contractor, any regulatory board, the Attorney General's Office and the MSPB.

Agencies utilizing a legal services contract template that has been approved by the Attorney General's Office and the MSPB will be presumed to have complied with this section. A sample contract template approved by the Attorney General's Office and the MSPB may be found at http://www.mspb.ms.gov or http://www.ago.state.ms.us/.

### 6.6.4 Determination

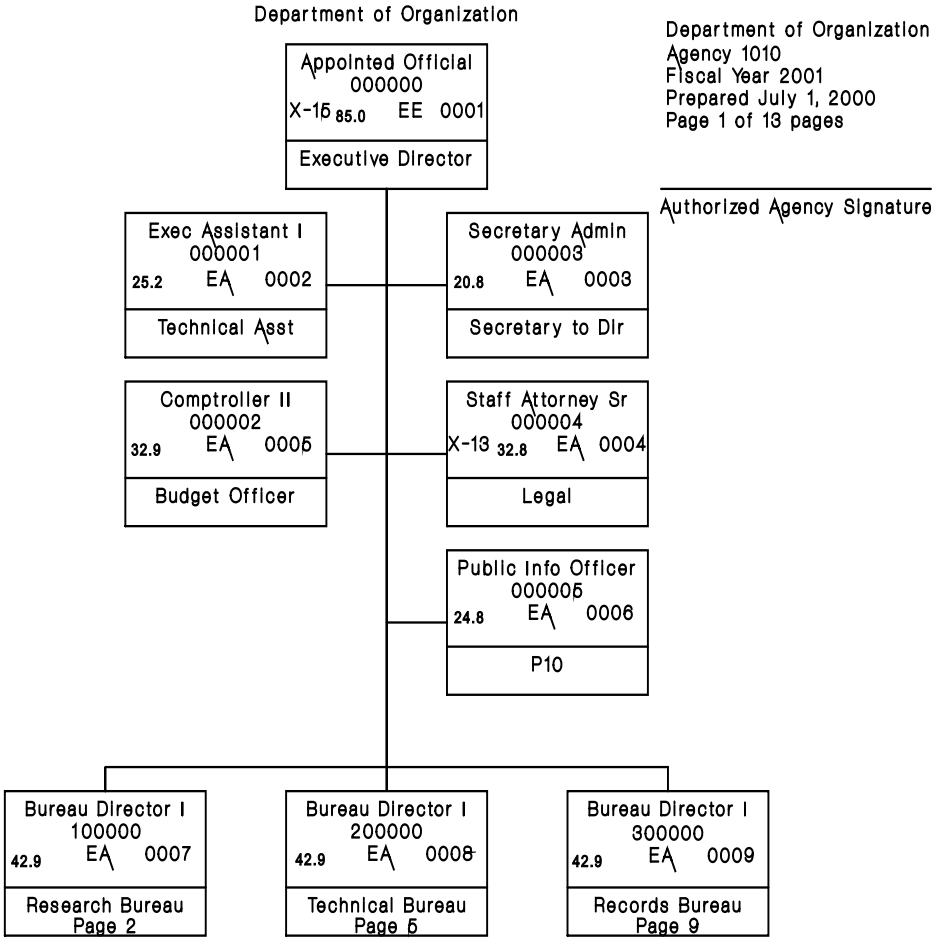
Once a determination has been made by either the MSPB or the Executive Director regarding an agency's request for approval of a legal services contract, the original contract and the original *Request for Contract Personnel Services Approval* Form will be returned to the requesting agency. The MSPB will provide a copy of the proposed contract as approved by the MSPB to the Attorney General's Office. DFA will then be notified electronically through the SPAHRS system that the agency has complied with Mississippi Code Annotated § 27-104-105 and that

payment for legal services provided pursuant to the approved contract may be processed. If approved, the original contract should then be finally executed by the contractor. The agency should provide the MSPB with a copy of the contract after it is fully executed.

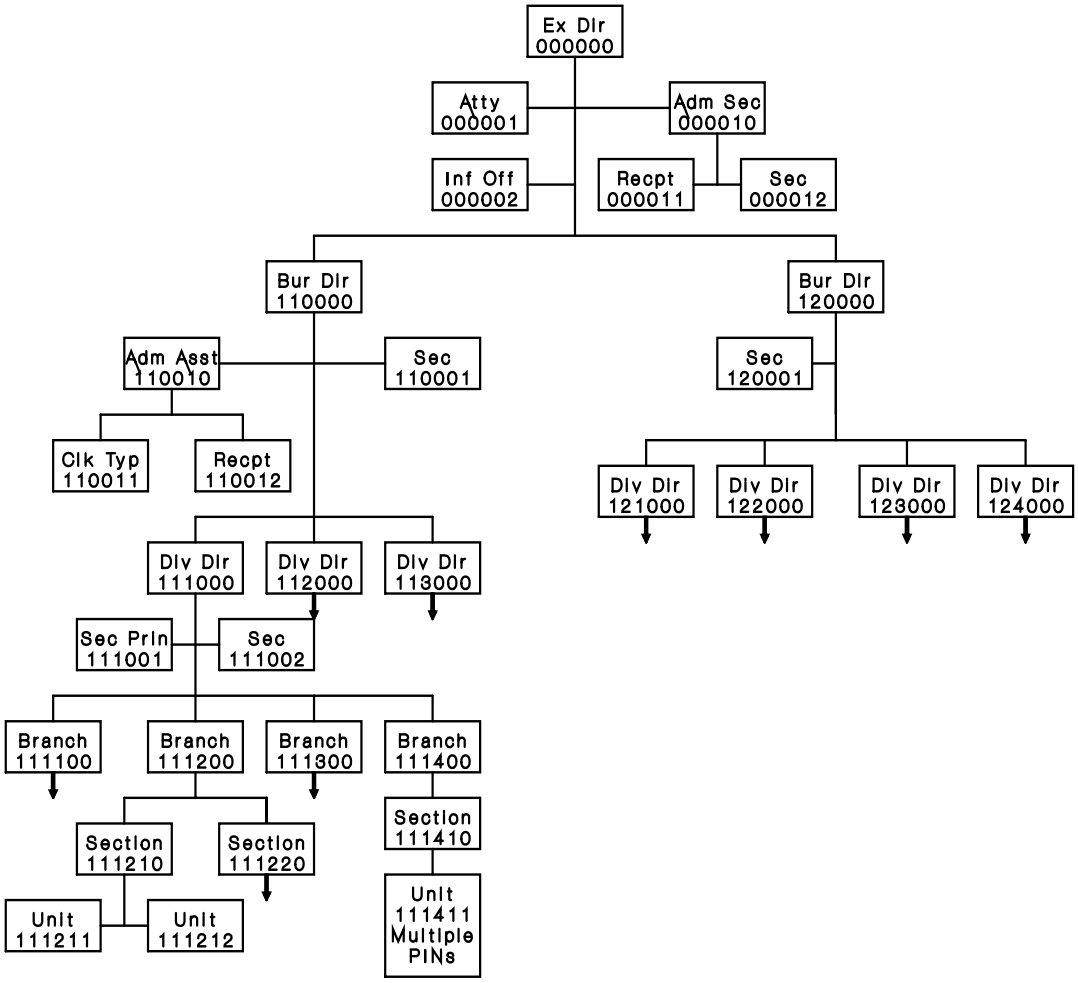
### 6.6.5 Termination

Each agency must notify the MSPB upon the termination or completion of services to be performed pursuant to the contract terms prior to expiration of the previously approved legal services contract. The executed *Request for Contract Personnel Services Approval* Form must be submitted to the MSPB indicating the termination of services pursuant to the contract and identifying the effective date of such termination. The MSPB will acknowledge the termination of services by execution of the form and will return the form to the agency for processing.

## SAMPLE ORGANIZATION CHART



## EXAMPLE OF ORGANIZATIONAL CODING



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# CHAPTER 7 – EMPLOYEE RELATIONS

## 7.1 WORKFORCE DEVELOPMENT

The MSPB assists appointing authorities in planning for the agency's future workforce needs by offering assistance in the review of organizational design, talent management, and career development.

The primary emphasis of workforce development is to improve state government services. Under Mississippi Code Annotated § 25-9-103(c), the MSPB shall administer a state personnel system to train employees, as needed, to ensure high quality performance. The appointing authority may contact the Office of Workforce Development of the MSPB to request career development activities for his or her employees. Such activities may be conducted either in the MSPB training facility, on-site, or in other designated facilities.

### 7.1.1 Training Needs

The MSPB Executive Director shall assess the workforce development needs of the state service and take necessary steps to meet those needs consistent with funding and resources. An appointing authority shall respond to the workforce development needs assessments sent by the MSPB Workforce Development staff to the agencies.

### 7.1.2 Development and Coordination

The MSPB Executive Director shall provide or coordinate career development programs integral to the administration of the statewide personnel system and career development needs generic to all state agencies, such as supervisory/management skills, interpersonal skills, clerical skills, and professional development skills.

Registration for career development courses is done through the State's Mississippi Enterprise Learning Management System (MELMS), a link to which is at http://www.mspb.ms.gov. Employees and agencies may also register for career development courses by completing a registration form, which is also located at http://www.mspb.ms.gov under the Office of Workforce Development.

### 7.1.3 Interagency Partnerships

The MSPB Executive Director shall encourage and, when feasible, coordinate inter-agency partnerships in sharing employee workforce planning and career development activities, resources, materials, and programs.

### 7.1.4 Career Development Costs

The MSPB Executive Director may assess MSPB-sponsored career development course costs to agencies on a per-course basis or a pro-rata share of the cost of career development course basis depending on the number of an agency's employees who participate or are scheduled by the agency to participate.

### 7.1.5 Guidelines for Development of Agency Career Development Programs

The appointing authority should:

A. Assess the workforce needs of the agency workforce;

B. Develop an agency-wide workforce planning policy using available internal resources, capabilities, facilities, and staff to meet assessed career development needs when appropriate; and

C. Provide specialized career development activities to agency personnel as required to ensure high quality performance and to meet agency objectives.

### 7.1.6 Training Data

The appointing authority shall provide, upon request from the MSPB Executive Director, any career development activity data necessary for comprehensive, statewide planning purposes.

### 7.1.7 Out-Service Career Development

Out-service career development activities include formal course work offered by educational institutions, workshops, conferences, correspondence courses, and seminars conducted by professional, private, or public organizations. Agencies may use facilities and resources of educational institutions and other sources outside state government if such out-service career development is used in the appointing authority's discretion and only to assist employees in acquiring the knowledge and skills necessary to perform their tasks more efficiently or to conform to regulatory or professional development requirements. For career development activities which involve college or graduate credit, refer to Section 7.8.

### 7.1.8 Liaison with Educational Institutions and State Service Agencies

The MSPB Executive Director may establish a liaison with public and private institutions of higher learning, the community college system, the Mississippi Co-op and Placement Association, and state government agencies to maintain a point-of-contact for partnering efforts.

### 7.1.9 Internship Programs

The MSPB Executive Director may provide personnel resources to the Board of Trustees of the Institutions of Higher Learning and to state service agencies, and may provide other assistance in establishing internship programs.

## 7.2 BENEFITS

Although the MSPB develops rules governing the administration of leave benefits, the appointing authority of each agency may develop internal administrative procedures governing the application of these leave rules. The agency human resources office, payroll office or immediate supervisors may provide employees with information regarding procedures unique to a specific agency.

### 7.2.1 Work Attendance

Mississippi Code Annotated § 25-1-98 defines "workday" and authorizes the appointing authority to establish work schedules which ensure that each full-time employee works a full workday.

### 7.2.2 Holidays

State employees receive regular pay for ten legal holidays and for any other day proclaimed as a holiday by the Governor of the State of Mississippi or the President of the United States. Employees who are not in an active pay status on a legal holiday will not be compensated for the holiday. Active pay status is defined as either physically working or on paid leave the day of a legal holiday, the day immediately preceding a legal holiday, or the day immediately following a legal holiday. Compensation for legal holidays for part-time employees will be computed on a pro-rata basis according to hours regularly scheduled to work. The State of Mississippi observes the following legal holidays:

| | |
|---|---|
| January 1 | New Year's Day |
| The Third Monday of January | Robert E. Lee's Birthday and<br>Dr. Martin Luther King Jr.'s Birthday |
| The Third Monday of February | Washington's Birthday |
| The Last Monday of April | Confederate Memorial Day |
| The Last Monday of May | National Memorial Day and<br>Jefferson Davis' Birthday |
| July 4 | Independence Day |
| The First Monday of September | Labor Day |
| November 11 | Armistice or Veterans' Day |
| A day fixed by proclamation by the Governor of Mississippi as a day of Thanksgiving, which shall be fixed to correspond to the date proclaimed by the United States President | Thanksgiving Day |
| December 25 | Christmas Day |

In the event any of these holidays fall on Saturday or Sunday, then the legal holiday will be observed the following Monday.

Except as may be provided in specific agency appropriations bills, when, in the opinion of the agency, it is essential that a State employee work during an official State holiday, the employee shall receive credit for the number of hours actually worked. In addition and in accordance with specific provisions of an agency's appropriation bill, an agency may require employees in specific job classes to work on an official State holiday and be paid call-back pay in lieu of receiving compensatory time credit.

### 7.2.3 Employee Work Schedules

A. State law requires that all State offices be available to the public for services from 8:00 a.m. until 5:00 p.m., Monday through Friday.

B. The MSPB defines a normal work schedule as eight hours per day, forty hours per week, 173.929 hours per month and 2,087 hours per year.

C. Each part-time employee will be provided a schedule of working hours.

D. To provide for maximum flexibility in scheduling employees, the appointing authority may develop modified work schedules providing for flextime or compressed work schedules. "Flextime" is a schedule which offers agency management a choice to vary employee arrival and departure times from work. A "compressed work schedule" allows agency management to schedule the general forty hour workweek requirement in less than the usual five workdays per week.

## 7.3 LEAVE

Each month State employees earn two types of leave, personal leave and major medical (sick) leave. Employees, including part-time employees, will be granted leaves of absence for non-State Service and for military leave as provided by statute. Employees begin to earn and accumulate personal and major medical leave on the first working day of each month the employee works or receives paid leave. The appointing authority cannot increase the amount of personal leave or major medical leave to an employee's credit, and it is unlawful for an appointing authority to grant personal and major medical leave in an amount greater than was earned and accumulated by the employee. Part-time employees are granted leave only during periods when they are scheduled to work.

### 7.3.1 Transfer of Leave Between State Agencies

Both major medical and personal leave earned by employees is transferable between any and all State agencies, junior colleges and senior colleges. However, compensatory leave is not transferable. Each appointing authority will be furnished a statement of accrued leave when an employee transfers between agencies.

Upon transfer, leave accrual rates at the receiving agency will reflect total continuous Service. An employee transferring with a break in service must begin accruing at the rate established for the new employees. Lump sum payment for accrued personal leave and/or the lapse of one eight-hour workday between the termination date with the original agency and the effective date with the new agency denote a break in service.

### 7.3.2 Personal Leave

All full-time employees and appointed officers of the State of Mississippi earn personal leave as follows:

| CONTINUOUS SERVICE | ACCRUAL RATE (Monthly) | ACCRUAL RATE (Annually) |
|---|---|---|
| 1 month to 3 years | 12 hours | 18 days |
| 37 months to 8 years | 14 hours | 21 days |
| 97 months to 15 years | 16 hours | 24 days |
| Over 15 years | 18 hours | 27 days |

Employees begin to earn and accumulate personal leave on the first working day of each month the employee works or receives paid leave. Personal leave is available for the employee's use on the first day of the month after the leave is earned. Part-time and temporary employees accrue personal leave on a pro rata basis. There is no limit to the accumulation of personal leave. Full-time employees and appointed officers who are hired after the first of a month, who terminate before the end of a month, or who are placed on leave without pay for a portion of the month shall be credited with personal leave for that month on a pro-rata basis.

For the purpose of Mississippi Code Annotated §§ 25-3-91 through 25-3-99, the earned personal leave of each employee shall be credited monthly after the completion of each calendar month of service.

Employees are encouraged to use earned personal leave for vacations and personal business. However, all requests for personal leave, except when taken due to an illness, are approved at the agency's discretion. Personal or compensatory leave must be used for illnesses of the employee requiring absences of one day or less. In addition, accrued personal or compensatory leave must be used for the first day of an employee's illness requiring his or her absence of more than one day. A workday is defined as eight working hours. Accrued personal, major medical, or compensatory leave may also be used for an illness in the employee's immediate family, including only a spouse, parent, step-parent, sibling, child, step-child, grandchild, grandparent, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law or sister-in-law.

Upon termination of employment, each employee may be paid for not more than thirty days of accumulated personal leave. Unused personal leave in excess of thirty days and all unused major medical leave will be counted as creditable service for the purposes of the retirement system.

For the purpose of computing credit for personal leave, each appointed officer or employee is not considered to work more than five days each week. For purposes of calculating the leave accrual rate for employees, leaves of absence granted by the appointing authority for one year or less are permitted without forfeiting previously accumulated continuous service. The provisions of this section do not apply to military leaves of absence.

The beneficiary of an employee who dies with unused personal leave will receive payment for all personal leave accumulated but not used by the employee. The beneficiary designated with PERS will receive these benefits unless another beneficiary has been designated.

### 7.3.3 Major Medical Leave

All full-time employees and appointed officers of the State of Mississippi accrue major medical leave as follows:

| CONTINUOUS SERVICE | ACCRUAL RATE (Monthly) | ACCRUAL RATE (Annually) |
|---|---|---|
| 1 month to 3 years | 8 hours | 12 days |
| 37 months to 8 years | 7 hours | 10.5 days |
| 97 months to 15 years | 6 hours | 9 days |
| Over 15 years | 5 hours | 7.5 days |

Employees begin to earn and accumulate major medical leave on the first working day of each month the employee works or receives paid leave. The leave is available for the employee's use the first day of the month after the leave is earned. Part-time and temporary employees accrue major medical leave on a pro rata basis. Full-time employees and appointed officers who are hired after the first of a month, who terminate before the end of a month, or who are placed on leave without pay for a portion of the month shall be credited with major medical leave for that month on a pro-rata basis. There is no maximum limit to major medical leave accumulation. All unused major medical leave will be counted as creditable service for the purposes of the retirement system.

Major medical leave may be used for the illness or injury of an employee or member of the employee's immediate family, including only a spouse, parent, step-parent, sibling, child, step-child, grandchild, grandparent, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law or sister-in-law. The employee should remember that major medical leave can be used in this manner only after the employee has used one day of accrued personal or compensatory leave. In the event that an employee has no accrued personal or compensatory leave, the first day of leave must be taken as leave without pay. This is a requirement for each absence due to illness.

Major medical leave may be used, without prior use of personal or compensatory leave, to cover regularly scheduled visits to a doctor's office or a hospital for the continuing treatment of a chronic disease, as certified in advance by a physician. "Physician" means a doctor of medicine, osteopathy, dental medicine, podiatry or chiropractic. Employees must remember that the initial eight hours (one day) of leave relating to the condition must be personal leave, compensatory leave or leave without pay.

For each absence due to illness that requires the employee be absent from work for thirty-two consecutive working hours (combined personal, major medical, and compensatory leave), major medical leave can be authorized only when certified in writing by the attending physician.

An employee may use up to three days of earned major medical leave for each occurrence of death in the immediate family requiring the employee's absence from work. No qualifying time or use of personal or compensatory leave will be required prior to use of major medical leave for

this purpose. The immediate family is defined as a spouse, parent, step-parent, sibling, child, step-child, grandchild, grandparent, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, or sister-in-law. Child means a biological, adopted or foster child, or a child for whom the individual stands or stood in loco parentis.

With appropriate documentation, an employee is entitled to use all accrued major medical leave for recuperation from illness. In cases of illness or disability exhausting available major medical leave, the employee may be allowed to charge the excess days against accumulated personal leave or compensatory time earned by the employee. If all accumulated major medical, personal leave and compensatory time have been used, employees are subject to a pro rata deduction from their salaries for the length of time or number of days in excess of accumulated leave. Family Medical Leave is also available for qualifying State employees and is described in detail on the following pages.

Should an employee die having accumulated major medical leave, such leave will be counted as creditable Service. Employers have no authority to pay an employee's beneficiary for unused major medical leave in the event of an employee's death.

### 7.3.4 Donated Leave for Catastrophic Injury or Illness

Donated leave for catastrophic injury or illness shall be administered as provided in Mississippi Code Annotated §§ 25-3-91, 25-3-93 and 25-3-95. Those employees who received donated leave and continued to be eligible to use it as of July 1, 2000, shall be allowed to use that leave, which was donated to them before July 1, 2000.

“Catastrophic injury or illness” means a life-threatening injury or illness of an employee or a member of an employee’s immediate family, including only a spouse, parent, stepparent, sibling, child or stepchild, which totally incapacitates the employee from work, as verified by a licensed physician, and forces the employee to exhaust all leave time earned by that employee, resulting in the loss of compensation for the employee. Conditions that are short-term in nature, including, but not limited to, common illnesses such as influenza and the measles, and common injuries are not catastrophic. Chronic illnesses or injuries, such as cancer or major surgery, which result in intermittent absences from work and which are long-term in nature and require long recuperation periods, may be considered catastrophic.

Any employee may donate a portion of his or her earned personal leave or major medical leave to another employee who is either suffering from a catastrophic injury or illness or who has a member of his or her immediate family that is suffering from a catastrophic injury or illness, as follows:

A. The employee donating the leave (the "donor employee") must designate the employee who is to receive the leave (the "recipient employee") and the amount of earned personal leave and major medical leave that is to be donated and must notify the donor employee's supervisor of his or her designation. The donor employee's supervisor will then notify the recipient employee's supervisor of the amount of leave that has been donated by the donor employee to the recipient employee.

B. The maximum amount of earned personal leave that an employee may donate to any other employee may not exceed the number of days that would leave the donor employee with fewer than seven days of personal leave, and the maximum amount of earned major medical leave that an employee may donate to any other employee may not exceed fifty percent of the earned major medical leave of the donor employee. All donated leave shall be in increments of at least twenty-four hours.

C. An employee must have exhausted all of his or her earned personal leave and major medical leave before he or she will be eligible to receive any leave donated by another employee.

D. Before an employee may receive donated leave, he or she must provide his or her or supervisor with a physician's statement that states the beginning date of the catastrophic injury or illness, a description of the injury or illness, a prognosis for recovery and the anticipated date that the recipient employee will be able to return to work.

E. If an employee is aggrieved by the decision of his or her appointing authority that the employee is not eligible to receive donated leave because the injury or illness of the employee or member of the employee's immediate family is not, in the appointing authority's determination, a catastrophic injury or illness, the employee may appeal the decision to the Employee Appeals Board.

F. The maximum period of time that an employee may use donated leave without resuming work at his or her place of employment is ninety days, beginning on the first day that the recipient employee uses donated leave. Donated leave that is not used because a recipient employee has used the maximum amount of donated leave authorized under this paragraph must be returned to the donor employees in the manner provided under paragraph (G) of this subsection.

G. If the total amount of leave that is donated to any employee is not used by the recipient employee, the donated leave must be returned to the donor employees on a pro rata basis, based on the ratio of the number of days of leave donated by each donor employee to the total number of days of leave donated by all donor employees. In no case will any donor employee receive more leave in return than the employee donated.

H. The failure of any appointing authority or supervisor of any employee to properly deduct an employee's donation of leave to another employee from the donor employee's earned personal leave or major medical leave shall constitute just cause for the dismissal of the appointing authority or supervisor.

I. No person, through the use of coercion, threats or intimidation shall require or attempt to require any employee to donate his or her leave to another employee. Any person who alleges a violation of this paragraph must report the violation to the executive director of the agency by whom he or she is employed or, if the alleged violator is the executive director of the agency, then the employee must report the violation to the MSPB. Any person found to have violated this paragraph will be subject to removal from office or termination of employment.

J. No employee can donate leave after tendering notice of separation for any reason or after termination of his or her employment.

K. Recipient employees of agencies with more than five hundred employees as of March 25, 2003 may receive donated leave only from donor employees within the same agency. A recipient employee in an agency with five hundred or fewer employees as of March 25, 2003 may receive donated leave from any donor employee.

L. In order for an employee to be eligible to receive donated leave, the employee must have been employed for a total of at least twelve months by the employer on the date on which the leave is donated and have been employed for at least 1,250 hours of service with such employer during the previous twelve-month period from the date on which the leave is donated.

M. Donated leave may not be used in lieu of disability retirement.

N. Those employees who received donated leave and continued to be eligible to use it as of July 1, 2000 will be allowed to use that leave which was donated to them before July 1, 2000.

**7.3.5 Compensatory Leave**

Compensatory leave is administered in accordance with State law and in compliance with the Fair Labor Standards Act and the regulations promulgated by the U. S. Department of Labor (hereinafter referred to as "DOL").

A. FLSA Compensatory Leave

State employees in positions which have been classified "non-exempt," as defined in the federal regulations promulgated by DOL pursuant to the Fair Labor Standards Act (hereinafter referred to as "FLSA"), may receive compensatory time at a rate of not less than one and one-half hours for each hour worked over forty hours in a workweek as defined in DOL regulations, instead of cash overtime pay. State employees in positions that have been classified as "exempt" under DOL regulations may receive compensatory time earned under FLSA only when they perform duties of a "non-exempt" position on an emergency and temporary basis. There are limits on the extent to which the non-exempt employee may continue to accrue compensatory time. The limit of earned compensatory time under the FLSA for most non-exempt employees is 240 hours. Law enforcement, fire fighters, emergency response personnel, and employees engaged in seasonal activities may accrue up to 480 hours of compensatory time under the FLSA. State employees should consult their agency human resources office to confirm the status of their position under the FLSA, when their DOL workweek begins and ends, and to determine the limit of compensatory time which may be earned for their position under the FLSA.

The appointing authority may require a State employee to use compensatory time earned pursuant to the FLSA prior to the use of accrued personal or state compensatory time. Further, the appointing authority may require a non-exempt employee to take FLSA

compensatory time off when the employee's compensatory time earned under the FLSA has reached the limit allowed under the regulations, as stated above.

B. State Compensatory Leave
State law provides that when, in the opinion of the appointing authority, it is essential that a State employee work after normal working hours, the employee may receive credit for compensatory leave. Further, except as otherwise provided by statute, when in the opinion of the appointing authority, it is essential that a State employee work during an official State holiday, the employee shall receive credit for compensatory leave. Compensatory time earned under State law is credited at a rate of an hour for an hour for all employees.

Upon termination of employment, an employee may not be paid for accumulated state compensatory leave. Should an employee retire having accumulated state compensatory leave, such leave may not be counted as creditable service for retirement purposes. Employers also have no authority to pay an employee's beneficiary for unused state compensatory leave in the event of an employee's death.

### 7.3.6 Administrative Leave

State employees may be granted administrative leave with pay. For the purposes of this section, "administrative leave" means discretionary leave with pay, other than personal leave or major medical leave.

A. The appointing authority may grant administrative leave to any employee serving as a witness or juror or party litigant, as verified by the clerk of the court, in addition to any fees paid for such services, and such services or necessary appearance in any court shall not be counted as personal leave.

B. The Governor or the appointing authority may grant administrative leave with pay to State employees on a local or statewide basis in the event of extreme weather conditions or in the event of a manmade, technological or natural disaster or emergency.

C. The appointing authority may grant administrative leave with pay to any employee who is a certified disaster service volunteer of the American Red Cross (hereinafter referred to as "ARC") and who participates in specialized disaster relief services for the ARC in this State and in states contiguous to this State when the ARC requests the employee's participation. Administrative leave granted under this paragraph cannot exceed twenty days in any twelve-month period. An employee on leave under this paragraph is not considered to be an employee of the State for the purposes of workers' compensation or for purposes of claims against the State. As used in this paragraph, the term "disaster" includes disasters designated at level II and above in the ARC national regulations and procedures.

### 7.3.7 Leave of Absence

An employee can, upon written application to and in the discretion of the appointing authority, be granted a leave of absence without pay not to exceed twelve months, without forfeiting previously accumulated continuous service.

A State Service employee, with the consent of the head of the department, agency or institution and the concurrence of the MSPB Executive Director, may be placed on a leave of absence for purposes of accepting an assignment in the non-State Service for a period not to exceed one year, in accordance with Mississippi Code Annotated § 25-9-125.

Leaves of absence should not be confused with leave without pay. A leave of absence is for the purpose of accepting another position in non-State Service. Leave without pay is leave granted to the employee, at the discretion of the appointing authority, in the absence of paid leave.

### 7.3.8 Leave Without Pay

Leave without pay (hereinafter referred to as "LWOP") is employee leave taken in the absence of paid leave. LWOP must be authorized by the appointing authority. When a State government employee is on LWOP, it is the employee's responsibility to pay the employee and employer portion, if any, of all insurance premiums the employee wishes to continue. In order to continue insurance coverage while out on LWOP, the employee should contact his or her agency human resources office.

### 7.3.9 Use of Leave during Pregnancy

Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work.

A. All types of leave shall be granted to pregnant women on the same terms as leave is granted to other employees.

B. The appointing authority shall not terminate the employment of any employee in the state service because of pregnancy or require that such employee take a mandatory leave.

C. When certified in advance by a medical doctor, pregnant women can use major medical leave for regularly scheduled prenatal care by a medical doctor without the requirement that personal leave be used for the first eight hours of each absence for subsequent visits. Just as with major medical leave, the first day (or the first eight hours) of leave taken for pregnancy must be personal or compensatory leave or leave without pay if the employee has no accrued personal or compensatory leave.

### 7.3.10 Military Leave

Employees who are members of the military reserves or former members of the military are entitled to fifteen days of paid leave of absence when ordered to duty to participate in training or military exercises. Such employees are further entitled to unpaid leaves of absence from their respective duties in excess of the previously outlined fifteen days without loss of time, annual leave or efficiency rating until relieved from duty when ordered to duty as above.

The Uniformed Services Employment and Re-employment Act of 1994, a federal law, requires employers to allow up to five years of unpaid leave to a soldier who leaves employment to perform military duty, performs that duty satisfactorily, and requests his or her job back within

the statutory time limits. The soldier must be re-employed without regard to whether the military duty was voluntary or involuntary.

### 7.3.11 Leave Accumulation and Retirement

Unused personal and major medical leave for which an employee is not compensated upon termination or retirement will be transferred by the employee's agency to the Public Employees' Retirement System (hereinafter referred to as "PERS") and be counted by PERS as creditable service for the purpose of the retirement system. In computing unused leave for creditable service, in no case shall credit be allowed for any period of unused leave of less than fifteen days. In order to receive creditable Service for unused leave, PERS must receive certification of such leave balances from the employee's agency.

The amount of unused leave will determine the number of quarter-years of creditable service in accordance with Mississippi Code Annotated § 25-11-109.

The amount of unused leave will determine the number of quarter-years of creditable service as follows:

| **Conversion of Accumulated Unused Uncompensated Leave** | | | |
|---|---|---|---|
| **Combined Personal and Sick Leave** | **Credit Equivalent** | **Combined Personal and Sick Leave** | **Credit Equivalent** |
| 15 to 77 days | 0.25 year | 393 to 455 days | 1.75 years |
| 78 to 140 days | 0.50 year | 456 to 518 days | 2.00 years |
| 141 to 203 days | 0.75 year | 519 to 581 days | 2.25 years |
| 204 to 266 days | 1.00 year | 582 to 644 days | 2.50 years |
| 267 to 329 days | 1.25 years | 645 to 707 days | 2.75 years |
| 330 to 392 days | 1.50 years | 708 to 770 days | 3.00 years |

For members of the system who are elected officers and who retire on or after July 1, 1987, the following shall govern:

A. For service prior to July 1, 1984, the members shall receive credit for leave (combined personal and major medical) for service as an elected official prior to that date at the rate of thirty (30) days per year.

B. For service on and after July 1, 1984, the member shall receive credit for personal and major medical leave beginning July 1, 1984, at the rates authorized in Mississippi Code Annotated §§ 25-3-93 and 25-3-95, computed as a full-time employee.

Contact the agency human resources office, payroll officer and/or PERS (http://www.pers.state.ms.us) for answers to specific questions regarding the crediting of unused leave.

### 7.3.12 Resignation

An employee who desires to terminate service with the State should submit a written resignation to the appointing authority at least ten working days before the final working day.

### 7.3.13 Record Keeping

All State agencies whose payroll is processed through SPAHRS offer the same leave record reporting method. The balances of both personal and major medical leave are reported on each pay stub. Employees should verify leave balances on a monthly basis for accuracy.

### 7.3.14 Accrual and Use of Leave by Part-time Employees

Mississippi Code Annotated § 25-9-107(xi) provides that part-time employees shall only be hired into authorized employment positions classified by the MSPB, shall meet minimum qualifications as set by the MSPB, and shall be paid in accordance with the Variable Compensation Plan as certified by the MSPB. Part-time employees shall only be granted leave during periods when they were otherwise scheduled to work.

### 7.3.15 Mississippi Living Organ Donor Leave

The Mississippi Living Organ Donor Leave policy was promulgated by the Department of Finance and Administration, as authorized in Mississippi Code Annotated § 25-3-103. It is provided here for informational purposes only.

All permanent full-time or part-time employees who have been employed by any agency of State government for a period of six months or more and who donate an organ, bone marrow, blood or blood platelets are eligible for organ donor leave. Those individuals employed by units of local government or school districts are not eligible for leave under this policy.

Employees may use organ donor leave only upon receipt of prior approval from the donor employee's agency but are not required to use accumulated major medical leave or personal leave before using organ donor leave. Certification by the employee's attending physician for an employee participating as a bone marrow or organ donor will be required prior to using organ donor leave.

Employees requesting placement on organ donor leave for the purpose of donating blood or blood platelets must provide verification from the blood service organization of the donation of blood and/or blood platelets to their supervisor upon returning to work to be approved for organ donor leave.

An employee may use:

A. Up to thirty days (240 hours) of organ donor leave in any twelvemonth period to serve as a bone marrow donor;

B. Up to thirty days (240 hours) of organ donor leave in any twelvemonth period to serve as an organ donor;

C. Up to one hour to donate blood every fifty-six days; and

D. Up to two hours to donate blood platelets no more than twenty-four times in a twelvemonth period in accordance with appropriate medical standards established by the ARC or other nationally recognized standards.

## 7.4 EQUAL EMPLOYMENT OPPORTUNITY

The State of Mississippi is an equal opportunity employer and assures equal employment opportunities to all persons regardless of race, color, sex, religion, national origin, age, disability, genetic information, religious creed, or political affiliation. In order to implement the State's equal employment policy and to assure non-discriminatory personnel administration, the MSPB promotes non-discriminatory practices and procedures in all phases of State Service personnel administration and prohibits any form of unlawful discrimination. Equal employment opportunity can only be attained through State agency commitment to complying with all applicable laws affording equal employment opportunities to individuals. Accordingly, it is imperative that State agencies make all personnel decisions in accordance with MSPB policies, practices, and procedures.

The selection process and criteria must ensure fair and equitable treatment of all applicants and employees and not disqualify them if they have disabilities which prohibit or limit their ability to perform nonessential or marginal job functions. The Americans with Disabilities Act of 1990 requires state agencies to make reasonable accommodations for the known physical and mental limitations of otherwise qualified individuals with disabilities who are applicants or employees, provided such accommodations do not cause undue hardships to state agency operations. Qualified individuals with disabilities are persons with disabilities who meet the job-related requirements of an employment position and who can perform the essential functions of the position with or without reasonable accommodations. A person with a disability is considered an individual with a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment.

Equal employment opportunity does not guarantee an employee any rights not otherwise provided by law.

## 7.5 STANDARDS OF EMPLOYEE CONDUCT

The maintenance of high standards of honesty, integrity, impartiality and conduct by employees of the State of Mississippi is essential to earning and retaining the confidence of the citizens of Mississippi. The avoidance of misconduct and conflicts of interests on the part of employees through informed judgment is indispensable to quality of performance as well as to the maintenance of these high standards.

### 7.5.1 Attendance

Regular attendance is a basic condition of employment with the State of Mississippi and shall be considered among the essential elements for all permanent position classifications. All

employees must report to and leave work at the time designated by their employer. Anticipated absence from work is to be arranged with the employee's supervisor in advance, and unexpected absences are to be reported promptly to the employee's supervisor prior to the beginning of the employee's work period.

### 7.5.2 Diligence during Work Period

All employees must apply themselves to their assigned duties during the full schedule for which compensation is being received, except for reasonable time provided to take care of personal needs.

### 7.5.3 Work Performance

All employees must meet established performance standards. Any conditions or circumstances in the work environment which prevent an employee from performing effectively are to be reported to the supervisor.

Many departments and agencies maintain more specific rules for employees. The employee's supervisor or the agency human resources office may provide additional information.

### 7.5.4 Workplace Harassment

Each appointing authority must provide a workplace free from harassment with regard to race, color, genetic information, religion, age, religious creed, sex, national origin, disability or political affiliation or activity. This prohibition includes, but is not limited to remarks, gestures, physical contact, display or circulation of written or electronic materials, pictures or objects derogatory to any person based on the characteristics listed above. Such behavior is strictly forbidden and will not be tolerated at any organizational level. Harassment not based upon a protected class is not workplace harassment under these policies.

The following is a non-exhaustive list of actions that may be inappropriate: epithets; derogatory or suggestive comments, slurs or gestures; unwelcome or offensive physical touching; and offensive posters, e-mail, cartoons, pictures or drawings aimed at a protected classification. No employee may imply, suggest or threaten that an applicant's or employee's cooperation in any form of harassment or refusal to so cooperate will have any effect on the individual's employment status, including but not limited to assignment, compensation, advancement or any other condition of employment.

Harassment by someone not within the same protected class, as well as harassment or discrimination by someone of another protected class, is prohibited. For example, harassing conduct by a male toward a female because of her sex as well as harassing conduct by a male toward another male because of his sex is prohibited. Likewise, racially harassing conduct by someone of a particular race toward a member of another race or a member of the same race, if the conduct is based on race, is prohibited.

No employee or applicant should endure workplace harassment. Any person believing he or she has been illegally harassed should immediately report the incident to management. The appointing authority shall take timely and appropriate corrective action.

### 7.5.5 Workplace Violence

Each appointing authority shall provide a workplace environment for employees that is free from violence. No employee shall be allowed to harass any other employee or a member of the general public by exhibited behavior including, but not limited to the following: harassment, intimidation, threats, physical attacks, domestic related violence, stalking, or property damage.

Harassment is engaging in actions that include but are not limited to abusive conduct, verbal abuse and/or behavior intended to frighten, coerce, or induce duress. Intimidation is behavior or communication designed or intended to intimidate, menace, or frighten another person. A threat is the expression of an intent to cause physical or mental harm. An expression constitutes a threat without regard to whether the party communicating the threat has the present ability to carry it out and without regard to whether the expression is contingent, conditional, future or verbal. A physical attack is hostile physical contact or attempted physical contact such as hitting, fighting, pushing, shoving or throwing objects. Domestic related violence is the use of abusive or violent behavior, including threats and intimidation, between people who have an ongoing or prior intimate relationship. This could include people who are married, live together or date or who have been married, lived together or dated. Stalking is conduct that places a person in fear for his or her safety and includes any unwanted contact or action which directly or indirectly communicates a threat or places the individual in fear for his or her safety. Property damage is intentional damage to property and includes property owned by the State, employees, visitors or vendors. The workplace environment consists of the building(s), grounds, lighting, and other considerations. It also includes the attitude the employees have about their belief that they will be safe at work.

### 7.5.6 Political Activity

Personnel administration must be conducted in an atmosphere free from political influence or coercion.

#### 7.5.6.1 Political Contributions and Services

No State Service employee may be obliged, by reason of his or her employment, to contribute to a political fund or to render political Service, and he or she may not be removed or otherwise prejudiced for refusal to do so.

#### 7.5.6.2 Use of Official Authority Or Influence To Coerce Political Action

No State Service employee may use his or her official authority or influence to coerce the political action of a person or body.

#### 7.5.6.3 Fair Treatment of Applicants and Employees

Each appointing authority will assure fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation.

### 7.5.6.4 Freedom from Political Coercion

Each appointing authority will assure that employees are free from coercion for partisan or political purposes.

### 7.5.6.5 Informing Employees of Political Activities Laws

Each appointing authority will inform all employees of which political activities are permitted or prohibited by law.

### 7.5.6.6 Violation of Provisions

Any employee in the State Service who violates any of the provisions of this section may be subject to appropriate disciplinary action.

### 7.5.6.7 Grievance and Appeals

Any applicant or employee who believes he or she has been discriminated against on the basis of political affiliation or unlawful political activity affecting State employment may grieve and appeal.

### 7.5.6.8 Prohibited Political Activity

Mississippi law prohibits any agency or appointing authority from attempting to direct or coerce any state employee to vote or not to vote and from either discharging or threatening to discharge, changing the salary or, or promoting or demoting any State employee because of the employee's vote or failure to vote for any particular candidate or group of candidates. State law further prohibits any agency or employee of any agency with the authority to employ or discharge other employees from giving out or circulating any statement or report that is calculated to intimidate, coerce, or otherwise influence any employee as to the employee's vote. If any such statement or report is circulated, the agency must publicly repudiate it or will be deemed to have circulated the statement. Agencies are also prohibited from requesting, directing or allowing any employee to canvas for or otherwise render any services for or against any candidate or group of candidates during working hours or while an employee is on vacation or other leave of absence at the expense of the agency. No State employee, at the expense, in whole or part, of his or her employer, may take any part whatsoever in any election campaign except the time necessary to cast his or her vote. (See Mississippi Code Annotated § 23-15-871).

No one who has any control over, directly or indirectly, the expenditure of any public funds in the State of Mississippi may suggest or intimate either publicly or privately that any such expenditure will in any way depend on or be influenced by the vote of any person or groups of persons. (See Mississippi Code Annotated § 23-15-871).

No person may, in order to promote his or her own candidacy or that of any other person for public office in Mississippi, directly or indirectly promise to appoint or secure or assist in securing the appointment, nomination or election of another person to any public position or employment or the employment of any person under any public contract or the expenditure of any public funds in the personal behalf of any particular person or group. However, a candidate for election may publicly announce his position in relation to an election in which he may be

called on to take part if elected. This prohibition is further inapplicable to a sheriff, chancery clerk, circuit clerk or any other person of the State or county when it comes to his or her office force. (See Mississippi Code Annotated § 23-15-873).

*The Hatch Act*

The federal "Hatch Act," 5 U.S.C. § 1501 and following, covers individuals employed by State or local agencies receiving federal loans or grants whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or a federal agency, but does not include (a) an individual who exercises no function in connection with that activity; or (b) an individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a State or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization.

The Hatch Act regulations which are applicable to State and local employees may be found in the Code of Federal Regulations at 5 C.F.R. § 151.101 and following. In cases where the Hatch Act is applicable, the State of Mississippi may additionally place more strict prohibitions on the political activity of its employees. "Political Activity and the State and Local Employee" is a booklet which explains the provisions of the Hatch Act and can be found at http://www.osc.gov/documents/hatchact/ha_sta.pdf. An employee may obtain more information regarding the Hatch Act at www.dol.gov.

*Agency Specific Prohibitions*

Several State agencies have specific laws which relate to the political activity of its employees. Those agencies are responsible for informing all employees of which political activities are permitted or prohibited pursuant to the law applicable to that agency's employees.

### 7.5.7 Drug-Free Workplace Act of 1988

The Drug-Free Workplace Act of 1988 (DFWA) requires grantees of federal agencies to certify that they will provide a drug-free workplace. Making the required certification is a precondition of receiving a federal grant beginning March 18, 1989.

The certification statement, which grantees are required to make under the DFWA, includes several provisions that grantees must comply with to provide a drug-free workplace, including:

A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition; and

B. Establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace; the grantee's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

The DFWA also provides that sanctions may be imposed against grantees for non-compliance with the law. To comply with the DFWA, state agencies that are federal grantees should refer to the federal regulations governing this law. A copy of the regulations may be found in the Federal Register, Vol. 54, No. 19, Tuesday, January 31, 1989.

### 7.5.8 Drug and Alcohol Testing

State law governing drug and alcohol testing of employees and job applicants is set forth in the Mississippi Code Annotated § 71-7-1, *et. seq*. These statutes provide procedures and guidelines for appointing authorities who wish to formulate a drug and alcohol testing policy. Except as provided by federal law, agencies are not required to administer drug or alcohol tests. This statute must be complied with if such tests are given. However, the statute does not apply to agencies subject to any federal law or regulations which govern the administering of drug and alcohol tests. Agencies are also required to be cognizant of the proscriptions of the Americans with Disabilities Act regarding pre-employment medical tests. Refusal to submit to a drug or alcohol test when requested to do so by an employer with a written drug and alcohol testing policy pursuant to statute is a Group III offense under the Schedule of Offenses and Authorized Disciplinary Action (§ 9.1 C).

### 7.5.9 Agency Record Keeping Requirements

Agencies are required to maintain certain information in each employee's personnel file. A complete list of these requirements can be found at:

http://records.mdah.state.ms.us/genschedules1.php?recordtype=Personnel+Records&sortby=scheduleno

### 7.5.10 Conflict of Interest

State employees should be especially careful to avoid using, or appearing to use, an official position for personal gain, giving unjustified preferences, or losing sight of the need for efficient and impartial decision making in the State's method of operation. No act should be committed which could result in questioning the integrity of State government.

Employees are not to engage in any activity in either a private or official capacity where a conflict of interest may exist. A State employee's first loyalty should be to the public's interest. Associations, dealings or interests that could affect an employee's objectivity in performing the employee's job or in making the decisions required of the employee's position should be avoided. However, employees are encouraged to participate in professional and civic organizations if such participation does not adversely affect the employee's role as a public employee.

### 7.5.11 Employee Use of State Property

State employees have no ownership rights in or control of State property, which is defined to include all office space, space adjacent to the workplace controlled by the State or State agency, furniture, fixtures, equipment, and inventory including without limitation, all computer software, databases, servers, computer hardware, discs, and information of any kind contained in or recorded on physical or electronic data sources of any kind. Employees are prohibited from using State property for personal use.

### 7.5.11.1 Wireless Communication Devices and Electronic Communications

State employees may not directly or indirectly use or allow the use of agency property of any kind, including property leased to an agency, for other than officially approved activities. In addition, employees shall protect and conserve agency property, including wireless communications equipment. Wireless communications equipment includes cellular phones, personal digital assistant devices, and standard and two-way pagers, as well as any similar devices that perform some or all of these functions. Employees are hereby notified that the agency will enforce this policy through a variety of methods and may monitor use of wireless communications equipment to assure compliance.

A. Wireless communication devices shall be used for legitimate State business only. Use of an agency-provided cellular phone for personal calls may result in appropriate disciplinary action and/or the loss of the use of the phone.

B. The agency may not reimburse employees for any charges on personal wireless communication devices.

C. Employees should be aware that cellular phone transmissions are not secure transmissions. Confidential information regarding official business should be transmitted from a secure environment.

### 7.5.11.2 Social Media

Social media includes, but is not limited to, personal websites, blogs, chat rooms and bulletin boards; social networks, such as Facebook, Flickr, Google Plus, LinkedIn, MySpace, Pinterest and Twitter; video sharing sites such as YouTube; and email.

A. Any personal social media sites used by State employees may not be represented as official State sites. State email addresses should not be used to register for personal social media. State employees should not pressure or coerce other employees to “friend” or otherwise connect with them via social media.

B. State employees are prohibited from sharing information or rumors that are false about the State, entities of the State, other employees or people working on behalf of the State. If information is shared related to employment with the State of Mississippi, it must be clear that the views expressed are a State employee’s personal opinions alone and do not reflect the views of the State or any entities of the State. Any comments or posts may only express personal opinions and not those of the State, unless an employee is authorized to do so.

C. Personal comments or postings on social media by state employees must be consistent with these policies. Comments, statements, photographs, video, or audio that are discriminatory, harassing, or threatening, or that demonstrate other unlawful conduct

should not be made toward other State employees and clients or customers with legitimate business interests with the State of Mississippi.

The application of this policy should not be construed to infringe on any person's rights of expression which are guaranteed by law. However, violations of this policy are subject to disciplinary action as set forth in Chapter 9.

**7.5.11.3 Storage of Information**

All information, in any form, including written materials that pertain to work at a State agency, should be stored on the computer or in an employee's desk in accordance with dictated procedures so that other employees or an employee's supervisor has access to it. Agency Information Technology employees and agency supervisors may have passwords or other information necessary to access an employee's voice mail and email, and duplicate keys, if any, to all desks and file cabinets. Employees are prohibited from locking desks or cabinets unless permitted by management or altering equipment or programs to prohibit access.

**7.5.11.4 Expectation of Privacy**

State employees have no expectation of privacy in their work premises. All State property, including an employee's workstation, all physical storage areas and all electronic storage areas, including all software and data on all computers, voicemail and email, are subject to access and inspection at any time by management, other employees or third parties designated by management.

Because agency management may access or inspect an employee's work area at any time to find materials or obtain information, employees should not store any personal documents or materials on or in State property.

**7.5.11.5 Right to Search**

The State reserves the right to conduct reasonable searches on, in or of State property and on State premises including, at any time, locked and unlocked areas, for any reason related to the operation of State business. Consent by the employee is implied and lack of cooperation or refusal to permit a search can result in immediate discipline, including termination.

The State or an agency may conduct inspections or searches for illegal drugs, weapons, explosives, contraband or other prohibited materials on, around or in State property, at any time, without notice, whenever there is a reasonable basis to believe that an employee may be in the possession of such materials in violation of policy.

Inspections or searches for prohibited materials may be conducted by any member of management, an independent person appointed by management, law enforcement representatives, or by the State or an agency with its own personnel.

The right to conduct routine searches of agency premises is in addition to the right of an agency to access all State property without requiring consent of the employee.

### 7.5.11.6 Personal Property

Employment or continued employment with the State constitutes acknowledgement by employees that routine searches of State property might result in the discovery of an employee's personal possessions or personal information. Because the State or third parties will have access to all areas of State property, employees are encouraged not to store or bring to the workplace any personal property or to transmit or obtain the transmission of personal information or messages using State-owned equipment.

### 7.5.12 Discouraged Relationships

The State of Mississippi requires that all employees behave at all times in a professional manner that avoids any unlawful discrimination, including harassment, conflict of interest, or risk of a claim or loss to the State of Mississippi. These requirements include maintenance of a work environment in which the State discourages romantic, dating or sexual relationships between:

A. employees working in a common sphere of influence, meaning a relationship between a supervisor and subordinate, or any relationship in which one employee supervises or manages, directly or indirectly, another employee or makes decisions concerning another employee's terms, conditions or privileges of employment, and/or

B. an employee and a contractor, subcontractor, potential employees or vendor when the employee has the capacity to influence, directly or indirectly, the business relationship or potential employment.

Such relationships can cause conflict and adversely affect morale, operations and productivity because of the perception of impropriety or unfairness and the possibility of accusations that one's position is being used to obtain or grant sexual favors, and of inappropriate influence on others, favoritism, bias or unfair treatment. Additional problems can occur in the workplace should the relationships cease.

### 7.5.13 Outside Employment

All employees must be available for and devote their full attention to their assigned duties and responsibilities during scheduled working hours. Further, employees having emergency response responsibilities must be reasonably available during non-scheduled hours. Each employee must ensure that his or her off-the-job activities do not adversely affect job performance with and are not contrary to the interests of the State. For this reason, the following guidelines and rules are established for all employees:

A. Employment with the State will be the employee's primary job responsibility and obligation – any other employment will be deemed secondary.

B. An employee should not seek or accept outside or secondary employment that may negatively impact or affect the employee's punctual and consistent attendance, ability to satisfactorily and efficiently perform his or her duties or that creates a conflict of interest.

C. The demands or requirements of outside or secondary employment may not be considered as excusable reasons for absences, tardiness, poor performance or other areas of concern from a personnel perspective.

D. Prior to seeking or accepting outside employment, full-time regular employees must discuss a secondary job with management to determine whether or not the job is considered a "conflict of interest" as previously defined.

Outside employment refers to a job or task performed for which any form of compensation is received. This includes the receipt of a benefit as opposed to monetary compensation; for example, performing a service and receiving goods for the task performed instead of receiving a salary or wage. Outside employment does not refer to being a member of a reserve component of the military.

Employees engaging in any outside employment must submit a request for approval to the individual or individuals designated by the agency prior to employment. This request must be completed if an outside activity exists at the time the employees hired by the State; when an outside employment activity previously approved is being discontinued or the nature or scope of the activity is being changed; or, when the employee plans to enter into any outside employment. If the outside employment constitutes a conflict of interest, detracts from the employee's responsibilities, or has an appearance of a conflict of interest, the request will be denied.

## 7.6 EXCELLENCE IN GOVERNMENT AND LONGEVITY SERVICE AWARDS

Two award programs have been established to recognize and acknowledge achievement in and commitment to public service: the Excellence in Government Awards program and the Longevity Service Awards program.

### 7.6.1 Excellence in Government Awards

The recognizing of excellence and innovation in the management of administrative procedures, which increase the quality of public service at the state, district, and local governmental levels shall be governed by the procedures outlined below. The development of the following procedures is based upon Mississippi Code Annotated § 25-9-134 (2) which states as follows:

> The State Personnel Board is hereby authorized and directed to establish a program to encourage and recognize excellence, innovation, and diversity on the part of state, district, and local governmental entities in the design, execution, and management of their own administrative procedures. The State Personnel Board shall establish by rule and regulation procedures for evaluating said examples of

improvement in public administration, and shall provide for an annual awards program to recognize excellence in government. The Board may establish categories of governmental service in order to recognize these achievements.

**7.6.1.1 Provisions for Award Determination**

A. A maximum of two individuals or two groups of individuals will be publicly recognized each year. One shall be the recipient of the Award for Excellence in State Government, and one shall be the recipient of the Award for Excellence in Local and District Government.

B. The Award for Excellence in State Government shall recognize the state service or non-state service employee or group of employees whose contributions within the last five (5) years represent excellence in government.

C. The Award for Excellence in Local and District Government shall recognize the local or district level employee or group of employees whose contributions within the last five (5) years represent excellence in government.

**7.6.1.2 General Procedures for Award Determination**

A. Eligibility Criteria

1. A nominee must be, at the time of the nomination, a full-time employee of a governmental entity in a classified position with a minimum of three (3) years of service.

2. Persons holding elected offices will be evaluated based on their career in public service, excluding time served as an elected official.

B. Nomination Requirements

1. The appointing authority or the governing boards or commissions of governmental entities shall submit nominations for personnel in the entity under their purview to the Executive Director by February 1st of each year.

2. Each nomination must be accompanied by a nomination form signed by the appointing authority of the governmental entity employing the nominee. (An appointing authority may only be nominated by the governing board or commission of the entity employing the appointing authority nominee.)

3. In addition to the nomination form, a written nomination not to exceed five (5) pages should include the following:

(i) Brief biography of the nominee, summarizing positions held, educational background, civic and professional involvement, and other personal data; and

(ii) Statement of achievement

(a) Description of the nominee's work, including but not limited to what was accomplished, how resources were maximized, and what was innovative about the nominee's work;

(b) Description of the significance of the nominee's work, including but not limited to the impact on efficiency and effectiveness; and

(c) Description of the nominee's commitment to government in Mississippi and how his/her service exemplifies that commitment.

C. Submission Guidelines

Nominations may be submitted by email, mail, or hand-delivery. Emails must be time stamped on or before February 1st, and mail must be postmarked on or before February 1st. Nominations which are hand-delivered must be received by the MSPB Executive Director on or before the close of business on February 1st.

D. Verification

Information submitted in support of nominations is subject to verification by the Executive Director. In addition, the Governor or the Executive Director may request a nominating party or nominee to furnish additional information.

**7.6.1.3 Selection Criteria**

A. The nominee must have primary and direct responsibility for administrative action and implementation of personnel-related improvements in productivity, efficiency, or effectiveness.

B. Measurability and tangibility of results will be considered. Examples include, but are not limited to, increased revenues, reduced expenditures while maintaining same quality/quantity standards, or improved quality/quantity standards at equal or decreased cost.

C. Adaptability of actions and/or transferability of approach to other state, district, and/or local jurisdictions will be considered.

D. Innovation of action or approach will be considered.

E. Selection will be based on clear and practicable actions for the improvement of particular aspects of technical or administrative procedures, which include, but are not limited to, the following:

1. Strengthening one or more major areas of public administration such as personnel recruitment, training, development and/or payroll administration.

2. Increasing intergovernmental cooperation with respect to such matters as personnel interchange, personnel recruiting, staff utilization and interchange, and fringe benefits.

3. Establishment of personnel systems of general or specific functional coverage to meet the needs of governmental jurisdictions.

F. Nominations meeting the requirements will be submitted to the Mississippi State Personnel Board for review and comment. Following review and comment by the Board, the Executive Director shall submit all nominations to the Governor for review, comments, and recommendation at least sixty (60) days prior to final evaluation and award by the Board. An explanation in writing shall be sent to the Governor in the event the Board does not concur with recommendations of the Governor in approving or disapproving said nominations.

**7.6.1.4 Announcement of Awards**

The announcement of the awards shall be made publicly at an awards ceremony. Media coverage of all awards functions will be solicited to the greatest extent possible to recognize recipients on a statewide basis. In addition, each recipient shall receive an award.

**7.6.1.5 Scope of the Executive Director's Authority**

A. In the event the Executive Director determines that any nomination is misclassified, the Executive Director may reclassify the nomination to the appropriate category without prejudice to the nominee.

B. Individual nominations made in previous years may be reactivated by the Executive Director for nomination in a subsequent year's competition. However, this provision is not automatic, and nominating parties are encouraged to re-nominate deserving personnel who did not win in the previous year's nominations. Subsequent re-nominations should be updated to include the nominee's latest achievements.

C. Should an insufficient number of valid nominations for the Local and District Government Award and/or the State Government Award be received, the Executive Director may recommend the award(s) not be presented in any given year.

D. All nominations will be screened by the Executive Director to ensure compliance with the eligibility, nomination, and selection requirements.

**7.6.2 Longevity Service Awards**

The Longevity Service Award Program was established to recognize full-time employees for service to the State of Mississippi. The program is established based upon Mississippi Code § 25-9-151 which states that awards shall be made upon attainment of ten (10), twenty (20) and thirty (30) years of full-time service in state government, and shall be the same for all personnel regardless of position or title. Agencies, boards and commissions may request awards for

employees by submitting the Longevity Service Award Program form, which is available on the MSPB website at http://www.mspb.ms.gov, to the Executive Director of the Mississippi State Personnel Board. The award program does not provide for the giving of gifts or monetary bonuses to employees.

## 7.7 REDUCTION IN FORCE

Except as otherwise provided in these rules, the tenure of an employee with permanent state service status shall be continued during good behavior and the satisfactory (Successful) performance of assigned duties. Mississippi Code Annotated § 25-9-127 provides for a Reduction-in-Force policy.

A. Reduction-in-Force - An appointing authority may reduce the number of employees in a state service agency whenever deemed necessary for the following reasons:

   1. Shortage of funds or work;

   3. Material change in duties or organization; or

   4. Merger of agencies.

   Prior to implementing the reduction-in-force, the agency must provide a written explanation or justification to the MSPB citing one or more of the above reasons for the reduction-in-force. In addition, the agency **must submit a proposed organization chart and a proposed staffing plan** to the MSPB for approval sixty (60) calendar days before the MSPB will act upon a reduction in force request. Further, a reduction in force shall be effective no earlier than sixty (60) calendar days from the MSPB approval date.

   Upon emergency request by an agency, the MSPB may waive the sixty (60) day calendar requirement to allow an agency to request approval to implement a reduction-in-force pursuant to the Expedited Implementation Procedure outlined in subsection (B) under circumstances otherwise not qualifying for such a procedure. In considering whether to grant the waiver, it shall consider the emergency nature of the request and whether there has been sufficient time to review the agency's written justification, proposed organization chart, and proposed staffing plan.

B. Expedited Implementation Procedure

   During periods of severe shortfalls of state revenue, an appointing authority may request approval on an expedited basis to implement a reduction-in-force. Before implementing a reduction-in-force, the agency must provide a written explanation or justification to the MSPB for the reduction-in-force because of a shortage of funds to the agency. The agency also must submit a proposed organization chart and a proposed staffing plan to the MSPB for approval, in the form required by the MSPB, at least ten (10) calendar days before the MSPB will act on a reduction-in-force request. If an agency requests expedited consideration of its request in compliance with this procedure, the MSPB will review such a request and make its determination regarding the request within ten (10) calendar days after receipt of the required proposed organization chart and proposed staffing plan. A reduction-in-force approved by the MSPB pursuant to this subsection

will be effective no earlier than ten (10) calendar days after the date of approval by the MSPB.

C. Method of Reduction in Force

1. A reduction-in-force because of shortage of funds or work or because of material change in duties or organization may be administered by the following method(s):

    i. By functional area (e.g., Office, Bureau, Division, Branch, Section, Unit);

    ii. By location (e.g., counties, districts, state office, agency-wide);

    iii. By job class; or

    iv. By a combination of the preceding factors.

An agency may exempt a program area or a certain number of positions in a program area from a reduction in force when such an exemption is required by federal law or grant requirements.

Once the method of reduction in force is determined and prior to implementation, each agency shall submit to the MSPB a written statement of the method of the reduction in force to be administered and the proposed effective date. Such statement is required to establish a record. Then Sections C and D herein are applied. The result of applying the order for reduction in force formula (Section C) and the retention point formula (Section D) must be submitted to the MSPB for purpose of establishing a record. Afterward, Section E herein is applied.

2. The method of reduction-in-force because of the merger of agencies shall be administered as follows:

    i. First - by functional area and/or funding source

    ii. Second - by location, (e.g., counties, districts, state office, agency-wide)

    iii. Third - by job class or job class series

Prior to implementing a reduction in force by merger of agencies, each agency shall submit to the MSPB a written statement of the functional area(s) and/or funding source(s), locations(s) and job class(es), which are targeted for reduction in force and the proposed effective date. Such statement is required for the purpose of establishing a record. Then Sections C and D herein are applied. The result of applying the order for reduction in force formula (Section C) and the retention point formula (Section D) must be submitted to the MSPB for purpose of establishing a record. Afterward, Section E herein is applied.

D. Order for Reduction in Force - The reduction in force formula shall be in the order that follows:

1. Those with emergency appointments;

2. Those with probationary or indefinite probationary appointments;

3. Permanent State Service employees.

E. Retention Point Formula for Reduction in Force - Permanent state service status employees shall be the last group of employees to be separated in a reduction-in-force. When permanent state service employees must be separated, employees with the lowest number of retention points based on seniority, performance ratings, and veterans' preference shall be dismissed first. The retention point formula shall be as follows:

1. Seniority - An employee shall be credited with one point for each year or portion thereof of continuous state service as a state service employee for a total not to exceed thirty (30) points. In calculating retention points for a partial month of service, one-twelfth of a point is credited to employees with service equal to fifteen days in the month. No credit is given for service of less than fifteen days of the month.

2. Performance Rating - Each agency shall use the three most recent annual performance ratings, as recorded in agency files, and assign retention points to calculate the Adjusted Rating Score (ARS), as of the date the agency submits the organizational chart and staffing plan.

   i. The retention points for each of the three performance ratings shall be added together and converted to an Adjusted Rating Score (ARS) using the Performance Rating Conversion Chart. The resulting score should be rounded to the tenth decimal place.

   ii. If an employee has received less than three performance evaluations, then the employee receives a presumptive “Successful” for each missing evaluation. An appraisal rating rendered more than three years before the date the agency submits the organizational chart and staffing plan for reduction-in-force will not be used to calculate an employee's Adjusted Rating Score.

   iii. Employee ratings are very critical whenever an agency has to implement a reduction-in-force. Ratings not completed and recorded pursuant to policy and procedures will not be used in the computation of the Adjusted Rating Score and a presumptive rating of “Successful” will be used.

3. Veterans' Preference - Veterans shall be awarded four (4) points, and disabled veterans shall be awarded eight (8) points.

4. Performance Rating Conversion Chart

   The sum of the employee’s three most recent annual performance ratings shall be converted to an Adjusted Rating Score as identified below:

| Total of 3 Years Annual Ratings | Adjusted Rating Score |
|---|---|
| 6 or below | 10 |
| 6.1 | 11 |
| 6.2 | 12 |
| 6.3 | 13 |
| 6.4 | 14 |
| 6.5 | 15 |
| 6.6 | 16 |
| 6.7 | 17 |
| 6.8 | 18 |
| 6.9 | 19 |
| 7 | 20 |
| 7.1 | 21 |
| 7.2 | 22 |
| 7.3 | 23 |
| 7.4 | 24 |
| 7.5 | 25 |
| 7.6 | 26 |
| 7.7 | 27 |
| 7.8 | 28 |
| 7.9 | 29 |
| 8 | 30 |
| 8.1 | 31 |
| 8.2 | 32 |
| 8.3 | 33 |
| 8.4 | 34 |
| 8.5 | 35 |
| 8.6 | 36 |
| 8.7 | 37 |
| 8.8 | 38 |
| 8.9 | 39 |
| 9 | 40 |
| 9.1 | 41 |
| 9.2 | 42 |
| 9.3 | 43 |
| 9.4 | 44 |
| 9.5 | 45 |

| | |
|---|---|
| 9.6 | 46 |
| 9.7 | 47 |
| 9.8 | 48 |
| 9.9 | 49 |
| 10 | 50 |
| 10.1 | 51 |
| 10.2 | 52 |
| 10.3 | 53 |
| 10.4 | 54 |
| 10.5 | 55 |
| 10.6 | 56 |
| 10.7 | 57 |
| 10.8 | 58 |
| 10.9 | 59 |
| 11 | 60 |
| 11.1 | 61 |
| 11.2 | 62 |
| 11.3 | 63 |
| 11.4 | 64 |
| 11.5 | 65 |
| 11.6 | 66 |
| 11.7 | 67 |
| 11.8 | 68 |
| 11.9 | 69 |
| 12 | 70 |

**EXAMPLE FOR COMPUTATION OF TOTAL RETENTION POINTS: Employee A profile:**

(1) Continuous state service of fifteen (15) years - Employee A would receive fifteen (15) retention points based on seniority. (Refer to E.1. above.)

(2) Employee A's performance ratings are 2.8, 3.1, and 3.6 for a total of 9.5 - The Adjusted Rating Score would be 45. (Refer to E.2.i. and E.4 above.)

(3) Employee A is a veteran and would receive four (4) retention points for veteran's service. (Refer to E.3.)

Employee A's total retention points equal: "64" Seniority (15) + ARS (45) + Veterans' Preference (4).

F. Employees who will be terminated by a reduction-in-force shall be notified in writing of the effective date of the reduction-in-force termination at least ten (10) working days prior to the effective date of the reduction-in-force. The written notification shall cite the reasons for the layoff. The appointing authority and the MSPB shall attempt to place affected employees in other positions for which they are qualified. (See Chapter 4 of this manual.)

G. When requesting a separation in SPAHRS of an employee due to a Reduction-in-Force, the following shall be in effect:

1. The effective date of the separation shall be the last day the employee worked.

2. An individual cannot receive payment for accrued personal leave unless records reflect that a termination date has been entered in SPAHRS by the requesting agency.

3. Online submission of the separation of the employee using the appropriate separation and Reduction-in-Force reason is required.

4. Positions affected by a Reduction-in-Force cannot be filled, reallocated, or abolished and reestablished for a period of one year following the reduction-in-force.

### 7.7.1 Furlough

A furlough, or an involuntary leave without pay, may be implemented when such action is necessary to temporarily reduce expenditures to avoid a deficit of funds.

A. Provisions for Implementation of Furlough (Involuntary Leave without Pay)

The MSPB furlough policy shall apply uniformly to all executive and subordinate employees within an agency, regardless of job class. The MSPB shall review furlough plans only upon written certification of a general funds shortage from the Department of Finance and Administration or written certification of a special funds shortage from the

agency. The MSPB shall ensure that any furlough plan complies with all applicable policies, rules, and regulations of the MSPB.

Such furlough leave for the purpose of reducing expenditures shall be based on the agency head's determination that:

1. Funds on hand or funds to be received during the current fiscal period will be inadequate to effectively discharge the agency's responsibilities without recourse to reductions-in-force; or

2. It is necessary to accrue funds by reducing current payroll expenses so that reductions-in-force or more extensive furloughs may be minimized or avoided.

B. When instituting a furlough, the agency head shall abide by the following rules and regulations:

1. Before instituting furlough leave, an agency head shall develop an equitable and systematic plan for implementation of an agency-wide furlough stating the reasons that require this action. Such plan and subsequent furlough action must be submitted to the MSPB for review and approval prior to implementing such leave.

2. Such a plan shall apply uniformly to all employees in the agency, regardless of status or funding source unless prohibited by law, loss of federal funds, or inability to continue a federally mandated program; however, agency heads may request the MSPB for an exemption from the loss of federal funds provision. All employees, including those on paid leave, shall be placed on an equivalent number of hours of leave without pay. A proportionate number of hours shall be applied to part-time employees. However, an agency head may, with the approval of the MSPB Executive Director, make such leave subject to early cancellation or periodic call-back on a case-by-case basis to protect public health, safety, or property or to ensure operations of critical agency functions. The plan and the employees' notice of leave shall describe the reasons for and conditions of the provision. Agency heads who are elected and whose salary is set by Mississippi Code Annotated § 25-3-31 are not subject to an agency furlough.

3. Employees placed on furlough leave shall be given prior written notice, advising the employee of the particulars regarding the action, including the dates and times furlough leave is to begin and end.

4. While on furlough leave, an employee shall not accrue personal and major medical leave for that portion of the employee's salary funded by the restricted funds. Additionally, personal, major medical, and compensatory leave shall not be taken in lieu of furlough leave.

5. During furlough leave, group health and life insurance benefits funded by the State will continue for employees who remain qualified in accordance with the eligibility criteria as set forth in the group health and life insurance plan approved by the Health Insurance Management Board. An employee will continue to pay

for dependent insurance coverage as well as other insurance premiums paid by the employee.

6. During furlough leave, employees classified as Exempt employees, in accordance with U.S. Department of Labor regulations promulgated pursuant to the Fair Labor Standards Act of 1938, as amended, lose their exemption for the workweek in which the furlough occurs. (See 29 C.F.R. §541.5d(3)(b)).

7. Once the funds have been restored, the agency head shall implement, on an equitable and systematic basis, the recall of furloughed employees. Failure on the part of an employee to return from furlough leave to his or her previous work status as directed in writing shall be cause for discharge.

8. Involuntary leave without pay conducted under this policy shall not be grievable.

9. For provisions regarding implementation of furlough of federally funded employees due to the restricting or limiting of federal funds, see Section C. below.

C. Provisions for Implementation of Furlough of Federally Funded Employees (Involuntary Leave Without Pay)

Mississippi Code Annotated § 25-9-126 authorizes furloughs of federally funded employees as follows:

> In the event that federal funds for the funding of programs of any state agency shall be restricted or limited, the administrative board of such agency or agency administrative head shall have the authority to furlough rather than dismiss employees in accordance with rules and regulations established by the MSPB.

When instituting such a furlough, the administrative board or agency administrative head shall abide by the following rules and regulations:

1. The restriction or limiting of federal funds must be certified in writing by an agency of the federal government, or be an indisputable fact (as in the failure of the United States Congress to pass funding legislation for the federal fiscal year.)

2. The administrative board or agency administrative head shall develop an equitable and systematic plan of furlough and shall administer it uniformly to all executive and subordinate employees, without regard to status, whose positions are funded by the federal funds being restricted or limited. Employees whose positions are funded only in part by federal funds may be placed on part-time duty to exclude the obligation and expenditure of federal funds.

3. Within forty-eight hours of implementation of the furlough plan, the administrative board or agency administrative head shall notify the MSPB Executive Director in writing of the furlough, and shall include the reasons and the plan for implementation.

4. Employees placed on such furlough leave shall be given prior written notice, advising the employee of the particulars regarding the action, including the dates and time furlough leave is to begin and end.

5. While on furlough leave, an employee shall not accrue personal and major medical leave for that portion of the employee's salary funded by federal funds. Additionally, personal, major medical, and compensatory leave shall not be taken in lieu of furlough leave.

6. During furlough leave, group health and life insurance benefits funded by the State will continue for employees who remain qualified in accordance with the eligibility criteria as set forth in the group health and life insurance plan approved by the Health Insurance Management Board. An employee will continue to pay for dependent insurance coverage as well as other insurance premiums paid by the employee.

7. Once the restrictions have been lifted and/or the funds restored, the administrative board or agency administrative head shall implement, on an equitable and systematic basis, the recall of furloughed employees. Failure on the part of an employee to return from such leave to his or her previous work status as directed in writing shall be cause for discharge.

8. The administrative board or agency administrative head may make such furlough leave subject to early cancellation or periodic call-back on a case-by-case basis to protect public health, safety, or property, or to ensure operations of critical agency functions only upon approval by the federal agency of the obligation and expenditure of federal funds.

9. Involuntary leave without pay conducted under this policy shall not be grievable.

## 7.8 EDUCATIONAL LEAVE

### 7.8.1 General Professional Development

State agencies are authorized to grant paid educational leave on a part-time or full-time basis and/or reimburse employees for educational leave expenses in order for employees to develop job-related skills and to develop employees for higher-level professional and management positions; to prescribe eligibility for such educational leave and expense reimbursement; and, for related purposes. **Employees should note that not all State agencies offer educational leave.** (See Mississippi Code Annotated § 37-101-293).

The MSPB is required to approve the form of the contract prepared by the Attorney General and establish a maximum salary amount at which any employee may be paid full compensation while on educational leave and establish a deduction ratio or reduced percentage rate of compensation to be paid to all employees compensated at a salary level above such maximum salary amount. The law also stipulates that each agency granting paid educational leave or reimbursing expenses or both shall file an annual report with the Legislature detailing for each recipient's position the cost of educational assistance, the degree program, and the school attended. This report,

covering the previous fiscal year, shall also be filed with the Mississippi State Personnel Board on or before January 1 of each year. (See Mississippi Code Annotated § 37-101-293).

A. Procedures Outline

Agencies should:

1. Develop internal policies and procedures governing educational leave;
2. Identify the job classifications in which they are experiencing demonstrated critical shortages;
3. Have educational leave recipients sign a contract, the form of which has been approved by the Attorney General and the MSPB; and,
4. Forward to the MSPB and to the Legislature prior to January 1 of each year a copy of the annual report on the Educational Leave program as required by the statute.

B. Eligibility

1. Candidates for Educational Leave must have worked at a State agency for three years at the time of application or be working at a State agency at the time of application for part-time graduate level education in a particular profession deemed by the administrative head of the State agency to meet a critical need within the State agency.
2. Candidates must agree to enter into a contract with the requesting State agency, which must contain the statutory provisions and regulatory terms and conditions upon which the paid Educational Leave will be granted to the candidate.
3. Candidates must attend a college or university located in the State of Mississippi and approved by the head of the agency unless such course of study is not available at a Mississippi college or school.

C. Salaries of Employees on Educational Leave

1. Educational Leave Contract Salary
   i. The Educational Leave contract shall specify the salary by which Educational Leave recipients shall be compensated.
   ii. The MSPB prescribes the maximum salary levels permitted employees on Educational Leave.
2. Determination of Maximum Educational Leave Salary
   i. Employees whose salaries at the time of application are $24,941.40 or less may have their salaries established at the discretion of the appointing authority at any salary up to the current salary at the time of application.

The salary established shall be the maximum salary permitted while on Educational Leave.

ii. Employees whose salaries at the time of application are greater than $24,941.40 may have their salaries established by the appointing authority at any salary up to $24,941.40. Appointing authorities may additionally grant 50% of the difference between $24,941.40 and the current salary. This formula shall establish the maximum salary permitted while on Educational Leave. See the following example:

| | |
|---|---|
| Current Salary: | $35,711.04 |
| Educational Leave Salary: | $24,941.40 |
| Difference: | $10,769.64 |

$10,769.64 x 50% = $5,384.82
$5,384.82 + $24,941.40 = $30,326.22 (max. salary on Educational Leave)

iii. If any part of a month is spent on Educational Leave, the employee shall be compensated at the Educational Leave salary for that entire month.

iv. Employees shall be informed of their Educational Leave salary prior to signing the Educational Leave Contract.

3. Legislative and Variable Compensation Plan Salary Increases

Employees shall be ineligible for salary increases for the time they are on Educational Leave. However, upon the completion of Educational Leave, recipients of Educational Leave shall have their salaries restored by appointing authorities to the level the salary would have been after the addition of any salary increases guaranteed by the Legislature during the period of Educational Leave. No back pay or back award of pay shall be authorized for the time spent on Educational Leave.

D. Educational Programs which Qualify for Educational Leave

Educational Leave shall be granted only to pursue undergraduate and graduate level education. Undergraduate and graduate-level education shall be defined as an educational program:

1. Conducted by a college, university, or school; and

2. That awards academic credit upon successful completion of each course.

E. Educational Opportunities which Do Not Qualify for Educational Leave

Educational Leave does not apply to educational programs other than those identified above. Educational Leave shall not apply to training conducted, sponsored, or co-

sponsored by the requesting agency, the MSPB, or other state or federal agencies which offer job-related training of short duration.

F. Equal Educational Opportunity

Appointing authorities shall ensure that Educational Leave and training opportunities are accorded all qualified agency employees without unlawful discrimination as to race, color, religion, sex, national origin, creed, age, genetic information, political affiliation, religious creed or disability. (See Mississippi Code Annotated §§ 25-9-103; 149).

G. Duration of Educational Leave

Unless otherwise terminated, the duration of Educational Leave may be the length of the semester, quarter, or term in which the employee is actually enrolled pursuing his or her designated professional course work; or at the option of the appointing authority, the duration may extend across successive semesters, quarters, or terms, as long as the employee is enrolled and pursuing his or her designated professional course work in each intervening semester, quarter, or term. Agencies shall maintain contemporaneous leave records, which detail those periods an employee uses Educational Leave.

H. Conditions Requiring Termination of Educational Leave

Educational Leave may be terminated by the administrative head of the agency based on a variety of reasons, including, but not limited to:

1. Any condition listed in the Educational Leave contract,
2. Agency funds constraints,
3. Agency reorganization or change in agency mission,
4. Agency program changes,
5. Agency workload increases or staffing crises,
6. Reductions-in-force,
7. Disciplinary action, or
8. Failure to make adequate academic progress.

   Unless otherwise specified in the Educational Leave contract, adequate academic progress shall be defined as maintaining a "B" or better cumulative average. Failure to make adequate academic progress in one term may result in the employee being ineligible for further Educational Leave.

I. Administrative Provisions

If an Educational Leave candidate will be having his or her salary decreased as a result of Educational Leave, the requesting agency shall submit the action into SPAHRS. Please reference the SPAHRS User Training Workbook located at http://www.mmrs.state.ms.us

or contact your Human Capital Core Processes Consultant for more detailed information regarding Educational Leave. The employee's current salary plus any legislative guarantees will continue on the PIN to ensure proper salary projections.

J. Refer to Mississippi Code Annotated § 37-101-293 for other requirements. These include specific employment obligations in exchange for Educational Leave benefits, repayment obligations and liquidated damages with interest for failure to fulfill the terms of the contract, other legal rights and remedies, and the requirement for annual agency reports to the Legislature on Educational Leave.

K. The administrative head of the employing agency shall be responsible for stipulating any other needed contractual provisions, including but not limited to repayment obligations should the employee be separated for cause, failure to make adequate academic progress, disciplinary action, retirement, or other conditions which may result in the failure to meet Educational Leave contractual obligations. If the administrative head of the agency wishes to require the applicant to be employed at the conclusion of their Educational Leave in a specific geographic location, office, or location, then such terms should be addressed in the contract.

L. In accordance with the Educational Leave law, Educational Leave recipients shall attend colleges or schools located in Mississippi. However, if the administrative head of the employing agency determines that the course of study is not available at a Mississippi college or school, the applicant may attend an out-of-state college or school.

### 7.8.2 Mississippi Code Annotated § 37-101-293

1. Within the limits of the funds available to any state agency for such purpose, the administrative head of such state agency may grant paid educational leave on a part-time or full-time basis and reimburse employees for educational expenses such as tuition, books and related fees to pursue undergraduate or graduate level education to those applicants deemed qualified.

   It is the intent of the Legislature that such educational leave program shall be used as an incentive for employees to develop job-related skills and to develop employees for higher-level professional and management positions.

2. In order to be eligible for paid educational leave, reimbursement for educational expenses or both, an applicant must:

   a) Be working at a state agency for at least three years at the time of application or be working at a state agency at the time of application for part-time graduate level education in a particular profession deemed by the administrative head of the state agency to meet a critical need within the state agency;

   b) Attend any college or school located in the State of Mississippi and approved by the administrative head of such agency, unless such course of

study is not available at a Mississippi college or school, in, which case the applicant may attend an out-of-state college or school;

c) Agree to work as an employee in the same state agency for at least three (3) full years after completion of the course of study or, in the case of employees on educational leave on a part-time basis or receiving reimbursement for educational expenses only, to work for a time prorated based upon the total amount of expenses, including leave, paid for by the agency.

3.

a) Before being granted paid educational leave, or being approved for reimbursement of educational expense or both, each applicant shall enter into a contract with the state agency, which shall be deemed a contract with the State of Mississippi, agreeing to the terms and conditions upon which the paid educational leave will be granted to him. The contract shall include such terms and provisions necessary to implement the purpose and intent of this section. The form of such contract shall be prepared by the Attorney General of this state and approved by the State Personnel Board, and shall be signed by the administrative head of the state agency and signed by the recipient. If the recipient is a minor, his minority disabilities shall be removed by a chancery court of competent jurisdiction before the contract is signed.

b) Educational expenses for tuition, books, and associated fees shall be reimbursed to the employee only after the employee has submitted documentation that the approved course has been successfully completed.

c) If the recipient does not work as an employee in that state agency for the period of employment specified in the contract, the recipient shall be liable for repayment on demand of the remaining portion of the compensation that he or she was paid while on paid educational leave and educational expenses paid, with interest accruing at ten percent (10%) per annum from the recipient's date of graduation, or the date the recipient last worked at that state agency, whichever is the later date. In addition, there shall be included in any contract for paid educational leave a provision for liquidated damages equal to Two Thousand Dollars ($2,000.00) per year for each year remaining to be served under such contract.

d) If any recipient fails or withdraws from school at any time before completing his/her education, the recipient shall be liable for repayment on demand of the amount of the total compensation that he or she was paid while on paid educational leave, with interest accruing at ten percent (10%) per annum from the date the recipient failed or withdrew from school. However, if the recipient remains or returns to work in the same position he or she held in the same state agency prior to accepting

educational leave, he or she shall not be liable for payment of any interest on the amount owed.

e) The state agency shall have the authority to cancel any contract made between it and any recipient for paid educational leave or educational expenses or both upon such cause being deemed sufficient by the administrative head of the agency.

f) The state agency is vested with full and complete authority and power to sue in its own name any recipient for any balance due to the state on any such uncompleted contract, which suit shall be conducted and handled by the Attorney General of the state.

g) Persons who default on contracts entered into under this section shall have the default determined and lose their professional health care license under the procedures provided in Section 37-101-291.

4. At the discretion of the administrative head of the state agency, any recipient who is granted paid educational leave by the state agency, including nurses, shall be compensated by such agency as prescribed by the Mississippi State Personnel Board during the time he or she is in school. For employees who are on educational leave on a full-time basis, the Mississippi State Personnel Board shall establish a maximum salary amount at which any employee may be paid full compensation while on educational leave and shall establish a deduction ratio or reduced percentage rate of compensation to be paid to all employees compensated at a salary level above such maximum salary amount. No recipient of full-time educational leave shall accrue personal or major medical leave while he or she is on paid educational leave.

5. Each state agency granting paid educational leave to employees or reimbursing educational expense or both shall file an annual report with the Legislature, which shall detail for each recipient of paid educational leave the position of the employee, the cost of the educational assistance and the degree program and school attended.

6. Within the limits of funds available to the Mississippi Department of Mental Health, the Executive Director of the Department of Mental Health may grant educational leave to medical residents of the University of Mississippi and pay a stipend in an amount not to exceed the salary of a medical resident. In order to be eligible for paid educational leave under this subsection, the applicant must be approved by the Department of Mental Health Educational Leave Committee and meet all obligations established under agreements between the Department of Mental Health and the University of Mississippi and regulations promulgated by the Board of Mental Health. The recipient shall fulfill his/her obligation under this program on an annual pro rata basis for each year on paid education leave.

### 7.8.3 Professional Development Programs

Certain paid educational leave and paid internship programs have been authorized to develop professional skills and to prepare employees for higher-level professional and management positions. Those employees deemed qualified for paid educational leave or paid internship shall receive funds that may be used to pay for tuition, books, and related fees to pursue their degrees. (See Mississippi Code Annotated §§ 37-101-291 and 37-101-292).

Employees may contact their agency human resources office for more information on the availability of Educational Leave benefits and agency specific policies pertaining to educational leave.

## 7.9 EMPLOYER REQUIREMENTS UNDER FMLA

All information provided below and more detailed information and instructions regarding the implementation and application of the Family and Medical Leave Act of 1993 can be found at http://www.dol.gov/WHD/fmla.

### 7.9.1 General Provisions

In keeping with the requirements of the Family Medical Leave Act of 1993 (hereinafter referred to as "FMLA") and the State of Mississippi's policies, an employee must have worked for the State for a total of twelve months and the employee must have worked for the State for 1250 hours in the twelve month period immediately preceding the commencement of the leave to be eligible for FMLA leave. An employee meeting these requirements is referred to an "eligible employee" for purposes of this policy.

***Availability of Family Medical Leave***

An eligible employee may take up to the equivalent of twelve workweeks of unpaid family and/or medical leave (FMLA leave) during any twelve month period for one or more of the following purposes:

A. For incapacity due to pregnancy, prenatal medical care, or childbirth;

B. To care for a newborn son or daughter, a recently adopted child, or a recently placed foster child through formal placement by a State agency;

C. To care for a legal spouse, parent (not including in-laws) or son or daughter (under the age of eighteen or over the age of eighteen and incapable of self care because of a physical or mental disability), who has a serious health condition; or

D. Because of a serious health condition that makes the employee unable to perform the functions of his or her job.

Leave to care for a new child must be taken within the first twelve months of birth or placement by adoption or foster care, and leave may be taken by the father and/or the mother of the child.

Federal regulations allow an employer to choose from several different methods in determining the twelve month period in which the twelve weeks of leave entitlement occurs.

### 7.9.2 Agency Posting Requirements

Each appointing authority shall post and keep posted, in conspicuous places where notices to employees and applicants are customarily posted, a notice summarizing the entitlement to family leave and providing information concerning the procedures for filing complaints of violations of the Act.

### 7.9.3 Military Leave Entitlements

Eligible employees are entitled to two different kinds of leave as a result of either being in the military or having family members in the military:

A. Eligible employees are entitled to up to twelve weeks of FMLA leave because of any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is a member of any Armed Forces and/or a reserve component of the Armed Forces on covered active duty, or has been notified of an impending call to covered active duty status. Qualifying exigencies may include any one or more of the following: 1) attending to issues arising from a short notice (seven days or less) of deployment, with FMLA leave entitlement lasting up to seven days from the notice; 2) attending certain military events; 3) attending certain childcare and school activities related to the military duty; 4) addressing certain financial and legal arrangements; 5) attending certain counseling sessions; 6) taking up to fifteen days to spend with a military member who is on short-term, temporary rest and recuperation leave; 7) attending post-deployment reintegration briefings; 8) parental care leave, when a military member's parent is incapable of self-care when the care is necessitated by the member's covered active duty; or 9) other activities agreed to by the agency and the employee. Eligible employees must provide notice of the need for such leave as soon as reasonable and practicable. This kind of leave may be taken intermittently or on a reduced schedule. Upon request, eligible employees must provide documentation to support any request for leave.

B. Eligible employees may take up to twenty-six weeks of leave during a single twelve month period to care for a "military member" who is the employee's spouse, son, daughter, parent or next of kin (nearest blood relative or designated as such). A military member is a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or a veteran, who was discharged or released under conditions other than dishonorable, who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five years

preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, as set forth in the FMLA regulations. Eligible employees may take this kind of leave intermittently, or on a reduced schedule, where medically necessary. This twenty-six week leave entitlement will include all other permissible FMLA leave.

### 7.9.4 Serious Health Condition

A "serious health condition" is defined as an illness, injury, or physical or mental condition that involves:

A. *In-patient care* in a hospital, hospice, or residential care facility, including a period of incapacity or treatment related to the inpatient care(i.e., an overnight stay);

B. *A period of incapacity* of more than three consecutive calendar days, with *two or more visits to a health care provider*, one occurring within seven days of the onset of incapacity, and the second within thirty days of the onset (unless extenuating circumstances exist);

C. *A period of incapacity* of more than three consecutive calendar days, with one or more visits to a health care provider, the first occurring within seven days of the onset of the incapacity, and *which results in a regimen of continuing treatment* under the supervision of the health care provider (example: four day absence, one doctor's visit, and prescription medication);

D. Any period of incapacity due to *pregnancy, for prenatal care, or childbirth*;

E. Treatment for or incapacity because of a *chronic serious health condition* (examples: diabetes or epilepsy), which requires periodic visits (at least two per year) for treatment by a health care provider;

F. *Incapacity which is permanent or long term* for which treatment may be ineffective, and the individual is under the continuing supervision of a healthcare provider (example: Alzheimer's Disease); or

G. Any absence to receive *multiple treatments by a health care provider* either for restorative surgery after an injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of treatment (example: chemotherapy treatments for cancer).

The serious health condition must prevent the employee from performing the functions of his or her job or prevent the qualified family member from participating in school or other daily functions.

A "serious injury or illness" in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the covered service member in the line of duty on covered active duty in the Armed Forces (or existed before the beginning of the member's covered active duty and was aggravated by service in the line of duty on covered active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period of covered active duty, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the covered service member in the line of duty on covered active duty in the Armed Forces (or existed before the beginning of the member's covered active duty and was aggravated by service in the line of duty on covered active duty in the Armed Forces) and that manifested itself before or after the member became a veteran, and is:

1. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member medically unfit to perform the duties of the service member's office, grade, rank, or rating; or

2. A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or

3. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

4. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

### 7.9.5 Intermittent or Reduced Schedule Leave

An eligible employee generally does not need to use FMLA leave entitlement in one block. Eligible employees who, because of a serious health condition of their own or a qualifying relative, need to take FMLA leave on an intermittent basis or to stretch their leave out by

working a reduced schedule, must provide certification of the medical necessity for such leave. Eligible employees must make reasonable efforts to schedule planned medical treatment so as not to unduly disrupt the agency's operations. When eligible employees request intermittent or reduced schedule leave because of a birth or placement of a child with them for adoption or foster care, the agency director and/or management will consider such things as how the request for intermittent leave or reduced hours will affect the work output of the employee's positions, and the request will be granted only at the agency's discretion. Under certain circumstances, the agency may require an employee on intermittent leave or reduced schedule leave to transfer temporarily to an alternative job for which he or she is qualified and that better accommodates the leave.

### 7.9.6 Married Couples

The twelve week maximum per eligible employee per year applies to married couples, rather than individual employees, if both members of the couple work for any State agency and the leave is for the purpose of caring for a new child by birth, adoption or foster care placement or to care for the employee's parent. Leave requested because of an eligible employee's own serious health condition is not subject to this limitation, nor is leave to care for the eligible employee's sick spouse or child. Husbands and wives who are both employed by the agency are limited to a combined twenty-six workweeks of leave during the twelve month period to care for a covered service member.

### 7.9.7 Notice Requirements

*EMPLOYEES*: Employees must provide sufficient information to the agency's human resources department to determine if the leave qualifies for FMLA protection, and they must also provide the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions; the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a health care provider, or circumstances supporting the need for military family leave. Employees also must inform the employer if the requested leave is for a reason for which FMLA leave was previously taken or certified.

When leave is foreseeable, employees are required to give thirty days advance notice of their expected need for FMLA leave. If they fail to provide such notice, the agency may deny the leave until a thirty day notice period has expired. When thirty days' notice is not possible, employees are required to give as much notice as is practicable, and they generally must comply with the agency's call-in procedures. Medical certification for most FMLA leave is required and must be submitted within no more than fifteen days of an employee's initial request for leave. It is the employee's obligation to return this form as required. If the certification indicates that the employee does not qualify for FMLA leave, or if the employee fails to return the form in a timely manner, the employee will be subject to the agency's normal attendance and discipline policies. Medical certifications must be submitted on the appropriate form which may be obtained in the agency's human resources department.

Employees on leave must call the agency periodically (but at least every thirty days) to report on their status and intent to return to work.

*THE AGENCY*: The agency will inform employees if they are eligible under FMLA, if their requested leave will be designated as FMLA-protected, and the amount of leave counted against the employee's leave entitlement. The notice will also specify any additional information required, as well as the eligible employees' rights and responsibilities. If the agency determines that the leave is not FMLA protected, the agency will notify the employee and supply the reason for the ineligibility.

### 7.9.8 Use of Accrued Leave

Employees may choose or employers may require use of accrued paid leave while taking FMLA leave, if they otherwise satisfy all of the procedural requirements for the use of that accrued leave.

Leave for a worker's compensation injury that involves a serious health condition, as defined by this policy, will run concurrently with FMLA leave up through the permissible twelve weeks of FMLA leave.

### 7.9.9 Benefits During Leave

Health insurance benefits will be continued during FMLA leave, and the State of Mississippi will continue to cover the applicable premium amount for the employee. An employee may continue dependent coverage during leave, but he or she will be responsible for paying for the coverage on a timely basis. If the employee ceases paying the premium, the State may cancel the dependent coverage. However, the State may also continue the dependent coverage at its own expense and recoup payments from the employee upon the employee's return to active employment. Personal and medical leave benefits will not accrue during unpaid FMLA leave.

An employee who fails to return to work at the end of the FMLA leave and who cannot excuse the failure as due to reasons beyond his or her control, or because of the continuance, recurrence or onset of a serious health condition, is potentially liable for reimbursing the State for its payment of any or all of the health insurance premiums or other non-health premiums it paid during the employee's FMLA leave, except for premiums paid by the State while the employee was concurrently on paid leave. The amounts paid can be deducted from any moneys owed by the State to the employee, including unpaid wages or accrued leave, to the extent permitted by law. Employees are considered to have "returned to work" if they come back to work for at least thirty days after the conclusion of the FMLA leave.

If an employee desires to continue life insurance, disability insurance, or other types of benefits for which he or she typically pays during unpaid FMLA leave, the agency is required to follow established policies or practices for continuing such benefits for other instances of leave without pay. If the agency has no established policy, the employee and the agency are encouraged to agree upon arrangements before FMLA leave begins. With respect to PERS, any period of FMLA leave will be treated as continued service (i.e., no break in service) for purposes of vesting and eligibility to participate.

### 7.9.10 Return from Leave

Employees returning from FMLA leave will be restored to their prior positions and pay wherever practicable. Such employees will receive all benefits accrued prior to the beginning of leave, and

they will be provided continuation of, or reinstatement to, health insurance benefits. If the employee's prior position is not available, the employee will be restored to an equivalent position with equivalent pay and terms and conditions of employment.

Employees must report on their intention to return to work as requested by the agency. So that their work may be properly scheduled, employees must provide reasonable notice (within two business days) of any foreseeable changed circumstances requiring either longer or shorter FMLA leave periods than originally requested.

**7.9.11 Designation of Leave as FMLA Leave and Notification to Employee**

The agency is responsible for designating leave that is FMLA qualifying and for giving notice of the designation to the employee.

A. If the agency knows the reason for leave is an FMLA reason at the time leave begins, the leave must be designated by the agency in writing at that time. If the agency knows the leave is for a FMLA reason at the time leave begins and *fails* to designate, the leave may not be counted against the employee's FMLA entitlement, and the employee continues to be subject to FMLA protection. Once the agency designates, the leave may be counted against the FMLA entitlement only from that time forward, and not retroactively.

B. When the agency learns that leave is for an FMLA purpose after leave has begun, but before the employee returns to work, the entire or some part of the leave period may be retroactively counted as FMLA leave.

C. Leave may be designated as FMLA after the employee has returned to work in only two circumstances:

    1. The leave is short-term and the agency is awaiting medical certification, or

    2. The agency does not know the reason for the leave, but learns upon the employee's return to work. The designation must be made within two business days of the employee's return to work. If the agency has not made a designation, but the employee wants the absence to be treated as FMLA leave, the employee must notify the agency within two business days of his or her return to work. If such notification is not made, the employee may not subsequently assert FMLA protection.

D. If an employee takes paid or unpaid leave and the agency does not designate the leave as FMLA leave, it may not be counted against the employee's FMLA entitlement.

E. The agency must provide written notice detailing the specific expectations and obligations of the employee and explaining any consequence of failure to meet these obligations. Such specific notice must be provided to the employee within a reasonable time after notice of the need for leave is given, and must include, as appropriate:

    1. That the leave will be counted against the employee's annual FMLA leave entitlement;

2. Any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;

3. The employee's right to substitute paid leave and whether the agency will require the substitution of paid leave and the conditions related to any substitution;

4. Any requirement for the employee to make any premium payments to maintain health benefits, the arrangements for making such payments, and the consequences of failure to make such payments on a timely basis;

5. Any requirement for the employee to present a fitness-for-duty certificate to be restored to employment;

6. The employee's status as a "key employee," the potential consequence that restoration may be denied following FMLA leave, and the conditions required for such denial;

7. The employee's right to restoration to the same or an equivalent position upon return from leave; and

8. The employee's potential liability for payment of health insurance premiums paid by the agency during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.

### 7.9.12 Medical Certification

The agency may require that an employee's leave to care for his/her seriously-ill immediate family member, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of his/her position, be supported by a certification issued by the health care provider of the employee or the employee's ill family member.

When the leave is foreseeable and at least thirty days' notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested verification to the agency within the timeframe requested (which must allow at least fifteen calendar days after the agency's request) unless it is not practicable under the particular circumstances despite the employee's diligent, good faith efforts.

The Department of Labor has developed an optional form (Form WH-380, as revised found at http://www.dol.gov/WHD/fmla/ or http://www.dol.gov/whd/forms/WH-380-F.pdf) for employees or their family members to use in obtaining medical certification from health care providers that meet FMLA's certification requirements. This form or another form containing the same basic information may be used by the agency; however, no additional information may be required. The form contains required entries for:

A. A certification as to which part of the definition of serious health condition, if any, applies to the patient's condition and the medical facts, which support the certification, including a brief statement as to how the medical facts meet the criteria or definition.

B. The approximate date the serious health condition commenced and its probable duration.

C. Whether it will be necessary for the employee to take leave intermittently or to work on a reduced leave schedule basis.

D. If the condition is pregnancy or a chronic condition, whether the employee is presently incapacitated and the likely duration and frequency of episodes of incapacity.

E. If additional treatments will be required for the condition, an estimate of the probable number of such treatments.

F. If the patient's incapacity will be intermittent, or will require a reduced leave schedule, an estimate of the probable number and interval between such treatments, actual or estimated dates of treatment if known, and the period required for recovery.

G. If medical leave is required for the employee's absence from work because of the employee's own condition, whether the employee:

    1. Is unable to perform work of any kind;

    2. Is unable to perform any one or more of the essential functions of the employee's position, including a statement of the essential functions that the employee is unable to perform based on either information provided on a statement from the agency of the essential functions of the position, or if not provided, discussion with the employee about the employee's job functions; or

    3. Must be absent from work for treatment.

H. If leave is required to care for a family member of the employee with a serious health condition, whether the patient requires assistance for basic medical or personal needs or safety or for transportation; or if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in the patient's recovery.

If an employee submits a complete certification signed by the health care provider, the agency may not request additional information from the employee's health care provider.

If the agency has reason to doubt the validity of the certification, it may require, at agency expense that the employee obtain the opinion of a second health care provider designated or approved by the agency. Any such health care provider designated or approved shall not be employed on a regular basis by the State.

If the second opinion differs from the original certification, the agency may require, at its own expense, that the employee obtain the opinion of a third health care provider designated or approved jointly by the agency and the employee concerning the information previously certified. The opinion of the third health care provider concerning the information previously certified shall be considered final and shall be binding on the agency and the employee.

The agency may require, at the employee's expense, that the employee obtain subsequent recertification on a reasonable basis. No second or third opinion on recertification may be required.

### 7.9.13 Certification of Military Caregiver Leave

Health care providers who are authorized to complete a certification for military caregiver leave for a covered service member may include health care providers, as defined in FMLA regulations, who are not affiliated with the Department of Defense, Department of Veterans Affairs, or TRICARE.

The Department of Labor has developed optional forms (WH-385, WH-385-V) for an employee's use in obtaining certification that meets FMLA's certification requirements, which may be obtained from local offices of the Wage and Hour Division or on the Internet at www.dol.gov/whd. These optional forms reflect certification requirements so as to permit the employee to furnish appropriate information to support his or her request for leave to care for a covered service member with a serious injury or illness.

If certification is requested, an employee may submit documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers as sufficient certification of the covered veteran's serious injury or illness. The documentation is sufficient even if the employee is not the named caregiver on the document.

If an employee submits documentation of the service member's enrollment in the VA Program of Comprehensive Assistance for Family Caregivers, an employer may require the employee to provide additional information.

Second and third opinions may be required for military caregiver leave certifications that are completed by health care providers who are not affiliated with Department of Defense, Department of Veterans Affairs, or TRICARE.

Where medical certification is requested, an employee may not be held liable for administrative delays in the issuance of military documents which occur despite the employee's diligent good-faith efforts to obtain the documents. Where certification is requested, it is the employee's responsibility to provide his or her employer with complete and sufficient certification and failure to do so may result in the denial of FMLA leave.

### 7.9.14 Unlawful Acts

The FMLA makes it unlawful for any employer to:

A. Interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under the FMLA; or

B. Discharge or discriminate against any person for opposing any practice made unlawful by the FMLA or for involvement in any proceeding under, or relating to, the FMLA.

Please notify the agency's executive director immediately if any of these actions occur. Employees may also file a complaint with the United States Department of Labor or bring a private lawsuit against the agency.

### 7.9.15 Enforcement

The U. S. Department of Labor (DOL) is responsible for the enforcement of the FMLA and may investigate and resolve complaints and violations under the Act in the same manner as under the Fair Labor Standards Act (FLSA). For assistance in complying with the FMLA, State agency employers may contact the area office of the Wage and Hour Division of the DOL at http://www.dol.gov/WHD/ or call (601) 965-4347 or 1-866-4-USWAGE.

## 7.10 INFLUENZA PANDEMIC POLICY

### 7.10.1 Preventing the Spread of the Flu in the Workplace

State employees are encouraged to cooperate in taking steps to reduce the transmission of both seasonal and novel strain of influenza in the workplace. Agencies are also encouraged to install alcohol-based hand sanitizers throughout the workplace and in common areas.

### 7.10.2 Staying Home When Ill

During flu season and/or an influenza pandemic, it is critical that employees do not report to work while they are ill. Employees who report to work ill will be sent home. Employees who are sent home under this policy will be required to utilize leave in accordance with Section 7.3, Leave.

### 7.10.3 Reporting to Work When Not Ill

A severe influenza pandemic could result in a significant level of absenteeism. During this time, unless otherwise notified, attendance and leave policies will remain in place.

| EDUCATIONAL LEAVE REPORT | | | |
|---|---|---|---|
| **Agency** | | **Fiscal Year** | |
| **Individual Responsible for this Report** | | **Phone Number** | |

| **Name** | **Position** | **Degree/ Course Work** | **School** | **Cost to Agency** | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | **Leave** | **Tuition** | **Fees** | **Books** | **Travel** | **Total** |
| | | | | | | | | | |
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**This report or any variation of this report, which contains the same information, is to be submitted on or before January 1 of each year to the Legislature and to the Mississippi State Personnel Board. The reporting period covers the previous fiscal year. Additional sheets may be attached if needed.**

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## CHAPTER 8 – PERFORMANCE DEVELOPMENT SYSTEM

***Note:*** *The January 2013 revisions to this chapter will be in effect as of the effective date of the Mississippi State Personnel Board Policy and Procedure Manual. However, agencies that need additional time to implement these revisions may have until January 1, 2014, to fully implement this chapter. An agency should implement these revisions agency wide at the same time due to the nature of the Reduction in Force formula.*

*Until such point in time that an agency has adopted the January 2013 revised Performance Development System, said agency will be allowed to continue to utilize the Job Content Questionnaire (JCQ) being replaced by the new Performance Development Assessment. However, after January 1, 2014, the Job Content Questionnaire (JCQ) will no longer be accepted by the MSPB as a valid document.*

### 8.1 AUTHORITY AND SCOPE

The MSPB was established, in part, to "advance employees on the basis of their relative ability, knowledge and skills..., to provide equitable and adequate compensation to retain employees... and to retain employees on the adequacy of their performance, to correct inadequate performance, and to separate employees whose inadequate performance cannot be corrected." (See Miss. Code Ann. § 25-9-103(a)–(d)). To implement these principles in accordance with MSPB's mandate to develop rules and regulations requiring a uniform system of personnel administration governing promotions, transfers, demotions, separations, reports of performance and employee training, the MSPB has developed a Performance Development System (hereinafter referred to as a "PDS") for use by all employees under the purview of the MSPB. (See Miss. Code Ann. § 25-9-119(c)). This system assesses an employee's performance at either the Outstanding (4.0) Performance Level, the Successful (3.0) Performance Level, the Improvement Needed (2.0) Performance Level, or the Not Demonstrated (1.0) Performance Level and provides employees with an Individual Development Plan (hereinafter referred to as an "IDP") that fosters performance growth and includes specific goals to be accomplished during the review period.

Assessing employee performance is a continuous process, providing agency management with a factual basis to identify employees for productivity increases, promotion, correction of inadequate performance, or separation when inadequate performance cannot be corrected. These assessments are also used in the retention point formula for a Reduction in Force (see Section 7.7), for job development and training, and for other job related personnel management actions.

Disciplinary issues should be handled by established disciplinary procedures and should not be part of the PDS process. The PDS must be administered in a fair manner without unlawful discrimination based on race, color, sex, religion, national origin, age, disability, genetic information, religious creed or political affiliation.

### 8.2 APPLICABILITY

Every employee whose position is under the salary setting authority of the MSPB shall have their job performance assessed at least once annually. Assessments must be based only on the

employee's performance of his or her assigned duties compared against the competencies/behavioral anchors for those duties. IDPs are a continuous process and should be in place for all employees.

## 8.3 DEFINITIONS

PERFORMANCE DEVELOPMENT SYSTEM (PDS): A system which assesses an employee's performance and provides employees with a plan that fosters individual employee development.

NOT DEMONSTRATED (1.0): Employee does not show competency.

IMPROVEMENT NEEDED (2.0): Employee shows frequent, but not consistent competency.

SUCCESSFUL (3.0): Employee consistently shows competency.

OUTSTANDING (4.0): Employee is above the level of expected competency.

INDIVIDUAL DEVELOPMENT PLAN (IDP): A written action plan, jointly developed by the employee and the reviewing supervisor, to foster individual performance growth.

REVIEW PERIOD: A time period of at least ninety days and not more than 365 days for which an employee's performance is reviewed.

FINAL ASSESSMENT: The last assessment of the review period which results in a determination of employee's overall performance.

VALID ASSESSMENT: An assessment completed as a result of an employee's job performance for at least ninety days and no more than 365 days.

PERFORMANCE IMPROVEMENT PLAN (PIP): A written action plan, jointly developed by the employee and the reviewing supervisor, to outline actions required to bring a final assessment to a Successful (3.0) Performance assessment level.

REVIEWING SUPERVISOR: The last person to have supervised the employee for a minimum of a ninety day period at the time the Final Assessment is due.

FIRST LEVEL REVIEWER: The Reviewing Supervisor's immediate supervisor.

SECOND LEVEL REVIEWER: The immediate supervisor of the First Level Reviewer.

## 8.4 GENERAL RULES

A. During the first year of employment for *probationary employees/new hires*, the PDS shall be initiated within fourteen days of the hire date. An initial assessment shall be made within fourteen days prior to the end of the sixth month from date of hire. (In cases where completion of required job training results in reclassification, the initial assessment may be conducted earlier than six months from date of hire.) A Final Assessment shall be completed within fourteen days prior to the end of the twelfth month from date of hire.

B. For each subsequent twelve month employment period, a Final Assessment shall be required to be completed at least once.

1. For positions under the salary setting authority of the MSPB, personnel transactions (promotion, transfer, reclassification, reallocation, and demotion) require that a Final Assessment be completed within ninety days prior to the effective date of the personnel transaction.

2. All personnel transactions requested will result in the Review Period resetting to begin with the date the employee enters the position or the effective date of a reclassification/reallocation and end one year from that date (except for employees in the probationary period of twelve months).

3. If the most current Final Assessment is more than ninety days prior to the effective date of the personnel transaction, the personnel transaction will not be processed until a new Final Assessment is completed, recorded, and approved for the employee in his or her current position. Then, the pending personnel transaction request will be completed. When the request is approved, the next Review Period will begin with the effective date of the personnel transaction and end 365 days later.

C. An employee who is detailed or temporarily assigned to a different position for a period expected to be at least 180 calendar days shall be provided with the duties and competencies/behavioral anchors of the detailed or temporarily assigned position. Development and communication of these duties and competencies/behavioral anchors shall follow the guidelines established by this Chapter. Upon completion of the detail or temporary assignment, the employee shall receive a Final Assessment.

D. If an employee is on detail to special duty or temporary duty assignment for a period of less than ninety days at the time of the Final Assessment due date, the Reviewing Supervisor is the last person to have supervised the employee prior to the detail or temporary assignment, providing such official meets the definition of a Reviewing Supervisor.

E. An employee shall have been in a position for a period of at least ninety days before being eligible to receive a Final Assessment. If the employee is in the position less than ninety days, it is assumed that the employee has performed at the Successful (3.0) Performance level.

F. A Reviewing Supervisor who leaves the supervisory position is responsible for submitting to the First Level Reviewer a Final Assessment for each supervised employee.

G. Where an employee has not been supervised by any one Reviewing Supervisor for at least ninety days during the Review Period, or the Reviewing Supervisor has not completed a Final Assessment and is no longer available to complete such, the employee will receive a Final Assessment from the person who is identified as the First

Level Reviewer. In such cases, the Final Assessment shall be reviewed and approved by the Second Level Reviewer.

H. Within fourteen days prior to the end of the Review Period, the documented Final Assessment will be completed by the Reviewing Supervisor through an assessment interview with the employee to discuss the employee's level of performance.

## 8.5 PROCESS

### 8.5.1 The Beginning of the Review Period

During the first fourteen days of the Review Period, the Reviewing Supervisor and employee are to determine the job duties and competencies/behavioral anchors of the position and to identify what constitutes a Successful (3.0) Performance level.

Each agency will utilize applicable MSPB job descriptions to determine common/generic essential job duties to be used to complete the Job Content section and competencies/behavioral anchors to be used to complete the Competencies sections of the Performance Development Assessment (PDA). Common/generic duties and competencies/behavioral anchors may be identified, developed, and issued for certain occupations and types of positions in each agency. The Reviewing Supervisor and the employee will review together agency established duties and competencies/behavioral anchors.

The Reviewing Supervisor and the employee are also to determine specific competencies to be developed through completion of associated learning activities by creating the employee's IDP that will be utilized throughout the Review Period. Examples of learning activities contained in an employee's IDP include, but are not limited to, relevant classes to attend and books to read.

Duties and competencies/behavioral anchors established as criteria for an employee's assessment are management decisions that are NOT grievable.

### 8.5.2 Required Review of Duties and Competencies/Behavioral Anchors

Each agency will provide for a First Level Reviewer who will review the duties and competencies/behavioral anchors identified for each position/employee. The purpose of the review will be:

A. To ensure consistency, where appropriate, in the duties and competencies/behavioral anchors for similar positions in the agency;

B. To review the distribution and priority of work as implied by the duties and competencies/behavioral anchors;

C. To ensure consistency between the duties and competencies/behavioral anchors and organization function statements as well as job descriptions; and

D. To ensure compliance with the provisions of this Chapter.

### 8.5.3 Changes to Duties and Competencies/Behavioral Anchors

Changes to duties and competencies/behavioral anchors made during the Review Period must be signed and dated by the Reviewing Supervisor, employee, and First Level Reviewer documenting that a meeting was held and the changes discussed.

### 8.5.4 Supplemental Employee Performance Folder

A Supplemental Employee Performance Folder (hereinafter referred to as a "SEPF") must be maintained by the Reviewing Supervisor on each employee for the current Review Period. The folder should contain: (1) a current (less than twelve months old) Performance Development Assessment (PDA) signed by the employee and the Reviewing Supervisor; (2) any narrative statements about the employee's performance; (3) examples of work when appropriate; (4) results of each review session; (5) Performance Improvement Plan, if pertinent; (6) a copy of the employee's IDP; and (7) any information the employee may want to contribute.

The SEPF may be used for written descriptions of specific employee performance, both positive and negative, observed by the Reviewing Supervisor and related to the employee's duties and competencies/behavioral anchors. If an employee has failed to meet a competency for reasons beyond his/her control, then this fact and the reasons should be noted in the employee's SEPF record.

The SEPF must be maintained in a secure file by the Reviewing Supervisor and not be shared with anyone except the employee who is the subject of the data and the First Level Reviewer. All material in the SEPF must be made available for the employee to review within a reasonable time after request.

### 8.5.5 Review Sessions

The purposes of the review sessions during the Review Period are:

A. To provide feedback to the employee concerning the overall assessment of performance during the Review Period.

B. To review and update duties and competencies/behavioral anchors in light of changing requirements of the employee's position.

C. To identify areas of performance requiring improvement and to identify methods/training needed to facilitate that improvement.

D. To update the employee's IDP.

Review sessions may be held at any time. However, the Reviewing Supervisor shall conduct a mid-point review session with the employee during the Review Period. The Reviewing Supervisor must give reasonable advance notice to the employee of the date and time for any review session.

### 8.5.6 Informal Efforts

When the result of the final assessment of an employee's overall job performance is determined to be at least Improvement is Needed (2.0) Performance level but lower than the Successful (3.0) Performance level, the Reviewing Supervisor must discuss with the employee specific action/steps to be taken by both the Reviewing Supervisor and the employee to improve performance. The Reviewing Supervisor should initiate the following informal actions: (1) counseling on a systematic, job-related basis; (2) regular and careful review of work; and (3) on- and/or off-site training. At the agency's discretion, if 180 days into the new rating period the employee's performance is assessed as continuing in this range, the Reviewing Supervisor may initiate a formal Performance Improvement Plan (hereinafter referred to as a "PIP").

### 8.5.7 Performance Improvement Plan

A. Formal Performance Improvement Plan

When the result of the final assessment of an employee's overall job performance is determined to be at the Not Demonstrated (1.0) Performance Level but lower than the Improvement is Needed (2.0) Performance Level, the Reviewing Supervisor must initiate a formal Performance Improvement Plan.

The employee must be given notice that his or her overall performance must be improved to the level of Successful (3.0) Performance by the end of a ninety day performance observation period. A mid-point review session should be held with the employee around the forty-fifth day of the ninety day period. Failure by the employee to improve job performance to the level of Successful (3.0) Performance by the conclusion of the ninety day PIP period may constitute cause for dismissal, demotion, or transfer.

B. Improvement in Performance

At the conclusion of the ninety day PIP period and after a Final Assessment, if the employee's performance has improved to the Successful (3.0) Performance Level, the Reviewing Supervisor will begin a new Review Period as outlined in this Chapter.

C. Continued Not Demonstrated (1.0) and Improvement is Needed (2.0) Performance

At the conclusion of the ninety day PIP period and after a Final Assessment, if the employee's performance has not improved to the Successful (3.0) Performance Level, the Reviewing Supervisor shall submit through appropriate lines of administration, the recommended action to be taken as a result of the employee's failure to improve performance. Recommended actions may include the initiation of a second formal PIP, demotion, transfer, or termination.

### 8.5.8 The End of the Review Period

Within fourteen days prior to the end of the Review Period, a Final Assessment interview must be held. Refusal by the employee to sign the assessment form does not affect or negate the Final Assessment. His or her refusal to sign the assessment form at the end of the Review Period

acknowledging that the Final Assessment has been discussed with him or her may be, following a warning, considered an act of insubordination.

### 8.5.9 Grievance/Appeals Process

State service employees who disagree with an assessment (excluding the contents of duties and competencies/behavioral anchors) may seek review by appeal to the Employee Appeals Board of the MSPB after exhausting agency grievance procedures.

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# CHAPTER 9 – DISCIPLINE AND CORRECTIVE ACTION

## 9.0 INTRODUCTION

State law provides that no employee of any department, agency or institution under the Statewide Personnel System who is subject to the policies and procedures prescribed by the Mississippi State Personnel Board may be dismissed or have adverse action affecting their compensation or employment status taken against them except for inefficiency or other good cause, and after written notice and opportunity to be heard within the department, agency or institution as provided in policies and procedures promulgated by the MSPB. This provision does not apply to persons separated from employment: 1) due to a curtailment of funds or a reduction in force approved by the MSPB; 2) during the initial twelve (12) month probationary period in State Service; or 3) as an executive officer or other non-State Service employee of any State agency who serves at the will and pleasure of the Governor, board, commission or other appointing authority.

Adverse action against an employee or separation of employment may occur because the conduct of the employee is an offense as provided in the schedule of offenses listed below or because there is a legal non-conduct basis which meets the statutory requirement of good cause.

In accord with State law, the MSPB requires that all State employees who are subject to the policies and procedures of the MSPB and who have attained a property interest in their job as provided in State law may not be subject to separation of employment or other forms of discipline without due process of law.

Disciplinary action shall be applied in steps of increasing severity whenever practical in order to stimulate a change in the behavior that activated the disciplinary process. The appointing authority or designated representative shall exercise corrective action when a State Service employee violates established rules of conduct or performs below minimum expected standards as prescribed herein. Corrective action shall also be exercised when a State employee fails to comply with agency policy, procedure and/or management directives. Each appointing authority shall:

A. establish and adhere to fair and objective procedures for correcting or treating unacceptable conduct and performance in accordance with the guidelines herein; and

B. distinguish between less serious and more serious actions of misconduct and provide disciplinary action accordingly and consistently.

## 9.1 SCHEDULE OF OFFENSES AND AUTHORIZED DISCIPLINARY ACTION

The appointing authority or designated representative shall administer discipline in an equitable and consistent manner. The schedule of offenses and disciplinary actions below shall be adhered to in administering discipline to all employees subject to these policies and procedures. The appointing authority may add to this schedule of offenses and disciplinary action to reflect the particular mission and work environment of the agency. Any offenses and disciplinary actions added by the agency shall apply only to that agency and shall be submitted to the MSPB for

approval prior to implementation. The approved schedule of offenses and disciplinary actions shall be published and a copy provided to each employee upon implementation.

A. Group One Offenses

Generally these offenses are less severe and may be disciplined by written reprimand. The accumulation of three (3) Group One written reprimands within a three (3) month period may result in suspension without pay not to exceed three (3) working days. Accumulation of four (4) Group One written reprimands within a six (6) month period may result in demotion or dismissal. Multiple reprimands may not be issued for the same occurrence or event. State employees facing disciplinary action for accumulating written reprimands are entitled to due process prior to being suspended, demoted or dismissed.

Group One includes the following offenses:

1. unexcused tardiness;
2. abuse of State time such as unauthorized time away from work area or failure to notify supervisor promptly upon completion of assigned work;
3. obscene or abusive language;
4. conviction of a moving traffic violation, excluding driving under the influence, while operating a State vehicle.

Group Two Offenses

Acts and behavior in this group are generally more severe than Group One offenses. Group Two offenses may be disciplined by written reprimand and/or suspension without pay not to exceed five (5) working days. Accumulation of two (2) Group Two written reprimands within a one (1) year period may result in demotion or dismissal. Accumulation of one (1) written reprimand for a Group Two offense and three (3) written reprimands for Group One offenses within a one (1) year period may result in demotion or dismissal. Multiple reprimands may not be issued for the same occurrence or event. State employees facing disciplinary action for accumulating written reprimands are entitled to due process prior to being suspended, demoted, or dismissed.

Group Two includes the following offenses:

1. insubordination, including, but not limited to, resisting management directives through actions and/or verbal exchange, and/or failure or refusal to follow supervisor's instruction, perform assigned work, or otherwise comply with applicable established written policy;
2. violation of safety rules in the absence of a threat to life;
3. failure to report to work without giving required notice to supervisor;

4. leaving the work site without permission during working hours in the absence of a threat to life.

Group Three Offenses

Acts and behavior in this group are of the most serious nature. Commission of one (1) Group Three offense may be disciplined by the agency with a written reprimand and/or may result in suspension without pay for up to thirty (30) working days, demotion, or dismissal.

Group Three includes the following offenses:

1. unauthorized absence or leave in excess of three (3) consecutive working days without required notification and satisfactory explanation to the supervisor or the appointing authority in a timely manner;

2. chronic absenteeism which is defined as three (3) or more incidents of unauthorized absence without required notification and satisfactory explanation to the supervisor or the appointing authority in a timely manner within any ninety (90) day period;

3. use or possession of alcohol while on the job or on the employer's premises or reporting to work under the influence of alcohol, or when ability is impaired by alcohol;

4. the unlawful manufacture, distribution, possession, or use of controlled substances while on the job or on the employer's premises or reporting to work under the influence of controlled substances, or when ability is impaired by the unlawful use of controlled substances;

5. refusal to take a drug or alcohol test when requested to do so by an employer with a written drug and alcohol testing policy pursuant to Mississippi Code Annotated, § 71-7-3.

6. falsification of records, such as, but not limited to, vouchers, reports, time records, leave records, employment applications, or other official State documents;

7. willful or negligent defacement of or damage to the records or property of the State, another employee, or business invitee of a State agency or office;

8. acts of physical violence;

9. violation of safety rules causing a threat to life or human safety;

10. unauthorized possession or use of firearms, dangerous weapons or explosives;

11. threatening or coercing employees, supervisors, or business invitees of a State agency or office, including stalking;

12. unauthorized use or misuse of State property or records;

13. an act or acts of conduct, including, but not limited to, the arrest or conviction for a felony or misdemeanor, occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees;

14. an act or acts of conduct occurring on or off the job which are plainly related to job performance and are of such nature that to continue the employee in the assigned position could constitute negligence in regard to the agency's duties to the public or to other State employees;

15. engaging in prohibited political activity;

16. leaving the work site without permission causing a threat to life or human safety;

17. theft on the job;

18. a breach of agency security or confidentiality;

19. willful violation of MSPB policies and procedures, including, but not limited to refusing to cooperate and/or giving a false statement in an investigation of possible violation of MSPB policies and procedures;

20. operation of a state-owned motor vehicle without a valid driver's license from the State of Mississippi or a contiguous state;

21. the failure of any appointing authority or supervisor of any employee to properly deduct an employee's donation of leave to another employee for a catastrophic injury or illness from the donor employee's earned personal leave or major medical leave.

## 9.2 FORMS OF DISCIPLINE

The appointing authority or designated representative shall take action to formally discipline an employee who is guilty of an offense. All forms of discipline are grievable and/or appealable. The employee shall be given an opportunity for a conference (due process hearing) with the appointing authority or designated representative and to respond prior to any suspension, demotion or termination. When a conference has been held prior to an employee being issued a written reprimand, the affected employee may appeal directly to the Employee Appeals Board without exhausting the grievance procedure.

In extraordinary circumstances, the employee may be placed on immediate suspension with pay pending a hearing on the matter.

The appointing authority or a designated representative may attempt to correct unacceptable behavior with a verbal warning and/or counseling and/or other appropriate informal means, whenever practical, prior to taking formal action against an employee.

### 9.2.1 Documentation of Corrective and Disciplinary Actions

A. When the appointing authority or designated representative has taken corrective action preliminary to a formal disciplinary action, a written account of such action may be placed in the employee's personnel file. Formal disciplinary actions include written reprimand, suspension, demotion, and dismissal.

B. When an employee has been issued a written reprimand, a copy of the reprimand shall be placed in his or her personnel file. All written reprimands must clearly State that it is a written reprimand and state the specific conduct of the employee and the particular offense violated. The written reprimand must also inform the employee of their right to grieve the reprimand in accordance with the MSPB grievance procedure.

C. Documentation of corrective actions and disciplinary measures, including written reprimands, may be kept indefinitely in the employee's personnel file for the purpose of showing a pattern of employee conduct.

D. Before any written documentation of corrective action or disciplinary measure is placed in an employee's personnel file, the employee shall be given:

   1. a copy of the material to be placed in his or her file; and

   2. written notice that the material will be placed in his or her personnel file.

   The appointing authority will keep a copy of the notice, which will contain either the employee's acknowledgment that he or she has received the material and the notice, or a statement signed by the person who delivered the material and the notice that the employee refused to sign such an acknowledgment.

E. The appointing authority will determine what job-related information will be included in each employee's personnel file. However, the inclusion of any information which may adversely affect a permanent State Service employee's compensation or employment is a grievable and appealable issue.

### 9.2.2 Suspension

The appointing authority may suspend an employee without pay or other compensation as punishment for disciplinary cause. An agency may not suspend an employee without pay as punishment for disciplinary cause for more than thirty (30) workdays during any twelve (12) month period. The twelve (12) month period shall begin with the first day of the first suspension.

In extraordinary circumstances, the appointing authority or designated representative may immediately suspend an employee with pay. Such employee must be given an opportunity for a hearing with the appointing authority or designated representative within twenty (20) working days of the suspension, at which time the appointing authority may make a final decision. Further, where the employee has been charged with a felony, the appointing authority or designated representative may suspend an employee without pay pending a post suspension hearing to be held within twenty (20) working days from the first day of suspension. This period

of suspension without pay pending a post suspension hearing shall not be considered as punishment for disciplinary cause.

### 9.2.3 Disciplinary Demotion

A permanent State Service status employee may be demoted from a position in one class to a position in a lower class having a lower salary range and having less discretion or responsibility only for cause. The demotion may be in addition to a suspension without pay for disciplinary cause. The salary will be certified in accordance with policies and procedures regarding demotion.

### 9.2.4 Dismissal

A State employee may be dismissed or his or her employment terminated voluntarily or involuntarily. Voluntary severance of employment occurs when a State employee submits his or her resignation of employment. An involuntary severance of State employment can occur based upon a Reduction in Force, disciplinary action, failure of the employee to continue to meet the eligibility criteria for the position held or an inability to perform the essential functions of the job.

The appointing authority may dismiss a permanent State Service status employee only for good cause. A probationary employee may be dismissed by the appointing authority at any time during the probationary period, with or without cause.

## 9.3 DUE PROCESS

All permanent State Service employees, i.e., all State government employees who have successfully served twelve (12) months in State-Service designated positions, are entitled to procedural due process of law prior to any employment action to dismiss or otherwise adversely affect their compensation or employment status. The process which is due to each State Service employee is written notice of a proposed disciplinary action which states with sufficient particularity what charges or allegations are being made concerning the employee, the proposed discipline which may be taken, and the opportunity for a conference with the appointing authority or designated representative allowing the employee to respond and present a defense to the allegations prior to final action by the appointing authority. The written notice shall be presented to the employee at least seven (7) working days prior to the conference. The employee may also respond in writing to the allegations contained in the written notice.

**PRIOR TO DISCIPLINARYACTION BY APPOINTING AUTHORITY:**

**DUE PROCESS = WRITTEN NOTICE + OPPORTUNITY TO RESPOND**

Below are the elements of due process afforded to State Service employees:

A. The written notice presented to an employee prior to a conference must list all of the reason(s) for the appointing authority's consideration of the adverse action, and the written notice of the appointing authority's final decision to take adverse action must restate all of the reason(s) for the action. The reason(s) listed in these notices shall be specific by setting forth the particular group offense(s) violated and the charge(s) or

ground(s) upon which the disciplinary action is predicated. The reason(s) listed in these notices will be the only reason(s) to be addressed throughout the appeals process.

B. In extraordinary circumstances an employee may be suspended immediately with pay. Such employee must be given an opportunity for a hearing with the appointing authority or designated representative within twenty (20) working days of the suspension, at which time the appointing authority may make a final decision. Further, where the employee has been charged with a felony, the appointing authority or designated representative may suspend an employee without pay pending a post suspension hearing to be held within twenty (20) working days from the first day of suspension. This period of suspension without pay pending a post suspension hearing shall not be considered as punishment for disciplinary cause.

   Extraordinary circumstances means a situation in which, based on the judgment of the appointing authority or designated representative, retention of an employee could reasonably result in damage to State property, be detrimental to the interests of the State or result in injury to the employee, to a fellow employee, or to the general public, including inmates, patients, and residents of institutions.

C. If the employee waives a hearing, the appointing authority or designated representative may make a final decision after the waiver. The waiver of the hearing shall be determined by an employee's written statement of waiver or by the employee's failure to respond in writing or appear at the conference with the appointing authority or designated representative by a pre-established date and time. The appointing authority shall notify the employee of his/her decision within a reasonable period of time after the hearing.

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## CHAPTER 10 – GRIEVANCES AND APPEALS

### 10.1 WHO MAY FILE A GRIEVANCE

A permanent State Service employee may file a grievance on those issues listed below, through the grievance procedure.

A probationary employee in a State Service position, or a non-State Service employee in, or applicant for, an authorized employment position in an agency which employs State Service employees may grieve only alleged acts of discrimination based on race, color, religious creed, national origin, sex, age, disability, genetic information, religion or political affiliation in any personnel action or employment practice.

### 10.2 GRIEVABLE ISSUES

The following issues are grievable under the State Service grievance procedure:

A. written reprimands;

B. application of personnel policies, procedures, rules, regulations and statutes;

C. acts of reprisal against an employee for using the grievance procedure;

D. complaints of discrimination on the basis of race, color, sex, religion, national origin, age, disability, genetic information, religious creed or political affiliation;

E. any matter of concern or dissatisfaction to an employee if the matter is subject to the control of agency management, except those listed in the following section as non-grievable;

F. performance review ratings to the extent they affect an employee's employment status or compensation;

G. permanent relocation of an employee as a disciplinary measure, and/or where the employee can present substantive evidence that the management decision to relocate the employee was arbitrary or capricious;

H. dismissal or adverse action taken against an employee who reports an alleged improper governmental action to a State investigative body as defined in Mississippi Code Annotated § 25-9-171.

### 10.3 NON-GRIEVABLE ISSUES

The following are non-grievable issues under the State Service grievance procedure:

A. issues which are pending or have been concluded by direct appeal through administrative or judicial procedures;

B. temporary work assignments which do not exceed ninety (90) calendar days;

C. budget and organizational structure, including the number or assignment of employees or positions in any organizational unit;

D. duties/performance standards established as criteria for performance review;

E. the selection of an individual by the appointing authority, department head, or designee to fill a position through promotion, transfer, demotion, or appointment unless it is alleged that selection is in violation of a written agency policy or of a MSPB rule on filling vacancies;

F. internal security practices established by the appointing authority, department head, or designee;

G. termination or layoff from duties because of shortage of funds or work, material change in duties or organization, or a merger of agencies;

H. any matter which is not within the jurisdiction or control of the appointing authority;

I. the content of published agency policy;

J. an action by an agency pursuant to federal or State law, directives from the Governor's office, or court order;

K. establishment and revision of the compensation plan, and the policies, procedures, rules and regulations pertaining thereto;

L. position classifications; and

M. employee benefits.

## 10.4 GENERAL INFORMATION

When a conference (due process hearing) has been held prior to an employee being issued a written reprimand, the affected employee may appeal directly to the Employee Appeals Board without exhausting the grievance procedure.

If the employee does not present the grievance within the specified time frame, it is considered waived. If the employee does not advance the grievance to the next step within the specified time frame, the last management decision stands.

If management does not react within the specified time frame, the employee may advance the grievance to the next level unless an extension of time to respond is granted to management by written mutual agreement.

All time limits may be extended by mutual written agreement.

It is the responsibility of the aggrieved employee's supervisor and agency human resources director to make certain that all grievances are handled as quickly as possible and without prejudice.

For purposes of the provisions in this chapter, “working days” are defined as Monday through Friday, excluding legal holidays and any other days when state government offices are closed by executive order of the Governor.

## 10.5 GRIEVANCE PROCEDURAL STEPS

### 10.5.1 Step I

A. An employee who has a grievable complaint may submit in writing (on the Grievance Form located at http://www.mspb.ms.gov and in Appendix A of the Mississippi State Employee Handbook) a description of the grievance with all other required information to his or her immediate supervisor within seven (7) working days of becoming aware of the cause of the complaint.

B. The supervisor is required to conduct an investigation of the grievance and meet with the aggrieved employee within three (3) working days after receipt of the Grievance Form.

C. The supervisor is required to give the employee a written response within three (3) working days after the meeting.

D. The human resources director or designee may assist in the filing of the grievance or answer any questions the employee may have in connection with filing the grievance.

### 10.5.2 Step II

A. If not satisfied with the Step I written decision, the employee may indicate (on the same form) the desire to have the grievance advanced to the next step. The grievance must be submitted to the next level of management within three (3) working days following receipt of the Step I supervisor's response.

B. The Step II supervisor is required to conduct an investigation of the grievance and meet with the aggrieved employee within three (3) working days after receipt of the Grievance Form.

C. The Step II supervisor is required to give the employee a written response within three (3) working days after the meeting.

### 10.5.3 Step III

A. If the second step does not resolve the grievance, the employee should use the same form to advance the grievance to the third step and forward the grievance to the agency head within three (3) working days after receipt of the Step II response.

B. The Step III agency head or designated representative is required to review the grievance and relevant information and meet with the employee within seven (7) working days after receipt of the Grievance Form.

C. The Step III agency head or designated representative is required to give the employee the final agency decision concerning the grievance within seven (7) working days after the meeting.

### 10.5.4 Special Procedure for Claims of Harassment or Discrimination

If the employee's grievance is a complaint of unlawful discrimination or harassment and the source of the alleged discrimination or harassment is in the employee's chain of command, the employee may skip the source of the alleged discrimination or harassment's level of management by proceeding to the next step in the process and filing the grievance directly with the discriminating or harassing supervisor's supervisor. If the alleged source of the discrimination or harassment is the employee's agency head, then the employee may contact the MSPB Executive Director for assistance and may be advised to file an appeal directly with the Employee Appeals Board without exhausting agency level remedies.

### 10.5.5 Time Limit

If a grievance is not presented within the time limits as set forth above, it will be considered waived. If a grievance is not advanced to the next step within the specified time limit or an agreed extension thereof, it will be considered settled on the basis of the supervisor's, appointing authority's or designee's last answer. If the supervisor, appointing authority, or designee does not answer the grievance within the specified time limit, the employee may elect to treat the relief requested as denied at that step and immediately appeal the grievance to the next step. Time limits on each step may be extended by mutual written agreement of the parties involved.

## 10.6 AMERICANS WITH DISABILITIES ACT GRIEVANCE PROCEDURE

A. Any applicant for an employment position or employee who has reason to believe that they have been unlawfully discriminated against by a State agency on the basis of disability may file a grievance in accordance with this separate grievance procedure. A copy of the ADA Grievance Form can be found at http://www.mspb.ms.gov and in Appendix B to the Mississippi State Employee Handbook. Implementation of this separate Americans with Disabilities Act (ADA) Grievance Procedure is not intended to prohibit an applicant or State employee from utilizing the existing grievance procedures. Grievants are not required to exhaust this separate ADA Grievance Procedure prior to filing a complaint with an applicable federal agency.

B. The ADA Grievance Procedure begins with the individual who is filing the grievance preparing and submitting a written Statement. The Statement should contain the name, address, and telephone number of the individual or their authorized representative filing the complaint; a brief and specific description of the situation, incident, or condition being grieved and reasons therefore; identity of the grievant; identity of witnesses, if any; the remedy the individual is seeking; and the signature of the individual filing the grievance properly dated by this individual.

C. The grievance should be submitted to the human resources director or ADA coordinator of the agency where the alleged discrimination occurred within seven (7) working days of when the grievant became aware of the cause of the complaint.

D. The agency's human resources director, ADA coordinator, or a designee will have three (3) working days to provide to the grievant a written acknowledgment of the grievance.

E. The agency human resources director, ADA coordinator, or a designee will promptly conduct a review of the issues involved in the grievance. If a resolution of the grievance is mutually agreeable by the parties involved, the agency human resources director or ADA coordinator will facilitate arrangement of the resolution and make a record of this agreement. If no resolution is possible, the human resources director, ADA coordinator, or a designee will provide a written response to the grievant outlining all of the relevant issues concerning the grievance. This response shall be approved by the agency head or appointing authority and must be completed no later than fifteen (15) working days from the agency's receipt of the grievance.

F. If a grievance is not presented within the time lines as set forth herein above, it will be considered waived absent an extension by written mutual consent. If the human resources director, ADA coordinator, or designee does not answer or acknowledge receipt of the grievance within the specified time lines, the grievant may elect to treat the grievance as denied at that point and immediately appeal the grievance to the Employee Appeals Board unless an extension of time is granted to the human resources director, ADA coordinator, or designee to respond by written mutual agreement.

## 10.7 APPEALS

**Mississippi Employee Appeals Board**
Ingrid Dave Williams, Chief Hearing Officer (1st Supreme Court District)
Wesla Sullivan Leech, Hearing Officer (2nd Supreme Court District)
Michael N. Watts, Hearing Officer (3rd Supreme Court District)

**EAB Administrative Office**
210 East Capitol Street
Suite 800
Jackson, MS 39201
(601) 359-2779 / Fax (601) 576-2749

### INTRODUCTION

In 1980 the Mississippi State Legislature mandated the creation of the Mississippi Employee Appeals Board (hereinafter referred to as the "EAB") in order to provide a fair and impartial forum in an informal and expeditious manner beyond the agency level for consideration of employee and job applicant grievances. The EAB consists of three Hearing Officers who provide employees of the State of Mississippi an opportunity, in compliance with the EAB's rules, to appeal agency level decisions adversely affecting the employee's service.

### DEFINITIONS

"Agency" means the State agency against which an employee or job applicant is filing an appeal.

"Administrative Office" means the office that receives, maintains, and provides data regarding the filings and other matters before the Employee Appeals Board.

"Administrative Office Notice" means the process of informing the parties of action by a presiding hearing officer. Notice may be given electronically, including facsimile notice, or by any other method reasonably calculated to effect actual notice. This definition applies to notices of hearings, orders, decisions, and other pertinent documents.

"EAB" means the three hearing officers presiding *en banc*.

"File" means submitting pleadings and other documents to the Administrative Office. Filing may be accomplished electronically, including fax, by certified mail or personal delivery, or any other method specified by the presiding hearing officer. The date of filing is the date of receipt by the Administrative Office of the document. When a document is filed electronically, filing is considered accomplished on the date the electronic message is sent as indicated by the electronic message.

"Hearing Officer" means one of the individual hearing officers appointed pursuant to Mississippi Code Annotated § 25-9-129.

"Parties" mean the person or persons filing an appeal and all agencies against which an appeal is filed.

"Presiding hearing officer" means the hearing officer assigned to an appeal or the chief hearing officer when the EAB hears a matter *en banc*.

"Serve" means giving notice of a filing to all other parties. Service may be accomplished electronically, by certified mail, personal delivery, or any other method specified by the Administrative Office. The date of service will be determined by the date indicated on the serving party's certification.

## ADMINISTRATIVE RULES

### I. Notice of Appellants' Rights

Each agency shall give notice to all applicants and employees of their rights regarding appeals and shall make available copies of these administrative rules.

### II. Time Calculations

In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, legal holiday or any other day the Administrative Office is in fact closed, in which event the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday or other day the Administrative Office is closed. Intermediate Saturdays, Sundays and legal Holidays shall be excluded in the computation when the period of time prescribed or allowed is less than ten days. In the event any legal holiday falls on a Saturday or Sunday, the legal holiday will be observed as mandated by law.

## III. Who May Appeal; Actions Which May Be Appealed

A. A permanent State Service employee may appeal any action adversely affecting his or her compensation or employment status after exhausting applicable agency grievance procedures.

B. A permanent State Service employee may appeal any grievable action and/or a disciplinary action. (See Section 10.1 – 10.6 of the *Mississippi State Personnel Board Policy and Procedures Manual).*

C. No person may appeal a non-grievable action. (See Section 10.3 of the *Mississippi State Personnel Board Policy and Procedures Manual*).

D. A permanent State Service employee, probationary employee in a State Service position, or non-State Service employee in, or applicant for, an authorized employment position in an agency which employs State Service employees, may appeal alleged acts of discrimination based on race, color, religion, national origin, sex, age, disability, creed, physical handicap, genetic information or political affiliation in any personnel action or unlawful employment practice.

E. A permanent State Service employee, probationary employee in a State Service position, or non-State Service employee in, or applicant for, an authorized employment position in an agency which employs State Service employees, may appeal alleged acts of retaliation based upon the employee or applicant's reports of alleged improper government action to a State investigative body.

F. An employee may appeal the decision that he or she is not eligible to receive donated leave because the injury or illness of the employee or member of the employee's immediate family is not, in the appointing authority's determination, a catastrophic injury or illness.

## IV. Exhaustion of Remedies

A. No person may file an appeal with the Administrative Office until all applicable agency-level grievance procedures have been exhausted in accordance with MSPB policies, rules and regulations.

B. Except as authorized under federal law, no aggrieved party may file a petition for judicial review with a court of competent jurisdiction until a final written decision and order of the EAB has been filed by the Administrative Office.

## V. Perfection of Appeal by Timely Filing

A. All appeals shall be initiated by filing a written Notice of Appeal with the Administrative Office. Notice of Appeal forms shall be made available by the Administrative Office to all State agencies and employees.

B. A Notice of Appeal must be filed within fifteen days after the date a person receives written notice of the final decision of an alleged grievable action or within fifteen days

of the first attempted delivery date by certified mail, return receipt requested, whichever occurs first.

C. A non-refundable fee of one hundred dollars ($100.00) in the form of a cashier's check, bona fide attorney's check, or money order made payable to the "Mississippi Employee Appeals Board" shall be filed by the appealing party with each Notice of Appeal. Cash or personal checks will not be accepted.

**VI. Content of Notice of Appeal**

A. The Notice of Appeal shall contain:

1. The names and mailing addresses of all parties and, if known, the names and mailing addresses of their attorneys, if any;

2. If applicable, the appealing party's (i) employing agency, (ii) assigned work station (town, city, county) and organizational location (office, bureau, division, branch) within employing agency, (iii) immediate supervisor, (iv) job title, (v) date of hire, and (vi) date of termination;

3. A statement, in sufficient detail, of the facts upon which the appeal is taken, including the effective date of any alleged grievable action, and why such action is in error;

4. A statement of the final action taken and/or decision made as a result of the agency-level grievance proceedings, including the effective date of such final action; and,

5. A statement of the relief requested.

B. The Notice of Appeal shall be accompanied by copies of all documents related to the appeal in the possession of the employee. Such documents, when applicable, shall include, but not be limited to, performance review documents, correspondence between the appealing party and the responding agency, written reprimands, grievance forms, pre-disciplinary notice, and final disciplinary notice.

**VII. Jurisdiction**

When an appeal is filed, a presiding hearing officer shall determine whether or not he or she has jurisdiction. If not, the appeal shall be dismissed.

**VIII. Parties**

Unless the Notice of Appeal names some other respondent, the appealing party's employing state agency shall be considered the only respondent.

## IX. Filing of Pleadings and Other Documents; Copies to Be Made Available

A. All pleadings, briefs, requests, and other correspondence shall be filed with the Administrative Office. When an appeal is filed, the Administrative Office shall assign it a docket number.

B. All pleadings and other documents filed in the appeal shall be entered on a docket to be maintained by the Administrative Office. The Administrative Office shall make a notation of the filing date on all such pleadings and other documents.

C. Copies, including certified copies, of pleadings and other documents filed in the appeal shall be made available by the Administrative Office to either party at a reasonable fee.

D. Copies of any and all pleadings, briefs and requests filed by any party to an appeal must be served on every other party or his or her attorney. All such documents must contain a certification executed by the serving party identifying the parties served, the manner of service and the date of service.

E. All pleadings, briefs, and requests filed by any party to an appeal must be signed by such party or his or her attorney and must specify the assigned docket number.

## X. Administrative Office

A. When an appeal is filed, the Administrative Office shall give notice to the employing agency and any other appropriate party.

B. The Administrative Office will give notice to the parties of any orders, including those for prehearings, hearings, and motions.

C. The Administrative Office may create and disseminate forms to expedite the appeals process and assist the parties.

## XI. Assignment of Cases; Scheduling of Prehearing Conference; Full Board Review

A. The chief hearing officer shall assign prehearing procedures and cases to the hearing officers in a manner that is most efficient and effective to hear and decide cases.

B. When, in the opinion of the chief hearing officer, pending appeals involve a common question of law or fact, he or she may, on his or her own motion or upon motion of a party, order that the appeals be consolidated.

C. When, in the opinion of the chief hearing officer, the issues and circumstances of an appeal warrant that the hearing be conducted before the EAB instead of a single hearing officer, he or she may issue an order or notice to that effect.

D. Once a case is filed, at the discretion of the presiding hearing officer a prehearing conference may be conducted no later than 60 days after the date of filing. The purpose

of the prehearing conference is to simplify the issues, procedures, and evidence in order to fairly hear and decide the case.

## XII. Prehearing Conference

When a prehearing conference is conducted, the presiding hearing officer may order from the parties any such matters as may resolve, simplify and/or expedite the appeal, including but not limited to a prehearing statement, dispositive motions, and statements regarding possible settlement, and may order any other preliminary matter be brought forward at that time at the discretion of the presiding hearing officer.

## XIII. Prehearing Order

After a prehearing conference, the presiding hearing officer may issue a prehearing order, if appropriate.

## XIV. Motions

A. Parties may file written motions, including requests for continuance, with the Administrative Office. The request must state the grounds, whether the party desires a hearing, and any relief requested. The other parties shall have ten days after service of the motion on the parties to respond to such motion. The presiding hearing officer assigned to the case will promptly act upon the request. Motions not filed in a timely manner pursuant to this rule will be heard only at the discretion of the presiding hearing officer.

B. Motions for continuance will be granted only for good cause.

C. Except for extraordinary reasons, motions for continuance may not be filed any later than fourteen days before the scheduled hearing.

D. For purposes of this rule, requests for subpoenas and subpoenas duces tecum shall be considered motions.

## XV. Witnesses

A. Each party shall file a list of witnesses such party will call to testify at the hearing. If the presiding hearing officer does not order the filing of witness lists at a different time, then each party must file a witness list in compliance with this rule no later than ten (10) days prior to the date of the hearing. The list shall contain for each witness:

1. Name;
2. Employer;
3. Street address of employer; and,
4. Brief summary of testimony to be given.

B. The issuance of subpoenas to compel the attendance of witnesses shall be governed by Rule XVI.

**XVI. Subpoenas**

A. The presiding hearing officer shall have the authority to issue subpoenas in connection with a hearing.

B. To compel the attendance of a witness, or witnesses, any party to an appeal may file with the Administrative Office a written Request for Issuance of Subpoenas. Each request shall contain for each witness:

1. Name;

2. Street address where the witness may be readily found for service of the subpoena (If the only available address is a route number or box number, the party requesting the subpoena must provide complete and accurate directions for locating the witness.); and,

3. Brief statement supporting the relevance and materiality of the testimony of the witness to the appeal.

C. To compel the production of documentary evidence, any party to an appeal may file with the Administrative Office a written Request for Issuance of Subpoena Duces Tecum. Each request shall specify:

1. Name of person who is to produce such documentary evidence;

2. Street address where such person may be readily found for service of the subpoena (If the only available address is a route number or box number, the party requesting the subpoena must provide complete and accurate directions for locating the witness.); and,

3. Brief statement supporting the relevancy and materiality of the documentary evidence to the appeal.

D. Each request must be filed no later than twenty days prior to the hearing date to ensure timely service. Requests for subpoenas must be served on every other party or his or her attorney. A person or entity shall be given at least ten days to produce documentary evidence pursuant to a subpoena.

E. A subpoena may be served as provided by the Mississippi Rules of Civil Procedure.

F. If the requesting party desires the Administrative Office to forward the subpoenas, once issued, to the appropriate office for service by the county sheriff, a fee of thirty-five dollars ($35.00) for each person to be subpoenaed shall accompany the request. The fee must be in the form of a cashier's check, bona fide attorney's check, or money order made payable to the sheriff of the county where the person to be subpoenaed may be found. In the event that additional subpoenas are required at the same address, a fee of

one dollar ($1.00) each shall accompany these requests. If the requesting party does not specify where the issued subpoenas should be sent, the Administrative Office will return the issued subpoenas to the requesting party for service.

G. In case of the failure of any person to comply with any subpoena issued by the presiding hearing officer, the requesting party may invoke the aid of any court of this state of general jurisdiction. The court may thereupon order such person to comply with the requirements of the subpoena. Failure to obey the order of the court may be punished by the court as contempt thereof.

**XVII. Failure to Appear at Hearing**

If any party, without good cause, fails to appear at a hearing, the presiding hearing officer may order such sanction as the hearing officer deems appropriate, including, but not limited to, reimbursement by the missing party of reasonable costs incurred by other parties as a result of attendance or dismissal of the appeal.

**XVIII. Conduct of Hearing**

A. The purpose of the hearing is to ascertain the truth.

B. It is the responsibility of the presiding hearing officer to develop the record to ascertain the truth; this includes questioning witnesses.

C. The hearing is *de novo*, affording the appealing party all procedural due process.

D. The responding agency may have a representative, in addition to its attorney, remain in the hearing room during the entire course of the hearing, even though the representative may testify. The appealing party may remain in the hearing room throughout the hearing. The presiding hearing officer has authority to control the presence of witnesses in the hearing location.

E. The presiding hearing officer is authorized to administer oaths and affirmations and will take testimony under such oaths and affirmations.

F. Parties may be represented by counsel licensed to practice in Mississippi.

G. The presiding hearing officer will afford the parties, witnesses, and representatives respect and fairness consistent with their duty to maintain decorum and exercise due diligence.

H. The presiding hearing officer is authorized to sanction parties and representatives for inappropriate behavior and failure to follow these rules. Such sanctions include but are not limited to: default, taking a negative inference, or limiting evidence, provided his or her reasons for taking such action are in the record.

**XIX. Evidence**

A. Hearings shall be informal, and technical rules of evidence shall be relaxed.

B. All witnesses shall testify under oath and shall be subject to cross-examination.

C. All parties shall have the opportunity to respond and present evidence and argument on all relevant issues. All relevant evidence is admissible, but the presiding hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. The presiding hearing officer shall exercise reasonable control over the manner and order of cross-examining witnesses and presenting evidence to make the cross-examination and presentation effective for ascertaining the truth, avoiding needless consumption of time, and protecting witnesses from harassment or undue embarrassment.

D. In the appeal of formal disciplinary action, the presiding hearing officer shall hear or receive evidence on only those reasons and allegations contained in the responding agency's final disciplinary notice to the employee of such action.

E. Documents received into evidence by the presiding hearing officer shall be marked by him or her, or under his or her direction, and filed for the record of the appeal.

F. Rebuttal and surrebuttal evidence may be heard in the discretion of the presiding hearing officer.

G. Summations of the evidence and the law may be heard in the discretion of the presiding hearing officer.

## XX. Order of Proof; Burden of Proof

A. At the hearing, the matter should be heard as directed by the presiding hearing officer in his or her sole discretion.

B. An appealing party shall have the burden of proving that the reasons stated in the notice of the agency’s final decision are not true or are not sufficient grounds for the action taken.

## XXI. Preservation of Record of Hearing; Transcription of Record of Hearing

All hearings and prehearing matters shall be electronically recorded. It is the responsibility of the Administrative Office to record the proceedings. The responding agency, or agencies, shall be assessed a reasonable fee to defray the cost of recording the hearing. Upon request and at a reasonable cost, the Administrative Office will provide electronic copies to the parties.

## XXII. Order to be Filed upon Completion of Hearing

Upon conclusion of the appeal hearing, and after all evidence has been presented, the presiding hearing officer, within a reasonable time thereafter, shall prepare and file a written decision and order.

## XXIII. Compliance with Order

A. All parties shall promptly comply with all orders of the EAB, unless a timely appeal of the decision has been filed by either party.

## XXIV. Relief to be Granted

A. The order may reinstate a prevailing party into employment with his or her responding agency and restore all his or her employee rights and benefits including back pay, medical leave, and personal leave. The order may also restore retirement benefits provided the integrity of such benefits remains uncompromised in accordance with all applicable laws, policies, rules, and regulations.

B. The order may modify an action of a responding agency but may not increase the severity of such action on the appealing party. If the responding agency has acted in accordance with the published policies, rules and regulations of the MSPB, and if the personnel action taken by the responding agency is allowed under said policies, rules and regulations, the order shall not alter the action taken by the agency, including, but not limited to, the compensation paid to the employee.

## XXV. Review by the EAB

A. Any party aggrieved by the final written decision and order of a presiding hearing officer entered on the hearing of an appeal may file a written Request for Review by the full EAB.

B. The request must be filed within fifteen days after the date the final order is filed. The request will include specific reasons, including whether the:

    1. Findings are in error;

    2. Decision is contrary to the law; or,

    3. Procedural decisions were in error.

C. Any party may file written brief to be considered by the EAB. Simultaneous briefs must be filed within thirty days of the request for review. The briefs may reference evidence contained in the electronic record by identifying the witnesses and the substance of their testimony.

D. The EAB shall base its review on:

    1. The pleadings;

    2. Any documentary evidence received and filed for record at the hearing;

    3. The recording of the hearing; and,

    4. Briefs of the parties, if filed.

E. The EAB shall issue a final written decision and order on the review within thirty days after the final filing date for all documents to be considered on review.

**XXVI. Judicial Review**

Any party aggrieved by a final written decision and order of the EAB may appeal such order in the manner provided by applicable laws and statutes.

**XXVII. Assessment of Fees and Costs**

A. Pursuant to the Mississippi Public Records Act, Miss. Code Ann. § 25-61-1, *et seq*., the Administrative Office shall have the authority to establish reasonable fees and assess reasonable costs of conducting appeals.

B. In response to a written request for a transcript, the Administrative Office will provide an audio recording of the hearing. The requesting party must contact a certified court reporter to transcribe and certify, under penalty of perjury, on the transcript that he or she heard the witness sworn on the recording and that the transcript is a correct writing of the recording. It is the responsibility of the party requesting the transcript to pay any costs associated with preparation of the requested transcript. The original certified transcript must be filed with Administrative Office within thirty days of the mailing of the audio recording from the Administrative Office, unless good cause is shown.

C. Upon proper payment, the Administrative Office will certify the record to the appropriate court, as required by applicable laws, statutes, and rules.

D. Administrative Office fees:

A request for written documents or audio recordings must be accompanied by sufficient funds, payable by cashier's check or money order, to defray the actual costs of searching, reviewing, copying and, if applicable, mailing the records. Fees charged for the records will not exceed the actual costs, and any overpayment will be refunded. Fees shall be collected prior to compliance with the request. The Administrative Office shall promptly notify the person making the request of the estimated fees if the estimate exceeds the funds accompanying the request. The fees charged will be according to the following schedule:

Employee time—Salary rate plus 17% for fringe

Photocopies—$.13 per page

Other printed materials—Actual cost

Mailing—Actual cost

Audio recording of hearing—Actual cost for compact disc(s).

## XXVIII. Judicial Conduct

A. The hearing officers shall be guided by and subject to the Mississippi Rules of Court, Code of Judicial Conduct (Adopted by the Mississippi Supreme Court April 4, 2002).

B. No Hearing Officer shall be removed from office during his or her term except by a finding of misfeasance, malfeasance, or nonfeasance in office.

## XXIX. Amendment of Rules; Validity of Rules; Enforcement of Rules

A. The MSPB may amend these rules or promulgate new rules.

B. If any one or more of these rules is found to be invalid by any court of competent jurisdiction, such finding shall not affect the validity of any other of these rules.

C. The EAB shall have the authority, duty, and responsibility to abide by and enforce these rules.