



# MISSISSIPPI STATE EMPLOYEE HANDBOOK

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## **CHAPTER 1 – WELCOME TO STATE GOVERNMENT**

### **1.1 INTRODUCTION**

This Handbook contains the rules and regulations for State employees under the purview of the Mississippi State Personnel Board. The information contained in this Handbook is not intended to and does not grant to any State employee any additional rights or privileges of employment not otherwise expressly provided in State or Federal law. The rules of the Mississippi State Personnel Board are periodically revised. The *Mississippi State Employee Handbook* is available on the Mississippi State Personnel Board website at <http://www.mspb.ms.gov>.

This *Mississippi State Employee Handbook* is effective as of January 1, 2020.

### **1.2 STATEMENT OF EQUAL OPPORTUNITY EMPLOYMENT**

The State of Mississippi is an equal opportunity employer and assures equal employment opportunities to all persons in compliance with state and federal law. In order to implement the State's equal employment policy and to assure non-discriminatory personnel administration, the Mississippi State Personnel Board promotes non-discriminatory practices and procedures in all phases of 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 Mississippi State Personnel Board policies, practices, and procedures.

Equal employment opportunity does not guarantee an employee any rights not otherwise provided by law.

### **1.3 THE STATEWIDE PERSONNEL SYSTEM**

In 1980, the Mississippi State Legislature created the Statewide Personnel System, which governs the establishment of employment positions, classification of positions, employment conduct, movement and separation of employees and provides a system of personnel management for State government. The Legislature also created the Mississippi State Personnel Board (hereinafter referred to as "MSPB") as the governing authority to administer the Statewide Personnel System. In 1981, the Legislature further established the "Colonel Guy Groff State Variable Compensation Plan" or the VCP and authorized MSPB to implement the plan and review the plan annually. Mississippi Code Annotated § 25-9-147.

#### ***The Mississippi State Personnel Board***

MSPB is composed of five members appointed by the Governor with the advice and consent of the Senate. One Board member is appointed from each of the three Supreme Court Districts, and two members are appointed from the State at large. Each Board member serves a five-year term, with the terms staggered such that one member's appointment expires at the end of each fiscal year. In addition to the Board members, the Lieutenant Governor may designate two Senators and the Speaker of the House may designate two Representatives to attend Board meetings, acting in the capacity of advisors, but with no vote on any matter within the jurisdiction of the Board. Mississippi Code Annotated § 25-9-109.

### ***Duties of the Mississippi State Personnel Board***

The duties of MSPB are two-fold: (1) to support State government by providing a system of personnel management that enhances efficiency and effectiveness with regard to the use of personnel resources and (2) to provide the Executive and Legislative branches data necessary for budgetary and planning purposes. MSPB has a strong and continuing commitment to equal employment opportunity, employee development, performance review, uniform administration of leave benefits, open communication, and equitable and adequate compensation. The framework of personnel management provided by MSPB is designed to be fair to all, based on state-of-art theory and practice, and in compliance with Federal and State laws and regulations. Mississippi Code Annotated §§ 25-9-101, *et seq.*

### ***MSPB Executive Director***

The MSPB Executive Director is the State Personnel Director. The Board sets the general policies by which its assigned duties and responsibilities may be accomplished and has tasked its Executive Director with the daily administration of the system. His or her role is “to administer the operations of the State Personnel System and to otherwise act in the capacity of chief executive officer to the Mississippi State Personnel Board.” Mississippi Code Annotated § 25-9-119.

### ***Personnel Advisory Council***

The Personnel Advisory Council is composed of personnel directors of five major State agencies. These members, appointed by and serving a term concurrent with that of the Governor, advise MSPB in the development of comprehensive policies, programs, rules and regulations that will improve public employment in the State. The Council also assists in the promotion of public understanding of the purposes, policies and practices of the Statewide Personnel System. Mississippi Code Annotated § 25-9-117.

### ***Employee Appeals Board***

Mississippi Code Annotated §25-9-129 provides that the Mississippi State Personnel Board shall appoint an employee appeals board (hereinafter referred to as the Mississippi Employee Appeals Board or “MEAB”). The MEAB shall consist of three (3) hearing officers for the purpose of holding hearings, compiling evidence and rendering decisions on appeals of personnel action adversely affecting employment status or compensation (formal disciplinary action defined in Section 7.1). Grievable issues specified in Section 8.1 may also be appealed to the MEAB.



## **CHAPTER 2 – STATE EMPLOYMENT STATUS**

### **2.1 STATE SERVICE EMPLOYMENT**

MSPB identifies employees of State agencies as either State Service employees or Non-State Service employees. The Legislature has defined by statute those employees that are considered Non-State Service employees. *See* Mississippi Code Annotated § 25-9-107(c). Employees of State departments, agencies and institutions who are not listed within that statute are defined as State Service employees.

A State Service employee retains that status upon transfer (intra- and inter-agency), promotion, demotion, reallocation, or reclassification as long as he or she remains in a State Service position and does not have a break in service. A break in service is defined as either (1) lump sum payment for accrued personal leave, (2) lapse of one eight-hour work day between employment with the original State Service status agency and the new State Service status agency, or (3) separation of employment.

### **2.2 NON-STATE SERVICE EMPLOYMENT**

Non-State Service employees cannot attain State Service status while employed in a Non-State Service position. MSPB has salary setting authority for several categories of Non-State Service employees. In addition, MSPB has the authority to set minimum qualifications for Non-State Service positions such as time-limited and part-time employees as well as verify the statutory qualifications of certain physicians, dentists, veterinarians, nurse practitioners, and attorneys.

### **2.3 NOTIFICATION OF STATUS FOR NON-STATE SERVICE EMPLOYMENT**

Each applicant, including State Service employees who have attained permanent status, shall be given written notice, prior to his or her appointment to a Non-State Service position by the appointing authority, that he or she may be dismissed or otherwise adversely affected as to compensation or employment status, with or without cause and is not entitled to due process of law.

### **2.4 PROBATIONARY PERIOD AND TERMINATION AT WILL**

Every employee, upon original entry into a State Service status position, must successfully serve a twelve-month probationary period before that employee is granted State Service status. During the probationary period, the employee's work and conduct are carefully observed. During this twelve-month probationary period, the employee is Non-State Service and may be dismissed or otherwise adversely affected as to compensation or employment status, with or without cause and is not entitled to due process of law.

### **2.5 PROMOTIONAL OPPORTUNITIES FOR PROBATIONARY EMPLOYEES**

A state service status, probationary state service, part-time, time-limited and/or other MSPB 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. If the employee transfers to another State Service

status position in the same agency or in a different State Service status agency, the employee shall continue to serve the remainder of the twelve-month probationary period without penalty, provided there is no break in service.

## **2.6 EMPLOYEE DISCIPLINARY ACTION, GRIEVANCE, AND APPEAL RIGHTS**

Mississippi Code Annotated § 25-9-127 requires that State Service employees may only be dismissed or otherwise adversely affected as to compensation or employment status for inefficiency or other good cause. The statute also requires that such personnel action must be in accordance with policies and procedures promulgated by the MSPB, complying with due process of law. Chapter 7 of this handbook contains the policies and procedures concerning employee corrective and disciplinary action for State Service employees. A Non-State Service employee may be dismissed or otherwise adversely affected as to compensation or employment status, with or without cause and is not entitled to due process of law.

Chapters 8 and 9 contain the policies and procedures for employee grievances and appeals to the Mississippi Employee Appeals Board (MEAB).

## **2.7 TRANSFER**

Employees may transfer from an employment position in one agency to a vacant employment position in another agency. The transfer of a State Service employee into a promotional State Service position at another agency is accomplished through the use of a Referred List, except in the case of a demotional transfer or a lateral transfer into the same job class currently occupied by the employee.

## CHAPTER 3 – HOLIDAYS AND LEAVE

Although 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. Agency Human Resources Offices, payroll offices or immediate supervisors may provide employees with information regarding procedures unique to a specific agency.

### 3.1 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 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 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 a Saturday or Sunday, then the legal holiday will be observed as declared by the Governor.

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 will 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.

### 3.2 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 military leave as provided by statute. 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.

#### *Transfer of Leave Between State Agencies*

Both major medical and personal leave earned by employees are 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 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.

#### *Personal Leave*

All full-time employees and appointed officers of the State of Mississippi earn personal leave as follows:

<b>CONTINUOUS SERVICE</b>	<b>ACCRUAL RATE (Monthly)</b>	<b>ACCRUAL RATE (Annually)</b>
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. 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.

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, stepparent, sibling, child, stepchild, grandchild, grandparent, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law or sister-in-law.

A state law enforcement officer who is injured by wound or accident in the line of duty is not required to use earned personal leave during the period of recovery from such injury.

For the purpose of computing credit for personal leave, each appointed officer or employee is considered to work no 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.

Source: Mississippi Code Annotated § 25-3-93.

***Major Medical Leave***

All full-time employees and appointed officers of the State of Mississippi accrue Major Medical Leave as follows:

<b>CONTINUOUS SERVICE</b>	<b>ACCRUAL RATE (Monthly)</b>	<b>ACCRUAL RATE (Annually)</b>
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. 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, stepparent, sibling,

child, stepchild, 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 use of personal or compensatory leave will be required prior to the use of Major Medical Leave for this purpose. The immediate family is defined as only a spouse, parent, stepparent, sibling, child, stepchild, 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.

An employee may use up to six weeks of earned major medical leave for the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement.

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 in the Family and Medical Leave Act Leave Section herein.

A state law enforcement officer who is injured by wound or accident in the line of duty is not required to use earned major medical leave during the period of recovery from such injury.

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.

Source: Mississippi Code Annotated § 25-3-95.

### ***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”).

#### **➤ *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.

#### **➤ *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 will 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.

### ***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.

- 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.
- 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. Any employee on a previously approved leave shall be eligible for such administrative leave granted by the Governor or appointing authority, and shall not be charged for his or her previously approved leave.
- 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.

### ***Accumulated Leave Upon 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 as outlined in the relevant PERS statutes and regulations.

Contact the agency Human Resources Office, payroll officer and/or PERS (<http://www.pers.ms.gov>) for answers to specific questions regarding the crediting of unused leave.



### ***Leave Record Keeping***

All State agencies whose payroll is processed through SPAHRS offer the same leave record reporting method. Time and leave record reporting should be entered into SPAHRS in a timely manner to ensure that records accurately reflect the State's liabilities and obligations. 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.

### ***Donated Leave for Catastrophic Injury or Illness***

“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, step-parent, 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:

- 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.
- 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.
- 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.
- Before an employee may receive donated leave, he or she must provide his or her 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.
- 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.

- 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 in this subsection.
- 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.
- 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.
- 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 MSPB. Any person found to have violated this paragraph will be subject to removal from office or termination of employment.
- No employee can donate leave after tendering notice of separation for any reason or after termination of his or her employment.
- Recipient employees of agencies with more than five hundred (500) 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 (500) or fewer employees as of March 25, 2003 may receive donated leave from any donor employee.
- 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 twelvemonth period from the date on which the leave is donated.
- Donated leave may not be used in lieu of disability retirement.
- 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.

### ***Family and Medical Leave Act Leave***

In keeping with the requirements of the Family and 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 1,250 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:

- For incapacity due to pregnancy, prenatal medical care, or childbirth;
- 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;
- 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
- 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.

#### ➤ ***Military Leave Entitlements***

Eligible employees are entitled to two different kinds of leave as a result of having family members in the military:

- 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.

- 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.

➤ ***Serious Health Condition***

A "serious health condition" is defined as an illness, injury, or physical or mental condition that involves:

- 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);
- 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);
- 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);

- Any period of incapacity due to pregnancy, for prenatal care, or childbirth;
- 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;
- 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
- 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 military member in the line of duty on covered active duty in the Armed Forces (or existed before the beginning of the service 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 service member medically unfit to perform the duties of the service 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 service 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 service member became a veteran, and is:

- 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
- 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
- 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

- 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.

➤ ***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 position, 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.

➤ ***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 any State agency are limited to a combined twenty-six workweeks of leave during the twelve-month period to care for a covered service member.

➤ ***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. Medical certifications must be submitted on the appropriate form which may be obtained in the agency's human resources department. 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. 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 employee's 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.

➤ ***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.

➤ ***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.

➤ ***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.

➤ ***Unlawful Acts***

The FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under the FMLA; or 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.

***Temporary Assignments***

Mississippi Code Annotated §25-9-125 allows for 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.

***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 human resources director.



### *Use of Leave During Pregnancy*

Women affected by pregnancy, childbirth or related medical conditions will 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. All types of leave will be granted to pregnant women on the same terms as leave is granted to other employees. 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.

### *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.

### *Educational Leave*

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.**

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.

### *Mississippi Living Organ Donor Leave*

All 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 local government entities 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:

- Up to thirty days (240 hours) of organ donor leave in any twelve-month period to serve as a bone marrow donor;
- Up to thirty days (240 hours) of organ donor leave in any twelve-month period to serve as an organ donor;
- Up to one hour to donate blood every fifty-six days; and
- Up to two hours to donate blood platelets no more than twenty-four times in a twelve-month period in accordance with appropriate medical standards established by the ARC or other nationally recognized standards.

### **3.3 INFLUENZA PANDEMIC POLICY**

#### ***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 strains of influenza in the workplace. The best strategy for reducing the transmission of the flu is frequent hand washing with warm, soapy water, covering mouths with tissues whenever you sneeze, discarding tissues used when sneezing. Agencies are also encouraged to install alcohol-based hand sanitizers throughout the workplace and in common areas.

#### ***Staying Home When Ill***

Many times, with the best of intentions, employees report to work even though they feel ill. State employees are provided with paid medical leave to compensate employees who are unable to work due to illness. During flu season and/or an influenza pandemic, it is critical that employees do not report to work while they are ill and/or experiencing the following symptoms: fever, cough, sore throat, runny or stuffy nose, body aches, headache, chills and fatigue. A significant number of people who have been infected with this virus also have reported diarrhea and vomiting. Currently, the Centers for Disease Control and Prevention recommends that people with influenza-like illness remain at home until at least 24 hours after they are free of fever (100 degrees F or 37.8 degrees C) or signs of a fever without the use of fever-reducing medications. Employees who report to work ill will be sent home in accordance with these health guidelines. Employees who are sent home under this policy will be required to utilize leave in accordance with Section 3.2 Leave.

### ***Reporting to Work When Not Ill***

An influenza pandemic could result in a significant level of absenteeism. State employees may be unable to work if they become ill due to the virus while others may need to remain home to care for ill family members or simply to provide care for children during school closings. During this time, unless otherwise notified, attendance and leave policies will remain in place. Individuals who believe they may face particular challenges reporting to work during a severe influenza pandemic should take steps to develop any necessary contingency plans.

### **3.4 MEDICATION USE IN THE WORKPLACE**

Prescription and over-the-counter drugs are not prohibited in the workplace when taken in standard dosage and/or according to a prescription. However, certain medication, even when taken in the standard dosage and/or according to a prescription may interfere with the safe, effective performance of assigned duties or compromise workplace safety. Section 5.3 states that all employees must apply themselves to their assigned duties during the full schedule for which compensation is being received. Section 5.4 requires that all employees must meet established performance standards. Employees using medication that interferes with required job performance or workplace safety may be required to use applicable leave in accordance with Section 3.2. Employers must consider that such employees may possibly be eligible for Family and Medical Leave Act leave and/or could qualify for protection under the Americans with Disabilities Act.

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## **CHAPTER 4 – EMPLOYEE BENEFITS**

### **4.1 DEFERRED COMPENSATION PLAN**

Deferred Compensation is a supplemental, voluntary savings plan administered by the Public Employees' Retirement System Board of Trustees offering tax advantages to participants. Employees who choose to participate in this plan may set aside part of their salary each year. Income tax liability is postponed on that part of their salary until the year in which the employee actually receives the deferred amount. Interest and/or earnings also are tax deferred until withdrawal. Interested employees may contact their Human Resources Office, payroll office, or PERS.

### **4.2 WORKERS' COMPENSATION**

Workers' compensation is administered by the Mississippi Workers' Compensation Commission, and all State employees are covered under the provisions of the Mississippi Workers' Compensation Law. The basic purpose of workers' compensation is to provide fixed benefits to employees in the event an employee is injured in the course of employment. An employee who is injured on the job is entitled to certain benefits at no cost to the employee, including compensation for reasonable and necessary medical expenses, partial compensation for income lost because of the injury or illness, retraining for new skills, if necessary, and certain other related benefits.

Workers' compensation is unavailable when an injury was caused by an employee's use of illegal drugs, abuse of prescription medication or intoxication due to the use of alcohol. An employee may be requested to submit to a drug and alcohol test if injured while at work.

Workers' compensation wage loss benefits are not payable for the first through the fifth days of disability unless the disability extends to fourteen days or more. The workers' compensation benefit is payable at 2/3 the average weekly wage or, in some cases, to a weekly maximum set by law.

Wage benefits are payable in addition to any accrued leave the employee may be entitled to use. It is the employee's responsibility to ensure that payment of accrued Personal Leave and/or Major Medical Leave and the receipt of workers' compensation benefits simultaneously do not result in the employee being paid a total amount that exceeds 100 percent of his wages earned in State employment at the time of injury.

A State employee who is absent due to a work-related injury for which the employee is receiving temporary disability benefits is limited in his or her use of accrued Personal Leave and/or Major Medical Leave and the receipt of workers' compensation benefits simultaneously if the combined receipt of both benefits results in the employee being paid a total amount that exceeds 100 percent of his wages earned in State employment at the time of injury.

It is the employee's responsibility to cooperate with the agency to determine if he or she has received excess wages and, if so, to notify the agency's Human Resources Office of how such excess wages should be recovered from the employee. Recovery could be:

- Through direct repayment (by endorsing the temporary disability benefit check over to the agency or remitting a personal check/money order);

- Through a payroll deduction;
- Through a payroll adjustment by which the Personal Leave and/or Major Medical Leave taken during the affected pay period is reclassified to Leave Without Pay; or
- By a combination of direct repayment, payroll deduction and/or reclassification of paid leave to Leave Without Pay.

Should the employee elect to be placed on Leave Without Pay rather than use accrued Personal Leave and/or Major Medical Leave, employment benefits (i.e., employer-paid life and/or health insurance, leave accrual, FICA and PERS contributions) may be adversely affected.

Any excess wages that are not remitted to the agency will be deemed to be a debt owed to the State of Mississippi and are subject to collection as allowed by Mississippi law.

Any injury or illness which is work related should be reported as soon as possible to the supervisor or agency's workers' compensation representative so that appropriate medical treatment can be arranged and a report of the injury can be sent to the Workers' Compensation Commission. Timely reporting also ensures that any wage loss benefits, which are due, will be paid without undue delay. For assistance in the event of injury or for questions concerning workers' compensation, contact the agency Human Resources Office or the agency's workers' compensation representative.

#### **4.3 TRAVEL AND EXPENSES**

If a State employee is required to travel in the performance of an official duty, reasonable expenses will be paid by the State. Prior approval may be required for travel reimbursement. Employees should request information regarding their agency's travel reimbursement policy from their human resources director. Rules and regulations governing official travel are established by the Department of Finance and Administration.

#### **4.4 SOCIAL SECURITY**

Every employee of the State of Mississippi is required to participate in the federal Social Security program. For further information, you may call Social Security at 1-800-772-1213.

#### **4.5 RETIREMENT**

Employees and officials of the State become members of the Public Employees' Retirement System as a condition of employment. PERS participation and coverage is provided to employees in positions requiring employees to work and receive compensation for **not** less than twenty hours per week OR **not** less than eighty hours per month. Participation is restricted to employees whose wages are subject to payroll taxes and are reported on IRS Form W-2.

When a State employee is first employed, the agency will furnish the employee with a member information form to establish a membership account. The employee's social security number will serve as a membership number. A fiscal year membership statement will be sent to the employee each year containing information regarding contributions paid into PERS. Additional information is contained in the ***PERS Member Handbook*** which the agency will provide. You may also contact PERS by calling 1-800-444-7377 or (601) 359-3589 or visit the website at <http://www.pers.ms.gov>.

### ***Contributions***

An employee's monthly contribution is equal to a percentage of the employee's Gross Reportable Earnings, and this amount is refundable. The employer's monthly contribution of a percentage of the employee's Gross Reported Earnings is not refundable.

### ***Vesting Period***

If an employee was employed by the State of Mississippi at any point prior to July 1, 2007, the employee may receive monthly benefits once the employee becomes eligible for retirement after the employee contributes to the retirement system for at least four years. For those employees first employed by the State of Mississippi after July 1, 2007, the employee must contribute to the retirement system for eight years prior to being able to receive monthly benefits upon eligibility for retirement.

### ***Retirement Eligibility***

Any employee hired before June 30, 2011, with twenty-five years of participation in PERS, is eligible to retire and draw monthly benefits at any age. Any employee hired on July 1, 2011 or later, with thirty years of participation in PERS is eligible for retirement and benefits at any age. Alternatively, employees with less than twenty-five years of participation in the retirement system who became members of the retirement system before July 1, 2007 and have at least four years of membership in the system are eligible to retire at age sixty and receive a retirement allowance. Employees who became members of the retirement system after July 1, 2007 and have at least eight years of membership in the system are eligible to retire at age sixty and receive a retirement allowance.

## **4.6 INSURANCE**

As a benefit to its employees, the State of Mississippi provides a life and health insurance plan to assist its employees with the cost of such insurance. The State and School Employees' Life and Health Insurance Plan (hereinafter referred to as "the Plan") provides State employees and their dependents with many options for health and life insurance coverage. All new employees are provided with a Summary Plan Description (hereinafter referred to as "SPD") that describes in more detail the Plan's benefits, eligibility and how to use the Plan. New SPDs are sent to enrolled employees every year when changes occur in the Plan. Also, all enrolled employees receive the ***Health Plan Update***, a newsletter that is distributed throughout the year to give more information about Plan benefits.

All new employees must enroll in the Plan or waive coverage. Enrollment in the Plan is effective on an employee's first day of employment; however, an employee must complete his or her enrollment paperwork within thirty-one days of his or her hire date. Additionally, there is an annual Open Enrollment period for coverage effective the following plan year.

Depending on the employee's specific employment status, the State of Mississippi pays some portion of the health insurance premium and life insurance premium for the employee. The Plan also allows employees to cover their dependents under the Plan by paying the premiums for their dependents through payroll deductions. Eligible dependents include a lawful spouse, as well as the enrollee's child up to age 26. Dependent children who meet eligibility requirements at the time

of enrollment may remain covered regardless of age if permanently physically disabled or mentally disabled, are incapable of self-sustaining employment, and depend upon the enrollee for 50% or more of their support. The disabling condition must have occurred prior to the dependent's 26th birthday.

For additional information, you may contact your Human Resources Office, the Department of Finance and Administration's ("DFA") Office of Insurance, or visit the DFA website at <http://www.dfa.state.ms.us>.

#### **4.7 CAFETERIA PLAN**

An employee of the State of Mississippi may choose to participate in a Section 125 plan, also known as a "Cafeteria Plan." A Cafeteria Plan allows employees' payments for health, life, dental and vision care, prescription drugs, disability contributions, and deposits to flexible spending accounts to be deducted pre-tax from an employee's earnings.

Please contact your agency Human Resources Office or payroll office for information on how to participate in your agency's Cafeteria Plan.

#### **4.8 STATE CREDIT UNIONS**

All State employees are eligible to join the Public Employees' Credit Union as well as applicable agency specific credit unions. Credit Unions are non-profit financial organizations serving the savings and borrowing needs of members. Services such as financial counseling, money orders and free notarizing may also be provided. Credit Unions return all earnings exceeding operating expenses to its members in the form of dividends, interest, reserves, and services. The Public Employees' Credit Union may be contacted at (601) 948-8191.

#### **4.9 UNEMPLOYMENT COMPENSATION**

If a State employee becomes separated from a job for reasons beyond the employee's control, that employee may be eligible for unemployment compensation. Inquiries may be directed to the Mississippi Department of Employment Security or visit the web site at <http://www.mdes.ms.gov>.



## **CHAPTER 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. The following guidelines should be followed by State employees:

### **5.1 EMPLOYEE WORK SCHEDULES**

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.

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.

Each part-time employee will be provided a schedule of working hours.

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.

### **5.2 ATTENDANCE**

Regular attendance is a basic condition of employment with the State of Mississippi and shall be considered among the essential elements for all employees. 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.

### **5.3 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.

### **5.4 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.

## **5.5 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.

## **5.6 WORKPLACE HARASSMENT**

Each appointing authority must take appropriate steps to provide a professional workplace free from any type of harassment. Federal law prohibits harassing behavior based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also prohibited for individuals to be harassed in retaliation for certain “protected activity” such as participating in a discrimination complaint process or opposing employment practices that are reasonably believed to be in violation of anti-discrimination laws. State law also requires a personnel system that assures employees are free from coercion for partisan or political purposes and shall receive fair treatment in all aspects of personnel administration without regard to political affiliation.

Offensive conduct can include, but is not limited to, offensive jokes, slurs, epithets, physical assaults or threats, intimidation, ridicule, insults, offensive objects or pictures, and interference with work performance. A harasser can be a supervisor, agent of the employer, co-worker, or a non-employee. A victim does not have to be the person harassed, but can include anyone affected by the offensive conduct.

It is essential that each appointing authority take appropriate steps to prevent and promptly correct harassment, especially harassing behavior based on or motivated by an individual’s membership in a protected group. Employees should immediately report harassing behavior they experience, witness or become aware of to an appropriate agency administrator (immediate supervisor, upper management, human resources or an employee designated by the appointing authority to receive such complaints). Agencies should provide alternative opportunities for employees to report harassment to an appropriate agency administrator, in case the source of the harassment is in the employee’s management chain.

An appointing authority’s reasonable care to prevent workplace harassment should include, but not be limited to, establishing and implementing an anti-harassment policy consistent with these principles. The policy should be well publicized and clearly communicated to all employees. Each level of management and human resources should communicate and demonstrate that harassment will not be tolerated and employee concerns will be promptly addressed, without any fear of retaliation.

After receiving notice of a possible violation of policy, the agency must take prompt action reasonably calculated to end the alleged harassment and conduct a thorough investigation. After completing the investigation, the agency should take effective and appropriate remedial measures, including necessary corrective or formal disciplinary action against the harasser.

If an agency appointing authority is the source of the alleged harassment, the victim may report the harassing behavior directly to the Executive Director of the MSPB. The Executive Director shall promptly take reasonable steps to ensure the complaint is appropriately and effectively

addressed by the responsible parties. Each appointing authority should ensure agency anti-harassment policies are consistent with these guidelines and principles and a sample agency anti-harassment policy can be found at the MSPB website.

## **5.7 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.

## **5.8 POLITICAL ACTIVITY**

Personnel administration must be conducted in an atmosphere free from political influence or coercion.

### ***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.

### ***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.

### ***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.

### ***Freedom From Political Coercion***

Each appointing authority will assure that employees are free from coercion for partisan or political purposes. State law requires a personnel system that assures employees are free from coercion for partisan or political purposes and shall receive fair treatment in all aspects of personnel administration without regard to political affiliation.

### ***Informing Employees of Political Activities Laws***

Each appointing authority will inform all employees of which political activities are permitted or prohibited by law.

### ***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.

### ***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 of, 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.

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.

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.

#### **➤ *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. Additional information about the Hatch Act can be found at <http://www.osc.gov/Pages/HatchAct.aspx>. An employee may obtain more information regarding the Hatch Act at <http://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.

## **5.9 WORKPLACE VIOLENCE**

Each appointing authority must take appropriate steps to provide a safe workplace environment for employees that is free from violence. Employers must immediately respond to acts of violence, intentional damage to property, and acts of aggression or intimidation in the workplace. Any threat of workplace violence to employees or the general public, direct or implied, is strictly prohibited and should be immediately reported to agency management.

## **5.10 DRUG-FREE WORK PLACE ACT OF 1988**

The Drug-Free Workplace Act of 1988 requires grantees of federal agencies to certify that they will provide a drug-free workplace. State agencies which are federal grantees must comply fully with the provisions of this law.

## **5.11 DRUG AND ALCOHOL TESTING**

State law governing drug and alcohol testing of employees and job applicants provides 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. If an agency chooses to implement a drug and alcohol testing policy, it must comply with State law. However, Mississippi's statutory law regarding drug and alcohol testing 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 take a drug or alcohol test when directed to do so by an employer, in accordance with applicable state and federal law, is considered good cause for possible disciplinary action pursuant to Chapter 7.

## **5.12 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.

### ***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.

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. The agency may not reimburse employees for any charges on personal wireless communication devices.

Employees should be aware that cellular phone transmissions are not secure transmissions. Confidential information regarding official business should be transmitted from a secure environment.

### ***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.

### ***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.

### ***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.

### ***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.

## **5.13 PROHIBITED 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 prohibits romantic, dating or sexual relationships between:

- 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
- 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.

## **5.14 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:

- Employment with the State will be the employee’s primary job responsibility and obligation; any other employment will be deemed secondary.
- 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.
- 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.
- 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 herein.

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 employee is 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.

## **5.15 SOCIAL MEDIA**

Social media is defined as the various activities that integrate technology, social interaction, and content creation. Through social media, individuals or groups can create, organize, edit or comment on, combine, and share content. Social media uses many technologies and forms, including social-networking, blogs, wikis, photo-sharing, video-sharing, podcast, social bookmarking, mash-ups, widgets, virtual worlds, microblogs, Really Simple Syndication (RSS) and more.

Any personal social media activity by State employees may not be represented as official state or agency social media activity. State email addresses shall not be used to register for personal social media activity. State employees should not pressure or coerce other employees to connect with them via social media.

It is considered to be protected expression for state employees to engage in social media activity concerning issues of public concern, while on personal time and in a personal capacity. State employees must make clear that any views concerning issues of public concern are those of the individual and do not reflect the views of the state or any entity of the state. State employees maintain their First Amendment rights, but any speech or expression, even in a personal capacity, causing disruption or that undermines the effectiveness and/or operation of the workplace is prohibited.



Any of the following social media activity, comments, expression or posts by a state employee in his or her professional or personal capacity are also prohibited:

- A. Content that is discriminatory, harassing or physically threatening, as defined in sections 5.6 and 5.9 of this Handbook, toward other state employees;
- B. Disclosure of agency information that is confidential or proprietary;
- C. Content that demonstrates unlawful conduct;
- D. Content that is in violation of MSPB conflict of interest regulations, as defined in sections 5.7, 5.13 and 5.14 of this Handbook.
- E. Content that is in violation of the federal Hatch Act, 5 U.S.C Section 1501 *et seq.*, and 5 C.F.R. Section 151.101 *et seq.* Additional information concerning the Hatch Act may be found in Section 5.8 of this Handbook.

State agency regulation of employees engaging in social media, while on personal time and in a personal capacity, must be both consistent and measured. Violations of this policy are subject to disciplinary action as set forth in Chapter 7 of this Handbook.

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## **CHAPTER 6 – PERFORMANCE REVIEW SYSTEM**

The Mississippi Legislature requires the Mississippi State Personnel Board and the MSPB Executive Director to provide a system of rules and regulations to measure employee performance.

### **6.1 SCOPE**

A performance review system serves several distinct purposes and functions, including: aligns, corrects, and leverages the performance of each employee; allows managers to make effective decisions regarding workforce performance issues; and promotes quality services. The performance of each employee whose position is under the salary setting authority of MSPB must be reviewed at least annually.

Performance reviews must be administered in a fair manner and in compliance with state and federal laws. The Performance Review System (hereinafter referred to as “PRS”) assesses an employee’s performance at either the Outstanding (3.0) Performance Level, the Successful (2.0 – 2.9) Performance Level, or the Improvement Needed (1.0 – 1.9) Performance Level.

### **6.2 APPLICABILITY**

Every employee whose position is under the salary setting authority of MSPB must have their job performance assessed at least once annually. Assessments are based on the employee’s performance in three areas:

1. Use of required systems/programs/equipment/instruments
2. Job knowledge/technical ability, and
3. Problem solving/decision making.

For employees who oversee a program or who have functional supervision of at least one employee, performance in a fourth area is included: project management/delegation.

### **6.3 WORKFORCE TALENT DEVELOPMENT AND SUCCESSION PLANNING**

The Performance Development System (PDS) used from January 15, 2013 – December 31, 2019 included an Individual Development Plan (IDP) to emphasize the importance of development on performance. Effective January 1, 2020, the IDP is transitioning to Workforce Talent Development and Succession Planning.

Employees impact agency services. Nowhere is this more evident than in the public sector, where services that are critical to an agency’s mission are delivered through our employees. When individual development directly contributes to meeting agency needs, the result is an enhanced level of performance for the agency.

The Workforce Talent Development and Succession Planning Guide on the MSPB website provides details about development and customizable templates agencies can use to coordinate individual development with specific agency needs. The revised IDP includes a section that identifies how the agency benefits from the employee’s development plan.

## **6.4 PROCESS**

The PRS process outlined below provides a brief overview of the annual Review Period. Details of the PRS process are provided with the PRS templates on the MSPB website.

Actions taken by the direct supervisor and the employee at the beginning of the Review Period Section 6.4.A are performed within fourteen days of the initial employment date, then at twelve-month intervals for each subsequent Review Period. Actions taken during Review Sessions Section 6.4.B occur three months and nine months after the initial employment date, then at the six-month midpoint for each subsequent Review Period. Actions taken at the end of the Review Period Section 6.4.C occur six months and twelve months after the initial employment date, then at twelve-month intervals for each subsequent Review Period.

### **A. The Beginning of the Review Period**

During the first fourteen days of the Review Period, the direct supervisor and employee review, and if necessary, update the job duties of the position and identify what constitutes a Successful (2.0 – 2.9) Performance level.

### **B. Review Sessions**

Review sessions may be held at any time. However, the direct supervisor must conduct a mid-point review session with the employee during the Review Period. As referenced in 6.4(c), failure to perform job duties before the conclusion of a Review Period may warrant immediate corrective or disciplinary action at any time. The purposes of the review sessions during the Review Period are:

1. To provide feedback to the employee concerning the overall assessment of performance during the Review Period.
2. To review and update duties in light of changing requirements of the employee's position.
3. To identify areas of performance requiring improvement and to identify methods/training needed to facilitate that improvement.

The direct supervisor maintains relevant documentation supporting the performance rating of each employee. Examples of such documentation include, but are not limited to:

1. Narrative statements about the employee's performance;
2. Examples of work;
3. Previous Performance Reviews or Performance Development Assessments;
4. Informal Corrective Action (Section 7.5)
5. Formal Disciplinary Action (Section 7.5)

Formal disciplinary action is also maintained in the employee's Human Resources personnel file. Supervisors should coordinate with Human Resources whether documentation of Informal Corrective Action should also be included in the employee's personnel file (Section 7.5). In the event that an agency does not have a Human Resources division, supervisors should coordinate with the appointing authority's designee who has Human Resources responsibilities.

### **C. The End of the Review Period**

Mississippi Code Annotated §25-9-127 provides that a state service employee may be dismissed or otherwise adversely affected as to compensation or employment status for inefficiency or other good cause. Failure to receive a Successful rating at the conclusion of a Review Period is considered to be inefficiency or other good cause (Section 7.2) warranting possible corrective or disciplinary action. In addition, failure to perform job duties before the conclusion of a Review Period may warrant immediate corrective or disciplinary action at any time (Section 7.2).

Corrective or disciplinary action for an employee's failure to receive a Successful rating and/or non-performance of job duties during a Review Period shall comply with Chapter 7 (Employee Corrective and Disciplinary Action). An employee that is dismissed or otherwise adversely affected as to compensation or employment status (formal disciplinary action defined in Section 7.1 as Written Reprimand, Suspension Without Pay, Involuntary Demotion or Dismissal) may review Chapters 8 and 9 concerning any applicable grievance or appeal procedures. Corrective action such as a documented warning/counseling session or other appropriate informal means intended to correct unsatisfactory job performance (Section 7.5) is not grievable. Although such action is not grievable, Human Resources should appropriately respond to questions or concerns raised by an employee concerning the Performance Review System. In the event that an agency does not have a Human Resources division, the appointing authority's designee who has Human Resources responsibilities should appropriately respond to such questions or concerns.

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## CHAPTER 7 – EMPLOYEE CORRECTIVE AND DISCIPLINARY ACTION

Mississippi Code Annotated § 25-9-127 provides that no employee of any department, agency or institution under the State Personnel System, who is subject to the policies and procedures prescribed by MSPB, may be dismissed or otherwise adversely affected as to compensation or employment status except for inefficiency or other good cause. Before such disciplinary action, a State Service employee must be provided written notice and hearing within the department, agency or institution as provided in the policies and procedures promulgated by MSPB complying with due process of law.

### 7.1 DISMISSED OR OTHERWISE ADVERSELY AFFECTED AS TO COMPENSATION OR EMPLOYMENT STATUS

**Dismissed** means an involuntary termination of employment. An employee is **adversely affected as to compensation or employment status** when the employee is dismissed, involuntarily demoted with a reduction in pay, or suspended without pay. Each of these personnel actions either reduces or terminate an employee's compensation and shall be based on **inefficiency or other good cause**. State Service employees are first entitled to due process of law before receiving such disciplinary action.

Mississippi Code Annotated § 25-9-127 provides that this provision **does not** apply to the following persons: 1) employees separated from employment due to a curtailment of funds or a reduction in force approved by the MSPB; 2) employees dismissed or otherwise adversely affected as to compensation or employment status during the probationary period of state service of twelve (12) months; 3) or employees dismissed or otherwise adversely affected as to compensation or employment status, as an executive officer or other Non-State Service employees of any state agency who serves at the will and pleasure of the Governor, board, commission or other appointing authority.

#### *Written Reprimand and Informal Corrective Action*

Employees may also be issued a Written Reprimand before disciplinary action reducing or terminating an employee's compensation is necessary. A Written Reprimand is formal notice to an employee of inefficiency or other good cause warranting disciplinary action and is intended to correct unacceptable behavior or unsatisfactory job performance.

When warranted, an employer may attempt to correct unacceptable behavior or unsatisfactory job performance with a documented warning/counseling session or other appropriate informal means, before taking formal disciplinary action (Written Reprimand, Suspension Without Pay, Involuntary Demotion or Dismissal.)

## **7.2 INEFFICIENCY OR OTHER GOOD CAUSE**

The following list of examples illustrating inefficiency or other good cause is not all-inclusive. It is not intended to limit an appointing authority's discretion in determining that inefficiency or other good cause exists, warranting disciplinary action in compliance with MSPB procedures.

- Failure to report to work at the required time.
- Unauthorized time away from the assigned work area.
- Leaving the work site without permission during assigned work hours.
- Failure to report to work without giving the required notice to the supervisor.
- Acts in violation of Section 5.6 of the MSPB Handbook (Workplace Harassment).
- Acts in violation of Section 5.7 of the MSPB Handbook (Conflicts of Interest).
- Acts in violation of Section 5.8 of the MSPB Handbook (Political Activity).
- Acts in violation of Section 5.9 of the MSPB Handbook (Workplace Violence).
- Acts in violation of Section 5.13 of the MSPB Handbook (Prohibited Relationships).
- Acts in violation of Section 5.15 of the MSPB Handbook (Social Media).
- Conviction of a moving traffic violation while operating a state vehicle or operating a state vehicle in an unsafe manner.
- Operation of a state vehicle without a valid driver's license.
- Arrest or conviction of driving under the influence while in a state vehicle or while in a personal vehicle and on state business.
- Failure or refusal to follow supervisor's instructions or perform assigned work.
- Failure or refusal to comply with agency policies or procedures.
- Resisting management directives through insolent behavior, undermining a supervisor's ability to manage.
- Failure to receive a Successful MSPB Performance Review rating at the conclusion of a Review Period.
- Failure to perform job duties requiring disciplinary/corrective action before the conclusion of a Review Period.
- Use or possession of alcohol during assigned work hours or consuming alcohol preceding reporting to work.
- The unlawful manufacture, distribution, possession, or use of controlled substances during assigned work hours or being under the influence of or impaired by the unlawful use of controlled substances during assigned work hours.
- Refusal to take a drug or alcohol test when directed to do so by an employer, in accordance with applicable state and federal law.



- Falsification of records (including electronic communication), such as, but not limited to, travel reimbursement vouchers, time records, leave records, employment applications, invoices, reports, or other documents.
- Intentionally or negligently causing damage to state property or the property of another employee or invitee of the agency.
- Violation of agency safety rules.
- Unauthorized possession or use of firearms, dangerous weapons or explosives.
- Careless, negligent, or unauthorized use or intentional misuse of state property or records.
- Breach of agency confidentiality requirements.
- Refusing to cooperate or intentionally giving false statements in an administrative investigation concerning, but not limited to, work performance, misconduct or violations of MSPB/agency policies and procedures.
- The failure of any appointing authority or supervisor of an 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.
- Theft on the job.
- Arrest or conviction for a felony criminal charge.
- Arrest or conviction for a misdemeanor criminal charge that is related to an employee's job duties or conflicts with the mission of the agency.
- Other violations of MSPB or agency policies, procedures, rules or regulations not specifically referenced herein.

### 7.3 DUE PROCESS

A State Service employee may be dismissed or otherwise adversely affected as to compensation or employment status only after being given **written notice** and **hearing**, complying with **due process of law**. A Non-State Service employee may be dismissed or otherwise adversely affected as to compensation or employment status, with or without cause and is not entitled to due process.

Written notice means the employee is provided with a statement summarizing the reasons(s) the employee is facing possible disciplinary action. The notice should state with sufficient specificity the inefficiency and/or other good cause reason(s), so the employee may adequately respond. The notice must state an appointed time and location for the employee to respond to the allegation(s) in a hearing. The employee may choose to submit a written waiver of the hearing or respond in writing to the allegation(s) in the notice.

The hearing is an informal conference between the employee and the appointing authority or designated representative. The employee must be provided the notice at least five (5) working days prior to the hearing. The purpose of the hearing is to give the employee a meaningful opportunity to respond to the allegation(s) in the notice and for the employer to determine if inefficiency or other good cause exists, warranting disciplinary action.

### ***Administrative Leave/Suspension with Pay Pending the Employee's Due Process Hearing***

An employee may be placed on administrative leave/suspension with pay before the due process hearing. The hearing must take place within twenty-five (25) working days from the first day of the administrative leave/suspension with pay and the written notice must be provided to the employee at least five (5) working days prior to the hearing. Factors an employer shall consider in determining if administrative leave/suspension with pay pending the hearing is appropriate include, but are not limited to:

- The seriousness of the allegation(s) against the employee, taking into account the mission of the agency and the employee's particular job duties;
- The reasonable possibility of serious disciplinary action being issued as a result of the pending hearing;
- Whether the employee's continued presence at work pending the hearing would be contrary to the best interests of the agency.

In circumstances where the employee has been charged with a felony, the employee may be suspended without pay before the hearing. This period of suspension without pay prior to the hearing shall not be considered as a disciplinary Suspension Without Pay pursuant to Section 7.5.

### **7.4 DISCIPLINARY/CORRECTIVE ACTION DECISION**

In the hearing, the appointing authority or designated representative should only consider the reasons stated in the written notice, any related supporting documentation, and the employee's response. A determination and recommendation from the designated representative to the appointing authority should include both a summary of the employee's response and the basis for the decision and recommendation. The appointing authority should carefully consider the designated representative's determination and recommendation but may choose to accept or disregard the recommended personnel action.

If it is determined that inefficiency or other good cause exists, factors to consider in determining the appropriate personnel action include, but are not limited to:

- The seriousness of the misconduct/unsatisfactory job performance.
- The mission of the agency and the employee's particular duties.
- The employee's assigned level of responsibility.
- The employee's previous record of both formal and informal disciplinary/corrective action
- Consistency with past disciplinary/corrective action for other similarly situated employees

Disciplinary action should be timely, and employers are to ensure fair treatment for employees while also providing efficient operation of the agency. When warranted, employers should practice progressive disciplinary/corrective action to address employee misconduct or unsatisfactory job performance. Depending on the particular circumstances, escalated disciplinary/corrective action may not be possible.

If a disciplinary notice is issued as a result of the due process hearing, the notice shall:

- Re-state the reasons contained in the written notice that was the subject of the due process hearing and were determined to be inefficiency or other good cause for disciplinary action;
- State the effective date(s) of the disciplinary action. If the employee is involuntarily demoted, the notice should state the new job class and salary;
- State the decision may be appealed to the Mississippi Employee Appeals Board (MEAB) with a written Notice of Appeal filed within fifteen (15) calendar days after receipt of the disciplinary notice or within fifteen (15) calendar days of the first attempted delivery date by certified mail, return receipt request, whichever occurs first. The disciplinary notice may be hand delivered or sent by certified mail;
- Refer the employee to chapter nine (9) of the MSPB Handbook for additional information concerning appeals to the MEAB.

Mississippi Code Annotated § 25-9-127 provides that any State Service employee who appeals to the MEAB his or her dismissal or action adversely affecting compensation or employment status shall be required to furnish evidence that the reasons stated by the employer **are not true or are not sufficient grounds for the action taken.**

## **7.5 FORMS OF DISCIPLINE AND CORRECTIVE ACTION**

### ***Dismissal***

Dismissal is an involuntary termination of employment. Involuntary termination of employment can occur based upon disciplinary action or a Reduction in Force approved by the MSPB. Dismissal can also occur based on the 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.

### ***Involuntary Demotion***

An involuntary demotion is when an employee is demoted for disciplinary reasons from a position in one job class to a position in a lower job class having a lower salary range. The involuntary demotion shall include a reduced salary in accordance with the MSPB Variable Compensation Plan. An employee may receive an involuntary demotion in addition to a suspension without pay.

### ***Suspension Without Pay***

A disciplinary suspension without pay is the temporary removal of an employee from performing his or her duties and from receiving payment. The maximum period an employee may be suspended without pay during any twelve (12) month period is thirty (30) cumulative work days. The twelve (12) month period shall begin with the first day of the initial suspension.

### ***Written Reprimand***

A written reprimand is a formal notice to an employee of inefficiency or other good cause warranting disciplinary action. It is intended to correct unacceptable behavior or

unsatisfactory job performance before disciplinary action reducing or terminating an employee's compensation is necessary. A written reprimand should state with sufficient specificity the inefficiency or other good cause reason(s) for the disciplinary action. The reprimand must also:

- Inform the employee of his/her right to grieve the reprimand in accordance with MSPB grievance procedures;
- Inform the employee that a copy of the reprimand will be placed in his/her personnel file
- Contain the employee's signature acknowledging that he/she has received the reprimand. If the employee refuses to sign the acknowledgment, the person issuing the reprimand should sign the acknowledgment section confirming the reprimand was delivered to the employee.

An employee is not entitled to a due process hearing before being issued a written reprimand. If the employee has a due process hearing before being issued the reprimand, the reprimand may be appealed directly to the MEAB without first exhausting the MSPB grievance procedure. Otherwise, employees must exhaust the grievance procedure before appealing the reprimand to the MEAB.

### ***Informal Corrective Action***

When warranted, an employer may attempt to also correct unacceptable behavior or unsatisfactory job performance with a documented warning/counseling session or other appropriate informal means, before taking formal disciplinary action (Written Reprimand, Suspension Without Pay, Involuntary Demotion or Dismissal.) Informal corrective action is not grievable.

A formal disciplinary action notice shall be maintained in the employee's personnel file. Supervisors should coordinate with Human Resources as to whether documentation of informal corrective action should be included in the employee's personnel file. Employees must be given copies of any disciplinary/corrective action documentation placed in his/her personnel file. Documentation of formal disciplinary action or informal corrective action may be kept indefinitely in the employee's personnel file.

## **CHAPTER 8 – GRIEVANCES**

### **8.1 GRIEVABLE ISSUES**

The following issues are grievable and appealable to the Mississippi Employee Appeals Board (MEAB) after exhausting the MSPB grievance procedure:

- A. Written Reprimands issued pursuant to Section 7.5 of the MSPB Handbook. Non-state service employees may only grieve Written Reprimands on the basis of alleged violations of state or federal law.
- B. Open Competitive Appointments or Promotions into a Permanent State Service position alleged to be in violation of MSPB or agency policy;
- C. Promotions or appointments alleged to be in violation of state and federal law;
- D. Involuntary relocation of an employee as an alleged disciplinary measure or for arbitrary or capricious reasons; or
- E. Alleged violations of Mississippi Code Annotated §25-9-171 through §25-9-177.

An employee is not permitted to file a grievance or appeal to the MEAB concerning issues which are pending or have been concluded in a separate administrative or judicial forum.

When an employee has received due process (written notice and hearing pursuant to Section 7.3 of the MSPB Handbook) prior to being issued a Written Reprimand, the employee may appeal directly to the MEAB without exhausting the MSPB grievance procedure.

### **8.2 GRIEVANCE PROCEDURE**

- A. Grievances must be submitted to the agency Human Resources Director or other agency designee(s) within seven (7) working days of the employee becoming aware of the alleged grievable issue. In the event that an agency does not have a Human Resources division, grievances must be submitted to the appointing authority's designee who has Human Resources responsibilities. The HR Director or other agency designee shall then timely forward the grievance to the appropriate level supervisor to review the issues, meet with the employee, and provide a 1st Level Agency Response. The agency Human Resources Director or other agency designee shall assist the supervisor in this process.
- B. Within seven (7) working days of the employee initially submitting the grievance, the designated supervisor shall meet with the employee. This timeframe may be extended by agreement of the parties. Within three (3) working days of the meeting, the supervisor shall provide the employee with the 1st Level Agency Response to the grievance.
- C. If not satisfied with the 1st Level Agency Response, within three (3) working days of receipt, the employee may re-submit the grievance to the Human Resources Director or other agency designee for it to be timely forwarded to the agency Appointing Authority.
- D. Within seven (7) working days of the grievance being re-submitted, the Appointing Authority or his/her designee shall meet with the employee. This timeframe may be extended by agreement of the parties. Within three (3) working days of the meeting, the

Final Agency Response shall be provided to the employee.

- E. If not satisfied with the Final Agency Response, the employee may file an appeal with the Mississippi Employee Appeals Board in compliance with Chapter 9 of the MSPB Handbook.

### **8.3 GRIEVANCE FORM AND TIMEFRAME REQUIREMENTS**

Grievances are to be submitted using the MSPB Grievance Form and management shall provide the 1st Level and Final Agency Response on the grievance form. If necessary, either party may attach relevant supporting documents.

An employee's failure to comply with the required timeframe in Section 8.2(A) or 8.2(C) prohibits the employee from using or exhausting the grievance procedure. In such circumstances, the MEAB does not have jurisdiction to hear an appeal concerning the issue.

**An employee's failure to comply with or exhaust the grievance procedure does not relieve an agency's responsibility to timely and appropriately address such issues as necessary. Issues of concern to an employee that are not considered grievable pursuant to Section 8.1 may still require an immediate and appropriate response by the agency. Agencies are especially required to timely and effectively respond to complaints of alleged workplace harassment (Section 5.6) and workplace violence (Section 5.9).**

If the agency fails to comply with the required timeframe in Section 8.2 (B) or 8.2 (D) the employee may elect to treat the relief requested as denied at that step and immediately appeal the grievance to the next step.

## CHAPTER 9 – MISSISSIPPI EMPLOYEE APPEALS BOARD

### Purpose

Mississippi Code Annotated § 25-9-129 provides that the Mississippi State Personnel Board shall appoint an employee appeals board (hereinafter referred to as the Mississippi Employee Appeals Board or “MEAB”). The MEAB shall consist of three (3) hearing officers for the purpose of holding hearings, compiling evidence and rendering decisions on appeals of personnel action adversely affecting employment status or compensation (**formal disciplinary action** defined in Section 7.1). Grievable issues specified in Section 8.1 may also be appealed to the MEAB.

### 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.
- “En banc hearing” means a hearing on an appeal conducted by all three hearing officers.
- “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.
- “Final order” means the order granting disposition of the appeal by either the individual hearing officer, or the hearing officer if the matter was heard en banc.
- “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 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.
- “Working days” means Monday through Friday, excluding legal holidays and any other days when state government offices are closed pursuant to executive order of the Governor.

## **9.1 AVAILABILITY OF RULES AND MEAB ADMINISTRATIVE OFFICE**

The MSPB shall make these MEAB Administrative Rules available on the MSPB website and MSPB staff shall provide administrative support to the MEAB through the Administrative Office.

## **9.2 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 (10) days. In the event any legal holiday falls on a Saturday or Sunday, the legal holiday will be observed as mandated by law.

## **9.3 WHO MAY APPEAL; ACTIONS WHICH MAY BE APPEALED**

- A. State Service employees may appeal having been dismissed or otherwise adversely affected as to compensation or employment status (formal disciplinary action defined in Section 7.1).
- B. Non-State Service employees may appeal having been dismissed or otherwise adversely affected as to compensation or employment status (formal disciplinary action defined in Section 7.1) only on the basis of alleged violations of state or federal law.
- C. Employees may appeal issues that are grievable pursuant to Section 8.1 after having properly exhausted the grievance procedure pursuant to Section 8.2. When an employee has received due process (written notice and hearing pursuant to Section 7.3) prior to being issued a Written Reprimand, the employee may appeal directly to the MEAB without exhausting the MSPB grievance procedure.
- D. Employees may appeal alleged violations of Mississippi Code Annotated § 25-9-171 through § 25-9-177.
- E. Pursuant to Mississippi Code Annotated § 25-3-95 (8) (e) 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.

## **9.4 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 are available to all State agencies and employees on the MSPB website.
- B. A Notice of Appeal must be filed within fifteen (15) days after the date a person receives written notice of formal disciplinary action defined in Section 7.1 or the Final Agency Response to a grievance pursuant to Section 8.2 (E) or within fifteen (15) days of the first attempted delivery date by certified mail, return receipt requested, whichever occurs first.



- C. A 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.

## **9.5 JURISDICTION**

- A. 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 without further hearing. If an appeal is dismissed for lack of jurisdiction and without hearing, the EAB shall return the appellant's \$100 filing fee.
- B. An employee is not permitted to appeal issues which are pending or have been concluded in a separate administrative or judicial forum.
- C. Pursuant to Mississippi Code Annotated § 25-9-127, an employee separated from employment due to a curtailment of funds or a reduction in force approved by the MSPB is not permitted to appeal such decision to the MEAB.

## **9.6 PARTIES**

Unless the Notice of Appeal names some other respondent, the appealing party's employing state agency shall be considered the only respondent.

## **9.7 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 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.
- D. 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.

## **9.8 ADMINISTRATIVE OFFICE**

- A. When an appeal is filed, the Administrative Office shall give notice to the employing agency and any other appropriate party within five working days.
- B. The Administrative Office will give notice to the parties of any orders, including those for prehearings, hearings, and motions at their last known mailing address or through email. It shall be the duty and responsibility of each party to inform the Administrative Office of any change of address and provide the mailing address or email address to which future notices and communications should be directed. All correspondence shall be conducted

through email unless otherwise requested by a party.

- C. The Administrative Office may create and disseminate forms to expedite the appeals process and assist the parties.

### **9.9 ASSIGNMENT OF CASES; SCHEDULING OF PREHEARING CONFERENCE**

- A. The Administrative Office shall assign 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 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 hearing officer, the issues and circumstances of an appeal warrant that the hearing be conducted before the three hearing officers en banc instead of a single hearing officer, he or she may issue an order or notice to that effect.
- D. Once a case is filed, prehearing conferences may be held at the discretion of the presiding hearing officer to simplify the issues, procedures, and evidence in order to fairly hear and decide the case.

### **9.10 PREHEARING CONFERENCE AND ORDER**

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. After a prehearing conference, the presiding hearing officer may issue a prehearing order, if appropriate. Any such order must be issued within ten (10) days of the prehearing conference.

### **9.11 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 (10) 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 and Motions to Amend the Notice of Appeal will be granted only for good cause or upon the agreement of both parties.
- C. No party shall be granted more than one motion for continuance except in the case of extreme emergency or unusual hardship, as determined by the presiding hearing officer. 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.

## 9.12 WITNESSES

- A. Each party shall file a list of witnesses such party may call to testify at the hearing. 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:
  - i. Name;
  - ii. Employer;
  - iii. Street address of employer; and,
  - iv. Brief summary of testimony to be given.
- B. The assurance of subpoenas to compel the attendance of witnesses shall be governed by Rule 9.13.

## 9.13 SUBPEONAS

- 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:
  - i. Name;
  - ii. 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,
  - iii. 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:
  - i. Name of person who is to produce such documentary evidence;
  - ii. Street address where such person may be readily found for service of the subpoena (If the only available address is route number or box number, the party requesting the subpoena must provide complete and accurate directions for locating the witness.); and,
  - iii. Brief statement supporting the relevancy and materiality of the documentary evidence to the appeal.
- D. Each request must be filed no later than twenty (20) 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 (10) 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 five dollars (\$5.00) 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.

#### **9.14 WITHDRAWALS**

An appeal may be withdrawn by the appellant at any time prior to the issuance of a decision of the presiding hearing officer before whom the matter is pending. A request for withdrawal of an appeal shall be stated in the record of the proceeding, or shall be submitted in writing to the Administrative Office. Such a withdrawal shall have the same effect as a dismissal of the appeal.

#### **9.15 FAILURE TO APPEAR AT HEARING**

If any party, without good cause, fails to appear at a hearing, the presiding hearing officer may find in favor of the opposing party and dismiss the appeal with prejudice.

#### **9.16 CONDUCT OF HEARING**

- A. The hearing is *de novo*, affording the appealing party all procedural due process.
- B. 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.
- C. The presiding hearing officer is authorized to administer oaths and affirmations and will take testimony under such oaths and affirmations.
- D. Parties may be represented by counsel licensed to practice in Mississippi.
- E. 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.
- F. 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 judgment, taking a negative inference, or limiting evidence, provided his or her reasons for taking such action are in the record.

## **9.17 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 formal 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.
- H. The record shall be considered closed five (5) working days after the conclusion of the hearing, and no additional evidence or documentation shall be submitted.

## **9.18 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. A State Service employee shall have the burden of proving that the reasons stated in the notice of the agency's formal disciplinary action (i) are not true or (ii) are not sufficient grounds for the action taken.
- C. A Non-State Service employee that has received formal disciplinary action shall have the burden of proving such action was a violation of state or federal law.
- D. A party appealing a grievance filed pursuant to Section 8.1 (B) shall have the burden of proving the appointment or promotion was in violation of MSPB or agency policy.
- E. A party appealing a grievance filed pursuant to Section 8.1 (C) shall have the burden of proving the promotion or appointment was in violation of state or federal law.
- F. A party appealing a grievance filed pursuant to Section 8.1 (D) shall have the burden of proving his or her involuntary relocation was a disciplinary measure or for arbitrary or capricious reasons.
- G. A party appealing a grievance filed pursuant to Section 8.1 (E) (alleged violations of

Mississippi Code Annotated § 25-9-171 through § 25-9-177) shall have the burden of proving:

- i. that he or she is a whistleblower as defined in § 25-9-171; and
  - ii. as a result of being a whistleblower has been subjected to workplace reprisal, retaliation or adverse personnel action as defined in § 25-9-171 through § 25-9-177.
- H. A party appealing pursuant to Mississippi Code § 25-3-95 (8) (e) shall have the burden of proving that he or she is eligible to receive donated leave because the injury or illness of the employee or member of the employee's family is a catastrophic injury or illness.

### **9.19 PRESERVATION OF RECORD HEARING**

All hearings and prehearing matters shall be electronically recorded. It is the responsibility of the Administrative Office to record the proceedings. Upon request and at a reasonable cost, the Administrative Office will provide electronic copies to the parties. In order to maintain appropriate confidentiality and maintain the integrity of the official record, no other recording of the hearing, or any prehearing matter, will be permitted.

### **9.20 ORDER TO BE FILED UPON COMPLETION OF HEARING**

- A. Upon the closing of the record, the presiding hearing officer, within twenty-five (25) days thereafter, shall prepare and file a written decision and order. An order may be considered valid and filed only if signed by the Hearing Officer. To expedite resolutions of matters before the EAB, the Hearing Officer's signature may be affixed through actual or electronic means.
- B. The presiding hearing officer may, within thirty (30) days of the date of the initial order, correct any clerical mistakes or jurisdictional orders upon the hearing officer's own initiative or on the motion of any party.

### **9.21 COMPLIANCE WITH ORDER**

All parties shall promptly comply with all orders of the EAB, unless either party has timely sought available judicial review.

### **9.22 RELIEF TO BE GRANTED**

- A. If a party appealing formal disciplinary action meets his or her applicable burden of proof in Section 9.18, the hearing officer may:
  - i. Order reinstatement of a dismissed employee and restore all his or her employee rights and benefits, including back pay, medical leave, and personal leave. Retirement benefits may also be restored provided the integrity of such benefits remains uncompromised in accordance with all applicable laws, policies, rules and regulations.
  - ii. Order reinstatement of a demoted employee to his or her previous position and salary, including back pay.
  - iii. Order that an employee suspended without pay be reimbursed for the period of suspension

- iv. Order that a Written Reprimand be removed from an employee's personnel file and not considered for possible future disciplinary action.
- B. Pursuant to Mississippi Code Annotated § 25-9-131, the hearing officer may modify the formal disciplinary action issued to an appealing party but may not increase the severity of such action. In such circumstances, pursuant to Section 9.18 (B) (ii), the employee has the burden of proving that the reasons stated in the formal disciplinary action notice are not sufficient grounds for the action taken. The agency's decision concerning the level of disciplinary action issued to the employee is entitled to a presumption of correctness and the hearing officer shall accord a degree of deference to the agency's determination.
- C. If a party appealing pursuant to Section 9.3 (C), (D) or (E) meets his or her applicable burden of proof in Section 9.18, the hearing officer may grant the appropriate relief allowed by law.

### **9.23 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. Upon notification by the clerk of the relevant court that an appeal has been filed and, if necessary, bond provided, the Administrative Office shall prepare and transmit its record of the appeal. 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 MEAB has been filed by the Administrative Office.

### **9.24 ASSESSMENT OF FEES AND COSTS**

The Administrative Office shall have the authority to establish reasonable fees and assess reasonable costs of providing the record on appeal.

### **9.25 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.

### **9.26 AMENDMENT OF RULES; VALIDITY OF RULES; ENFORCEMENT OF RULES**

MSPB may amend these rules or promulgate new rules. 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. The MEAB shall have the authority, duty, and responsibility to abide by and enforce these rules.