State of Nebraska

Classified System
Personnel Rules & Regulations

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October 30, 2006

Published by:
Department of Administrative Services
State Personnel Division

Dave Heineman
Governor

STATE OF NEBRASKA

DEPARTMENT OF ADMINISTRATIVE SERVICES

[redacted]

Gerry Oligmueller
Acting Director

March 23, 2006

The State Classified System Personnel Rules and Regulations revised March, 2006, and promulgated under provisions of Sections 81-1301 through 81-1393, RRS Nebraska, 1943, are hereby approved March 23, 2006.

Samuel F. Seever, Chair
State Personnel Board

Mary C. Colacurci
Mary Colacurci, Member
State Personnel Board

Lucinda Glen, Member
State Personnel Board

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NOTICE OF RULE-MAKING HEARING

Notice is hereby given that the Nebraska Department of Administrative Services, State Personnel Division, will hold a rule-making hearing concerning the proposed revisions to the Nebraska Classified System Personnel Rules. The hearing will be held in the State Personnel Large Conference Room, 1st floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska on Friday, April 8, 2005 at 9:00 a.m.

The personnel rules establish the framework for agencies to work within, producing a degree of consistency on how employees are treated in regards to employment and all other personnel actions affecting employees. These rules cover all agencies within the State Classified Personnel System.

Draft copies of the proposed Rules are available for review at the offices of the Secretary of State, Regulations Division, Room 34B, State Capitol, Lincoln, Nebraska; in the DAS-State Personnel Division office, 1st floor of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska and on the web at www.das.state.ne.us/personnel/whatsnew.htm or www.sos.state.ne.us/business/regtrack/index.cgi.

There is no expected fiscal impact from amending these rules on state agencies, political subdivisions or persons regulated.

All interested persons may attend and testify orally or by written submission at the hearing. Interested persons may also submit written comments prior to the hearing which will be made part of the hearing record at the time of the hearing if received by DAS State Personnel Division on or before April 6, 2005. If auxiliary aids or reasonable accommodations are needed to participate in a hearing, please call 402-471-4115 or 402-471-4693 (TDD number) by no later than April 6, 2005.

Lori McClurg,
Director, Department of Administrative Services.
Mike McCrory, Director,
DAS-State Personnel Division

PROOF OF PUBLICATION

AFFIDAVIT

State of Nebraska, County of Douglas, ss:

Trawn Griffin, being duly sworn, deposes and says that he is an employee of The Omaha World-Herald, a legal daily newspaper printed and published in the county of Douglas and State of Nebraska, and of general circulation in the Counties of Douglas and Sarpy and State of Nebraska, and that the attached printed notice was published in the said newspaper on the 5 day of March A. D., 20 05, and that said newspaper is a legal newspaper under the statues of the State of Nebraska. The above facts are within my personal knowledge. The Omaha World-Herald has an average circulation of 192,600 daily 242,964 Sunday, in 20 05.

(Signed) Trawn Griffin Title: Advertising

Subscribed in my presence and sworn to before me this 7 day of March 20 05.

Debra L. Marco
Notary Public

STATE OF NEBRASKA GENERAL NOTARY
DEBRA L. MARCO
MY COMMISSION EXPIRES
September 13, 2007

Printer's Fee $ 265.74
Affidavit
Paid by

313-G8-007

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Certification
State of Nebraska
Department of Administrative Services
State Personnel Division

I, Mike McCrory, Director of the State Personnel Division of the Nebraska Department of Administrative Services, certify the attached is a true and correct copy of the Classified System Personnel Rules (Title 273 of the Nebraska Administrative Code) as amended. These Rules were adopted after public hearing held on April 8, 2005 of which notification was given by publication on March 5, 2005 in a newspaper having general circulation in the State of Nebraska.

The purposes of these Rules are to:

1. Promote economy and efficiency in state government through the recruitment, selection, employment, compensation and advancement of employees, based on their relative knowledge, skills and abilities, with consideration of experience and longevity, including open consideration of qualified applicants for initial appointments.

2. Assure equal opportunity to applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, age, marital status, mental or physical disability or religious creed, and with proper regard for their privacy and constitutional rights.

3. Provide for a uniform system of position evaluation based on analysis to assure compliance with the principle of equitable pay for comparable work.

4. Retain maximum authority and responsibility at the agency level for decisions to select or to terminate employees and for other facets of personnel management as may be consistent with the rule-making authority of the Director of DAS State Personnel for the development of uniform personnel administrative procedures.

5. Establish the necessary procedures to assure reasonably uniform and consistent personnel practices and provide a reliable basis for personnel costs projections and staffing patterns.

6. Encourage the retention and improved performance of employees in the state's service by establishing procedures, rules, regulations or guidelines regarding training, staff development and career advancement.

7. Establish uniform systematic processes for performance appraisal and employee discipline.

I further certify that all previous Rules are superceded by the contents of this filing.

Done this 23 day of March, 2006.

Mike McCrory

Mike McCrory, Director
State Personnel Division
Nebraska Department of Administrative Services

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Chapter 1 – Coverage

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

002 Agency Rules and Policies: Conflicts. These rules shall not be construed as limiting in any way the power and authority of any agency head to make rules governing the conduct of departmental employees and the performance of department functions, provided that such departmental rules shall be consistent with and limited by the provisions of these rules and any collective bargaining agreement shall supersede all departmental rules.

003 Agencies and Employees Covered by Personnel Rules. All agencies and personnel of state government shall be considered subject to the State Personnel system except those identified in section 81-1316 of Nebraska State Statute.

004 Positions and Employees not Covered by Personnel Rules. The following positions and employees are not covered by the Classified System Personnel Rules:

Positions directly appointed by the Governor, directly appointed by boards or commissions or others as directed by Nebraska State Statute;
All personnel of the office of the Governor;
All personnel of the office of the Lieutenant Governor;
All personnel of the office of the Secretary of State;
All personnel of the office of the State Treasurer;
All personnel of the office of the Attorney General;
All personnel of the office of the Auditor of Public Accounts;
All personnel of the Legislature;
All personnel of the court system;
All personnel of the Board of Educational lands and Funds;
All personnel of the Public Service Commission;
All personnel of the Nebraska Brand Committee;
All personnel of the Commission of Industrial Relations;
All personnel of the State Department of Education;
All personnel of the Nebraska state colleges and the Board of Trustees of the Nebraska State Colleges;

APPROVED
JON BRUNING
ATTORNEY GENERAL
APR 25 2006
BY Dale A Comer
ASSISTANT ATTORNEY GENERAL

FILED
OCT 25 2006
By Bess Gessiger SECRETARY OF STATE

APPROVED
OCT 25 2006
Dave Heineman
DAVE HEINEMAN
GOVERNOR

All personnel of the University of Nebraska;
All personnel of the Coordinating Commission for Postsecondary Education;
All personnel of the Governor's Policy Research Office, but not to include personnel within the State Energy Office;
All personnel of the Commission on Public Advocacy;
All agency heads;
The Director of Medical Services established under section 83-125 and the chief executive officers of the Beatrice State Developmental Center, Lincoln Regional Center, Norfolk Regional Center, Hastings Regional Center, Grand Island Veterans' Home, Norfolk Veterans' Home, Thomas Fitzgerald Veterans' Home, Western Nebraska Veterans' Home, Youth Rehabilitation and Treatment Center-Kearney, and Youth Rehabilitation and Treatment Center-Geneva;
All personnel employed as pharmacists, physicians, psychiatrists, or psychologists of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, and the Department of Health and Human Services Regulation and Licensure, except those already employed as of January 1, 2004 who choose to remain in the State Personnel system; and
Deputies and examiners of the Department of Banking and Finance and the Department of Insurance as set forth in section 8-105 and 44-119, except for those deputies and examiners employed as of March 4, 2003 who choose to remain in the State Personnel system.

004.01 Discretionary Non-Classified Positions. At each agency head's option, up to the following number of positions may be exempted from the State Personnel System, based on the following agency size categories:

Number of Agency Employees	Number of Non-covered Positions
Less than 25	0
25 to 100	1
101 to 250	2
251 to 500	3
501 to 1000	4
1001 to 2000	5
2001 to 3000	8
3001 to 4000	11
4001 to 5000	14

Over 5000	17

The purpose of having such noncovered positions shall be to allow agency heads the opportunity to recruit, hire and supervise critical, confidential or policy-making personnel without restrictions from selection procedures, compensation rules, career protections and grievance privileges. Persons holding the noncovered position shall serve at the pleasure of the agency head and shall be paid salaries set by the agency head. In no case shall a current state employee's career protections or coverage by Personnel Rules and Regulations be revoked without the prior written agreement of such employee.

004.01A **Creation of Discretionary Non-Classified Positions.** An agency head, when establishing a discretionary non-classified position, shall submit to the Director of Personnel, DAS State Personnel Division a notification to create a new position or change a current position. This notification shall include a listing of the number of employees in the agency for determination of the appropriate number of eligible discretionary non-classified positions. When non-classified positions are created under the provisions of Section 81-1316(2) of the Statute, they will be established in a single non-classified code and title N00700, Discretionary Non-Classified.

00401B **Duties and Working Title.** Discretionary non-classified positions shall be assigned duties consistent with the statutory intent that provides for "...critical, confidential or policy-making personnel..." The agency director shall assign a working title to the position which clearly and concisely describes the function of the position. The working title will be used for purposes such as the agency organization chart.

004.01C **Salary and Benefits.** Discretionary non-classified positions are assigned to salary grade 500 as are other non-classified positions. The agency head has total discretion in setting the pay rate (hiring rate, increases and reductions) of an employee in a discretionary non-classified position. Benefits such as sick leave, vacation leave, military leave, civil leave, life and health insurance, retirement, and others are as prescribed by State Statute.

004.01D **Classified Employee Conversion to Discretionary Non-Classified Status.** A classified position staffed by a classified employee cannot be designated for conversion to discretionary non-classified status without the voluntary and written agreement of the assigned employee. An employee may freely, and of their own accord, accept discretionary non-classified status if the agency has designated such

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position for conversion. In no case shall a current State employee's career protections or coverage by Personnel Rules and Regulations be revoked without the prior voluntary written agreement of such employee.

004.01D1 Individuals transferred or hired to fill discretionary non-classified positions are "at will" employees. "At will", for purposes of the discretionary non-classified positions, is defined as serving at the pleasure of the appointing authority not subject to the Rules and Regulations of the Classified Personnel System.

004.02 Discretionary Non-Classified Employee Conversion to Classified Status. An agency head shall not convert a discretionary non-classified position to a classified position while the position is occupied.

004.02A An agency head may convert a vacant discretionary non-classified position to a classified position. The conversion is accomplished by preparing and submitting a job description for the position to the Director of Personnel, DAS-State Personnel Division, for classification action in accordance with Nebraska Classified System Personnel Rules.

004.02B Because an incumbent in a discretionary non-classified position was not hired under and is not covered by the State Personnel System, such an employee cannot be transferred into a classified position covered by the State Personnel System. Such an employee is entitled to apply for and be considered for any vacant position in any agency of State Government.

004.03 Collective Bargaining Agreements. Employees subject to certified Collective Bargaining Agreements as prescribed in Section 81-1373 and 1374 are not covered by these rules to the extent that wages, hours and other terms and conditions of employment are provided for by contract.

005 Availability. Each employee has the right to review these rules. A copy is available for review in the DAS-State Personnel Division office or online. An employee may also review his/her agency's copy of the rules.

Chapter 2 - Management Authority

001 Agency Authorities. Agency heads and other management personnel so designated by the agency head shall have the following authorities and responsibilities, consistent with rules and regulations adopted and promulgated by the DAS-State Personnel Division:

001.01 Decisions concerning the mission of the agency;

001.02 Decisions on how to maintain and improve the efficiency and effectiveness of government operations;

001.03 Decisions on services to be rendered, operations to be performed, technology to be utilized or matters to be budgeted;

001.04 Decisions concerning the overall methods, processes, mean, or personnel by which operations are to be conducted;

001.05 Decisions concerning the processes and acts of hiring, directing or supervising employees;

001.06 Determining the performance evaluation rating of individual employees on at least an annual basis;

001.07 Employee salary administration decisions;

001.08 Assuring that position titles and job descriptions are accurate;

001.09 Decisions concerning employee job assignments, employee work schedules, promotions of employees, transfers of employees, and discipline of employees including terminations;

001.10 Decisions to relieve employees from duties because of lack of work or funds, or under conditions when the employer determines continued work would be inefficient or nonproductive including the contracting out for goods and services or because of the employee's inability to perform his/her assigned duties after the Employer has attempted to accommodate the employee's disability;

001.11 Decisions concerning development and maintenance of any personnel records necessary for the operation of the agency;

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001.12 Decisions to confer with any or all of its employees in the process of developing policies;

001.13 Decisions to take any other action not otherwise specified in this section; and

001.14 To develop alcohol and drug testing programs/policies.

Chapter 3 – Definitions

001 Agency - any legally constituted board, commission, department or other branch of state government in which all positions are under the same appointing authority.

002 Agency Head - the administrative head of an agency, such as Director, Executive Director, Commissioner, Executive Secretary, etc., reporting directly to the Governor, a commission or board.

003 Adjusted Service Date – See Service Date.

004 Board - the State Personnel Board as per State Statute 81-1318.

005 Bumping - process during layoff of allowing employees to replace other employees in lieu of layoff.

006 Catastrophic Event – a serious illness or injury resulting in a prolonged absence of at least thirty work days during a six month period.

007 Catastrophic Leave – vacation leave donated by one employee to another for the purpose of providing paid leave during an absence relating to a catastrophic event when the receiving employee has exhausted all other forms of paid leave.

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

009 Class Specification - the formal description of the work of a class, which defines the class and lists typical examples of work performed and the knowledge, skills and abilities associated with performing the work.

010 Classification and Compensation Administrator – Administrator of the Classification and Compensation Unit within the State Personnel Division of the Department of Administrative Services.

011 Classified System - all state agencies and positions covered by the State Classified Personnel System.

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012 Classify - to assign a position to a specific class based upon duties, responsibilities and knowledge, skills and abilities.

013 Compensatory Time - time off granted by an agency head to an employee in lieu of payment for overtime or holiday hours worked.

014 Comprehensive Position Questionnaire (CPQ) – questionnaire used when requesting a new classification be created or change in salary grade assignment for an existing classification.

015 Demotion - reassignment of an employee from one class to another class at a lower salary grade as a result of disciplinary action requiring a reduction in salary.

016 Director of Personnel - The Director of the State Personnel Division of the Department of Administrative Services (DAS) or his/her designated representative.

017 Disabled Veteran - A disabled veteran is defined by statute (48-225, Nebraska Revised Statutes) as an individual who has served on active duty in the armed forces of the United States, was separated under honorable conditions, and has established, by a letter or other document from the appropriate authority, the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pension because of a public statute administered by the United States Department of Veterans Affairs or a military department.

018 Disciplinary Probation - a special employment status imposed for disciplinary reasons; the period of time for such probation shall not exceed one year.

019 Dismissal - involuntary separation of an employee, excluding layoffs.

020 Employee - any person, except those excluded by statute, who works in any state agency in the State Classified Personnel System and receives a state pay warrant. For the purposes of these rules, employee refers to classified employees only.

021 Employee Relations Administrator – Administrator of the Employee Relations Division of the Department of Administrative Services.

022 Exempt - a class which is not covered by the time and one-half overtime provisions of the Fair Labor Standards Act and state law.

023 Full-time – Employees who work a minimum of 40 hours per week or 80 hours in a two week period on an ongoing and continuous basis.

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

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

026 Hiring Rate - beginning rate of a salary grade.

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

028 Investigatory Suspension - is a non-disciplinary suspension while an employee is being investigated to determine whether disciplinary action is warranted.

029 Job Description – see Position Questionnaire.

030 Job Preparation Guidelines - the education, experience and other qualifications recommended in order to determine eligibility for a class.

031 Layoff - involuntary employee separation or reduction of hours because of economic reasons, elimination of funds, reduction in workload or reorganization of the agency.

032 Leave of Absence - unpaid time off from work requested by the employee and granted by the agency head or appointing authority.

033 Maximum Rate - highest rate of a salary grade.

034 Minimum Permanent Rate - the lowest pay rate of an employee who has satisfactorily completed their original probationary period.

035 NIS (Nebraska Information System) – the computerized personnel/payroll/financial system operated by the Department of Administrative Services.

036 Non-classified System - all state agencies and positions not covered by the State Classified Personnel System.

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037 Non-exempt - a class which is covered by the time and one-half overtime provisions of the Fair Labor Standards Act and state law.

038 Occupational Group - a broad set of classes recognized as a field of employment; example: engineering, architectural, accounting and maintenance.

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

040 Pay for Performance Increases – Percentage or flat dollar increase which is added to the base rate, given in recognition of job performance.

041 Pay Status - a condition whereby an employee is receiving pay from the employing agency.

042 Permanent Position - a full-time or part-time position worked on an ongoing and continuous basis.

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

044 Position Description Questionnaire (PDQ) – questionnaire used when requesting reclassification of a specific position or creation of a new position in an existing classification.

045 Position Questionnaire – identifies the actual duties and responsibilities of a position as well as work and aptitude requirements.

046 Promotion - movement of an employee from one class to another class at a higher salary grade with increased duties and responsibilities.

047 Reassignment – involuntary movement of an employee from one position to another for business or disciplinary reasons.

048 Recruitment Administrator – Administrator of the Recruitment Unit of the State Personnel Division of the Department of Administrative Services.

049 Reduction in force – the elimination of positions/employees due to lack of funds or business reorganization.

050 Reinstatement - act of rehiring a former employee who has been laid off from employment or placed in a lower position in good standing as a result of a layoff.

051 Relocation - a reassignment requiring a move of more than 50 miles from the employee's place of residence (in general, rules of the Internal Revenue Service apply).

052 Salary Grade - a range of pay with a Hiring Rate and a Maximum Rate.

053 Selection Criteria – the competencies, knowledge, skills, abilities, personal characteristics, job elements, experience, education, or other measurable qualities used in employee selection procedures; what a selection device measures.

054 Selection Device - a valid, job-related instrument used to obtain an indication of the possession of the relative competencies, knowledge, skills, abilities, personal characteristics or other criteria that make a difference in job performance and are needed at entry to a particular job. (Examples: Training and Experience Rating Scale, Interview Questions, Supplemental Questionnaire.)

055 Series - two or more classes similar in duties, but differing primarily in level of difficulty, responsibility, knowledge, abilities and skills needed and supervision exercised or received. The Director of DAS State Personnel shall determine what classes constitute a series.

056 Service Date - date from which an employee's vacation and sick leave entitlement is computed. This is the date of hire minus the number of calendar days of unauthorized leaves of longer than 1 day, suspensions without pay, leaves of absences exceeding 14 calendar days (except military leaves) and/or any breaks in service as allowed by 10.006.01.

057 State Personnel System - all state agencies and positions not excluded by State Statute 81-1316, R.R.S., Nebraska, 2002 or subsequent legal decisions.

058 Suspension - a forced leave of absence without pay.

059 Temporary Employee - an employee hired for a limited period of time in one of three categories: 1) for less than six months; 2) for six to twelve months or 2080 hours; or 3) term for grant funded positions or special projects.

060 Temporary Position - a full-time or part-time position that shall not be worked on an on-going and continuous basis.

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061 Transfer of Employee - the voluntary movement of an employee from one position to another position within an agency or to another agency without a break in service.

062 Veteran – any person who served full-time duty with military pay and allowances in the armed forces of the United States during an eligible time period, except for training or for determining physical fitness, and was discharged under honorable conditions.

Chapter 4 - Employee Recruitment and Selection

001 Equal Employment. Each agency of state government shall take positive action in all areas of its operation to insure that every citizen is given fair and equal opportunity for employment and advancement. Agency heads shall ensure the prohibition of discriminatory activity in employment and advancement based on race, color, religion, national origin, age, sex, marital status or physical or mental disability.

001.01 Affirmative Action. Agencies shall take affirmative action to ensure the full implementation of a policy in state government employment which provides equal employment opportunity (please see the State Affirmative Action Rules).

001.02 ADA. Agencies shall comply with Public Law 101-336 (42 USC 12101), the federal Americans with Disabilities Act of 1990, to ensure that standards, criteria or methods of selection do not discriminate against individuals with disabilities.

002 Vacant Positions. Agency heads shall notify the Director of Personnel, DAS-State Personnel Division, of all vacant positions not filled internally for assistance in recruiting qualified applicants. The Recruitment Administrator, DAS-State Personnel Division, shall initiate a recruiting program, at the requesting agency's expense, for the specified positions.

002.01 Notification of Vacancies. The Recruitment Unit, DAS-State Personnel Division, must be provided an electronic or paper requisition of positions to be posted. The requisition shall include position number, job code, position title, essential duties, required qualifications, salary, work location, shift and working schedule and closing date.

002.01A Posting Requirement. All electronic requisitions shall be transmitted to the Recruitment Unit, DAS-State Personnel Division, by the prescribed time and date to ensure inclusion of the formal external announcement in the State Personnel sponsored publications and web sites. Positions shall be advertised for a minimum of six workdays. An exception to the six workday posting requirement may be granted by the Director of Personnel, DAS-State Personnel Division.

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002.01B Temporary Employment. Refer to Chapter 5 for rules covering recruitment, selection and employment of temporary employees.

002.01C Reposting. Positions posted within the past 90 days need not be posted again externally, **if** the hiring agency prefers to hire from the existing pool of interviewed applicants, provided that the new position is the same classification, similar in duties with the same requirements, and at a location within the same proximity. Agency internal posting requirements must be met, if applicable.

002.02 Applications. All applications for positions within the Nebraska Classified System must be received in the Recruitment Unit, DAS-State Personnel Division. Agencies desiring to collect applications at agency locations may request authority to do so from the Director of Personnel, DAS-State Personnel Division. The Director of Personnel, DAS-State Personnel Division, may revoke this authority at any time. Agencies receiving approval to collect applications at agency locations shall immediately make a copy of any applications received and forward the original to the Recruitment Unit, DAS-State Personnel Division.

002.02A Application deadline. Applications for a specific vacancy that are received in the DAS State Personnel Division or postmarked or dated electronically no later than the announced closing dates (or the actual closing dates for positions listed with an "open" recruitment period) shall be considered for that vacancy.

002.02A.1 Open Recruitment Period. When filling vacancies announced with an "open" recruitment period, hiring agencies shall assign a specific closing date and notify the Recruitment Unit, DAS-State Personnel Division of that date**, prior to a hiring decision being made.** All applications for that open position which are received by the DAS-State Personnel Division, postmarked or dated electronically, on or before that closing date, **shall** be considered for that position.

002.03 Advertising. Agencies have the option to advertise position vacancies in desired news publications. If they choose to advertise, agencies shall take advantage of contractual advertising cost savings by submitting newspaper ad copy to the Recruitment Unit, DAS-State Personnel Division, for placement with vendors. DAS-State Personnel Division shall be responsible for advising all Agencies, Boards and Commissions of new vendors in the program.

002.03A DAS-State Personnel Division shall place ads for publication in newspapers or periodicals per agency request.

002.03B Vacancy announcements for Internet job posting boards shall be submitted to the Recruitment Unit, DAS-State Personnel Division for notification, prior to placement.

002.03C An exception to this section may be approved by the Director of Personnel, DAS-State Personnel Division.

002.04 Reimbursement of interview expenses. The agency head may reimburse the best qualified job applicants for travel, meals and lodging expenses incurred when traveling to and from the prospective job site. No more than three applicants for any position may be reimbursed. Reimbursement shall be made in accordance with policies established by the DAS Accounting Division.

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

003.01 All agencies shall develop a selection device to be uniformly administered prior to beginning the selection process. The Recruitment Unit, DAS-State Personnel Division, is available to assist in developing a selection device.

003.01A If the Recruitment Unit, DAS-State Personnel Division, is not requested to develop a selection device/tool, the hiring agency is responsible for documentation and validation of all selection activities involved in the hiring process. DAS-State Personnel Division will maintain the Affirmative Action data on all applicants.

003.02 Applicants who falsify or omit relevant qualifications or work history in their application material shall not be considered. Applicants hired to positions as the result of falsifying or omitting relevant information concerning their qualifications or work history shall be disciplined (see Chapter 14). The level of disciplinary action taken shall be at the agency head's discretion.

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003.03 Applicants may grieve, to the State Personnel Board, alleged political affiliation discrimination concerning hiring practices for a position in the State Classified Personnel System.

004 Employment Eligibility Verification. In accordance with the Immigration Reform and Control Act of 1986, everyone, including citizens and nationals of the United States, must present acceptable documentation for proof of eligibility for employment in the United States, and complete a Department of Justice Form I-9 within 3 business days of the start of employment.

004.01 In accordance with the Immigration Reform and Control Act of 1986, agencies shall not discriminate against work-eligible individuals, attempt to specify which documents listed as acceptable on the DOJ Form I-9 will be accepted from an employee, nor refuse to hire an individual because of a future expiration date on a federal immigration document.

005 Veteran's Preference. In applying the provisions of this section, the statutory definition of veteran, specified in Section 48-225 of Nebraska Revised Statute, will be used. Veterans determined eligible shall be given preference (Veteran's Preference) as specified in Sec. 48-226 of the Statutes.

005.01 When no examination or numerical scoring is used, the preference shall be granted in the following manner: When two or more equally qualified candidates are being considered for a vacant position within State Government, the qualifying veteran shall be given preference for that position.

005.02 When an examination or numerical scoring is used, the preference shall be granted in the following manner: Veterans who obtain passing scores on all parts or phases of an examination shall have five percent added to their passing score, if a claim for such points is made on the application. An additional five percent shall be added to the passing score of any disabled veteran.

006 **Understudy.** For the purpose of training, agency heads may hire a qualified applicant to understudy an incumbent vacating a position for a period not to exceed 60 calendar days, unless approved by the Director of Personnel, DAS-State Personnel Division, and in no case shall the extension exceed a total of one year.

006.01 Service in an understudy status shall be included as a part of the original probationary period for the position occupied.

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Chapter 5 – Temporary Employment

001 Authority. State Statute 81-1307-(6)(b) establishes DAS-State Personnel Division as a clearinghouse for all State temporary employment. It reads, "The Director of Personnel shall be responsible for . . . . development of recommendations on personnel policy and for development of specific administrative systems and shall have the authority to adopt, promulgate, and enforce rules and regulations pertaining thereto. The director shall be responsible for specific administrative systems including, but not limited to, the following: . . . .

(6) Temporary Employees:

(a) The director shall administer the Temporary Employee Pool containing applicants from which agencies can draw when in need of a short-term labor supply; and

(b) State agencies must receive approval from the director before hiring any temporary employee."

001.01 Requests to hire temporaries. Requests to hire any temporary employee(s) shall include the following information: agency and division names and numbers; work location; position title and class code; number of FTE; work schedule; salary; beginning and ending dates; list of essential duties; education and experience and other special requirements; if any driving required; dress code; type of temporary (agency, SOS or private sector); justification/reason; funding source; supervisor's name and phone number; and agency approver's name and phone number.

002 Definition. Temporary employment may be full-time or part-time and fall into one of three categories: assignment of less than six months; assignment of six to twelve months or 2080 hours; and term for grant funded positions or special projects.

002.01 Extensions beyond twelve months or 2080 hours require prior approval from the Director of Personnel, DAS-State Personnel Division.

003 Benefits. Temporary employees shall receive the following types of paid leave: injury, civil and military training or emergency duty leave. (See Chapter 10 for information on leave.) Temporary employees are not eligible for sick leave, vacation leave, retirement or holiday pay. If a temporary employee is required to work on a holiday or observed holiday, he/she shall be paid for the time worked at his/her normal rate of pay.

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003.01 Insurance. Temporary employees of the state who have a work assignment of at least six month's duration and who work at least twenty hours per week may purchase health insurance through the Nebraska State Insurance Program. The state shall pay the same proportion of the insurance premium for temporary employees as is established through the collective bargaining process for permanent employees. For purposes of this subsection, temporary employee means individuals (a) employed in the Temporary Employee Pool as described in subdivision (6) of section 81-1307 and (b) hired directly by state agencies. In no event shall a temporary employee mean an individual hired through a private employment agency.

004 Length of service. Length of service for temporary assignments shall be monitored by DAS-State Personnel Division. When a temporary employee leaves a position in one agency (as "agency" is defined in statute) and goes to a position in a different agency, a new period of temporary employment begins. A transfer to another division or department within the same agency does not constitute the beginning of a new period of temporary employment. Temporary employees who complete assignments may return to the same assignment after a 30-calendar-day break in service.

005 Service date. In the event a temporary employee obtains a regular position in state government, the period of temporary employment shall not count toward service date or original probation period.

006 Termination. Temporary employees may be terminated at any time. The agency shall notify the employee of the date the termination is effective. The reason for termination shall be documented in the employee's personnel file and the employee shall be informed of the reason(s) for termination. Temporary employees are not entitled to the disciplinary process outlined in the Classified System Personnel Rules or any Labor Contract.

007 Grievance rights. Temporary employees do not have grievance rights.

008 Compensation. Employees hired into State temporary positions are compensated at the hiring rate for the classification assigned to the position according to the Classified Service Non-Contract Salary Schedule. Exceptions require approval of the Director of Personnel, DAS-State Personnel Division.

008.01 Rehiring former employees. A former permanent employee returning to work in a temporary capacity, in the same class within the State Classified Personnel System, may be rehired at the same rate the employee was receiving when he/she left State employment, except the rate must not be less than the Hiring Rate or more than the Maximum Rate of the current salary grade.

009 Overtime. Temporary employees eligible for overtime shall receive compensation in accordance with the Fair Labor Standards Act. Prior approval is required from the agency before any overtime hours can be worked.

010 Change in duties. When the duties of a temporary position have changed significantly, the agency shall request a review of the position by the Classification and Compensation Unit, DAS State Personnel Division.

011 Personnel Records. Temporary employees shall have the right to review their personnel file maintained at the employing agency. Review shall be done in the presence of a supervisor or personnel office staff during regular office hours. Performance documentation shall be maintained in the employee's personnel file and shall not be removed after separation of the employee.

012 Maintenance of Information on NIS. Agencies shall maintain appropriate NIS fields to allow DAS-State Personnel Division to obtain needed data for a quarterly report which includes the following information: (1) the number of temporary employees on the payroll during that period; (2) the amount of money expended on these temporary employees; (3) the number of such temporary employees who were eligible for health insurance coverage pursuant to section 84-1601; (4) the number of such temporary employees who elected coverage; (5) total state contribution for Agency temporary employees' insurance; and (6) the average length of health insurance coverage for those temporary employees who elected coverage.

013 Temporary Employees Hired Through Private Employment Agencies. These individuals are not considered state employees, and therefore, are not entitled to any rights or benefits afforded to state employees.

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Chapter 6 – Probationary Periods

001 Original Probationary Period. The employee uses this period for adjustment to state government while the agency head observes the employee's ability to satisfactorily perform assigned duties and responsibilities.

001.01 New Hire. All new hires shall be required to serve an original probationary period of six months from date of hire and shall be so notified. Employees who transfer from one agency to another may be required by the agency head to serve an original probationary period. An employee shall be removed from original probation status on the day following the end of the original probationary period, unless notified of extension (see 001.03) or separation (see 001.04) by the agency head. The employee shall be notified in writing by the agency head of successful completion of the probationary period.

001.02 Transfer During Original Probation. An employee who is transferred by promotion, demotion, lateral move, or move to a lower position within an agency, while serving an original probationary period, may have his/her probationary period extended at the discretion of the agency head (see 001.03).

001.03 Extension of Original Probation. An agency head may extend the original probation of an employee for reasons of performance, transfer and promotion for a period not to exceed a total of one year from the date of hire, rehire or transfer. The employee shall be notified in writing of the extension.

001.03A The notification of extension shall include the specific period of extension. In cases of extension for performance reasons, the employee shall be provided specific performance improvement requirements.

001.03B Notification of extension must be accomplished before the expiration of the probationary period and shall not be backdated once the original probationary period has ended.

001.04 Separation During Original Probation. Employees may be separated at any time during the original probationary period. Two weeks notice of separation does not have to be given to original probationary employees; however, the agency head shall notify the employee in writing of the date the separation is effective. The reason for separation shall

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be documented in the employee's personnel file, and the employee shall be informed regarding the reasons for separation. Employees who are separated while on original probation do not have State Classified Personnel System grievance rights.

002 Transfer Probationary Periods. In the case of personnel actions (promotion, lateral move or move to a lower position) employees may be required by the agency head to serve a probationary period. (Note -- this is not another original probationary period.) This probationary period in no way affects the grievance rights of an employee. The length of the probationary period is at the agency head's discretion, but shall not exceed six months, beginning on the date of the transfer. (Note: See Chapter 8, 003.01C for salary policy.)

002.01 If an employee cannot, or does not, perform satisfactorily in the class to which he/she was transferred, the agency head may transfer the employee to another position of either the same salary grade or a lower salary grade. If no other position is available for transfer, the agency head may reassign the duties of the employee, reclassify the employee to a classification of a lower salary grade or terminate the employee. The agency shall not be required to utilize the disciplinary process to revert an employee back to the employee's former position, or a vacant position equivalent to the former position's salary grade or to reclassify to a lower salary grade. If termination becomes necessary, the Agency shall utilize the disciplinary process outlined in Chapter 14. The Agency shall document efforts to provide the promoted employee with performance improvement counseling when utilizing this provision.

003 Disciplinary Probation Status. See Chapter 14 - Disciplinary Action.

Chapter 7 – Classification

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

002 Class Specifications. Specifications are maintained for each class. Specifications provide a title and description, typical duties and responsibilities, and knowledge, abilities and skills necessary for job performance. The duties outlined in the specification are representative only and do not limit the assignment of other duties to a position.

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

004 Agency Head Authority and Responsibilities. When significant changes in duties and/or responsibilities are made to a position, or when a new position is created, the agency head shall submit a current position questionnaire (Position Description Questionnaire [PDQ] or Comprehensive Position Description [CPQ])to the Classification and Compensation Administrator, DAS State Personnel Division, for classification review. (See Chapter 3-Definitions for proper usage of PDQs and CPQs.) Position questionnaires may be obtained from the agency Human Resources office or the DAS-State Personnel Division website.

005 Classification Delegation. The Director of Personnel, DAS State Personnel Division, may delegate limited classification authority to agencies, upon written request from an Agency. Such classification authority shall be in writing and shall specify the classes, or series of classes, for which an agency has authority, the time period for which authorization is given, as well as the reporting requirements. This delegated authority must be renewed every four years. The Director of Personnel, DAS-State Personnel Division, may revoke such authority at any time.

006 Understaffing. For the purpose of training, an agency head may understaff a position with an employee of a lower class within the same series. The duties and salary shall reflect the employee's classification. Ordinarily, an employee should not hold an understaffed position for

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more than one year. Positions that have been understaffed longer than one year shall be subject to review by the Classification and Compensation Administrator, DAS State Personnel Division.

007 Requests for Classification Reviews. Classification reviews may be requested by any of the following:

007.01 Employees may request a review of their classification at any time, provided that the position has not been reviewed and/or a classification decision letter issued by the Classification and Compensation Unit, DAS-State Personnel Division, in the previous six months. Requests may be made by completing a Position Description Questionnaire (PDQ) and submitting it, along with a request to the immediate supervisor for review. The request shall contain a specific explanation of how and when the position's duties and responsibilities have changed, the reasons why the current job classification **does not** match these job duties and responsibilities and a statement of the existing classification sought with the reasons why the requested job classification **does** match the position's duties and responsibilities. The supervisor shall review the information submitted by the employee for completeness and accuracy, make comments on the PDQ where designated and submit all materials to the next level within the agency according to agency policy. (Check with your agency HR office/representative for the agency policy on processing reclassification requests.) The agency shall have up to a maximum of forty-five work days to review such information and, if necessary, change the assignment of duties and responsibilities of a position, and shall forward the employee's request to the Classification and Compensation Administrator, DAS-State Personnel Division, for review.

007.01A If an agency changes the assignment of duties and responsibilities of an occupied position, they shall inform the employee, in writing, of the changes and effective date of the changes. This shall be done within the forty-five work day time period. If not done within the forty-five work day period, changes cannot be made until a final decision has been issued by the Classification and Compensation Administrator, DAS-State Personnel Division, and all appeal processes have been completed.

007.01B The employee may withdraw their request for reclassification at any time. However, if the agency and/or DAS-State Personnel Division already has knowledge that the employee may be performing a significant number of duties that are outside of the assigned classification, appropriate action shall be taken to correct the situation (i.e., remove duties, reclassify) .

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

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

008 Reclassification. No position may be classified or reclassified without written authorization of the Classification and Compensation Administrator, DAS-State Personnel Division. The decision of the Classification and Compensation Administrator, DAS-State Personnel Division, shall be implemented within the current pay cycle, or not later than the next full pay cycle after the written authorization, or at a later date if agreed upon by the agency head and the Classification and Compensation Administrator, DAS-State Personnel Division, unless a reconsideration of the classification decision is requested (see 009). Any pay change shall be effective only from the date of final determination.

009 Classification Decision Reconsideration Process. Any employee or agency head may request reconsideration, in writing, within 15 work days from notification of the classification decision to the Director of Personnel, DAS-State Personnel Division, and shall explain in detail the reasons for such request. The letter shall contain a concise and specific statement as to why the decision was inappropriate, the specific reasons therefore, and a statement of the classification sought. An employee request shall be forwarded through the agency head to the Director of Personnel, DAS-State Personnel Division. The Director of Personnel, DAS-State Personnel Division, shall assign [a] different Personnel Analyst[s] to conduct the second review. Following a thorough review, the Analyst[s] shall present a recommendation to the Director of Personnel, DAS-State Personnel Division. The Director of Personnel, DAS-State Personnel Division, shall ensure that: 1) proper application of the State's classification methodology was utilized in the decision making process, 2) the issues raised by the employee were taken into consideration, and 3) that the information used in the decision-making process was accurate and correct. The review shall be limited to the issues raised by the appellant in the initial request for reconsideration of the classification decision. New evidence shall not be allowed.

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Implementation of the classification action, including any pay changes, shall be delayed until the reconsideration has been formally concluded. In the case of any pay change such change shall be made effective the date of the decision of the Director of Personnel, DAS-State Personnel Division. The decision is final and binding.

Chapter 8 – Salary Administration

001 General. Utilization of the provisions in this chapter shall be managed within existing budget limitations. All employees must be hired at the hiring rate of the salary grade for their class, except in the following cases:

001.01 Increased Hiring Rates. When an applicant has training and/or experience which exceeds the entry level qualifications for the class or there are demonstrated recruitment difficulties, an agency head may hire that applicant at a rate up to the minimum permanent rate, without prior written permission from the Director of Personnel, DAS-State Personnel Division .

001.02 Written Permission Required. Prior written permission from the Director of Personnel, DAS-State Personnel Division, is required before a salary above the minimum permanent rate is offered to an applicant. Requests to the Director of Personnel, DAS-State Personnel Division, to offer a beginning rate above the minimum permanent rate shall be written and include the following information:

001.02A Information concerning agency advertising and recruitment efforts for the position in question. This shall include a list of the publications used, the number of applications received, the number of applicants minimally qualified, the number of applicants interviewed and other specific information that the agency used in making the decision to offer the job to a particular applicant including any special education/experience that the applicant has above the normal requirements of the classification that justifies the higher rate.

001.02B The relationship between the requested salary and other agency employees occupying the same class or class series and other internal equity considerations.

001.02C Attach any current salary information available that indicates a market situation where the State is not in a competitive position.

001.02D Other background information that would justify the necessity for hiring above the minimum permanent rate.

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001.02E An explanation as to the consequence created if this applicant is not hired.

001.02F Indicate whether there are other qualified candidates and whether or not they have been offered the position at a lower rate.

001.03 Recruitment Difficulties. If recruitment of applicants becomes difficult for compensation-related reasons, the Director of Personnel, DAS-State Personnel Division, may authorize an increased hiring rate for an entire class, or for a series of classes, or for a set of classes within a specific geographic area. Under these circumstances, current employees in the affected classes shall be paid at least the specified increased hiring rate. (Salary adjustments may be requested from the Director of Personnel, DAS-State Personnel Division, for other employees, if an inequitable compression of salaries would result from an increased hiring rate.)

001.04 Rehiring Former Employees. A former employee returning to work in the same class within the State Classified Personnel System may be rehired at the same rate the employee was receiving when he/she left State employment, except that the rate shall not be less than the hiring rate or higher than the maximum rate of the current salary grade. Documentation verifying the previous rate must be placed in the employee's personnel file. If the employee was not in the State Classified Personnel System, he/she is considered as a new employee for hiring rate purposes.

002 Salary Increases upon Completion of Original Probation. Upon completion of the original probationary period, employees paid less than the minimum permanent rate shall be given a salary increase to at least the minimum permanent rate. At the agency head's discretion, new employees hired at less than the minimum permanent rate may be given up to a five percent end-of-original probation increase. New employees hired at the minimum permanent rate may, at the agency head's discretion be given up to a five percent end of probation salary increase. New employees hired above the minimum permanent rate may, with approval of the Director of Personnel, DAS-State Personnel Division, be given up to a 5% end of probation salary increase.

002.01 Applicants shall be informed in writing, when they are hired, whether or not they are eligible to receive an increase following successful completion of the original probationary period and, if so, how much.

003 Salary Grade Changes.

003.01 Upward Changes. Employees placed in a higher salary grade may receive up to a ten percent pay increase per salary grade advanced, at the agency head's discretion, except in the following cases:

003.01A The employee shall be paid at least the minimum permanent rate of his/her new salary grade.

003.01B Employees placed in a higher salary grade cannot be paid above the maximum rate of his/her new salary grade as a result of the pay increase.

003.01C No employee shall be reclassified or transferred to a position of a lower salary grade (with no salary reduction) and then promoted back to the same salary grade with a salary increase within one year.

003.02 Downward or Lateral Changes. Employees placed in the same or lower salary grade because of a reclassification, involuntary transfer, or salary grade adjustment may have their salary reduced.

003.02A Employees requesting voluntary transfer (lateral or down) or as a result of bumping in lieu of layoff may, at the agency head's discretion, have their salary reduced.

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

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

004 Salary Adjustments Within Grade. Agency heads may request salary adjustments (up or down) for their employees, from the Director of Personnel, DAS-State Personnel Division. Reasons for such requests may include the following:

1. Internal pay equity within an agency for similar jobs with disparity in pay.

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2. If hiring above minimum permanent due to superior qualifications causes inequity for current, equally qualified staff.
3. If a single position within a class has unique responsibilities/skill requirements which significantly distinguish it from others in the class.
4. Retention issues (i.e., high turnover, market issues).
5. Increased workload that is considerable, yet does not warrant reclassification (i.e., lead worker responsibilities).

The reasons for and consequences of such requests shall be explained in detail and documented. The decision of the Director of Personnel, DAS-State Personnel Division, is final and is not appealable by the agency or the employee.

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

006 Performance-Based Pay Increases. The purpose of performance based pay increases is to give agencies the opportunity to recognize above satisfactory performance which is documented in the annual performance appraisal. Prior to awarding pay for performance increases, the agencies shall develop a written Pay for Performance program and submit a copy to DAS-State Personnel Division. Implementation instructions for performance-based pay increases shall be provided by the DAS-State Personnel Division. An Agency performance-based pay program must include written criteria for designating employees to be awarded performance-based pay increases.

NOTE: DAS State Personnel Division is available to assist Agencies in the development of criteria to be used for performance-based pay programs.

006.01 Performance-Based Pay increases are defined as a percentage or flat dollar amount added to the employee's salary. The increase is included in the employee's base salary and all future pay transactions are computed from the higher base.

007 Bonus Payments. In accordance with current administration policies/directives, agency heads may grant single or multiple bonus lump sum payments of up to a total of $500 per individual during a fiscal year subject to the following condition:

007.01 A bonus lump sum payment is not added into the employee's base salary.

008 Additional Benefits. In order to ensure equitable compensation programs, agencies shall obtain concurrence of the Director of Personnel, DAS - State Personnel Division before granting employees any additional benefits (shift differentials, stipends, officer of the day pay, uniforms, housing, vehicles, etc.).

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Chapter 9 - Work Schedules/Overtime

001 Work Week. Agency heads shall determine each employee's work week, which shall consist of seven consecutive calendar days, except for institutional, law enforcement or protection employees (Sections 004 and 005). The work week of each employee shall be documented in the agency's files. Full-time employees eligible for overtime (non-exempt employees) shall account for at least 40 hours of work or leave time per week. All employees shall be informed of their work week.

002 Work Schedule. Management sets each employee's work schedule and may require employees to work evenings, weekends, and/or holidays. Overtime may be assigned to an employee based on immediate availability or special job qualifications. The assignment of overtime will not be done in a discriminatory manner.

003 Overtime Compensation Eligibility. The DAS-State Personnel Division shall tentatively determine the overtime status of each classification as either exempt or non-exempt. However, since Fair Labor Standards Act (FLSA) requirements apply to positions and employees, and not to entire classes, each position within a class is subject to an individual analysis and determination on whether or not the position is exempt. Agencies shall make such determinations.

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

003.02 Exempt. Employees determined to be exempt from the Fair Labor Standards Act are not eligible for overtime compensation.

003.02A The Agency Head, at his/her discretion, may request approval from the Director of Personnel, DAS-State Personnel Division, to grant straight time overtime

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compensation to exempt staff for special circumstances or emergency situations. The request must include a detailed description of the circumstance/situation. The decision of the Director of Personnel, DAS-State Personnel Division, is final and not appealable/grievable.

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

003.04 Reconsideration of Exempt/Non-Exempt Status. Agency heads or employees may request reconsideration of the exempt/non-exempt status of their class. Such request shall be in writing to the Director of Personnel, DAS-State Personnel Division, and must explain the reasons for requesting reconsideration. The Director of Personnel, DAS-State Personnel Division shall render a decision within 15 workdays and the decision shall be final.

003.05 Authorization. Overtime hours shall be authorized in advance by the agency head. Such authorization may be written or oral, but in any event, such approval shall be made a matter of written record by the agency.

003.05A In the event of an emergency, or when it is not possible or practical to obtain prior approval for overtime work to be performed, the agency head may approve the overtime in writing subsequent to the time the work was performed.

004 Institutional Overtime. Agencies engaged in the operation of a hospital or an institution primarily engaged in the care of the sick, aged, mentally ill or developmentally disabled residents housed at state facilities may establish a period of 8 hours per day and 80 hours per 14 consecutive calendar days for the purpose of determining overtime compensation (rather than the 40-hour-per-week standard).

005 Law Enforcement and Fire Protection Overtime. Agencies having police, law enforcement or correctional security personnel may establish a period of 171 hours in a

consecutive 28-day period for the purposes of determining overtime compensation (rather than the 40-hour-per-week standard).

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

006 Non-Exempt Compensatory Time. Upon proper agency authorization, up to 240 hours of compensatory time (not more than 160 hours of actual overtime hours worked) may be accumulated by an employee. Fire protection, law enforcement employees and correctional security personnel may accumulate up to 480 hours of compensatory time (not more than 320 hours of actual overtime hours worked). Time accumulated over the above noted amounts shall be paid for at time and one-half rates. Payment of overtime shall be paid at the employee's current hourly rate, or at the average regular rate of pay for the final 3 years of employment, whichever is higher. Between December 25 and December 31 of each year, an employee may elect by notifying the Agency in writing, to receive payment for unused compensatory time accumulated during the prior State fiscal year. Compensatory time hours not paid shall be continued in the employee's compensatory time balance.

007 Travel Time. Travel time of non-exempt employees who are required to attend a meeting, conference, seminar, training course, etc., is considered compensable time. Authorized travel time shall be that required by the most efficient common carrier. The provisions of this paragraph shall not affect entitlement to other authorized travel and expense allowance.

007.01 A non-exempt employee traveling for one day (not overnight) shall be paid for all travel time. This travel time is counted when computing hours worked for overtime purposes.

007.02 A non-exempt employee traveling by common carrier on overnight business shall be paid for all travel time. However, only hours of travel which are within the employees normal scheduled work hours are counted when computing hours worked for overtime purposes (this includes travel hours on weekends or holidays). The non-exempt employee's time spent traveling shall be paid at their normal straight time rate when the employee's travel meets the following conditions:

- outside of normal scheduled work hours;

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- on overnight business;
- by common carrier; and
- employee is not doing actual work while traveling.

Under all other conditions the non-exempt employee's time spent traveling shall be counted as regular work hours when computing hours worked for overtime purposes except when the employee voluntarily chooses to drive their own personal vehicle.

008 Dual Employment. For overtime purposes, the State of Nebraska, not the individual agency, is recognized as the employer. Employees holding jobs in two agencies may be eligible for overtime compensation. To determine overtime obligations agencies shall contact DAS-State Personnel Division before employing an individual who is already employed by another agency of state government.

009 Alternate Work Schedules. Agencies may allow alternate work schedules (i.e., flexible, compressed) for their employees. Employees eligible for overtime (non-exempt employees) shall account for at least 40 hours work or leave time to be considered full-time. Agencies shall assure public access from 8:00 A.M. to 5:00 P.M. Monday through Friday (excluding holidays).

010.00 Telecommuting. All requests for telecommuting arrangements must be approved by the Director of Personnel, DAS-State Personnel Division, prior to implementation. Telecommuting is a voluntary work alternative that allows an employee to work at home or in a satellite location for all, or part, of their regular workweek using information technology. Telecommuting may be allowed as a viable alternative work arrangement in cases where individual, job and supervisor characteristics are best suited to such an arrangement. It is not an entitlement or a benefit and in no way changes the terms and conditions of employment. Occasional work off-site, including work while traveling on State business, does not constitute telecommuting and does not require the formal arrangements described in this section.

010.01 The agency head shall submit a proposed policy to the Director of Personnel, DAS-State Personnel Division, for approval. The proposed policy must follow guidelines established by DAS-State Personnel.

010.02 Upon request, the Director of Personnel, DAS-State Personnel Division, may delegate the authority for approving individual requests to the agency head or his/her designee. The agency head or his/her designee shall be responsible to ensure consistent application of the policy approved by the Director of Personnel, DAS-State Personnel Division. This delegated authority must be renewed every four years.

010.03 The agency shall provide to the Director of Personnel, DAS-State Personnel Division, on June 30 and December 31 of each year, a list of employees who are working or have worked under a telecommuting plan in the preceding six month period.

010.04 The Director of Personnel, DAS-State Personnel Division may revoke telecommuting approval at any time.

011 Job Sharing. With approval of the Director of Personnel, DAS-State Personnel Division, Agency Directors may permit job sharing where feasible. Job sharing allows for a permanent part-time arrangement in which jobs can be restructured to accommodate two people working a total of 40 hours per week in one position. This option provides career-level opportunities for persons unable to work a 40-hour week.

011.01 The agency head shall submit a proposed policy to the Director of Personnel, DAS-State Personnel Division, for approval. The proposed policy must follow guidelines established by DAS-State Personnel.

011.02 The agency head or his/her designee shall be responsible for approval of individual requests within the agency and ensure consistent application of the policy approved by the Director of Personnel, DAS-State Personnel Division.

011.03 The agency shall provide to the Director of Personnel, DAS-State Personnel Division, on June 30 and December 31 of each year, a list of employees who are working or have worked under a telecommuting plan in the preceding six month period.

011.04 The Director of Personnel, DAS-State Personnel Division, may revoke job sharing approval at any time.

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Chapter 10 – Provisions for Leave

001 Authorized Leave. The following are forms of authorized leave: holiday, vacation, sick, injury, military, civil, funeral, Family Medical and leave of absence. An employee may not use holiday, vacation, sick or funeral leave unless authorized by a supervisor. The employee shall provide appropriate documentation as requested by the supervisor.

002 Record of Leave. Each agency shall maintain an attendance record for each employee, accounting for time worked and all absences from work.

003 Holidays. The following holidays, and others when declared by proclamation of the Governor or President, are compensated holidays for employees other than temporary and are scheduled on the dates indicated.

New Year's Day	January 1
Martin Luther King, Jr. Day	Third Monday in January
President's Day	Third Monday in February
Arbor Day	Last Friday in April
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Friday following Thanksgiving
Christmas Day	December 25

003.01 Weekend Holidays. When a holiday falls on the first day of an employee's weekend, it shall be observed on the preceding day. When a holiday falls on the second day of an employee's weekend, it shall be observed on the following day. A weekend is two consecutive days off, whether they are Saturday/Sunday, Tuesday/Wednesday, Friday/Saturday, etc.

003.02 Work on an Observed or Actual Holiday. Full-time or part-time employees, not to include temporary employees, eligible for time and one-half overtime shall receive time and one-half compensation, either in the form of pay or time off within the next twelve-month period, for

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hours actually worked on the holiday (either observed or actual, but not both). This is in addition to holiday leave pay for hours scheduled to work that day. All hours worked on a holiday in excess of an employee's normally scheduled work day shall be compensated at two times the employee's normal hourly rate. In no case shall an employee receive both additional pay and time off for an observed or actual holiday

003.03 Eligibility for Holiday Leave. Unless excused by their supervisor, employees shall be in a pay status on the workday immediately preceding and the workday immediately following an observed holiday in order to receive compensation for that day. Employees shall not receive holiday pay or time off if the holiday occurs during a period of non-paid leave; however, if the holiday occurs during a paid leave, the employee is considered to be on holiday leave for the day of the holiday, rather than any other type of leave.

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

003.05 Holiday Leave for Temporary Employees. Temporary employees are not eligible for holiday leave, and if required to work on a holiday or observed holiday, are paid for the time worked at their normal rate of pay.

003.06 Holiday Leave. Full-time employees shall receive holiday compensation equal to one-fifth of their normal scheduled work week for each paid holiday.

003.06A Holiday Leave for Part-time Employees. Employees working part-time schedules shall receive paid time off for holidays on a pro-rated basis. Agencies shall use the budgeted percentage of the full time FTE (1.00) when calculating the amount of earnings. For example, a .60 FTE employee would receive 4.8 hours holiday leave for each holiday. (.60 FTE x 8 hours [for full-time] = 4.8 hours)

004 Vacation Leave. All employees, including agency heads, but excluding temporary employees and board and commission members, earn paid vacation leave. Earning of vacation leave begins immediately upon employment and it may be requested as soon as it is earned, subject to the provisions of the remainder of this section. Full-time employees, other than temporary, earn vacation leave according to the following schedule:

1st through 5th year	96 hours	12 days
6th year	120 hours	15 days
7th year	128 hours	16 days
8th year	136 hours	17 days
9th year	144 hours	18 days
10th year	152 hours	19 days
11th year	160 hours	20 days
12th year	168 hours	21 days
13th year	176 hours	22 days
14th year	184 hours	23 days
15th year	192 hours	24 days
16th year and more	200 hours	25 days

004.01 Scheduling Vacation Leave. Vacation leave should be applied for in advance by the employee and may be used only when approved by the agency head. Vacation leave may not be unreasonably denied or deferred so that the employee is deprived of vacation rights.

004.02 Balancing of Vacation Leave. All employees' accumulated vacation time in excess of thirty-five days shall be forfeited as of December 31 of each calendar year. In special and meritorious cases, when it would cause hardship for an employee to take earned vacation leave before December 31, excess carryover leave may be approved by the Agency Head. In these cases, the agency head shall assure hours carried over shall be used within the next six months. In no case shall approved carry over vacation continue from year to year.

004.02A Under authority of 81-1317, the Director of Personnel, DAS-State Personnel Division, has adjusted these leave provisions to be consistent with the NAPE/AFSCME collective bargaining agreement.

004.03 Vacation Leave Payment. Employees who leave state government employment for any reason shall be paid for any unused accumulated vacation leave earned, calculated on their base hourly rate.

004.04 Catastrophic Leave. When an employee experiences a catastrophic event, he/she may request catastrophic leave donations. A catastrophic event is defined as a serious

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illness or injury resulting in a prolonged absence of at least thirty work days during a six month period. Catastrophic Leave shall be available only to employees who have exhausted their own paid leave and only with approval of the agency head.

004.04A Eligibility of Recipient. Employees shall meet the following criteria before request(s) for donations can be made:

004.04A1 Be suffering a serious illness or injury resulting in a prolonged absence of at least thirty workdays during the past six months.

004.04A2 Produce satisfactory medical verification.

004.04A3 Have completed original probation.

004.04A4 Have exhausted all earned paid leave time including compensatory time off, sick leave and vacation leave.

004.04A5 Have not offered anything of value in exchange for the donation.

004.04B Requesting Catastrophic Leave. Employees must submit a written request for catastrophic leave donations to the agency/facility Human Resources office. The request must include substantiating evidence as described in 004.04A.2. (For your convenience, request forms are available from your agency/facility Human Resources office or the DAS State Personnel website.) The Human Resources staff will be responsible to initiate the process to verify eligibility, seek agency head approval, request donations, apply the conversion formula to donations received, advise the employee of donations received and notify the appropriate payroll personnel of changes to receiving/donating employees' leave balances. Agency heads and/or their designee[s] must approve catastrophic leave requests before solicitation for donations begin.

004.04C Catastrophic Illness/Injury Donation. Employees may contribute accrued vacation leave to benefit another State employee in the same agency suffering from a catastrophic illness. Vacation leave shall be donated in no less than 4 hour increments. The contributing employee must identify the specific amount of time donated and the name of the recipient of the donated vacation leave, and forms for that purpose are available from the Employer. Vacation leave donated and transferred to another State

employee pursuant to this provision shall be irrevocably credited to the recipient's catastrophic leave account.

004.04C1 Leave transferred shall be converted to a dollar value and then converted to hours based on the recipient's hourly rate (e.g., the leave donor's salary is $6.00 per hour and the recipient's salary is $12.00 per hour, thus, in this case, twice the amount of hours *is* needed to achieve full conversion.) No more than equivalent of 1200 hours of donated leave may be received by an employee during a twelve-month period.

004.04D Eligibility of the Donor. Before donating vacation leave, employees shall meet the following criteria:

004.04D1 Only increments of four (4) hours may be donated.

004.04D2 Have not solicited nor accepted anything of value in exchange for the donation.

004.04D3 Have remaining to his/her credit at least 40 hours of accrued vacation leave.

004.04E If catastrophic leave donations exceed that which is needed to cover the catastrophic illness/injury related absence, it shall remain in the catastrophic leave account for a period of one year from the employee's return to work. Remaining amounts may be used for future absences related to the catastrophic illness/injury (i.e., follow-up medical appointments/treatments). After one year from the date of the employees return from the first period of extended absence, or upon death of the employee, any remaining catastrophic leave balance shall be forfeited.

004.04F The provisions of this section are non-grievable.

005 Sick Leave. All employees, including agency heads, but excluding board or commission members, and temporary employees, earn sick leave. Earning of sick leave begins immediately upon employment and may be requested by the employees as soon as it is earned, subject to the provisions of this chapter. Full-time employees, other than temporary, earn sick leave according to the following schedule:

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1st through 5th year	96 hours	12 days
6th year	136 hours	17 days
7th year	144 hours	18 days
8th year	152 hours	19 days
9th year	160 hours	20 days
10th year	168 hours	21 days
11th year	176 hours	22 days
12th year	184 hours	23 days
13th year	192 hours	24 days
14th year	200 hours	25 days
15th year	208 hours	26 days
16th year	216 hours	27 days
17th year	224 hours	28 days
18th year	232 hours	29 days
19th year and more	240 hours	30 days
Maximum Accrual	1440 hours	180 days

005.01 **Conditions for Using Sick Leave.** The following conditions are the only valid reasons sick leave may be used:

005.01A When an employee is unable to perform his/her duties because of sickness, disability or injury. Pregnancy, post-natal recovery and miscarriage shall be considered temporary disabilities.

005.01B When an employee obtains medical, surgical, dental or optical examinations or treatment.

005.01C When an employee's presence at work jeopardizes the health of others by exposing them to a contagious disease.

005.01D When the illness, disability, injury or medical, surgical, dental or optical appointment of an immediate family member demands the employee's presence. The immediate family shall be considered as: spouse, children and parents. At the agency head's discretion, the definition of immediate family may be broadened. Employees may use vacation time for care of family members when their presence is helpful, but not essential, if approved by the agency head.

005.02 Requests for Sick Leave. Sick leave shall be requested in advance when possible. In the case of illness, injury, emergency or any other absence not approved in advance, the employee shall inform the supervisor of the circumstances as soon as possible. An employee may be required to submit substantiating evidence when the reason for the leave request was a medical or dental appointment or when the agency head suspects sick leave abuse. Substantiating evidence may also be required if the sick leave absence exceeds 3 workdays but is less than 10 workdays. Substantiating evidence shall be required if the sick leave absence is 10 workdays or longer. When substantiating evidence is required, supervisors shall request only the minimum information necessary and any personal medical information obtained shall be protected as directed by HIPAA (Health Insurance Portability and Accountability Act) law.

005.02A Sick leave shall be denied when the agency head has facts showing that the employee is abusing sick leave.

005.02B Sick leave shall not be used as vacation leave.

005.03 Balancing of Sick Leave. The sick leave account of each employee shall be balanced to a maximum of 1440 hours on December 31 of each year. Sick leave may be accumulated in excess of 1440 hours during a year, but the excess shall be forfeited when balanced.

005.04 Forfeiting of Sick Leave Upon Separation; Sick Leave Payments upon Retirement or Death. All sick leave shall be forfeited upon separation from employment, except that an employee age 55 or above, or of a younger age if the employee meets all criteria necessary to retire under the primary retirement plan covering his/her State employment, or at death, shall be paid one-quarter of his/her employee's accumulated sick leave.

005.05 Sick Leave Reinstatement. An employee who has left state service for other than disciplinary reasons and returns within 5 years shall have reinstated to the sick leave account all earned sick leave not used at time of departure. Any employee who has retired or voluntarily separated in lieu of retirement shall not have any sick leave reinstated.

005.05A Under authority of Neb. Statute 81-1317, the Director of Personnel, DAS-State Personnel Division, has adjusted these provisions to be consistent with the NAPE/AFSCME collective bargaining agreement.

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005.05B Employees eligible for retirement who are laid off shall have the option to defer the payment of one-quarter of their sick leave account for up to twelve months. Should the laid off employee return to state employment within twelve months, the employee's sick leave balance and service date shall be reinstated (minus the time in a non-pay status). Should the laid off employee not obtain further state employment at the end of the twelve-month period the agency from which they left shall pay them one-quarter of their sick leave account.

006 Vacation and Sick Leave Adjustments.

006.01 Service Date Adjustments. The service date is the date of hire for a new employee. The service date for rehired employees shall be adjusted by the number of calendar days absent if re-employed within 5 years. Suspensions without pay, unauthorized leaves of longer than 1 day and leaves of absence which exceed 14 calendar days (except military leave) also require adjustment of service date. Employees who left state service for other than disciplinary reasons and return within 5 years shall be given credit for previous state service by having their service date reinstated minus the amount of time absent. Employees who left state service for disciplinary reasons or employees who retired from state service or voluntarily resigned in lieu of retirement and return shall not be given credit for previous state service.

006.01A Under authority of Neb. Statute 81-1317, the Director of Personnel, DAS-State Personnel Division, has adjusted these provisions to be consistent with the NAPE/AFSCME collective bargaining agreement.

006.02 Advancement of Vacation and Sick Leave. Agency heads may advance vacation and sick leave to employees in an amount not to exceed a total of 80 hours (pro-rated for part-time employees). Employees shall reimburse the state for all used unearned vacation and sick leave upon separation or transfer.

006.03 Leave for Employees Working for More Than One Agency. Employees working for more than one agency earn vacation and sick leave from each agency.

006.04 Transferring Vacation and Sick Leave Balance to Another Agency. Employees who transfer from one agency to another in the State Classified Personnel System shall have

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

006.05 Vacation and Sick Leave Accumulation for Employees. Employees shall be in a pay status in order to earn vacation and sick leave. Part-time employees earn vacation and sick leave in proportion to their budgeted percentage of the full-time FTE. Leave is not earned until after the pay period has ended and, therefore, may not be used until the following pay period.

006.06 Temporary Employees. Temporary employees do not earn vacation or sick leave.

007 Funeral Leave. Up to 5 days funeral leave may be granted to employees for death in the immediate family. For purposes of this section, immediate family shall mean spouse, father, mother, grandfather, grandmother, sister, brother, child, grandchild, spouse of any of these, or someone who bears a similar relationship to the spouse of the employee. Step-persons bearing these relationships are included. At the Agency Head's or his/her designee's discretion, the definition of immediate family may be expanded to include other individuals with a similar personal relationship to the employee as that of an immediate family member.

008 Injury Leave and Workers' Compensation.

008.01 Eligibility. All employees (including temporary) who are disabled as a result of a job-related injury or disease, which is deemed compensable by Worker's Compensation, may be granted injury leave not to exceed five of the employee's normal working shifts for any particular injury. A working shift is counted even if an employee is absent for any portion of their assigned shift. Disabled shall mean the employee is unable to perform the tasks usually encountered in one's employment due either to an injury/disease or to treatment for an injury/disease.

008.01A Any job-related injury or disease shall be reported to the proper agency

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authority as soon as possible and the agency shall have the responsibility to supply all the necessary information to the DAS Risk Management Division.

008.01B No employee shall receive payments (worker's compensation plus regular pay) in excess of his or her regular gross wage.

008.02 Use of Sick and/or Vacation Leave to Supplement Workers' Compensation Payments. Employees being paid workers' compensation for job-related injuries or disease may use accrued sick, vacation or compensatory leave time to supplement the payment up to, but not to exceed, their regular gross pay. Before calculating the amount of accrued leave time eligible to be used, agencies should contact the Worker's Compensation Benefits Administrator to obtain the amount of worker's compensation payment the employee will receive. Worker's compensation benefits are not taxable. The formula for calculating the amount of accrued leave eligible to be used is as follows:

Normal gross wage minus the amount of worker's compensation payment minus any gross payment for hours actually worked divided by the hourly rate in effect at the time of the injury equals the maximum number of accrued leave time hours that may be used to supplement the worker's compensation payment.

Example: $900 (normal biweekly gross wages) minus $516.85 (worker's compensation payment) minus $180 (for 16 hours of actual work time) equals $203.15. $203.15 divided by $11.25 (hourly rate in effect at the time of injury) equals 18.06 hours of accrued leave time to be used to supplement the worker's compensation payment.

In the event the supplemental amount is not enough to cover the cost of all voluntary deductions, the employee can make direct payment for those deductions not covered.

008.02A Employees on workers' compensation shall be treated as part-time employees for purposes of leave earnings. They shall earn prorated sick and vacation leave based on the number of hours worked and/or accrued leave time hours used to supplement the worker's compensation payment. If they do not have, or choose not to use, accrued leave time to supplement the worker's compensation payment they will earn leave time only on the number of hours worked, if any.

008.02B Holidays occurring during this period shall be paid at a rate proportionate to the amount of accrued leave time being used.

008.02C After all accrued leave time has been exhausted, employees shall not be entitled to any leave or pay benefits except as authorized under worker's compensation and shall be carried in a leave without pay status while on worker's compensation. This type of leave of absence may exceed one calendar year. Provisions in Sections 011.01 and 011.02 of this chapter apply to this type of leave. No service date adjustment is necessary for this unpaid leave.

008.02D For a period of one year after the date of disability and upon termination of workers' compensation, and after the physician has released him/her to return to work, the employee shall be reinstated to his/her former classification with no salary reduction. If his/her former position is not available, the agency shall place the employee in a similar position and, at the agency head's discretion, may have their salary reduced.

008.02E For a period of one year after the date of disability and after the physician has released him/her to return to work, if disabled and unable to return to the former classification the employee shall be reinstated to a vacant position, if available, for which he/she is qualified and physically suited and, at the agency head's discretion, may have their salary reduced.

008.02F After one year from date of disability, if the employee has not or is not able to return to work the employing agency is relieved from any re-employment obligation and the employee may be terminated.

008.03 Employee Health Insurance. An employee's health insurance will continue with the appropriate employer contribution during an absence under workers' compensation after all accrued leave time has been depleted, provided the employee makes his/her required contribution.

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009 Military Leave.

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

009.01A When an employee's active service period continues into a new calendar year, the employee becomes eligible for another 120 hours of military leave on January 1 of the new calendar year. The agency shall contact the employee or a member of the employee's family to advise them of this eligibility. The employee may choose to utilize it or save it for later in the calendar year. In no case does the leave carry over into another calendar year. The employee, or duly delegated family member, shall notify the agency, in writing, of their decision.

009.02 State Active Service for Emergencies. When the Governor of this state declares that a state of emergency exists and any of the persons named in this section (See 009.01) are ordered to active service of the State, a state of emergency leave of absence shall be granted until such member is released from active duty of the State by competent authority. A military leave of absence shall not be used during a state of emergency declared by the Governor. Other forms of leave may be granted. During a state of emergency leave of absence because of the call of the Governor, any official or employee subject to this section shall receive his or her normal salary or compensation minus the State active duty base pay

he or she receives in active service of the State. Government officers serving a term of office shall receive their compensation as provided by law. Pay vouchers shall be retained at the agency level in the employee's personnel file.

009.02A Sick and vacation earnings and holiday pay are continued during this authorized absence.

009.03 Enlistment or Extended Duty. Employees, other than temporary, who leave their positions to undergo military training or extended duty with the armed forces of the United States or undertake military duty in the active service of the State shall be entitled to a leave of absence for a period of such training and/or service, not to exceed 5 years. This shall be without loss of pay during the first 15 workdays of the leave of absence, provided they have not already used the allotted time in that calendar year. All actions related to an employee's employment and benefits shall be taken in accordance with the Uniformed Service Employment and Reemployment Rights Act of 1994 (USERRA, 38 USC 4316 (2004), 38 USC 4317 (2004) and 38 USC 4318 (2004)) and amendments.

009.03A Upon returning from training and/or service within 5 years, employees shall be entitled to be reinstated in their former position or a similar position, at a salary level they would have been entitled to had they not been on leave of absence, if application is made in accordance with USERRA provisions (38 USC 4312 (2004)). The employee's service date shall not be adjusted due to this type of leave of absence.

009.04 Copies of Orders. Proper documentation, including copies of orders for all military leave absences, shall be retained at the agency level in the employee's personnel file.

010 Civil Leave

010.01 Jury Duty. If an employee is called to serve as a juror, he/she shall be entitled to paid civil leave in addition to jury duty pay. Employees shall return to work when not actually serving as a juror on a daily basis.

010.02 Election Board Duty. If an employee is appointed on an election or counting board, he/she shall be entitled to paid civil leave in addition to pay for this service.

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010.03 Voting Time. All employees shall be given up to two hours for the purpose of voting, provided the employee does not have sufficient time before or after regular duty hours to vote. The two hours authorized for voting does not apply to those employees who, by reasons of their employment, must vote by use of an absentee ballot.

010.04 Court Appearances.

010.04A Time spent by employees appearing in court as a function of their job shall be considered as hours worked. All witness fees and reimbursements received as a result of these court appearances shall be returned to the State.

010.04B Employees attending court as a plaintiff, defendant or witness on non-work related matters may use vacation leave or earned compensatory time. In the event the employee is subpoenaed for non-work related matters and does not have vacation leave or compensatory time, the agency head shall grant leave of absence. Any witness fees paid to the employee for these court appearances shall be kept by the employee.

010.05 Disaster Relief Leave. Employees who provide proof of their disaster relief volunteer certification with the American Red Cross may, with appropriate supervisory authorization, be granted paid civil leave not to exceed fifteen working days in each calendar year to participate in specialized disaster relief services in Nebraska for the American Red Cross, upon the request of the American Red Cross.

011 Leave of Absence. Agency heads may grant employees (including temporary employees) an unpaid leave of absence, not to exceed one year (except for military service and some worker's compensation cases), when such absences will not interfere with the best interests of the state. Under unusual circumstances this time may be extended by the agency head. Written requests for leaves of absence shall be considered for such things as temporary disabilities (i.e. leave for maternity), educational purposes, newly adopted children or other uses. Leave of absence in increments of less than one day shall not be granted to exempt employees in lieu of sick or vacation leave. The agency head's decision is final and non-grievable. The leave of absence, when granted, shall be in writing and detail the employment conditions that shall be in effect at the end of the absence.

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

011.02 Sick and vacation leave shall not accrue during a leave of absence.

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

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

012 Emergency Situations. In case of emergencies which affect employees' working hours or conditions, the Director of Personnel, DAS-State Personnel Division, shall issue clarifying personnel policies concerning work hours and appropriate leave.

013 Leave for Part-time Employees. All types of leave are granted in proportional amounts for part-time employees. Agencies shall use the budgeted percentage of the annual FTE when calculating leave earnings for part-time employees.

014 Governor Appointed Committees. When the Governor appoints an employee to serve on a committee, board or other body, time spent at meetings of the committee, board or other body crossing the employee's normal work hours shall be considered hours worked.

015 Family Leave.

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

015.02 Conditions for Using Family Leave. An employee may use Family Leave for the following reasons:

015.02A Because of the birth of a child of the employee.

015.02B Because of the adoption or placement of a foster care child with the employee.

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015.02C In order to care for the serious health condition of the employee's spouse, child or parent.

015.02C1 Spouse does not include unmarried domestic partners.

015.02C2 Child may include step-children, foster children or certain other children having more than a short-term residence in the employee's home such as legal wards of the employee.

015.02C3 Care for mother-in-law or father-in-law is not included. However, "parent" may include individuals other than biological or adoptive parents who served in a long-term parental role for the employee.

015.02D Because of the serious health condition of the employee.

015.02D1 Serious health conditions are defined as illness, injury, impairment or physical or mental conditions that involve: (1) in-patient care, (2) absence from work, school or other regular daily activities for more than three calendar days and continuing treatment by a health care provider, or (3) continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, or prenatal care.

015.02D2 Examples of serious health conditions include: heart attack, heart by-pass or valve operations, most cancers, back conditions requiring extensive therapy or surgery, strokes, severe respiratory conditions, spinal conditions, appendicitis, pneumonia, emphysema, severe arthritis, severe nervous disorders, need for prenatal care, severe morning sickness, childbirth and recovery from childbirth. This does not include voluntary or cosmetic treatments.

015.03 Certification of Serious Health Conditions. An employee requesting to use Family Leave due to a serious health condition must provide certification from a health care provider which must include:

(1) the date on which the serious health condition commenced;

(2) the probable duration of the condition;

(3) any appropriate medical facts;

(4) a statement containing specific information why the employee is needed to care for the child, spouse or parent, **OR**, a statement containing specific information why the employee is unable to perform the functions of the job.

(5) if the leave is to be intermittent, a statement containing specific information concerning planned medical treatments, the expected dates and duration of treatment.

015.03A **Medical Second Opinions.** The Agency may require a second opinion (the Agency's choice of health care provider) and must pay for the cost of the second opinion. If the second opinion differs from the first, a third opinion may be sought (from a mutually agreed upon health care provider, again, at the Agency's expense). The results of the third opinion are final.

015.04 **Notice of Intent to Use Family Leave.** An employee shall provide a minimum of 30-days notice to the Agency before he or she may use Family Leave. Where 30-days notice is not foreseeable, notice must be given as early as possible.

015.05 **Family Leave Duration.** Total paid (if employee has chosen to use accrued sick and/or vacation leave) and unpaid leave time taken for Family Leave is limited to twelve weeks within a twelve-month period, starting with the date the employee first uses Family Leave.

015.06 **Family Leave Not Cumulative.** Family Leave cannot be carried forward beyond the twelve-month period and banked for future use.

015.07 **Incremental Use of Family Leave.** Family Leave may be taken in increments with proper medical certification. Federal law allows employees not eligible for overtime (exempt employees) to make incremental use of unpaid Family Leave without affecting their "salaried" status.

015.08 **Health Insurance while on Family Leave.** Employer health insurance contributions shall continue during an employee's unpaid Family Leave absence, provided

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

015.09 Family Leave and Worker's Compensation. If an employee requests Family Leave due to an injury or illness qualifying for Workers' Compensation, the agency shall contact DAS Risk Management for coordination of Workers' Compensation and Family Leave benefits.

015.10 Service Date Adjustments. The employee's Service Date shall be adjusted when an unpaid absence due to Family Leave exceeds 14 consecutive calendar days.

015.11 Family Leave Denials. DAS State Personnel Division shall be notified by the Agency of any requests for Family Leave which are denied.

Chapter 11 – Performance Management

001 General. Performance management is a process by which an employer involves its employees, either individually or in groups, in effective accomplishment of agency mission and goals. This process includes: planning work and setting expectations, continually monitoring performance, developing the capacity to perform, regularly evaluating performance and rewarding good performance.

002 Performance Standards/Expectations. Agencies shall establish performance standards and expectations for their employees and shall communicate such to each employee. Performance feedback, whether favorable or unfavorable, should be communicated to the employee early, often and appropriately.

003 Performance Evaluations. Agencies shall regularly evaluate employee performance and provide feedback on performance to the employee. Performance evaluation systems must be approved by DAS State Personnel prior to implementation. Performance evaluations shall be prepared for all employees as indicated below:

003.01 Upon completion of the original probationary period.

003.02 At least on an annual basis with date to be determined by the agency.

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

004 Administration.

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

004.02 Performance evaluations shall then be discussed with the employee, who shall have the right to add his/her comments. The signing of the performance evaluation by the employee does not signify the employee's agreement with the content, but only that he/she has seen the performance evaluation, that it has been discussed with the employee and that the employee has been given an opportunity to comment. The evaluator shall sign and date

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the performance evaluation. If the employee refuses to sign, the supervisor and witness shall document the employee's refusal on the employee's performance evaluation form. The employee may attach written comments regarding the evaluation if he/she desires. These comments shall be submitted within 30 calendar days of the date of the report.

004.03 Each employee shall receive a copy of his/her performance evaluation and a copy of each performance evaluation shall be included in the employee's personnel file. The three most recent performance evaluations shall be retained in the employees personnel file. At agency discretion, more than three may be maintained.

004.04 For any period in which a performance evaluation has not been made within 60 calendar days after its due date, service shall be considered at least satisfactory. However, performance evaluation ratings being used as a basis for selection or layoff shall be current. If there is no current evaluation in the personnel file, the employer shall use the most recent evaluation, unless it is more than three years old. If more than three years old, the employer shall use a satisfactory rating.

005 **Evaluators.** Employees shall be evaluated by their immediate supervisor.

005.01 If an employee receives approximately equal supervision from two supervisors, both supervisors shall cooperate in preparing the evaluation. If the supervisor is unable to complete a performance evaluation within the specified time period, the evaluation shall be completed as soon as possible and reasons for late submission explained on the evaluation.

005.02 Only in the event of death, separation or long-term incapacitation of the immediate supervisor shall the next higher supervisor prepare the performance evaluation.

Chapter 12 – Personnel Records

001 Accessibility of Records. Subject to state law, the records of the DAS-State Personnel Division are public and open to public inspection during regular office hours at such times and following such procedures as may be prescribed by the Director of Personnel, DAS-State Personnel Division. All personnel data maintained by the DAS-State Personnel Division and agency personnel offices in computer databases, microfilm files and personnel folders shall be secured in strict conformance with state law governing the confidentiality of information.

001.01 Information concerning an employee's or former employee's name, position, gross salary, date of hire, date of separation and agency where employed shall be considered public information.

001.02 Non–public information may be released to the employee, the employee's supervisory chain of command, agency administrative personnel and to other state agencies performing a civil or criminal law enforcement investigation authorized by law. The Director of the requesting agency shall identify in writing what is sought and the purpose for the request.

001.03 Documented employment information from a current or former employee's personnel file shall be shared with other state agency human resource staff or hiring supervisors when the current or former employee has applied for a position in another department/division/agency.

001.04 Non-public information from a current or former employee's personnel file may be released to requesting parties, provided the employee has signed a release authorization. No information shall be given that is not contained in the personnel file.

001.05 In addition, non-public information shall be released to any requesting party when a legal warrant is served requesting such information.

002 Maintenance of Records. Each agency covered by the State Classified Personnel System shall maintain certain personnel records. These records may be retained at the agency level or at any organizational level determined appropriate by the agency head. Agency heads may prescribe the maintenance of additional records. The required records are:

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002.01 Individual vacation and sick leave records. NIS leave records are adequate for the purposes of meeting this rule.

002.02 Record of employee's performance report(s) shall be maintained according to the employing agency's policy.

002.03 Record of all personnel transaction forms pertaining to individual employees.

002.04 Record of documents initiated by the employee that affect pay (W-4's, authorized deductions, etc.).

002.05 Former employee's personnel files may be destroyed ten years after the employee's separation date (in accordance with Records Management records retention and disposal schedule). However, a brief file or information card **shall** be retained by the agency containing employee's dates of employment and rates of pay.

002.05A If there is a legal and/or administrative proceeding regarding the employee, records should be retained 10 years after all actions and/or appeals are complete and final.

003 Rights of Review. Employees shall have the right to review their personnel file maintained at the employing agency during regular office hours. Review may be done in the presence of a supervisor or the personnel office staff.

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

004.01 Employees or former employees have the right to file a written rebuttal within 30-calendar days from date of notice to any item placed in their personnel file with the exception of grievances settled in accordance with Chapter 14, Section 007. This written rebuttal shall be placed in their personnel file.

004.02 No negative documentation shall be placed in an employee's file after the separation of the employee unless the former employee is notified. Exceptions are reports, letters or documents originated and signed by the employee.

004.03 Records of disciplinary action shall be maintained in the employee's personnel file.

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

004.05 The provisions of the section are not applicable to temporary employees. See Chapter 5 for relevant information on temporary employees.

005 Director's Authorization. The Director of Personnel, DAS-State Personnel Division, shall have the authority to obtain from any classified agency any documents relating to personnel administration which the Director deems necessary for the proper administration of the State Classified Personnel System.

006 Medical Information. Any medical related information concerning employees shall be kept in a separate, secure file. In no case shall it be commingled with other personnel information.

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Chapter 13 – Reduction-in-Force

001 General. It is critical for agencies to retain their best-performing employees in order to accomplish their mission, achieve their goals and provide the best services to their customers. The provisions in this chapter provide alternatives to layoff and tools to retain best-performers when reduction-in-force becomes necessary. The agency head decides when a reduction in force is necessary, what form that will take, and what classes and positions will be affected.

002 Furloughs. A furlough is defined as placing an employee in a temporary non-duty, non-pay status because of lack of funds. This is an alternative to layoff that provides for the continuation of critical work and retention of valuable human resources. Furloughs should not be used as a long-term solution .

002.01 In cases of involuntary furloughs, agencies shall consider performance and seniority in deciding who will be furloughed.

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

002.03 According to State Statute 81-1320 and 81-1328, employees who regularly work less than 40 hours per week shall have sick and vacation leave earnings proportionate to their regular work week. However, under the authority of 81-1317, the Director of Personnel, DAS-State Personnel may adjust these provisions to mirror similar provisions of a collective bargaining agreement.

002.04 Agency heads shall determine when a furlough would be beneficial and shall develop a plan following the Nebraska State Government Furlough Guide. Furlough plans shall be submitted to the Director of Personnel, DAS-State Personnel Division, for review. The Director, Department of Administrative Services shall approve all furloughs.

003 Layoffs. The agency shall develop a layoff plan which complies with their reduction in force policy. The Director of Personnel, DAS-State Personnel Division shall review an agency's layoff plan prior to the initiation of any layoff. Layoff plans shall provide detail on what basis retention privileges are to be determined. Such plans shall not be effected, or the notice delivered, during the period December 15 through January 3.

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003.01 Agency heads shall decide on what basis retention privileges shall be determined. The basis for retention shall be one, or any combination, of the following: quality of performance, length of service or any job related factor. Length of service shall mean adjusted service date and part-time service shall be considered on a prorated basis, excluding employment in a temporary status. A numerical rating system using factors established by the agency shall be used as retention criteria to assure consistency in application (for example, a satisfactory performance rating might be worth 5 points, and a better than satisfactory performance report rating might be worth 10 points).

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

004 Bumping. The agency head shall establish bumping privileges by facility and/or geographical areas and/or division and/or by total agency. Such bumping limitations must be specifically defined and pre-set in the agency layoff plan.

004.01 Employees hired or voluntarily accepting promotion in the G (management) class code on or after July 1, 1998, shall not have bumping rights.

004.02 Bumping to a higher salary grade is not allowed.

004.03 Bumping rights shall not take place between agencies.

004.04 Employees occupying positions designated for layoff may, except in situations where unique job related factors are involved, bump employees with lesser retention privileges, as determined by the agency layoff plan, out of:

004.04A Positions of the same class;

004.04B Positions within the same class series of a lower salary grade.

004.04C Classes the employee previously occupied of an equal or lower salary grade and held within the previous 48 months.

004.05 Agencies shall give employees occupying positions designated for layoff a minimum of 3 workdays to respond to bumping options.

005 Layoff of Employees Eligible for Retirement. See Provisions for Leave (Chapter 10, 005.05B) reference deferral of sick leave payoff options upon retirement.

006 Salaries of Employees Exercising Bumping Rights. See Salary Administration (Chapter 8, 003.02A) reference salaries for employees moving downward or laterally.

007 Reinstatement. Employees or former employees are eligible for reinstatement to their previous class for 24 months after layoff or bumping. Employees desiring to be reinstated shall, following notification of the availability of a position, notify the agency head in writing of the acceptance or refusal of the position within 5 workdays.

007.01 It is the responsibility of the employee or former employee to inform the Agency of any change in address. Failure to receive notification of a position's availability because of an address change shall not cause the 5 workday reply period to be lengthened.

007.02 Agency heads may return reinstated employees at, or up to, their former salary, if reemployed within 2 years. Reinstated employees may receive, at the agency head's discretion, any legislative increases granted during the period of absence.

007.03 Employees reinstated after being laid off shall not be required to serve an original probationary period.

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

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

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

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

Chapter 14 - Disciplinary Action

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

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

001.02 Disciplinary Probation Status. A disciplinary probation may be imposed for a period of up to 6 months, but may be extended to a total of one year by the agency head. This is a designated time period during which the employee must improve. Improvement standards and time frames shall be set by the supervisor, and put in writing and a copy given to the employee. An extension of disciplinary probation shall be considered as a separate disciplinary action.

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

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

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

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

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

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

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

001.05 Reduction in Salary within Salary Grade. Employees not eligible for overtime (exempt employees) may not have their salary reduced for disciplinary reasons. Employees eligible for overtime (non-exempt employees) may have their salary reduced within their salary grade for disciplinary reasons. Agency heads may restore employees to their previous salary when circumstances justify. Employees' salaries may be reduced to no lower than the hiring rate of the salary grade. (Note: If the employee's reduced salary is at the hiring rate, the employee's salary must be increased to the minimum permanent rate within six months.)

001.06 Dismissal. A written document as described in 004.02 shall be given to employees two calendar weeks prior to the dismissal date, except in cases as described below:

001.06A Employees may be granted two calendar weeks pay in lieu of notice at the discretion of the agency head. Employees granted two calendar weeks pay in lieu of notice shall not be eligible to accrue sick or vacation leave for the period for which payment in lieu of notice is made.

001.06B An employee dismissed for job abandonment or gross misconduct such as conviction of a felony or an employee who commits an offense which threatens the safety or health of another person, or an offense of sufficient magnitude that the consequence causes disruption of work, shall not be entitled to two calendar weeks notice of dismissal or two calendar weeks pay in lieu of notice.

001.06C Employees may be dismissed during disciplinary probation if they do not take positive action to correct the conditions which resulted in the disciplinary probation. The serving of disciplinary probation is not a prior requirement for dismissal.

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

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

002.02 Investigatory suspensions may be grieved by employees.

003 Reasons for Imposing Disciplinary Action. Appropriate disciplinary action may be taken for any of the following offenses:

003.01 Violation of, or failure to comply with: federal laws, State constitution or statute; an executive order; published rules, regulations, policies or procedures of the employing agency or the State of Nebraska Classified Personnel System.

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003.02 Failure or refusal to comply with a lawful order or to accept a proper assignment from an authorized supervisor.

003.03 Inefficiency, incompetence or negligence in the performance of duties.

003.04 Unlawful manufacture, distribution, dispensation, possession or use of a controlled substance or alcoholic beverage in the workplace or reporting for duty under the influence of alcohol and/or unlawful drugs.

003.05 Negligent or improper use of state property, equipment or funds, or conversion of same to one's own use.

003.06 Use of undue influence to gain, or attempt to gain, promotion, leave or favorable assignment for individual benefit or advantage.

003.07 Falsification, fraud or intentional omission of required information on the employment application/resume.

003.08 Unauthorized, improper use or abuse of any type of leave, meal or rest periods.

003.09 Repeated tardiness or unauthorized leave, including unauthorized departure from work area.

003.10 Failure to maintain satisfactory working relationships with the public or other employees.

003.11 Failure to obtain and maintain a current license or certification required by law or agency standards as a condition of employment.

003.12 Conviction of a felony.

003.13 Repeated failure to make reasonable provision for payment of personal debts which results in more than one garnishment, except in cases of court ordered child support payments.

003.14 Insubordinate acts or language which seriously hamper the agency's ability to control, manage or function.

003.15 Acts or conduct (on or off the job) which adversely affects the employee's performance and/or the employing agency's performance or function.

003.16 Workplace harassment based, in whole or in part, on race, color, sex, religion, age, disability or national origin, which manifests itself in the form of comments, jokes, printed material and/or unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature.

003.17 Possession of materials and/or the utterance of comments in the workplace that are derogatory towards a group or individual based upon race, gender, color, religion, disability, age or national origin.

004 Procedure for Imposing Disciplinary Action.

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

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

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

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

004.02A Advised in writing of the nature of the offense;

004.02B Advised of the disciplinary action being administered; and,

004.02C If appropriate, notified of the time allowed for improvement and the consequences (including dismissal) of future violations or failure to improve;

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004.02D The employee should acknowledge receipt by signing the document. The employee's signature does not constitute agreement with the content of the document. If the employee refuses to sign, the supervisor and witness shall sign a notation of the employee's refusal on the document. A copy of the document shall then be placed in the employee's personnel file.

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

005 **Documentation Retention.** See Personnel Records (Chapter 12, 003) reference Employee's Right to Review.

Chapter 15 - Employee Grievance Procedure

001 Eligibility. All employees occupying a permanent position have grievance rights. Applicants (except as provided for in Chapter 4, 003.03), temporary employees and employees on original probation, and discretionary non-classified employees have no grievance rights within the State Classified Personnel System grievance procedure.

002 Grievance of Application of Personnel Rules or Conditions of Employment. Eligible employees in the State Classified Personnel System who are aggrieved as a result of management actions resulting in an injury, injustice, or wrong involving a misinterpretation or misapplication of rules promulgated by the DAS-State Personnel Division, agency rules and regulations or applicable labor contracts, if so agreed to by the appropriate parties, may formally grieve such actions. Agency heads shall ensure that every possible effort is made to resolve grievances at the agency level. Employees may ultimately appeal grievances not resolved within the agency to the State Personnel Board by filing a grievance and completing the steps of the procedure described in this chapter.

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

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

- performance evaluations;
- agency appointments, including promotions to positions;
- involuntary transfers not requiring the employee to relocate, with no salary reduction;
- leave of absence decisions;
- payment of moving expenditures;
- performance-based pay increase allocations;
- position classification, with no salary reduction.

003.02 Matters which involve harassment or discrimination based on race, color, religion, national origin, age, sex, marital status or physical or mental disability may be pursued with the Agency's Affirmative Action Officer or the State Affirmative Action Office. Employees not on original probation may pursue these matters through this grievance procedure. All

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employees may also contact the Nebraska Equal Opportunity Commission (NEOC) or the Federal Equal Employment Opportunity Commission (EEOC), or other appropriate agency.

003.03 Non-grievable complaints resulting from management actions may be dealt with through a complaint procedure, established at the agency level, which ensures final access to the agency head or designated representative.

004 Effect of Grievance on Management Action and Employee Status. Filing of a grievance does not delay the effective date of any management action. Filing of a grievance shall not jeopardize the grievant's position, opportunities for advancement, or salary increases. No employee may be coerced by the agency head or by other employees into not proceeding with a grievance or not appearing as a witness at a hearing.

005 Record of Previous Discipline. Agencies must maintain a log of disciplinary actions. The grievant or his/her representative may request an abstract of Agency disciplinary records concerning the same or similar offenses and the type of punishment administered for a period of two years prior to the imposition of the disciplinary action in question. Such request may be made at the time of the grievance filing but no later than eight workdays prior to the third step hearing. Agencies shall, upon receipt of a written request, provide such information within four workdays. The grievant or his/her representative shall only be given one abstract during each grievance process.

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

007 Settlement. At any time during the grievance procedure, the parties may reach a settlement and thereby terminate the process. The settlement must be in writing and is binding on both parties. The settlement must be signed by both parties and shall include a statement that neither party will pursue the matter further as long as settlement agreements are followed. At this point, the grievance will be considered to be resolved. If either party fails to abide by the settlement, the violation may be grieved, beginning at the agency-head level.

008 Grievance Procedure Steps and Time Allowances. If the grievance involves an involuntary separation, the grievant may skip Step 1 and go directly to Step 2 — agency head level. If the agency, in the first two steps, fails to respond to the grievant within the specified time period, the grievance shall be considered denied, and the grievant may forward his/her grievance to the next step. If the grievant fails to advance a grievance to any step within the

timelines specified, the grievance shall be considered discontinued by the grievant and the matter is considered closed. Time allowances at steps one and two may be extended by mutual agreement of the parties. The progressive steps and time allowances for the official grievance procedures are as follows (workdays exclude Saturdays, Sundays, and state holidays):

008.01 **Optional Informal Meeting.** The grievance may first be taken up with the immediate supervisor by the aggrieved employee within five (5) workdays of the occurrence of the grieved action (or from the day the employee could reasonably have known about the action). The immediate supervisor shall meet with the employee and issue a verbal decision within five (5) workdays from the informal meeting date. **NOTE: This optional meeting does not extend the 15-workday timeline for filing a written grievance (See 008.02).**

008.02 **Step 1. Formal Written Grievance.** Within 15 workdays of the occurrence of the grieved action (or from the day the employee could reasonably have known about the action) the employee shall present an original formal written grievance to his/her immediate supervisor. This document shall contain a statement of the grievance by indicating the issue[s] involved, the relief sought, the date the incident or violation took place, if known, and the specific section or sections of the Rules involved. (For your convenience, a form is available from the DAS Employee Relations Division.)

008.02A If the immediate supervisor did not make the grieved decision, he/she shall note the fact on the form, sign it and forward it to the decision-maker within 2 workdays, skipping any levels of intermediate supervision.

008.02B The decision-maker shall discuss the grievance with the grievant, then reply in writing on the grievance form (or an attachment) within 5 workdays of delivery of the grievance. The decision-maker shall be responsible for consulting with all necessary levels of supervision in the preparation of his/her written response to the grievant.

008.03 **Step 2. Appeal to Agency Head.** If dissatisfied with the decision-maker's written response, the grievant has ten (10) workdays to appeal the decision to the agency head or designee. As the agency head deems it appropriate, he/she may do one of the following:

008.03A Issue a decision in writing within 15 workdays.

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008.03B Appoint a grievance committee or designee to hear the grievance and recommend a decision. It is recommended that the committee be composed of representatives from management and the employee's peers, who do not have direct involvement with the grievance. Within 15 workdays of the receipt of Step 2 of the grievance, the agency head shall accept or modify the committee's or designee's recommendation and issue a written decision.

008.04 Step 3. Appeal to Personnel Board. If the grievant wants to appeal the decision of the agency head to the Personnel Board, the original appeal must be filed at the DAS Employee Relations Division within five (5) workdays of receipt of the agency head's decision. (For your convenience, appeal forms are available from the DAS Employee Relations Division.) The original grievance record must be attached to the appeal.

008.04A Definitions. The following definitions shall apply as used throughout this section.

008.04A1 Agency shall mean each board, commission, department, officer, division or other administrative office or unit of the state government authorized by law to make rules and regulations, except the Adjutant General's office as provided in Chapter 55 of the Nebraska Revised Statutes, the courts including the Nebraska Workers' Compensation Court, the Commission of Industrial Relations, the Legislature and the Secretary of State with respect to the duties imposed by the Administrative Procedure Act.

008.04A2 Appeal means the initial document filed by or with an agency that sets forth a claim and request for agency action.

008.04A3 Contested case shall mean a proceeding before the State Personnel Board in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after a Board hearing.

008.04A4 Ex parte communication shall mean an oral or written communication which is not on the record in a contested case with respect to which reasonable notice to all parties was not given. Ex parte communication shall not include:

008.04A4(a) Communications which do not pertain to the merits of a contested case;

008.04A4(b) Communications required for the disposition of ex parte matters as authorized by law;

008.04A4(c) Communications in a ratemaking or rulemaking proceeding; and

008.04A4(d) Communications to which all parties have given consent.

008.04A5 **Hearing officer** shall mean the person or persons conducting a hearing, contested case or other proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge, or some other title designation.

008.04A6 **Party** means the person by or against whom a contested case is brought.

008.04B Prohibitions against ex parte communications.

008.04B1 Prohibitions; when applicable. The prohibitions found in this section shall apply beginning at the time notice for hearing is given. The Board/Hearing Officer may designate an earlier time, but such earlier time shall be required to be set forth in the Board's/Hearing Officer's rules of procedure.

008.04B2 Prohibitions; to whom applicable.

008.04B2(a) Parties and public. No party in a contested case or other person outside the agency having an interest in the contested case shall make or knowingly cause to be made an ex parte communication to the hearing officer, a Board member, an agency head or employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

008.04B2(b) Persons in decision making roles. No hearing officer, Board member, agency head or employee who is or may reasonably be expected to be involved in the decision making process of the contested case shall make or knowingly cause to be made an ex parte communication to any party in a

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contested case or other person outside the agency having an interest in the contested case.

008.04B2(c) **Investigators.** No agency head or employee engaged in the investigation or enforcement of a contested case shall make or knowingly cause to be made an ex parte communication to a hearing officer, Board member, agency head or employee who is or may reasonably be expected to be involved in the decision making process of the contested case.

008.04B3 **Disclosure of Contacts.** The hearing officer, Board member, ~~or~~ agency head or employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication set forth in subsections 008.04B2(a) through 008.04B2(c) shall file in the record of the contested case:

008.04B3(a) All such written communications;

008.04B3(b) Memoranda stating the substance of all such oral communications; and

008.04B3(c) All written responses and memoranda stating the substance of all oral responses to all the ex parte communications.

008.04B3(d) The filing shall be made within two working days of the receipt or making of the ex parte communication. Notice of the filing, with an opportunity to respond, shall be given to all parties of record.

008.04B3(e) Filing and notice of filing provided under subsection 008.04B3(d) shall not be considered on the record and reasonable notice for purposes of the definition of ex parte communication.

008.04C **Commencement of a contested case.**

008.04C1 The contested case begins with the filing of an appeal and request for hearing, if applicable, with the State Personnel Board (hereinafter referred to as the "Board"). The appeal is the initial document, filed by the grievant or his/her representative at the DAS Employee Relations office that sets forth a claim and request for Board action.

008.04C2 The parties to a contested case shall be the Appellant or person by whom a contested case is brought and the Respondent or person against whom a contested case is brought.

008.04C3 A party may appear on his or her own behalf in a contested case proceeding or may be represented by an attorney or other representative as permitted by law.

008.04C4 The pleadings in a contested case may include an appeal, notice, motion, stipulation, objection or order or other formal written document filed in a proceeding before the Board. Any pleading filed in a contested case shall meet the following requirements:

008.04C4(a) The pleading shall contain a heading specifying the name of the agency and the title or nature of the pleading, shall state material factual allegations and state concisely the action the agency is being requested to take, shall contain the name and address of the Appellant, and shall be signed by the party filing the pleading, or when represented by an attorney, the signature of the attorney.

008.04C4(a)(1) Attorneys shall also include their address, telephone number and bar number.

008.04C4(a)(2) The initial appeal shall also contain the name and address of the Respondent.

008.04C4(b) All pleadings shall be made on white, letter-sized (8-1/2 x 11) paper and shall be legibly typewritten, photo statically reproduced, printed or handwritten. If handwritten, a pleading must be written in ink.

008.04C5 All pleadings shall be filed at the DAS Employee Relations Division office. Filing may be accomplished by personal delivery or mail and will be received during DAS Employee Relations' Division regular office hours.

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008.04C6 The Appellant shall serve a copy of the appeal on each Respondent listed on the appeal personally or by first-class or certified mail. Written proof of such service shall be filed with the DAS Employee Relations Division.

008.04C7 All pleadings subsequent to the initial appeal shall be served by the party filing such pleading upon all attorneys of record or other representatives of record and upon all unrepresented parties. Service shall be made personally or by first-class or certified mail. Written proof of such service shall be filed with the DAS Employee Relations Division.

008.04C8 Unless state law provides that a hearing is not required, a hearing date shall be set by the Board/Hearing Officer in accordance with statutory requirements or the Nebraska Classified System Personnel Rules. A written notice of the time and place of hearing and the name of the hearing officer, if known, shall be served by the DAS Employee Relations Division upon all attorneys of record or other representatives of record and upon all unrepresented parties. The notice must include a proof of such service and will be filed with the DAS Employee Relations Division.

008.04C9 In computing time prescribed or allowed by chapter 15 of these rules and regulations or by any applicable statute in which the method of computing time is not specifically provided, days will be computed by excluding the day of the act or event and including the last day of the period. If the last day of the period falls on a Saturday, Sunday, or state holiday, the period shall include the next working day.

008.04D Hearing officer; criteria.

008.04D1 The Board may be authorized by law to delegate to a hearing officer the functions of conducting a prehearing conference and/or a hearing and submitting a recommended decision to the Board.

008.04D2 A person who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or assist or advise a hearing officer in the same proceeding except as provided in subsection 008.04D4.

008.04D3 A person who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may not serve as hearing officer or advise a hearing officer in the same proceeding except as provided in subsection 008.04D4.

008.04D4 If all parties consent, a person who has served as, or who is subject to the authority, direction, or discretion of one who has served as investigator, prosecutor, or advocate in a contested case or in its prehearing stage may assist a hearing officer in the preparation of orders.

008.04D5 A person who has participated in a determination of probable cause or other equivalent preliminary determination in a contested case may serve as hearing officer or assist or advise a hearing officer in the same proceeding.

008.04D6 A person may serve as hearing officer at successive stages of the same contested case.

008.04E Prehearing Procedures.

008.04E1 Prehearing conferences and orders. A hearing officer designated to conduct a hearing may determine, subject to the Nebraska Classified System Personnel Rules, whether a prehearing conference will be conducted. If a prehearing conference is not held, a hearing officer for the hearing may issue a prehearing order, based on the pleadings, to regulate the conduct of the proceedings.

008.04E1(a) If a prehearing conference is conducted:

008.04E1(a)(1) The Board/hearing officer shall promptly notify the parties of the determination that a prehearing conference will be conducted. The Board may assign another hearing officer for the prehearing conference; and

008.04E1(a)(2) The Board/hearing officer for the prehearing conference shall set the time and place of the conference and give reasonable written

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notice to all parties. The DAS Employee Relations Division shall give written notice to other persons entitled to notice.

008.04E1(a)(3) The notice referred to in subsection 008.04E1(a)(2) shall include the following:

008.04E1(a)(3)(a) The names and mailing addresses of all parties and other persons to whom notice is being given by the hearing officer;

008.04E1(a)(3)(b) The name, official title, mailing address, and telephone number of any counsel or employee who has been designated to appear for the parties;

008.04E1(a)(3)(c) The official file or other reference number, the name of the proceeding, and a general description of the subject matter;

008.04E1(a)(3)(d) A statement of the time, place, and nature of the prehearing conference;

008.04E1(a)(3)(e) A statement of the legal authority and jurisdiction under which the prehearing conference and the hearing are to be held;

008.04E1(a)(3)(f) The name, official title, mailing address, and telephone number of the hearing officer for the prehearing conference;

008.04E1(a)(3)(g) A statement that a party who fails to attend or participate in a prehearing conference, hearing, or other stage of a contested case or who fails to make a good faith effort to comply with a prehearing order may be held in default under the Administrative Procedure Act; and

008.04E1(a)(3)(h) Any other matters that the Board/hearing officer considers desirable to expedite the proceedings.

008.04E1(b) The Board/hearing officer shall conduct a prehearing conference, as may be appropriate, to deal with such matters as exploration of settlement possibilities, preparation of stipulations, clarification of issues, rulings on identity and limitation of the number of witnesses, objections to proffers of evidence, determination of the extent to which direct evidence, rebuttal evidence, or cross examination will be presented in written form and the extent to which telephone, television, or other electronic means will be used as a substitute for proceedings in person, order of presentation of evidence and cross examination, rulings regarding issuance of subpoenas, discovery orders, and protective orders, and such other matters as will promote the orderly and prompt conduct of the hearing. The Board/hearing officer shall issue a prehearing order incorporating the matters determined at the prehearing conference.

008.04E1(c) The Board/hearing officer may conduct all or part of the prehearing conference by telephone, television, or other electronic means if each participant in the conference has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

008.04E2 Discovery in contested cases.

008.04E2(a) The Board/hearing officer or a designee, at the request of any party or upon the Board's/hearing officer's own motion, may issue subpoenas, discovery orders, and protective orders in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

008.04E2(b) Any prehearing motion to compel discovery, motion to quash, motion for protective order or other discovery-related motion shall:

008.04E2(b)(1) Quote the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena or excerpt of a deposition;

008.04E2(b)(2) State the reasons supporting the motion;

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008.04E2(b)(3) Be accompanied by a statement setting forth the steps or efforts made by the moving party or his or her counsel to resolve by agreement the issues raised and that agreement has not been achieved; and

008.04E2(b)(4) Be filed with the DAS Employee Relations Division. The moving party must serve copies of all such motions to all parties to the contested case.

008.04E2(c) Other than is provided in subsection 008.04E2(b)(4) above, discovery materials need not be filed with the DAS Employee Relations Division.

008.04E3 Continuances. The Board chairperson/hearing officer may, in his or her discretion, grant extensions of time or continuances of hearings upon the Board chairperson's/hearing officer's own motion or at the timely request of any party for good cause shown. A party must file a written motion for continuance which states in detail the reasons why a continuance is necessary and serve a copy of the motion on all other parties.

008.04E3(a) Good cause. Good cause for an extension of time or continuance may include, but is not limited to, the following:

008.04E3(a)(1) Illness of the party, legal counsel or witness;

008.04E3(a)(2) A change in legal representation; or

008.04E3(a)(3) Settlement negotiations are underway.

008.04E4 Informal Disposition. Unless otherwise precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

008.04F Conducting a contested case hearing.

008.04F1 Order. At the discretion of the hearing officer, the hearing may be conducted in the following order:

008.04F1(a) The hearing is called to order by the hearing officer. Any preliminary motions, stipulations or agreed orders are entertained.

008.04F1(b) Each party may be permitted to make an opening statement. Opening statements take place in the same order as the presentation of evidence.

008.04F1(c) Presentation of evidence.

008.04F1(c)(1) Evidence will be received in the following order:

008.04F1(c)(1)(a) Evidence is presented by the Appellant;

008.04F1(c)(1)(b) Evidence is presented by the Respondent;

008.04F1(c)(1)(c) Rebuttal evidence is presented by the Appellant; and

008.04G1(c)(1)(d) Surrebuttal evidence is presented by the Respondent.

008.04F1(c)(2) With regard to each witness who testifies, the following examination may be conducted:

008.04F1(c)(2)(a) Direct examination conducted by the party who calls the witness;

008.04F1(c)(2)(b) Cross-examination by the opposing party;

008.04F1(c)(2)(c) Redirect examination by the party who called the witness; and

008.04F1(c)(2)(d) Recross-examination by the opposing party.

008.04F1(d) After the evidence is presented, each party may have opportunity to make a closing argument. Closing arguments shall be made in the same

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order as the presentation of evidence. The Board/hearing officer may request that the parties submit briefs in lieu of closing arguments.

008.04F2 Evidence.

008.04F2(a) In contested cases the Board/hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonably prudent persons in the conduct of their affairs and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence.

008.04F2(b) Any party to a formal hearing before the Board/hearing officer, from which a decision may be appealed to the courts of this state, may request that the agency be bound by the rules of evidence applicable in district court by delivering to the DAS Employee Relations Division at least three days prior to the holding of the hearing a written request therefore. Such request shall include the requesting party's agreement to be liable for the payment of costs incurred thereby and upon any appeal or review thereof, including the cost of court reporting services which the requesting party shall procure for the hearing.

008.04F2(c) Documentary evidence may be received in the form of copies or excerpts or incorporated by reference.

008.04F2(d) All evidence including records and documents in the possession of the agency of which it desires to avail itself shall be offered and made a part of the record in the case. No factual information or evidence other than the record shall be considered in the determination of the case.

008.04F2(e) A Board chairperson/hearing officer or designee may administer oaths and issue subpoenas in accordance with the rules of civil procedure except as may otherwise be prescribed by law. Subpoenas and orders issued under this subsection may be enforced by the district court.

008.04F2(f) The Board/hearing officer shall give effect to the rules of privilege recognized by law.

008.04F2(g) The Board/hearing officer may take official notice of cognizable facts and in addition may take official notice of general, technical, or scientific facts within its specialized knowledge and the rules and regulations adopted and promulgated by the Respondent.

008.04F2(g)(1) Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of materials so noticed.

008.04F2(g)(2) Parties shall be afforded an opportunity to contest facts so noticed.

008.04F2(g)(3) The record shall contain a written record of everything officially noticed.

008.04F2(h) The Board/hearing officer may utilize its experience, technical competence and specialized knowledge in the evaluation of the evidence presented to it.

008.04F3 Conducting the hearing by electronic means. The Board/hearing officer may conduct all or part of the hearing by telephone, television, or other electronic means if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see the entire proceeding while it is taking place.

008.04F4 Official record.

008.04F4(a) The DAS Employee Relations Division shall prepare an official record, which shall include testimony and exhibits, in each contested case, but it shall not be necessary to transcribe the record of the proceedings unless requested for purpose of rehearing or appeal, in which event the transcript and record shall be furnished by the DAS Employee Relations Division upon request and tender of the cost of preparation.

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008.04F4(b) The DAS Employee Relations Division shall maintain an official record of each contested case under the Administrative Procedure Act for at least four years following the date of the final order.

008.04F4(c) The DAS Employee Relations Division record shall consist only of the following:

008.04F4(c)(1) Notices of all proceedings;

008.04F4(c)(2) Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board/hearing officer pertaining to the contested case;

008.04F4(c)(3) The record of the hearing before the Board/hearing officer, including all exhibits and evidence introduced during such hearing, a statement of matters officially noticed by the Board/hearing officer during the proceeding, and all proffers of proof and objections and rulings thereon; and

008.04F4(c)(4) The final order..

008.04F4(d) As provided in 53 NAC 4 Section 002.03 the hearing officer, Board member or employee who is or may reasonably be expected to be involved in the decision making process of the contested case who receives or who makes or knowingly causes to be made an ex parte communication as set forth in that subsection shall make the appropriate filings which shall be included in the official record of the contested case.

008.04F4(e) Except to the extent that the Administrative Procedure Act or another statute provides otherwise, the DAS Employee Relations Division record shall constitute the exclusive basis for Board action in contested cases under the act and for judicial review thereof.

008.04F5 **Costs.** There shall be no charge for hearing officer services in cases where the employee is covered by the Classified System Personnel Rules and Regulations. In cases where the employee is covered by the NAPE/AFSCME and

SCATA Labor Contracts, charge for the hearing officer shall be apportioned as provided in the respective labor contract.

008.04G Decision and order in a contested case.

008.04G1 Every decision and order adverse to a party to the proceeding, rendered by the Board in a contested case, shall be in writing or stated in the record and shall be accompanied by findings of fact and conclusions of law.

008.04G2 The decision and order should include:

008.04G2(a) The names of the Appellant and Respondent, and name of the proceeding;

008.04G2(b) The time and place of the hearing;

008.04G2(c) The names of all parties or their attorneys who entered an appearance at the hearing;

008.04G2(d) The findings of fact consisting of a concise statement of the conclusions upon each contested issue of fact;

008.04G2(e) The conclusions of law consisting of the applications of the controlling law to the facts found and the legal results arising therefrom; and

008.04G2(f) The order consisting of the action taken by the Board as a result of the facts found and the legal conclusions arising therefrom.

008.04G3 Parties to the proceeding shall be notified of the decision and order in person or by mail. A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed upon request to each party or his or her attorney of record. Personnel Board decisions are public information and are available for review in the DAS – Employee Relations Division, unless the hearing was closed.

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008.04H Appeals.

008.04H1 Any party aggrieved by a final decision in a contested case is entitled to judicial review under the Administrative Procedure Act or to resort to such other means of review as may be provided by law.

008.04H2 Parties desiring to appeal a Board decision must file a petition for review in the district court of the county where the Board action is taken within thirty days after the service of the final decision by the DAS Employee Relations Division. The thirty day period for appeal commences to run from the date of mailing of the notice of order and decision to the parties or their attorneys of record. Service of the petition and summons must be made in accordance with Nebraska law.

008.04H3 Unless otherwise provided by statute, the procedures of Neb. Rev. Stat. § 84-917 govern the procedure for taking an appeal.

Chapter 16 – Declaratory Orders

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

002 Definitions.

002.01 Agency shall mean the board, commission, department, officer, division, or other administrative office or unit of the state government as defined in Neb. Rev. Stat. 84-901(1).

002.02 Agency Director shall mean the director or governing body, whichever is applicable, of the agency.

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

002.04 Contested case shall mean a proceeding before the agency in which the legal rights, duties or privileges of specific parties are required by law or constitutional right to be determined after hearing before the agency.

002.05 Declaratory order proceeding shall mean a proceeding initiated by a petitioner seeking issuance of a binding order by the agency as to the applicability of specified circumstances to a statute, rule, regulation or order within the primary jurisdiction of the agency.

002.06 Hearing officer shall mean the person or persons conducting a declaratory order proceeding pursuant to the Administrative Procedure Act, whether designated as the presiding officer, administrative law judge or some other title.

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

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

002.09 **Parties** shall mean persons, political subdivisions, corporations, organizations or other entities subject to the jurisdiction of the agency who are involved in a declaratory order proceeding according to the procedures set forth in this chapter.

002.10 **Petition** shall mean the document filed in accordance with section 003 of this chapter to initiate a declaratory order proceeding.

002.11 **Petitioner(s)** shall mean a party or parties who have filed a petition with the agency seeking issuance of a declaratory order.

002.12 **Pleading** shall mean any written petition, answer or motion used in any declaratory order proceeding before the agency as set forth in this chapter.

003 **Petition for Declaratory Order.** A request for a declaratory order must be made by a petition that meets the requirements of section 003.

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

003.02 **When Orders Are Appropriate.** A declaratory order may be requested on the applicability of a statute, rule, regulation or order enforced by the agency. "Applicability" refers to the appropriateness of the relation of the law to the person, property or state of facts, or its relevance under the circumstances given. It may include such questions as whether the law applies at all, to whom it applies, when it applies, how it applies or which law applies. Considerations as to whether issuance of a declaratory order is appropriate include:

003.02A A declaratory order may be requested only on the applicability of existing statutes and rules and regulations.

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

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

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

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

003.03 Form of Petition. A petition for declaratory order shall be in the form of either a pleading or letter which shall contain each of the following:

003.03A A caption, which shall include:

003.03A1 The venue: BEFORE THE [AGENCY], STATE OF NEBRASKA;

003.03A2 A heading specifying the subject matter and the name of the petitioner; and

003.03A3 The name of the pleading: PETITION FOR DECLARATORY ORDER.

003.03B The statements required in subsection 003.04 of this chapter.

003.03C The signature of the petitioner, or when represented by an attorney, the signature of the attorney.

003.03D The name and address of the petitioner, and when represented by an attorney, the name, address, telephone number and bar number of the attorney.

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003.03E Size and Paper. The petition shall be made on white, letter-sized (8-1/2" x 11") paper.

003.03F Print. The petition shall be legibly typewritten, photo statically reproduced, printed or handwritten. If handwritten, the petition must be written in ink. Only one side of a page shall contain any writing.

003.03G Attachments. Any documents attached to a petition shall be securely fastened to the pleading and shall meet the requirements of 003.04E and 003.,04F and, when possible, be reproduced on 8-1/2" x 11" paper or placed in an 8-1/2" x 11" envelope and clearly marked as an attachment to the petition.

003.04 Contents of Petition. To be considered, the petition shall include the following:

003.04A The name and address of the petitioner.

003.04B The name and address of all persons or entities, known to the petitioner, who may have a specific interest in the applicability of the statute, rule, regulation or order or who may be adversely affected by the issue sought to be resolved by the petitioner.

003.04C The statute, rule, regulation or order upon which the petitioner seeks issuance of a declaratory order;

003.04D A detailed statement of all of the material facts and specific circumstances which apply to petitioner's request for issuance of a declaratory order;

003.04E All propositions of law or contentions asserted by the petitioner;

003.04F A demand for the relief to which the petitioner alleges entitlement. The petition shall state the petitioner's position as to how the agency should rule and why the agency should rule in the manner requested; and

003.04G Any documents pertinent to the petition that the petitioner wishes to be considered by the agency.

003.05 The petition shall be subscribed and verified by the petitioner. If the petitioner is a corporation, political subdivision, or other entity, then the petition shall be subscribed and verified by a duly authorized agent of the petitioning entity.

003.06 **Sample Petition.** The petitioner may use the sample form of a petition which is found at the end of this chapter. The petitioner may also prepare a reasonable facsimile of this form as long as the requirements of subsections 003.03, 003.04 and 003.05 of this chapter are satisfied.

003.07 **Written Consents.** The petitioner shall also attach to the petition any written consents obtained from any necessary party that the petition may be determined by use of a declaratory order proceeding.

004 **Submission and Service of Declaratory Order Petition.** The original petition for declaratory order shall be filed with the agency director by mail or in person during the agency's normal business hours. The petition shall be deemed as filled when it is actually received by the agency. The agency shall date stamp all petitions upon receipt.

004.01 At the same time the petition is filed with the agency, the petitioner shall serve a copy of the petition, by certified mail, return receipt requested, on all necessary parties, including all persons, political subdivisions, corporations, organizations or other entities who are known to have or claim any interest, legal right, duty, privilege or immunity which would be directly affected by issuance of a declaratory order in this matter by the agency.

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

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

005.01A Require that additional information be submitted before the petition will be further considered;

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005.01B Require a petitioner to provide notice to persons or entities who may be necessary parties and other persons that a request for a declaratory order has been filed with the agency;

005.01C Schedule a date, time and location at which the petitioner and any other parties to the proceeding may make an oral presentation on the petition;

005.01D Consider the petition and any attachments without oral presentation.

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

005.02A Issue an order declaring the applicability of the statute, regulation, rule or order in question to the specified circumstances; or

005.02B Agree to issue an order by a specified time declaring the applicability of the statute, regulation, rule or order in question to the specified circumstances; or

005.02C Set the matter for specified proceedings as set forth in subsection 005.01 of this Chapter; or

005.02D Decline to issue a declaratory ruling, stating the reasons for the agency's decision.

005.03 Notwithstanding section 005.02 of this rule, the agency may determine at any time that it will not issue a declaratory order if issuance of an order under the circumstances would be contrary to any provisions of section 009 of this Chapter. The agency shall notify the petitioner and, if applicable, any intervenor or necessary party in writing when the agency determines not to issue a declaratory order.

006 Intervention in Declaratory Order Proceeding.

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

006.01A A petition for intervention must be submitted in writing to the agency. Copies must be mailed to all parties to the proceeding.

006.01B The contents of the petition must be as specified in 006.02.

006.01C The agency must determine that the interests of justice and the orderly and prompt conduct of the proceedings will not be impaired by allowing the intervention.

006.02 **Contents of Petition.** The petition for intervention shall be submitted to the agency, in writing, on 8-1/2" x 11" white paper, and shall include each of the following:

006.02A The statute, regulation, rule or order that may apply to or affect the person, property, entity or facts at issue in the matter.

006.02B A statement of facts sufficient to show the intervenor's interest;

006.02C A statement of facts which demonstrate that the intervenor's legal rights, duties, privileges, immunities, or other legal interests may be substantially affected by the proceeding or that the intervenor may intervene pursuant to a provision of law;

006.02D All propositions of law or contentions asserted by the intervenor; and

006.02E A statement of the specific relief requested by the intervenor.

006.03 The agency may, at its discretion, invite any person or entity to file a petition for intervention.

006.04 The agency shall grant a petition for intervention if the requirements of subsections 006.01 and 006.02 are satisfied.

006.05 The agency shall deny a petition for intervention upon determining that the interests of justice or the orderly and prompt conduct of the proceedings would be impaired by allowing the intervention.

006.06 The agency's decision to grant or deny a petition for intervention shall be in writing and served upon all parties.

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007 Declaratory Order Proceedings

007.01 Oral Argument, When. Oral argument shall be had only on specific order of the agency. A petitioner, intervenor, necessary party or the agency may submit a motion for oral argument to the agency director. If opportunity for oral argument is grated, then argument shall be scheduled to be conducted not more than forty-five (45) days after filing of the petition. Petitioner and all other parties or, when represented, their attorneys, shall be served by the agency with a notice of the date, time and location for oral argument. The agency shall provide each of the parties with notice of the proceeding not less than seven (7) days in advance of the scheduled date. Service shall be made by certified mail, return receipt requested.

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

007.02A Identify the proceeding and introduce him or herself and identify each party for the record;

007.02B Hear the oral argument of the petitioner, intervenor or necessary parties;

007.02C Close the proceedings.

007.03 At the declaratory order proceeding, agency staff shall have the right to present oral argument.

007.04 The hearing officer or representative may impose reasonable time limits on the amount of time allocated to each party for oral argument.

007.05 The parties and agency staff may file briefs in support of their respective positions. The hearing officer may fix the time and order of filing briefs and may direct that briefs be submitted prior to the date of oral argument.

007.06 The oral argument may be conducted either in person or by telephone conference call.

008 Issuance of Declaratory Order.

008.01 The agency shall issue its declaratory order within sixty ((60) days of the date on which the petition was filed.

008.02 The declaratory order shall be in writing and shall include the following:

008.02A The names of all parties to the proceeding upon which the order is based;

008.02B The facts upon which the order is based;

008.02C The statute, regulation, rule or order at issue in the matter;

008.02D The agency's conclusion as to the applicability of the statute, regulation, rule or order to the facts.

008.02E The agency's conclusion as to the legal effect or result of applying the statute, regulation, rule or order to the facts;

008.02F The reasons relied upon by the agency to support its conclusions.

008.03 A copy of the declaratory order shall be served upon each party by certified mail, return receipt requested.

008.04 Effect of Declaratory Order. A declaratory order shall have the same status and binding effect as any other order issued in a contested case.

008.05 No Response within 60 Days. If the agency has not issued a declaratory order within sixty (60) days after the petition has been filed, then the petition shall be deemed to have been denied by the agency.

009 Circumstances Under Which Agency will not Issue Declaratory Orders.

009.01 Grounds upon which the agency **shall** refuse to issue a declaratory order include, but are not limited to, the following:

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009.01A The petition requests a declaratory order on a matter that is outside the scope of authority of the agency;

009.01B The petition requests review or appeal of a decision made by the agency in a contested case;

009.01C The petition requests a declaratory order on the effect of past conduct;

009.01D An investigation for purposes of a formal adjudication, a contested case, or a petition to issue, amend or repeal regulations is pending before the agency involving the petitioner on substantially the same or similar facts or issues raised in the petition;

009.01E The petition seeks a declaration that a statute or rule or regulation is unconstitutional or invalid;

009.01F The issue raised in the petition has been settled by a change in circumstances or other means so as to render moot the need for a declaratory order;

009.01G An order would substantially prejudice the rights of a person or entity who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding.

009.01H An order would not resolve the controversy or uncertainty; or

009.01I The question posed or facts presented are insufficiently specific, overly broad, or are otherwise inappropriate as a basis upon which to decide the matter.

009.02 Grounds upon which the agency **may** determine to refuse to issue a declaratory order include, but are not limited to, the following:

009.02A Refusal is necessary to assure adequate allocation of agency resources are available for issuing rulings on petitions raising questions of greater urgency or significance;

009.02B The question presented is of such complexity that the agency has had insufficient opportunity or resources to develop a fully matured ruling;

009.02C The petitioner fails to submit any additional information requested by the agency or submits such information after the date established by the agency;

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

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SAMPLE FORM
BEFORE THE [AGENCY NAME], STATE OF NEBRASKA

In the matter of	)	
the application of [name]	)	PETITION FOR
	)	DECLARATORY ORDER
	)	

1. Petitioner's name and address;
2. The name and address of all persons who or entities which may have a specific interest in the applicability of the statute, rule, regulation or order, or who may be adversely affected by the issue sought to be resolved;
3. All material facts and specific circumstances;
4. All rules of law which apply;
5. Petitioner's demand for relief;

DATED on this ____ day of _____, 200__.

VERIFICATION

STATE OF _____)
) ss.
COUNTY OF _____)

_____[name]_____, being first duly sworn, states that he/she is the petitioner/ petitioner's agent in the above entitled matter; that he/she has read the foregoing **Petition For Declaratory Order;** and that the allegations of fact therein are true.

_____
[Petitioner's signature]

SUBSCRIBED and sworn to before me on this ____ day of _____, 200__.

NOTARY SEAL _____

Chapter 17 - Miscellaneous

001 Conflict of Interest. An employee with a potential conflict of interest shall notify in writing his or her immediate supervisor and the Nebraska Accountability and Disclosure Commission. The written notification shall describe the potential conflict of interest.

001.01 An employee has a potential conflict of interest if he or she is faced with taking an official action or making an official decision which could result in a financial benefit or detriment to the employee, a member of his or her immediate family, or a business or other organization with which he or she is associated.

001.02 An employee who has an actual conflict of interest as determined by the Nebraska Accountability and Disclosure Commission shall take such steps as the Commission shall prescribe to remove himself or herself from the situation in which there is a conflict.

001.03 Employees failing to resolve a conflict of interest, as prescribed in the procedures outlined by the Accountability and Disclosure Commission, shall be subject to disciplinary action.

002 Employee Assistance Program. The State offers confidential counseling and referral services through a statewide employee assistance program (EAP). All employees and their family members can receive assistance in dealing with issues such as chemical dependency, emotional difficulties, legal and financial problems, marital complications, etc. Initial visits with the EAP are covered at no cost to the employee. Fees for services beyond and outside of the EAP contract are the responsibility of the employee.

003 Employee Tuition Assistance Program. Employees, other than temporary, may, with the approval of the agency head, receive reimbursement for up to 100% of tuition costs for the completion of a job or agency-related course of instruction through an accredited university, college, technical school or community college. Requests for tuition assistance must be approved by the agency head, or his/her designee, **prior to the class starting date.** Disapproval by the agency head is final and is not a grievable issue.

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003.01 Employees enrolling in a course may do so either by correspondence or attendance at classes during working or non-working hours. Employees granted permission by the agency head to attend classes during working hours shall arrange their work schedule so that they continue to work their normal number of hours per week. The agency head may approve the use of earned compensatory time, vacation time or leave without pay to attend classes during working hours.

003.02 Employees successfully completing the approved course or courses shall be reimbursed for whatever rate is indicated on the form. The rate approved may be up to 100% of the tuition cost. Tuition cost shall be the cost per credit hour and shall not include fees or the cost of books.

003.03 Employees eligible for other educational reimbursements through other governmental programs shall use these programs first. If the cost of an approved course is more than the amount available from other sources, the state may reimburse the employee for up to 100% of the difference.

003.04 Employees who receive tuition assistance may be asked to reimburse the state if they leave their employment within one year of the course completion date.

004 Interpretations. Any person may make a written request to the Director of Personnel, DAS-State Personnel Division, for an interpretation of any provision, of these rules or written statement of policy.

005 Moving Expenses. Employees who are relocated to another geographical location for the benefit of the employing agency shall be reimbursed for moving expenses. Employees relocating to another geographical area at their own request, for their personal benefit, need not be reimbursed for expenses incurred. Reimbursement for the amount and type of expenses shall be in accordance with policies and procedures established by the DAS State Accounting Division.

005.01 A relocation is defined as a change of job site which results in the new job location being at least 50 miles farther from the employee's current home than the current job location. If circumstances warrant, agency heads may waive the 50-mile requirement.

005.02 Whether or not a relocation is for the benefit of the employing agency shall be determined on an individual basis by the agency head. The decision of the agency head is non-grievable. Promotions may be considered as a benefit to the employing agency.

005.03 Payment of moving expenses shall be made only with the prior written approval of the agency head and in accordance with policies and procedures established by the DAS State Accounting Division.

005.04 The state may reimburse a newly appointed employee (excluding temporary) for moving expenses or a portion of these expenses, at the agency head's discretion, provided the employee agrees, in writing, to remain in the employment of the state for one year.

005.04A If an employee, whose moving expenses (all or a part) have been paid, resigns within one year of the move, the agency head may require the employee to reimburse the agency for a portion of the moving expenses, based on the length of time the employee worked after the move.

005.05 Payment of moving expenses shall be recorded into the employee's permanent personnel record and the fact that such payment was made shall be signed by the agency head and the employee.

006 Nepotism. An employee shall not employ or recommend or supervise the employment of an immediate family member in state government.

006.01 An immediate family member means a child residing in the employee's household, the spouse of the employee, or a person claimed as a dependent by the employee, or the employee's spouse for federal income tax purposes.

006.02 The Nebraska Accountability and Disclosure Commission provides advice and resolves issues regarding nepotism.

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

008 Petition for Rules Change. Any person may petition the Director of Personnel, DAS-State Personnel Division, requesting the promulgation, amendment or repeal of any State Classified System Personnel rule. The petition shall:

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008.01 Be clearly designated as a petition for a rules change;

008.02 In the case of a proposed new rule or amendment of an existing rule, shall set forth the desired rule in its entirety;

008.03 In the case of a petition for the repeal of an existing rule, such shall be stated and the rule proposed to be repealed shall either be set forth in full or shall be referred to by agency rule number;

008.04 Describe the reason for rules change;

008.05 Include an address and telephone number where the petitioner can be reached during regular work hours; and

008.06 Be signed by:

008.06A The petitioner or his or her attorney in which case the attorney shall also state his or her address and telephone number;

008.06B A duly authorized officer of the petitioner, if petitioner is a corporation or other legal entity.

008.07 Within sixty (60) calendar days after submission of a petition, the agency shall:

008.07A Deny the petition in writing, stating its reasons therefore;

008.07B Initiate rulemaking or regulation-making proceedings in accordance with the Administrative Procedure Act;

008.07C If otherwise lawful, adopt a rule or regulation.

009 Pilot Programs. Agencies may initiate human resource pilot program projects with the approval of the Director of Personnel, DAS State Personnel Division. The goal of any pilot project is to experiment with new and innovative approaches to facilitate the management of the State's human resource system and, thereby, its employees. The Director of Personnel, DAS-State Personnel Division, will establish criteria for pilot programs which shall be used in the review and disposition of such requests. Criteria may include the following: duration of the pilot project, the scope, (e.g., number of agencies included/affected, number of employees included/affected, the type or category of work), budgetary impact, desired/expected outcome from research and any other relevant factors.

009.01 Existing State statutes and/or federal laws/regulations do not permit alteration of personnel practices in these areas: employee vacation, sick and other forms of leave, exemption from overtime regulations, equal employment opportunity, employee participation in political activity, etc.

009.02 Any pilot project which affects the terms and conditions of employment, which are mandatory subjects of bargaining, will be presented under a process established by the Director of Personnel, DAS-State Personnel Division, to the Employee Relations Administrator, DAS-Employee Relations Division, the labor union(s) and other interested parties, and agreement reached prior to implementation of the project.

009.03 Agencies will be required to report on the progress of the pilot project at intervals established by the Director of Personnel, DAS-State Personnel Division. The format of the reports shall be determined by the Director of Personnel, DAS-State Personnel Division.

009.04 The utility of any pilot project and the eventual implementation of alternative personnel policies and practices system-wide require their measurement and evaluation. The Director of Personnel, DAS-State Personnel Division, will establish the process, criteria, format, frequency and reporting of these measurements and evaluations as part of each pilot project. Periodic reports and a final evaluative and recommendation report will be prepared, as determined by the Director of Personnel, DAS-State Personnel Division, in adherence to the requirements of this rule.

010 Political Activities.

010.01 An employee may engage in any political activities except that:

010.01A An employee shall not participate in political activities while on state time or while performing official State duties.

010.01B No employee shall engage in political activity while wearing a uniform required by the State.

010.01C No employee shall use or authorize the use of state personnel, property, resources or funds for campaign purposes, unless otherwise permitted by law.

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010.01D An employee whose position is partially or entirely funded with federal money and is covered by the federal Hatch Act is barred from being a candidate for a partisan office (offices with candidates identified as being from specific political parties).

010.02 For employees covered by these rules and also covered by the Hatch Act, the federal agency responsible for administering the Hatch Act should be consulted for specific restrictions on these employees. The agency responsible for administering and investigating violations of the Hatch Act is the Office of Special Counsel of the U.S. Merit Systems Protection Board, 1120 Vermont Ave., N.W., Washington, D.C. 20419.

010.03 If an employee wishes to take part in political activities during normally scheduled work hours, the employee must arrange for leave (vacation, leave without pay, etc.) to cover the period of absence.

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

011 Prohibited Acts and Gifts.

011.01 No employee shall use his or her State position or confidential information received through holding the State position for personal financial gain, that of an immediate family member, or that of a business or organization with which he or she is associated.

011.02 No employee shall accept anything of value, including money, a loan or a promise of future employment, from any person based upon an understanding or agreement that the official action or judgment of the employee would be influenced thereby.

011.03 No employee shall accept from a lobbyist, a principal or anyone acting on behalf of either, any gifts with an aggregate value of more than fifty dollars in a calendar month. Lists of lobbyists and principals are maintained by the Nebraska Accountability and Disclosure Commission and the Office of the Clerk of the Legislature.

012 Resignations. To resign in good standing, an employee must give written notice to the agency head at least 10 workdays before separation unless the agency head agrees to a shorter period.

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

014 Retiree Health Insurance. In addition to the provisions outlined in State Statute 84-1601 through 84-1615, employees who are eligible for retirement and do retire, shall be afforded the opportunity to continue health insurance coverage in the group plan until they become Medicare eligible. The employee shall be responsible for the entire cost of the premium for the plan chosen, which includes the normal employee contribution and the normal state contribution.

015 Severability. If any section or portion of these rules or the applicability thereof to any person or circumstance is held to be invalid by a court, the remainder of these Rules shall not be affected thereby.

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Chapter 18 - Employee Recognition Programs

001 Recognition Programs. With the approval of the Director of Personnel, DAS State Personnel Division, agencies may implement Employee Recognition programs, which may include awards such as certificates, plaques, pins, and/or monetary recognition, within the limits specified below:

001.01 Years of Service recognition programs, which may include awards other than monetary recognition.

001.02 Educational or Certification recognition programs for employees who successfully improve job expertise by taking educational coursework or otherwise gain job-related certifications. One time monetary rewards of up to $500 are allowed in any one fiscal year in this category. Employees must be provided prior knowledge of such programs through a published and/or posted Agency policy.

001.03 Achievement recognition programs with awards such as "Employee (or Manager) of the Month (or Year)", "Peer Award", or "Group Award". Monetary awards up to $100 for monthly awards, $250 for quarterly awards, $250 for annual award nominees or runners-up, and $500 for annual awards are allowed for achievement recognition purposes.

001.04 Suggestion recognition programs; awards shall be the greater of twenty-five dollars or ten percent of the amount of savings, limited to five thousand dollars.

001.05 Employees recognized through this program shall be allowed to attend/participate in all recognition program events on work time and shall not be charged accrued leave time or leave without pay for attending such events.

002 Funding. Agencies who exercise authority under this chapter must manage such within current budget limitations; this will not be grounds for deficit appropriations.

003 Public Information. Recognition programs and monetary awards are public information, and Agencies are encouraged to make recognition announcements via formal recognition ceremonies, staff meetings, newsletters, etc.

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FILED
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APPROVED
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ATTORNEY GENERAL
APR 25 2006
BY Dale A. Comer
ASSISTANT ATTORNEY GENERAL

APPROVED
OCT 25 2006
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GOVERNOR

Nebraska Administrative Code – Title 273

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