

# MEMORANDUM OF AGREEMENT

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Between the State of Kansas and the  
Kansas Organization of State Employees

July 1, 2010 through June 30, 2013

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## **PREAMBLE**

This Memorandum of Agreement hereinafter referred to as "MOA" or "Agreement," is made and entered into, pursuant to K.S.A. 75-4321 et seq., by and between the State of Kansas hereafter referred to as the "Employer" or the "State," and the Kansas Organization of State Employees hereafter referred to as the "Union" or "KOSE." It is the intent and purpose of the parties entering into this Agreement to provide for orderly and constructive employment relations in the public interest, the interest of the employees hereby covered, and in the interest of the Employer. The term "employee" as used in this Agreement, shall mean bargaining unit employees represented KOSE unless otherwise noted.

## **ARTICLE 1 UNION RECOGNITION**

**Section 1.** The Employer recognizes KOSE as the "recognized employee organization," as that term is defined in K.S.A 75-4322, for employees in the bargaining unit where it has been certified or recognized. Bargaining units covered by this Agreement are Unit Numbers 1, 2, 3, 4, 6, and 16. Appendix A contains a list of classifications in each bargaining unit at the time of this Agreement. The parties agree that successor classifications to those listed in Appendix A shall be included in the bargaining units. "Supervisory employees," "elected and management officials," and "confidential employees," as those terms are defined in 75-4322, and temporary employees shall be excluded from the bargaining units.

**Section 2.** The Employer recognizes the Union as the sole and exclusive representative in all matters establishing and pertaining to wages, hours and other terms and conditions of employment for all employees in the Bargaining Units covered by this Agreement. The Employer will not recognize or negotiate with any other union or employee organization on matters pertaining to wages, hours and other terms and conditions of employment for employees in KOSE represented bargaining units and shall not afford any other organization access to its facilities for the purposes of representing KOSE bargaining unit employees or soliciting membership from among the employees represented by KOSE.

## **ARTICLE 2 EMPLOYEE RIGHTS**

### **Section 1. Union Activity**

Employees shall have the right to form, join and participate in the activities of the Union, for the purpose of meeting and conferring with the employer. Employees also shall have the right to refuse to join or participate in the activities of the Union. Employees shall further have the right to confer with their Union representatives as provided in this Agreement, and shall have the right to file grievances in accordance with this Agreement and applicable laws and regulations. The Employer and the Union agree that they will not interfere with such rights and that they will take such action that is necessary to assure that employees may exercise their rights to the fullest without fear of penalty, reprisal or coercion. No employee shall be discriminated against by reason of union membership or non-membership or activities on behalf or in opposition to the Union.

## **Section 2. Prohibition Against Discrimination**

It is the policy of the State to prohibit discrimination in employment against any employee or applicant for employment because of race, color, gender, sexual orientation, gender identity, religion, national origin, ancestry, age, military or veteran status, disability status or, for classified employees, political affiliation and to promote and implement a positive and continuing program of equal employment opportunity. Unclassified employees in the bargaining units in non-policymaking and/or non-confidential positions will not be subject to discrimination based on political affiliation. It is the policy of the Union that it shall not discriminate against any employee or cause or attempt to cause the State to discriminate against any employee because of race, color, gender, sexual orientation, gender identity, religion, national origin, ancestry, age, military or veteran status, disability status or political affiliation. Within individual agencies or facilities the State will endeavor to apply personnel policies, procedures and regulations consistently in similar circumstances to similarly situated employees. However, the MOA shall be applied consistently. Reasonable accommodations made to employees determined by the Employer to be qualified individuals with a disability shall not serve as precedent for other employees.

## **Section 3. Compliance with Laws and Regulations**

The Employer and the Union shall comply with all applicable federal and state laws, regulations, rules, and policies.

## **Section 4. Personal Conduct and Outside Employment**

Employees are accountable for the performance of official duties and compliance with applicable standards of conduct for employees of the State of Kansas. Assuming adherence to these standards, employees shall have the right to conduct their private lives as they deem fit and further provided such conduct does not present a conflict with laws, regulations or policies adopted thereunder. Outside employment that may conflict with an employee's state employment is subject to prior approval by the Employer. Disapproval must be based on a conflict of interest.

## **Section 5. Whistleblower Protection and Right to Speak Out**

The State will comply with the Kansas Whistleblower Act, K.S.A. 75-2973, et seq. In addition, employees have the right to speak publicly about matters of public interest or matters relating to their employment provided they do not disclose information designated confidential by law and policies established thereunder, and provided further, that the employee states at the outset that the employee is not speaking in an official capacity as a representative of a state agency but is expressing a personal opinion.

# **ARTICLE 3 UNION RIGHTS**

## **Section 1. Access**

KOSE employee representatives and KOSE staff representatives shall have reasonable access to the premises of the Employer with prior notice and approval by the Employer for the reason of administration of this Agreement. In addition, upon reasonable notice to and approval by the Employer consistent with security and public service requirements, union representatives shall have access to the Employer's premises for the purpose of membership recruitment provided such activities take place in non-work areas. Representatives who are not employees at the worksite shall

provide written notice (including e-mail). Approval for access described in this section shall not be unreasonably denied.

KOSE and KOSE representatives shall have the right to email updates, alerts, and information to KOSE covered bargaining unit members to their state email account for those unit members who have state email accounts. The Employer shall not block KOSE as a sender or otherwise hinder the delivery of email to bargaining unit members from KOSE. Consistent with established policies and procedures, employees shall also have access to the KOSE website in order to obtain information. The parties recognize that not all employees have computers, internet, or email access in the course of their employment and, notwithstanding the above, nothing herein shall require the Employer to provide the same.

## **Section 2. Stewards**

The Employer will recognize stewards designated by the Union who will be responsible for investigating and processing grievances and participating in any grievance hearing or grievance meeting where employees are present; formal disciplinary hearings as defined by the Kansas Civil Service Act or other activities authorized by this MOA. Limitations on numbers and locations of stewards may be established in supplemental bargaining.

The Union will notify the Employer in writing of the names of the designated stewards prior to them assuming any duties. Upon execution of this Agreement the Union shall provide a comprehensive list of designated stewards to the Employer and shall continuously provide updated comprehensive lists of designated stewards any time changes occur. Designated stewards shall be allowed a reasonable amount of duty time normally not to exceed ninety (90) minutes per steward per week without charge to pay or leave to administer the Agreement and otherwise represent employees in accordance with this Agreement, or the Kansas Civil Service Act and its implementing regulations. If ninety (90) minutes is insufficient the steward may request additional time and the granting of such time shall be governed by Section 5. A reasonable amount of additional time shall not be arbitrarily denied. To the extent necessary to participate in hearings and meetings, a designated steward's shift shall be adjusted so that such participation shall be on official duty time. Stewards shall seek and obtain appropriate approval from their respective supervisory channels prior to leaving regular job duties to participate in Union steward duties and shall not abandon their posts prior to obtaining such approval. Release from duty and shift adjustments will not be unreasonably denied and will be consistent with the operational needs of the Employer.

An employee wishing to meet with a steward to discuss representational issues during work hours shall seek and obtain appropriate approval from their respective supervisory channels prior to leaving regular job duties to meet with a steward and shall not be required to use leave time if prior approval is obtained. As an alternative, the employee may make a request for a meeting to a steward. The steward shall then make a request to the employee's supervisor of the meeting. Upon approval by the supervisor, the employee and the steward shall be allowed to meet on the agreed to time. Release from duty for a reasonable amount of time for this purpose shall be granted so long as operational needs allow.

Discipline and grievance meetings with the Employer shall occur on work time.

### **Section 3. Union Activity During Working Hours**

Consistent with the operational needs of the Employer the Employer shall grant time with pay during work hours, or in pay status, to stewards or Union representatives for the purpose of attending grievance meetings, disciplinary investigative interviews, meetings and formal disciplinary hearings as defined by the Kansas Civil Service Act, labor/management meetings, negotiating sessions, committee meetings and activities if such meetings or activities have been jointly established by the parties, or meetings called or agreed to by the Employer, if such employees are entitled and required to attend the meetings by virtue of being Union representatives or stewards. The granting of time to participate in these activities shall not be unreasonably withheld. The Union will provide the Employer with the names of its representatives who need release time at least forty-eight (48) hours in advance of the event. The employer shall grant exceptions to the forty-eight (48) hour notice requirement when such notice is not feasible. It is agreed that the time with pay during working hours granted to stewards and Union Representatives will not be used for discussing any matters connected with the internal management and operation of the Union; the collection of dues or assessments; the solicitation of membership; campaigning for elective office in the Union; the distribution of literature; or randomly seeking or instigating new grievances or complaints unrelated to the investigation of current or active grievances.

### **Section 4. Release Time For Union Activities**

- A. Union representatives will be allowed time off with pay consistent with the operational needs of the Employer for Union business such as state or area-wide committee meetings or state or International conventions, and training activities provided the employee provides reasonable notices to his/her supervisor of such absence. Reasonable notice for Union sponsored meetings and conventions listed above is at least fifteen (15) days and the Employer shall respond within ten (10) days of receiving the representative's notice. Such time off will not be detrimental in any way to the employee's record and will be specifically taken into account when applying performance standards relating to quantity and timeliness of work. Time may be used in one (1) hour increments. All leave pursuant to this subsection shall be reported on unit member time sheets by each member reflecting the time used with the payroll code appropriate for employee organization business. Time off pursuant to this subsection shall not exceed twelve hundred (1200) hours total per calendar year
- B. In addition to the time in subsection A above, consistent with the operational needs of the Employer, bargaining unit members who serve on the bargaining team shall be entitled to be released from duty for a reasonable amount of time, as agreed by the Employer and KOSE, for time spent preparing for meet and confer. All leave pursuant to this subsection shall be reported on unit member time sheets by each member reflecting the time used with the payroll code appropriate for meet and confer leave (MAC).

### **Section 5. Release From Duty Issues**

The parties recognize their respective obligations to grant and utilize release time authorized by this Agreement in an efficient manner in the context of effective and efficient government operations. To this end, the Employer and the Union shall each designate a person to discuss and resolve issues associated with release from duty or time off. Requests for release time in accordance with this Agreement shall be granted consistent with operational needs. When the Employer denies time off based on operational needs in accordance with this Agreement

(including leave for Union service as authorized by Section 12), it shall, upon written request of the Union, provide the reasons in writing. Time off under this provision shall not be arbitrarily denied.

### **Section 6. Meeting Space**

Union representatives may request the use of state property to hold union meetings. Upon prior notification, the Employer will provide meeting spaces where feasible provided such use does not increase Employer costs. Reserving and using meeting space shall conform to established practices and policies. Such meetings will not interrupt state work and will not involve employees who are working. The Employer shall make space available for Union representatives to have confidential discussions with employees on an as-needed basis subject to availability.

### **Section 7. Routine Office Supplies**

Union representatives are authorized to make reasonable use of e-mail, copiers, FAX machines, computers and other office equipment for representational purposes, provided such use does not interfere with official State business. Union representatives shall not use such supplies for internal business such as membership recruitment.

### **Section 8. Bulletin Boards**

The Employer shall make available, at no cost to the Union, a reasonable portion of existing bulletin boards in State work locations for use by the Union to post notices in accordance with the provisions of this Article. The dimensions, number and location of the Union's bulletin board space shall be agreed to at the local level. The Employer retains the right to change the location of any bulletin board based upon a change in the use of space, remodeling or reconfiguring work areas or other like reason provided the Employer first consults with the Union about a suitable relocation of the bulleting board. All notices shall relate to the matters listed below:

- a. Union recreational and/or social affairs;
- b. Union appointments and contact information;
- c. Union elections;
- d. Results of Union elections;
- e. Rulings on policies of the Union or other labor organizations with which the Union is affiliated;
- f. Union meeting notices or minutes;
- g. Reports of Union committees;
- h. Official Union publications including reports on legislative activities affecting working conditions; and
- i. Membership rights and recruitment information.

The Union shall be responsible for all items posted on the bulletin board. Each item posted shall be dated and initialed by the Union official approving the posting. The Union shall ensure that items are not illegal, defamatory, political, or partisan and that no item is detrimental to the safety and security of the institution. Notices will not contain anything that would reflect unfavorably upon the Governor, any agency or its representatives, or any other state employee or legislator. Where the parties agree, the Union may purchase and install bulletin boards.

### **Section 9. Distribution of Union Information**



The Union shall be permitted during involved employees' non-work hours to place and distribute materials at parking lots, in break-rooms, employee mailboxes and at any other mutually agreed to locations. This Section does not authorize any Union representative to access any area to which they would otherwise not have access. At secure facilities, off-duty employees are not authorized to enter, re-enter or remain in the facilities for distribution of union materials, but union materials may be provided for placement in break-rooms and employee mailboxes. For purposes of this Section, "secure facilities" are institutions with custodial responsibility for inmates, juveniles, and forensic patients.

### **Section 10. New Employee Orientation**

Each Department shall notify the Union of each formal orientation meeting held by the Department. The notice will be sent as soon as such meetings are scheduled but not less than ten (10) days in advance and will include date, time and location. If the Union is unable to attend the formal orientation, the Union shall notify the respective Department as soon as that determination is made, but not less than forty-eight (48) hours in advance of the scheduled meeting. In the event a formal orientation meeting is not held, or the Union notifies the respective Department that it is unable to attend the formal orientation, or the Employer determines that there is insufficient time on the orientation agenda to include the Union, the Employer shall allow a Union representative and the new employee(s) group to meet during duty hours at a mutually agreed upon time and location mutually agreed upon by the Employer and the Union for twenty (20) minutes.

During the orientation, the Union will be permitted to give a twenty (20) minute presentation which may include an enrollment in membership.

### **Section 11. Information Provided To The Union**

On a monthly basis, the Department of Administration shall provide the Union with the following information for each bargaining unit employee covered by this Agreement:

- a. The name;
- b. Position classification;
- c. Bargaining unit;
- d. Home and work site addresses;
- e. Date of hire;
- f. State email address;
- g. Current status of employee, (leave of absence or active)

The Employer may require advance payment of a prescribed fee in accordance with K.S.A. 45-219, not to exceed one hundred and fifty dollars (\$150) per request.

In addition, on a monthly basis, the Employer shall provide the Union with the above information on all new entrants to the bargaining unit and shall provide a list of all separations from the bargaining unit.

### **Section 12. Leave For Union Service**

Upon request of the Union, and consistent with operational needs, the Employer will grant leaves of absence without pay to bargaining unit employees for up to thirty (30) days. Consecutive thirty day leaves of absence may be requested by the Union and granted by the Employer, not to

exceed 120 days total for any one employee per calendar year. The employee shall be returned to his/her previous position, facility, and shift subject to post rotation provisions.

In order to not disrupt KPERs contributions and requirements, an employee on consecutive leaves of absence for Union Service shall return to work at least one (1) day per each thirty day interval, on a date or dates agreed to prior to beginning Leave for Union Service. The employee's benefits (workers compensation, medical/dental insurance, if participating, etc.) shall continue to be paid by the Employer and the Union shall reimburse the Employer for all costs of benefits except that the employee or the Union shall continue to be responsible for paying the employee's share of the health insurance premium. For the purposes of this Section benefits do not include optional payroll deductions. Leave without pay for Union Service in accordance with this section shall not be considered an interruption in Length of Service.

#### **ARTICLE 4 MANAGEMENT RIGHTS**

**Section 1.** Nothing in this Agreement is intended to circumscribe or modify the existing right of the State to:

- a. Direct the work of its employees;
- b. Hire, promote, demote, transfer, assign and retain employees in positions within the public agency;
- c. Suspend or discharge employees for proper cause;
- d. Maintain the efficiency of governmental operation;
- e. Relieve Employees from duties because of lack of work or for other legitimate reason
- f. Take actions as may be necessary to carry out the mission of the agency in emergencies; and
- g. Determine the methods, means and personnel by which operations are to be carried on.

It is further specifically agreed that the foregoing enumeration of the rights of the Employer shall not be determined to exclude other rights not specifically enumerated unless abridged and modified by provisions included within this Agreement. By way of example but not limitation, management retains the rights to: determine the mission, budget and policy of the Employer and its various agencies and programs; determine the organization of the Employer, the number of employees, the work functions, and the technology of performing them; and to determine the numbers, types, and grades of positions.

It is also understood there may be other inherent rights of management which may be exercised during the term of this Agreement. It is specifically understood by the parties that the Employer may take any other actions it deems necessary or in the best interest of the state consistent with this MOA.

Management also reserves the right to decide whether, when, and how to exercise its prerogatives, whether or not enumerated in this Agreement. Accordingly, the failure to exercise any right shall not be deemed a waiver. It is understood and agreed by the parties that the Employer does not have to rely on any agreement reached through the meet and confer process with its employees as the source of its rights and management prerogatives.

Nothing herein shall be interpreted as a waiver of the Union's right to meet and confer regarding conditions of employment as that term is defined in K.S.A. 75-4322(t) as set out in Article 10 of this MOA.

**ARTICLE 5  
NO STRIKE OR LOCK OUT**

KOSE agrees that during the life of this Agreement, neither the organization, its agents, nor its appropriate unit members will authorize, instigate, aid or engage in any organized work stoppage, organized slow-down, organized sick-out, illegal picket or organized strike against the employer.

The employer agrees not to lock out any employees during the term of the Agreement as a result of a labor dispute with KOSE.

**ARTICLE 6  
PAYROLL DEDUCTION**

**Section 1.** The Employer agrees to the deduction of union dues from employee payroll warrants, upon receipt of written authorization signed by the employee and forwarded by the union through the Division of Accounts and Reports at least thirty (30) days prior to the first deduction. Such authorizations shall remain effective for not less than one hundred and eighty (180) days and shall be terminated at any time thereafter upon thirty (30) days' prior notice by the employee. Deduction cards or cancellation cards shall be provided by either the union or the employer, upon request by an employee, and shall be confidential.

**Section 2.** The Employer agrees to the deduction of voluntary contributions to the Union's Political Action Committee. Such deductions shall commence within thirty (30) days of the Employer's receipt of a written authorization from the employee and shall cease within thirty (30) days of the Employer's receipt of a written memorandum from the employee canceling such deduction. The Union agrees to reimburse the Employer for administrative costs incurred in the performance of this function.

**ARTICLE 7  
HOURS OF WORK AND OVERTIME**

**Section 1. Scope**

This Article is intended to define the normal hours of work and to provide the basis for the calculation and payment of overtime. It shall not be construed as a guarantee of hours per day or per week, or of days of work per week.

**Section 2. Administrative Workweek**

The administrative workweek begins at 12:01 a.m. Sunday and ends at midnight on the following Saturday.

**Section 3. Standard Workweek**

Except as noted below, the standard workweek for full-time employees consists of five (5) consecutive eight (8) hour days, Monday through Friday each week. Non-overtime hours and starting and quitting times for employees shall be the same throughout the standard workweek. The standard workweek does not apply to the following:

- A. alternative and/or compressed workweek schedules and flextime arrangements;
- B. cases where flexible hours are inherent to the job as an established condition of employment and are subject to agreement in this or a supplemental MOA in accordance with Article 10;
- C. shift employees whose work is continued by other employees who relieve them and continue those same work tasks and whose schedules are governed by section 5 below;
- D. certain law enforcement employees whose schedules are based on 80 hours over a two week pay period pursuant to this or a supplemental MOA in accordance with Article 10.

**Section 4. Changes in Work Schedules to Avoid Overtime**

Either party may address changes in work schedules to avoid overtime in supplemental meet and confer in accordance with Article 10.

**Section 5. Work Schedules for Shift Employees**

- A. For purposes of this Agreement, “work schedules” are defined as an employee’s assigned work hours and days of the week. Where work schedules for an employee described in Section 3.C. of this Article vary the employee will be notified of their assigned schedule at least seven (7) days prior to the effective date of the schedule. Work schedules may be modified without notice to respond to tornadoes, fires, wrecks, snow or other emergencies or similar events.
- B. Assigning an employee additional hours on an overtime basis is not considered a change to the work schedule.
- C. An employee may request to, and with prior approval of management may, trade any workday or shift within the work week with an employee who is willing to trade and is qualified to perform the work. Trading of days or shifts shall not jeopardize the required operational needs of the Employer, nor result in the creation of overtime.
- D. Except as it applies to the practices in existence at the time of this MOA within KDOT regarding snow/ice removal activities, there will be no split shifts (unpaid break of greater than one-hour within the workday) unless requested by the affected employees.

**Section 6. Alternative Work Schedules and Flextime**

Subject to operational needs, flexible and alternative work schedules may be established upon mutual agreement of the employee and the employer. Consent will be in writing and signed by both parties including agreement on how to change work schedule during weeks where there is a holiday. Approval may be rescinded based on identified operational needs or performance issues by providing thirty (30) calendar days notice. Current practices shall otherwise remain in effect.

**Section 7. Overtime**

- A. FLSA non-exempt full time employees shall earn overtime (or accrue compensatory time) for hours actually worked in excess of forty (40) in an administrative workweek.

Time in a paid status, but not worked by virtue of legal holiday, shall be considered as hours worked for purposes of administering overtime entitlements.

- B. In accordance with Section 3D, for appropriate positions the work period will consist of eighty (80) hours actually worked in fourteen (14) consecutive days, subject to Department of Labor determinations regarding section 207k of the Fair Labor Standards Act.
- C. Actual time worked may be substituted for authorized paid leave where appropriate.
- D. The Employer will make a good faith effort to avoid requiring employees to work more than 12 hours in a 24 hour period. An employee may volunteer to work over 12 hours in a 24 hour period. [Unit 6 Supplemental language shall remain in effect for Unit 6 employees.]

### **Section 8. Compensatory Time**

- A. An FLSA nonexempt employee may, with the approval of the Employer, elect to accrue compensatory time in lieu of monetary payment in accordance with applicable laws, policies and regulations. The accrual of compensatory time in lieu of monetary payment shall not be arbitrarily denied. An eligible employee shall not accrue more than two hundred and forty (240) hours of compensatory time. Each eligible employee who has accrued two hundred and forty (240) hours of compensatory time off shall, for any additional overtime hours of work, be compensated with overtime pay. Appointing authorities may establish lower maximum accumulations for employees in that agency subject to a minimum of forty (40) hours.
- B. A request to use earned compensatory time must be submitted to an employee's supervisor for approval prior to use and shall be approved provided the employee gives the supervisor reasonable notice of the employee's intention to use compensatory time and the employee's use of compensatory time does not unduly disrupt operations as that term is defined in 29 CFR 553.25(d).
- C. Due to operational needs the employer may pay, manage and require the use of compensatory time. Each employee who has accrued compensatory time off may be required by the appointing authority to use the compensatory time within a reasonable period after receiving notice of this requirement. The notices shall state the length of time in which a specified number of hours of compensatory time are to be used. Use of such compensatory time will be granted in a fair and equitable manner. In the event the employee is directed to use compensatory time with less than fourteen (14) days notice from the date the direction is given until the date the employee must use the compensatory time, the employer shall pay the compensatory time if requested to do so by the employee. Except as provided in K.A.R. 1-9-14 (a), each eligible employee who has accrued compensatory time off shall, upon termination of employment or upon promotion, demotion, or transfer to another state agency, be paid for the unused compensatory time at a rate of compensation not less than the higher of either of the following rates:

- a. the average regular rate received by the eligible employee during the last three (3) years of the employee's employment; or
  - b. the final regular rate received by the eligible employee.
- D. Any longevity or quality award bonus payments received during the last three (3) years of employment shall be included in determining the average regular rate and the final regular rate specified in this subsection
- E. Employees may carryover compensatory time that has not been paid or used to the next fiscal year.

### **Section 9. Overtime Distribution**

**A. Volunteers.** The Employer shall utilize volunteers who meet operational needs for overtime before requiring mandatory overtime.

**C. Mandatory Overtime.** Employees may be required to work overtime. Employees required to work overtime will be notified as soon as the need for overtime becomes known.

**D. Overtime in 24/7 facilities.** In 24/7 operations overtime shall be distributed among employees capable of performing the work in their respective facility, area and job class. Each facility shall establish a consistent process that includes the use of a list of volunteers to work overtime.

**E. Overtime in Non-24/7 Work Location.** Procedures for voluntary and involuntary overtime for employees who: 1) perform clerical, administrative or similar work, 2) perform specialized or individualized case work with patients, clients, customers or members of the public, or 3) work in classifications or locations where there is not a regular need for overtime based on the type of work performed, will be established on an individualized basis between the employee and supervisor as needed based on the particular circumstances requiring the need for overtime, with consideration given to providing as much notice to the employee in the event of the need for overtime.

**F. Unit 6 Exemption.** Unit 6 shall be exempt from this Section and shall be covered by Supplemental Agreements.

### **Section 10. FLSA Exempt Employees**

The Employer may approve the accrual of time off for FLSA exempt employees for extraordinary or excessive hours worked. The Employer shall act reasonably in approving such time off. It is understood by the parties that such time off is not meant to be hour for hour compensation.

### **Section 11. Responsibility for Staffing Coverage**

An employee is not responsible for finding staffing coverage when the employee is absent from work. The employee shall be responsible for advising the supervisor of any work assignment or other deadlines of which the employee is knowledgeable that occur during any period of absence.

**ARTICLE 8  
WAGES AND SALARIES**

**Section 1. General Salary Increase and Market Pay**

- A. The Employer agrees to budget for and recommend Legislative appropriation of funds necessary to provide market adjustment pay increases in Fiscal Year 2011.
  
- B. In accordance with Article 10 of this MOA and the Kansas Public Employer-Employee Relations Act the parties shall meet and confer on issues related to the implementation of the market pay plan and, on an annual basis, the parties shall meet and confer during the months of October through December regarding the Union's proposal for general wage increases (including longevity bonuses and other generally applicable wage payments) to become effective the following fiscal year. Such meet and confer shall be consistent with any constraints imposed by applicable law including constraints imposed by the adopted budget.

**Section 2. Call-in and Call-back Pay.**

Changes in call in/call back practices will be subject to supplemental meet and confer in accordance with Article 10 at the request of either party.

**Section 3 Stand-by Compensation.**

- A. Any appointing authority may require an employee to be on stand-by. "Stand-by time" means a period of time outside a non-exempt employee's regularly scheduled work hours, during which the non-exempt employee is required, at agency direction, to remain available to the agency within a specified response time. Each non-exempt employee on stand-by shall be available at agency direction for recall to perform necessary work. Stand-by assignments shall be limited to work situations where a probability of emergency recall of an employee or employees exists. When the employer is able to contact employees by means of a paging device or cell phone, such employees are eligible for stand-by compensation if the employee is required to remain available to the agency within a specified response time.
  
- B. Except as provided in subsection F., each non-exempt employee shall be compensated at the rate of two dollars (\$2.00) per hour for each hour the employee serves on stand-by status.
  
- C. Each non-exempt employee on stand-by who is called in to work shall be compensated for the actual hours worked at the appropriate rate of pay, but shall not be paid stand-by compensation for the hours actually worked. Only the hours actually worked by the employee shall be credited in determining eligibility for overtime compensation.
  
- D. Time during which a non-exempt employee is restricted to a particular telephone number at a location designated by the employer, or to the employer's premises, in order to remain personally available to the employer shall be considered hours worked and the employee shall be compensated at the employee's regular rate of pay instead of receiving stand-by compensation.

- E. Any non-exempt employee on stand-by or who is subject to the provisions of subsection D, who is not available when called, and who does not present reasonable justification for failure to report when called, shall lose compensation for that stand-by period and may be subject to disciplinary action.
- F. Stand-by and On-Call pay for law enforcement employees as defined in 29 CFR 553 shall be addressed in supplemental meet and confer in accordance with Article 10.

#### **Section 4. Shift Differential**

- A. Each agency having multi-shift operations shall designate one or more shifts as a normal day shift. Each agency shall specify no more than twelve (12) consecutive hours in the day from which normal day shifts may be designated. Each normal day shift shall fall entirely within those designated hours. Upon the effective date of this MOA, the Employer shall advise KOSE of each agency's designated day shift hours.
- B. Except as provided in subsection E., or pursuant to agreement reached in accordance with subsection F, a shift differential shall be paid to classified employees in positions eligible to receive overtime pursuant to K.A.R. 1-5-24 for hours worked on regularly established shifts other than the normal day shift or shifts except for unscheduled hours before or after a normal day shift.
- C. The shift differential shall not be paid to an employee for any time the employee is on any type of leave or holiday.
- D. Upon recommendation of the Secretary, the amount of the shift differential shall be that amount set by Executive Directive of the Governor subject to a minimum of fifty cents (\$.50) per hour.
- E. Shift Differential pay for law enforcement employees as defined in 29 CFR 553 shall be addressed in supplemental meet and confer in accordance with Article 10.
- F. Changes in shift differential practices in effect at the time of this Agreement shall be subject to supplemental meet and confer in accordance with Article 10 at the request of either party.

#### **Section 5. Longevity Bonus Pay.**

- A. Upon completion of ten (10) years of length of service, each classified employee in a regular position shall be eligible for longevity bonus pay.
- B. The longevity bonus payment for each eligible employee shall be computed by multiplying fifty dollars (\$50) by the number of full years of state service, not to exceed twenty five (25) years.
- C. Longevity bonus pay shall increase the regular rate applying to overtime pay for hours worked during the twelve (12) months preceding the date the longevity bonus is paid to the employee and shall be considered in calculating the payment of compensatory time to an employee upon termination as provided in K.A.R. 1-5-24.



D. All provisions of this section are subject to legislative appropriation.

### **Section 6. Acting Assignments**

- A. When an employee is temporarily assigned to another position in a higher salary range than that of the employee's normal position, the employee shall be paid at a step on the higher range that provides the employee with at least a five percent (5%) increase in pay.
- B. An appointing authority may temporarily assign an employee who has permanent status to perform the duties of another position on the basis of an acting assignment in accordance with K.A.R. 1-6-29.
- C. If an employee is acting in a position assigned to a pay grade higher than that of the employee's normal position, the employee shall be paid at a step on the higher grade that gives the employee an increase in pay. Such an increase shall not exceed the highest step possible if the employee were being promoted into the position.
- D. If an employee is acting in a position assigned to the same pay grade as that of the employee's normal position, the appointing authority may compensate the employee at a higher step of the pay grade than the step on which the employee is paid in the employee's normal position if the appointing authority determines the pay increase is in the best interests of the State.
- E. The employee's pay increase date shall be governed by the time-on-step requirement of the new step to which the employee is assigned under this section.
- F. If an employee is acting in a position assigned to a pay grade lower than that of the employee's normal position, the employee shall be paid at the employee's normal pay rate.
- G. For the duration of any acting assignment, the employee may receive pay step increases in accordance with applicable regulations.
- H. If the employee is promoted to a position in which the employee has served in an acting assignment, any accumulated months shall count towards the next pay step increase. The time served in the acting assignment may be credited towards the probationary period required for promotions.
- I. For the duration of the acting assignment, the employee shall receive step increases based on the time in step in the employee's normal position. When the acting assignment is terminated, and the employee is returned to the former class, the employee's salary shall revert to whatever rate it would have been had the employee not received the acting assignment.
- J. Neither the employee's pay increase date nor the employee's status shall be affected by an acting assignment.

**ARTICLE 9**  
**HEALTH BENEFITS and FLEXIBLE SPENDING ACCOUNTS**

**Section 1. Premium Contribution**

KOSE shall have the right to propose changes in the health benefit premium contribution shares at the same time, and in the same manner as it meets and confers regarding general wage increases in accordance with Article 10.

**Section 2. Kansas State Employee Health Care Commission**

Consistent with Kansas State Employee Health Care Commission Employee Advisory Committee bylaws, the Employer shall actively support employees nominated by KOSE to serve as members of the Employee Advisory Committee.

**Section 3. Flexible Spending Accounts**

The Employer shall continue to offer the KanElect Flexible Spending Account (FSA) program. Effective the next open enrollment period following the effective date of this agreement, the maximum contributions to the health care FSA shall be five thousand dollars (\$5000) per year (Two hundred and eight dollars and 33 cents (\$208.33) per semi monthly pay period). Other KanElect program maximum contribution limits shall be governed by IRS regulation.

**Section 4. Family and Medical Leave**

The Employer shall continue to make benefit contributions on behalf of an employee who is on paid or unpaid leave under the Family Medical Leave Act (FMLA). If the employee is in an unpaid status, the employee contribution shall be collected from the employee upon return from FMLA leave over the same period of time the employee was in an unpaid status, or in a shorter period or a one-time lump sum payment if the employee prefers.

**ARTICLE 10**  
**SUPPLEMENTAL AND MIDTERM MEET AND CONFER AND**  
**LABOR MANAGEMENT MEETINGS**

**Section 1. Supplemental Meet and Confer**

For matters not addressed in the MOA the parties agree to supplemental meet and confer at the bargaining unit or agency levels concerning “conditions of employment” (as defined in K.S.A. 75-4322(t)) unique to a bargaining unit, or an agency; or any other matter mutually agreed; or for any other matter identified for supplemental meet and confer in this MOA. The parties shall schedule supplemental meet and confer within thirty (30) days of the effective date of this Agreement. Pending the resolution of meet and confer, current practices shall be maintained.

**Section 2. Mid-Contract Meet and Confer**

- A. The Employer and the Union acknowledge their mutual obligation to meet and confer over Employer proposed changes in “conditions of employment” as that term is defined in K.S.A. 75-4322(t) affecting bargaining unit employees. The Employer agrees not to actively pursue legislation to change “conditions of employment” as defined in K.S.A. 75-4322(t) without engaging in the meet and confer process.
- B. The minimum notice to the Union of an intended change in “conditions of employment” as that term is defined in K.S.A. 75-4322(t) is fifteen (15) days. If required to meet a

legislative mandate or an emergency situation, the Employer will notify the Union as soon as possible. The Union may request to meet and confer within this fifteen (15) day period and shall submit proposals in response to the Employer's intent to change "conditions of employment" as that term is defined in K.S.A. 75-4322(t) within ten (10) days of its request to meet and confer. Upon request, the Employer shall provide the Union, at no cost, with information that is relevant and necessary for the full and proper understanding of the matter subject to meet and confer.

### **Section 3. Impasse Resolution**

In the event of an impasse in meet and confer, either party may request the services of a mediator assigned by the Federal Mediation and Conciliation Service (FMCS). If the impasse persists, the parties shall attempt to pick an impartial arbitrator to resolve the impasse. If the parties cannot agree on an impartial arbitrator, either party may request a list of seven (7) qualified interest arbitrators from the FMCS. The parties shall select one arbitrator from the list by alternately striking names until one arbitrator remains on the list. A coin toss shall determine which party strikes the first name. The arbitrator shall hold a hearing as soon as practical and render a binding determination to resolve the impasse. Established conditions of employment as defined in K.S.A. 75-4322(t) shall not be changed pending resolution of the impasse.

### **Section 4. Enforcement**

Midterm and supplemental Agreements shall be enforceable under the terms of this Agreement.

### **Section 5. Labor Management Meetings**

The Employer and the Union agree to meet periodically in order to promote harmonious relations between the parties. The meetings shall be held upon mutual agreement of the parties on a date and at a time as mutually agreed. Where the parties currently conduct scheduled labor management meetings, they will continue to do so. The purpose of the meetings shall be to establish an effective employer-employee relationship, discuss the administration of this agreement, disseminate information of interest to the parties and discuss other items as mutually agreed prior to the meeting. The parties may meet and confer on the Labor-Management meeting process during supplemental meet and confer in accordance with this Article.

## **ARTICLE 11**

### **STAFFING**

#### **Section 1. Meetings Regarding Staffing**

No more than once each year, the Secretary of Administration will, upon request, meet with the Union to hear the employees' views regarding the Governor's budget request regarding staffing.

## **ARTICLE 12**

### **GRIEVANCE PROCEDURE**

#### **Section 1. General Requirements**

- A. A grievance is a statement of dissatisfaction by any employee, or by the Union, concerning interpretation of this Agreement or a traditional work practice. In order to

facilitate resolution, grievances shall specifically identify which particular provision(s) of the agreement or work practice(s) are at issue.

- B. This grievance procedure shall be the sole method for settling a dispute arising as to the interpretation or application of the provisions of this Agreement.
- C. Employees may represent themselves or have a KOSE representative, represent them throughout this procedure.
- D. KOSE shall be notified of any grievance and be permitted to attend all grievance meetings and be provided with copies of all grievance correspondence sent to an employee.
- E. All grievance resolutions shall be in accordance with the terms of this agreement. No private agreements between individuals and the employer are permitted.
- F. Days, as used in this article, shall be calendar days.
- G. Time limits, as designated in this Article, may be extended by mutual agreement.
- H. Discussion of grievances between the Employer and the employee and his or her representative shall take place at such times in such places as the parties mutually agree upon.
- I. If KOSE determines that a dispute exists over the interpretation or application of the provisions of this Agreement that affects more than one employee, KOSE may file a grievance in its own name at Step Three (3).
- J. At each step after step one of the grievance process described below, the grievance shall state in writing why the previous response is unsatisfactory and shall identify any additional information that should be considered.

### **Section 2. Step One Immediate Supervisor.**

- A. An employee, and representative if chosen, shall file a grievance, in writing, with the employee's immediate supervisor within fourteen (14) days of the event causing the dispute, or within fourteen (14) days of the employee's knowledge of its occurrence.
- B. The immediate supervisor shall meet with the employee and a KOSE representative, and respond in writing within seven (7) days. Following the meeting, the immediate supervisor shall prepare and provide a written response. The written response shall include and be based on all information that is specific and relevant to the grievance.

### **Section 3. Step Two Facility, Division/Department, Regional Director**

- A. If the grievance is not resolved at Step One, the grievance may be advanced in writing to the next step within fourteen (14) days of the Step One response or, if there was no response, within fourteen (14) days after the response was due. The grievance shall be filed with the facility director (Superintendent or Warden); Division/Department Director

(for headquarters employees); or Regional Director (including District Engineer for KDOT employees).

- B. The step two official, or designee, shall meet with the employee and KOSE representative to discuss the grievance and provide a written response to the employee and representative within fourteen (14) days. Following the meeting, the step two official or designee shall prepare and provide a written response. The written response shall include and be based on all information that is specific and relevant to the grievance.

#### **Section 4. Step 3 Agency**

- A. If the grievance is not resolved at Step Two, or if the step two grievance official has not responded within fourteen (14) days, the employee or the representative may appeal to the head of the Agency within fourteen (14) days after the response or within fourteen (14) days of when the response was due. The employee and/or KOSE representative(s) may request to meet with the head of the Agency, or designee to discuss the grievance. The request for a meeting with the head of the Agency, or designee, shall not be arbitrarily denied.
- B. The head of the Agency, or designee, may meet with the employee and KOSE representative(s) to discuss the grievance and shall provide a written response to the employee and representative within twenty-one (21) days. The written response shall include and be based on all information that is specific and relevant to the grievance.

#### **Section 5. Arbitration**

- A. If the grievance is not resolved at Step Three, KOSE may seek to arbitrate the unresolved grievance.
- B. Notice of intent to arbitrate shall be in writing and shall be delivered to the Director of Personnel Services (DA) or his/her designee within thirty (30) days of the response of the Agency or within sixty (60) days of when the response was due if the Agency failed to respond.
- C. KOSE shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service (FMCS). The parties shall determine by coin toss the order in which they will strike names from the list, and thereafter engage in an alternate striking procedure to select the arbitrator.
- D. Costs associated with the fees and expenses of arbitration shall be shared equally by the parties.
- E. Either party may request a verbatim record of the proceedings, at the expense of the requesting party. If both parties agree on a request for a verbatim record of the proceedings, the expense shall be shared equally.
- F. Hearings shall be held at a place and at a time mutually agreed upon by the parties and the arbitrator. In the event that the parties cannot agree on a hearing date[s] the arbitrator shall issue a notice of hearing dates, times, and places.

- G. The arbitrator's decision shall be in accordance with the terms of this agreement and the arbitrator shall not have the authority to add to, amend, or modify the terms of this agreement.
- H. The arbitrator's decision shall be in writing. The Director of Personnel Services (DA) may request review of the decision by the Governor within thirty (30) days of receipt of the decision. Such request for review shall fully explain the rationale for modification of the arbitrator's decision. In the event a request for review is filed with the Governor, the Union shall have opportunity to submit a statement of position to the Governor within fifteen (15) days of receipt of the request for review. The Governor may set aside the decision of the arbitrator within seventy-five (75) days of the request for review. The Governor's decision shall be final.

## **ARTICLE 13 DISCIPLINARY ACTIONS**

### **Section 1. Discipline.**

This article does not apply to employees serving their original probationary period. All disciplinary actions shall be administered in accordance with applicable statutes and regulations and this MOA.

- A. The primary purpose of discipline is to correct performance or behavior that is below acceptable standards, or contrary to the employer's legitimate interests, in a constructive manner that promotes employee responsibility. If the employer has reason to discipline an employee, it shall normally be done in a manner that will not embarrass the employee before other employees, inmates, clients or the public.
- B. To ensure each employee's right to due process and the application of discipline in a consistent and fair manner, supervisors shall apply a program of progressive counseling and discipline with emphasis on correcting employee behavior or performance. This subsection shall not restrict the Employer from proposing the most appropriate disciplinary action in a specific circumstance.
- C. Agencies may utilize alternative methods to resolve conflicts or improper employee performance or behavior whenever appropriate.
- D. An employee who has completed the original probationary period required by K.A.R. rules may be reprimanded, suspended, demoted, or dismissed because of deficiencies in work performance as provided in K.S.A. 75-2949e or because of personal conduct detrimental to state service as provided in K.S.A. 75-2949f or because of both such reasons. For disciplinary purposes, the Employer may suspend an employee without pay for a period not to exceed thirty (30) days unless a longer period is authorized by an order of the Kansas Civil Service Board. No employee shall be dismissed for political, religious, racial, or other non-merit reasons except where there is a sufficient nexus to employment and as consistent with applicable laws and regulations.

- E. In cases of verbal counseling of an individual employee, the supervisor must inform the employee that he/she is being counseled and the reason for the counseling session. If a superior talks to an employee concerning the employee's performance or conduct, the meeting shall be held in private. In all cases, the confidentiality of the counseling and disciplinary process shall be maintained by the Employer and its representatives in accordance with applicable law.

## **Section 2. Pre-Disciplinary Investigations and Meetings**

- A. Formal disciplinary action, meaning suspension, demotion or dismissal, shall be proposed only after an investigation to determine the facts of a particular situation.

This Section does not apply to non-disciplinary meetings or discussion between an employee and his or her supervisor for the purpose of instruction, performance feedback or counseling, and an employee shall not be entitled to Union representation in such situations.

If an employee is called to an investigative interview and it is believed that the employee is a witness only, the employee shall not be entitled to union representation until such time as the employer or employee determines it reasonably appears that the employee may be subject to formal discipline involving suspension, demotion or dismissal.

- B. When the Employer or employee reasonably believes that an investigation may result in formal discipline involving suspension, demotion or dismissal, the employee under investigation may request the presence of a Union representative during an investigative interview with that employee, except that such representation shall not apply to peer review conducted pursuant to K.S.A. 65-4915. The Employer shall advise the employee in writing of the interview if the allegations forming the basis or reason for the interview, if proven, may result in a formal disciplinary action. If the Employer does not advise the employee that the employee is entitled to representation, the Employer may not impose a formal disciplinary action upon that employee for the matter under investigation. A meeting that may result in verbal counseling or written warning or written reprimand shall not entitle an employee to have a representative present for the meeting. Any documentation of verbal or written counseling shall be placed in the supervisory file and not in the employee's personnel file. However documentation of verbal or written counseling which is cited specifically within a performance evaluation or disciplinary action may be appropriately placed within the official personnel file as provided in this MOA.
- C. The Employer may deny an employee's request for Union representation during a meeting on the basis that it does not reasonably appear the employee being interviewed will be subject to formal discipline involving suspension, demotion or dismissal.
- D. If the Employer advises the employee that the investigation may result in a suspension, demotion or dismissal, and if so requested by the employee, the interview shall be recessed to allow the employee a reasonable opportunity to secure Union representation. The employee cannot refuse an available representative or steward. In no event shall the

recess be more than eight (8) hours unless the recess is pursuant to subsection F1 or F3. The Employer retains the right to immediately place an employee on leave with pay pending completion of the investigation.

- E. This Article shall not entitle a member of the unit who is the subject of the same investigation to be present at an investigative interview with or for another employee, as a Union representative or otherwise.
- F. The presence of a Union representative during the interview shall be governed by the following:
  - 1. The normal operations of the Employer shall not be interrupted by a Union representative's attendance at an investigative interview. Attendance of the Union representative shall not interfere with the legitimate needs of the Employer to maintain the operational integrity of the facility. In the event a Union Representative may not be released from duty, the Employer shall recess the investigative interview until the representative may be released, or arrangements are made for another representative to attend.
  - 2. An off duty steward or Union representative shall not be compensated in overtime or compensatory time for time spent attending an investigative interview.
  - 3. An employee serving as a Union representative who is a witness regarding the subject of the investigation shall be disqualified from serving as an employee's Union representative during the investigation.
- G. The parties agree that investigations will be conducted in a professional and fact-based manner.
- H. It is understood that investigative interviews are under the direction of the Employer's representatives. The role of the union representative is to assist the employee in a manner consistent with the purpose of the meeting. In interviews where Union representatives are permitted to be present under the terms of this Article, the Employer's assigned investigator(s) shall be permitted to conduct the interview with the employee without interference from the Union representative. The representative shall be allowed to speak privately with the employee before the interview, and may recess once during the questioning for a reasonable amount of time not to exceed twenty (20) minutes to speak privately with the employee. During the questioning, the representative may seek to clarify a question but shall not disrupt the meeting or otherwise interfere with the investigative process. While the interview is in progress, the representative cannot tell the employee what to say.
- I. Following the conclusion of the investigator's questions, the Union representative may take the opportunity to assist the employee in clarifying the employee's responses. Once the Union representative has finished, the investigator shall be permitted to ask follow-up questions of the employee and conclude the interview.
- J. Union representatives shall not use the interview as an opportunity to argue for the defense of the employee being interviewed, or to present evidence and/or a rationale for any position on the reduction of any discipline contemplated by the appointing authority.



- K. Employees have an obligation to fully cooperate in any investigation and to provide truthful and complete information regarding their actions as an employee and compliance with employee rules of conduct and Employer policies. Unless an employee has been granted immunity from prosecution, an employee may refuse to answer questions of a superior or an investigator employed by the state that tend to be self incriminating until the employee has obtained legal advice and/or counsel or has been issued a Garrity warning. The employee shall be given a reasonable period of time to secure counsel.

### **Section 3. Time Limits.**

Except for cases where outside agencies or divisions are involved in the investigation, the Employer may impose any disciplinary action or issue a notice of contemplated action no later than forty five (45) days after the responsible supervisor acquires knowledge of the employee's misconduct for which the disciplinary action is imposed, unless facts and circumstances exist which require a longer period of time. Delays at the request of the employee, or attributable to actions of the employee including employee unavailability due to health reasons, do not count toward the forty five (45) day time limit. This time limit shall not apply to performance related disciplinary actions which are governed by the requirements of KSA 75-2949e.

### **Section 4. Proposed Disciplinary Action**

- A. A letter of proposed disciplinary action shall for permanent employees contain the following:
  - 1. A statement of the proposed disciplinary action to include specifically what action is to be taken and the date thereof;
  - 2. The statute or regulation under which the proposed disciplinary action is being proposed;
  - 3. The reason the disciplinary action is being proposed, including the offense and a summary of the facts and evidence;
  - 4. Notice that the employee may respond to the proposed disciplinary action orally or in writing, or both, and that the employee may be represented by a KOSE or other personal representative;
  - 5. The date, time and place the employee may meet with the appointing authority to respond to the proposed disciplinary action. This meeting shall take place at least one day prior to the effective date of the proposed action; and
  - 6. A statement of the employee's status during the notice period until the matter is resolved.
  
- B. In accordance with the requirements of the Kansas Civil Service Act, K.S.A. 75-2925 et seq. and amendments thereto, the parties agree that the employee will be provided with written notice of any proposed formal disciplinary action involving suspension, demotion or dismissal, and given an opportunity to appear before the appointing authority prior to the time that a final decision is made by the appointing authority on the final disciplinary action. An employee may request Union representation in advance of the opportunity to appear meeting with the appointing authority. During the opportunity to appear meeting with the appointing authority, the employee and/or the Union representative may present supporting arguments on the employee's behalf, including arguments in favor of the reduction of any proposed formal discipline involving suspension, demotion or dismissal,

as well as offering information or arguments in mitigation of the proposed formal discipline.

### **Section 5. Considerations and Mitigation**

The following factors shall be considered by the appointing authority prior to proposing and deciding upon a formal disciplinary action:

- A. Severity of the offense;
- B. Impact of the behavior or performance on the agency;
- C. Nature and duration of the problem;
- D. Efforts made to help an employee adjust and efforts by the employee to adjust;
- E. Employee's length of service;
- F. History of the employee's behavior/performance and prior formal disciplinary actions against the employee while he or she has been employed by the Employer, considering the severity of such problems, and the time elapsed since the last problem situation; and
- G. Type of disciplinary action taken against other employees by the same appointing authority under similar circumstances.

### **Section 6. Implementation of Disciplinary Action**

The appointing authority and/or designee shall be available for a meeting with the employee in which the employee may respond to the proposed action as outlined in Section 4B. The appointing authority or designee shall consider the employee's response before making a final determination on the discipline. Following the meeting, the appointing authority or designee shall notify the employee and representative (if chosen) by letter, of the final determination of the disciplinary action. The letter shall also include a statement of the employee's:

- A. right to appeal the final decision; and
- B. the right to KOSE representation; and
- C. the applicable deadline for filing an appeal to the Kansas Civil Service Board.

### **Section 7. Documentation**

Formal disciplinary letters shall be included in the employee's employment file and the employee shall have full access to that file, and upon request may obtain a copy of that file and other documents in the possession of the Agency that the Employer is relying on to support the disciplinary action at no cost, in preparing a response to the appointing authority or designee and an appeal of a final action. Criminal investigation records and reports of conversations with confidential informants shall be excluded from the employment record but shall be made available to the employee or representative either voluntarily or through the discovery process if the Employer is relying on such records and statements to support the disciplinary action.

### **Section 8. Appeals.**

- A. Any permanent employee dismissed, demoted or suspended, may request a hearing from the State Civil Service Board to determine the reasonableness of such action. Each such request for a hearing shall be in writing and shall be filed in the office of the director of personnel services within thirty (30) calendar days after the effective date of the dismissal, demotion or suspension. Additional days shall not be added to the thirty-day (30) period in which an appeal may be filed if the notice of the effective date of the dismissal, demotion or suspension is mailed to the employee.

- B. An employee may appeal disciplinary action other than dismissal, demotion or suspension, (for example, a written reprimand) through the grievance procedure.
- C. If the Employer is found, through the final applicable step of the grievance and arbitration procedure in Article 12 of this Agreement, to have violated Sections 2, 3 or 9 of this Article, the disciplinary action if proposed shall not be imposed, and if imposed shall be reversed.

### **Section 9. Polygraph Examinations**

Polygraph examinations of an employee may be required to complete an investigation. Polygraph examinations may only be administered with an employee's written consent. Polygraph examination results shall not be considered conclusive evidence. No employee shall be requested to submit to a polygraph examination as a part of an internal investigation without prior approval of the appointing authority. In making the decision, the following shall be taken into consideration:

- A. the matter under investigation;
- B. the need to determine if the employee has been truthful during other phases of the investigation; and
- C. the investigative efforts which have been expended or remain to be utilized.

The refusal of an employee to submit to a polygraph examination shall not be the basis for disciplinary action.

## **ARTICLE 14**

### **LAYOFFS, RE-EMPLOYMENT, and FURLOUGHS**

#### **Section 1. Authority**

Layoffs shall be conducted in accordance with applicable law and regulations.

#### **Section 2. Notice**

The Union shall be provided a copy of the agency notice submitted to the Director of Administration at the time such notice is submitted to the Director. A minimum forty-five (45) day notice of layoff to the Director and the Union is required. In cases of extenuating circumstances, the forty five 45-day notice requirement may be waived by the Director. However, in no case shall notice of layoff to the director be less than thirty 30 days prior to the proposed effective date of the layoff.

#### **Section 3. Bumping**

Employees shall have the right to bump into a lower class in which the employee previously had permanent status, unless the employee's position is in a class which is part of a class series designated by the appointing authority in the agency's layoff notice. If such a class series is designated in the agency's layoff notice, then the employee shall be permitted to bump into a lower class in the class series. Each employee shall be informed of the employee's right to seek reemployment opportunities with the state, including placement assistance provided by the division. Placement assistance shall be available to the affected employee for up to three years after the effective date of the layoff unless the affected employee requests in writing that the employee does not want placement assistance. Any employee who is not scheduled for layoff,

but whose position will be vacated during the layoff and bumping process, and who refuses to accept a transfer or demotion to another position, may request to be laid off voluntarily. Any employee who has been granted a voluntary layoff shall have reemployment rights.

#### **Section 4. Layoff Scores**

Layoff scores shall be computed based on an employee's length of service, as defined in K.A.R. 1-2-46(a), expressed in months except that authorized leave without pay for FMLA or union service shall count towards length of service. Length of service for a retired employee who has returned to work shall be calculated on the same basis as a new hire. Layoff scores computed by the appointing authority shall be made available for inspection by each employee upon request at or before the time the agency gives written notice of a proposed layoff to the director and the secretary pursuant to Section 2. Upon request of any employee, the appointing authority shall review the manner in which the employee's score was calculated. Any dispute as to the proper calculation of a layoff score of any employee shall be resolved by the director.

#### **Section 5. Layoff Procedures for an Abolished Agency.**

The parties shall meet and confer in accordance with Article 10 regarding layoff procedures for an abolished agency.

#### **Section 6. Reemployment**

- A. Except as provided below, each employee who is laid off, or demoted or transferred in lieu of layoff, shall be placed in a reemployment pool by the Director of Personnel Services, unless the employee requests in writing to not be placed in the reemployment pool. Each employee in the reemployment pool shall be eligible to apply for any vacancy to be filled, including any internal vacancy, until the date the employee is reemployed or for three years from the date of the layoff, whichever occurs first.
- B. Each employee who is eligible for reemployment and who is also a veteran shall be offered an interview for any vacancy that meets all of the following conditions:
  1. The vacancy is for a regular position in the classified service.
  2. The vacant position is at the same pay grade or a lower pay grade than the pay grade at which the individual was paid at the time the individual received the notice of layoff.
  3. The employee meets the minimum requirements for the position.
- C. Each individual who meets all of the following conditions shall be eligible for the Kansas employee preference program, as provided in this subsection:
  1. The individual received a written layoff notice in accordance with K.A.R. 1-14-9.
  2. The individual's most recent performance rating before receiving the layoff notice was "satisfactory" or better.
  3. The individual was not suspended for more than five (5) days, demoted, or terminated as provided in K.S.A. 75-2949, and amendments thereto, in the twelve (12) months preceding the date on which the individual received the layoff notice.

- D. Each individual who receives a written layoff notice in accordance with K.A.R. 1-14-9 shall remain eligible for the Kansas employee preference program until any of the following events occurs:
1. The individual is appointed to a classified or unclassified position that is eligible for benefits.
  2. An eligible individual who was laid off or is scheduled to be laid off from a regular position that was not eligible for benefits chooses to use the Kansas employee preference for any position, whether or not that position is eligible for benefits, and the individual then is appointed to that position.
  3. A period of twelve (12) consecutive months has passed since the effective date of the layoff. Each individual who is eligible for the Kansas employee preference program, but has not been reemployed under any of the circumstances identified in paragraph (D)(1) or (D)(2) at the end of that 12-month period shall remain eligible for reemployment as provided in herein.
  4. The individual is suspended for more than five (5) days, demoted, or terminated as provided in K.S.A. 75-2949, and amendments thereto, at any time after the individual becomes eligible for the Kansas employee preference program, but before the date on which the individual is actually laid off.
- E. Each individual who is qualified to receive a Kansas employee preference shall be eligible to apply for any vacancy that meets the following conditions:
1. The vacancy is for a classified position that is eligible for benefits, except that when the individual who is eligible for the Kansas employee preference program was laid off from or has received a layoff notice for a regular position that is not eligible for benefits, the vacancy may be for any regular position in the classified service, whether or not the vacant position is eligible for benefits;
  2. the vacant position is at the same pay grade or a lower pay grade than the pay grade at which the individual was paid at the time the individual received the layoff notice; and
  3. the vacant position to be filled is one for which a notice of vacancy will be posted in accordance with the provisions of K.A.R. 1-6-2, including an internal vacancy.
- F. Upon receiving an application for the vacant position from an individual who is eligible for a Kansas employee preference, the appointing authority shall offer the position to the individual if the individual meets the minimum requirements for the position, subject to the following requirements:
- a. If only one individual who is eligible for a Kansas employee preference applies for the position and is determined to meet the minimum requirements for the position, the appointing authority shall schedule an interview with the individual to provide the appointing authority with an opportunity to assess the employee's ability to successfully perform the duties and responsibilities of the position and to provide the individual with an opportunity to determine whether the position is of interest to the individual
  - b. Following the interview, the appointing authority shall offer the position to the individual, unless the director determines that the individual

cannot successfully perform the duties and responsibilities of the position under K.A.R. 1-6-23(b)(4)(C).

- c. The individual who is offered the position as provided in this paragraph shall inform the appointing authority whether the individual accepts or rejects the offer within two business days of the date on which the position is offered.
2. If more than one individual who is eligible for a Kansas employee preference applies for the position and meets the minimum requirements for the position, the appointing authority shall apply additional, job-related selection criteria in accordance with K.A.R. 1-6-21 in considering the application of each of these individuals, subject to the following conditions and requirements:
    - (i) The appointing authority shall not be required to interview more than seven individuals, except that each individual who is a veteran shall be offered an opportunity for an interview.
    - (ii) After considering the additional, job-related selection criteria, the appointing authority shall offer the position to one of these individuals, except that the appointing authority shall not be required to offer the position to any individual who the director determines cannot successfully perform the duties and responsibilities of the position under K.A.R. 1-6-23(b)(4)(C).
    - (iii) Any individual who is a veteran shall be offered the position if that individual is determined to be equally qualified after applying the additional, job-related selection criteria.
    - (iv) The individual who is offered the position as provided in this paragraph shall inform the appointing authority whether the individual accepts or rejects the offer within two business days of the date on which the position is offered.
  3. If the appointing authority submits written documentation to the director and, based on the documentation, the director determines in writing that there is a clear indication that an individual who is eligible for the Kansas employee preference could not, after minimal training or a reasonable amount of experience on the job, successfully perform the duties and responsibilities of the position, the appointing authority shall not be required to offer the position to that individual.

G. For purposes of this article, "veteran" means any individual who is eligible for a veteran's preference under the provisions of K.S.A. 75-2955, and amendments thereto.

## **Section 7. Furlough**

A. Furlough is defined as placing an employee in a temporary non-duty, non-pay status because of the lack of funds. An intermittent furlough is a furlough action in

which the non-duty, non-pay status occurs discontinuously over a period of time (e.g. one work day per month for a six month period) rather than consecutively.

- B. The Union shall be provided thirty (30) days advanced notice of any furlough plan initiated by the Employer or Governor. Within seven (7) days of this notice, upon the Union's request, the parties shall meet and confer on the furlough plan, and issues related to implementation of the plan.
- C. Furloughs shall not adversely affect the Employer's contribution to an employee's health insurance premium, an employee's health insurance premium contributions and service anniversary date, nor shall leave earnings be prorated as a result of the furlough.
- D. Inability to reach a mutual agreement on a furlough plan within seven (7) days of the Union's request to meet and confer shall trigger impasse resolution in accordance with Article 10, Section 3, unless the Employer or the Governor withdraws the furlough plan.

## **ARTICLE 15 PERFORMANCE EVALUATION**

### **Section 1. Evaluation Period**

Classified employees shall be evaluated at least annually.

### **Section 2. Application of Evaluation Criteria**

- A. The evaluation criteria (performance expectations) for employees shall be job and outcome related and shall be specific, attainable, relevant and fully consistent with an employee's duties, responsibilities and grade as described in his/her job description. Supervisors must be able to identify the achievements necessary to achieve the meets expectations rating level, and any other rating level above meets expectations where such rating is an integral component of employee pay, at the outset of the rating period.
- B. Evaluations will be applied fairly, objectively and equitably. The Employer shall take into account equipment and resource problems, lack of training, frequent interruptions, and other matters outside of an employee's control when evaluating performance. Preapproved time away from the job including sick leave, personal days, annual leave and authorized duty time for union representational purposes and other authorized activities will not be considered negatively in the performance evaluation. Evaluations shall fully take into account such approved absences in a measure of timeliness and quantity of work.
- C. Employees shall be made aware within twenty-one (21) calendar days from the date of discovery, unless facts and circumstances exist which require a longer period of time, of any adverse information that may be used on evaluations (including client/patient/inmate/customer complaints) and shall be provided an opportunity to offer a rebuttal. Any adverse information used during the evaluation must be validated by the immediate supervisor. As used in this subsection validation means documentation or

corroboration of the adverse information. Nothing herein shall relieve the obligation of the Employer to comply with Article 13, Section 3.

### **Section 3. Rating Official**

An employee's immediate supervisor or, if the immediate supervisor has not supervised the employee for at least ninety (90) days, another qualified person with significant knowledge of the employee's performance shall provide the evaluation and such ratings may not be reduced by another rater who does not have significant knowledge of the employee's performance.

Evaluations shall be completed not later than fourteen (14) days from the end of the evaluation period and shall be dated the actual date of receipt by the employee. An employee shall be provided a copy of the evaluation at the time he/she is asked to sign receipt. The Employer shall not set a quota or pre-determined distribution of ratings.

### **Section 4. Appeals**

**A. Right to Appeal:** An Employee may appeal any evaluation that is lower than the highest possible rating by submitting a written request to appeal to the Appointing Authority within seven (7) calendar days of the Employee's receipt of the evaluation.

**B. Option for Changes by Appointing Authority:** Within seven (7) calendar days following receipt of the employee's written notice of appeal, the appointing authority shall have the option either to make any changes in the rating deemed appropriate or to appoint a committee of three persons to hear the appeal as provided in Section 4. C. below. If the Employee is not satisfied with changes made by the appointing authority, within seven (7) calendar days the employee may submit a written request to the appointing authority to proceed with the appointment of an appeal committee which appointment shall occur within seven (7) calendar days. If the appointing authority makes no changes, an appeal committee shall be appointed within seven (7) calendar days.

**C. Composition of Committee:** The Appointing Authority shall appoint a chairperson and four proposed committee members. Persons shall be appointed who will be fair and impartial in discharging their responsibilities. At least one proposed committee members shall be in a job classification represented by KOSE. Within three (3) business days of being notified of the names of proposed committee members the employee shall strike two of the four proposed committee members not designated as the chairperson and notify the appointing authority accordingly. Committee members shall be state employees who do not report to the rater involved.

**D. Representation:** An employee appealing an evaluation may request and shall receive KOSE representation during the appeal and appeal hearing.

**E. Committee Responsibilities:** The Appeal Committee shall meet and issue a written decision to the Appointing Authority within fourteen (14) days calendar days of



appointment. The Appeal Committee shall have full authority to change the evaluation. Within five (5) calendar days of receipt of the decision of the Committee, the Appointing Authority shall provide copies to the employee, the original rater and the KOSE representative, if utilized. All decisions of the Appeal Committee shall be final.

**F. Extension of Time Limits:** Time limits provided in this section may be extended by mutual agreement of the Employer and the Employee and/or Union.

### **Section 5. Supervisory Files**

Any incident reports and/or complaint or informal records appearing within a supervisory file which are not utilized in the evaluation process or disciplinary process within a twelve (12) month period from the date of the report may not be used as evidence against an employee in future disciplinary actions or performance evaluations. However, any incident reports and/or complaints which are cited specifically within a performance evaluation, disciplinary action, or otherwise appropriately placed within the official personnel file may be considered. For disciplinary purposes Article 13 of the MOA shall prevail.

### **Section 6. Pay**

Upon implementation of merit based pay, Employees must receive a performance rating of meets expectations, exceeds expectations or exceptional to be eligible to receive a pay increase for the appropriate period.

Market adjustments shall remain subject to Meet and Confer provided by Article 10 of the MOA.

## **ARTICLE 16 SAFETY and HEALTH**

### **Section 1. General Duty**

The Employer will provide safe, secure healthful working conditions for all employees. To the extent that the Kansas State Department of Labor has determined that the safety standards developed by the federal Occupational Safety and Health Administration are applicable to state employees and workplaces, the Employer agrees to follow such standards or other safety standards and guidelines determined by the State Department of Labor to be applicable. Allegations of violations or misapplication of safety standards may be reported to the employee's appointing authority or may be directed to the Industrial Safety and Health Section, Public Services Unit, of the Kansas Department of labor in accordance with K.S.A. 44-636. The Department of Labor may be reached at (785) 296-4386. In accordance with K.S.A. 44-636(f), an employee may not be discharged or in any manner discriminated against because such employee has filed a complaint or furnished information to the Department of Labor concerning conditions or situations alleged to be unsafe, hazardous, or otherwise not in accord with established safety standards. Employees shall comply with all safety rules and regulations established by the Employer.

### **Section 2. Imminent Risk**

If an employee is assigned tasks that are in conflict with the training he/she has been provided or are in conflict with the established policies and procedures of the agency, and the performance of those tasks would lead a reasonable person to conclude that doing so would subject the employee to imminent risk of serious injury or death, the employee, with no reasonable alternative, may in good

faith refuse to perform the assigned tasks. Under such circumstances the employee shall not be subject to disciplinary action. The assigned tasks must be of such a nature that performing them would subject the employee to imminent risk of death or serious injury. Staffing levels and the physical layout of workplaces, in and of themselves, are not considered as creating an imminent risk to an employee. Risks which can reasonably be expected to occur in a job classification shall not justify a refusal to work.

### **Section 3. Health and Safety Committees**

The parties shall establish health and safety committees in Departments in supplemental agreements in accordance with Article 10. If an employee has safety concerns said concerns will be submitted to the committees for response.

## **ARTICLE 17 PROMOTION AND RECRUITMENT**

### **Section 1. Policy**

Promotions shall be made in accordance with applicable regulations.

For each classification, required selection criteria shall be established by the Employer concerning education, experience, age, physical requirements, character, and other factors that are related to ability to perform satisfactorily the duties of positions in the class. Each required selection criterion shall relate directly to the duties of positions in the class. Optional selection criteria may be established by the director for one or more classes, which may be designated by the appointing authority as preferred or required for particular positions in the classes. Any agency may establish additional preferred selection criteria in order to determine the capacity and fitness of each eligible candidate in the pool to perform the position's specific duties. Optional and preferred selection criteria must be appropriate to the job classification and position and shall not be crafted to give advantage to any pre-determined preferred candidate.

Each applicant certified to the pool of eligible candidates shall meet the required selection criteria for that class and position at the time of hire. If the required selection criteria for a class or position includes a degree requirement, any applicant who is expected to complete the degree requirement by the end of the current academic term may be certified to the pool of eligible candidates for that class or position and extended a conditional offer of employment. The applicant shall meet the degree requirement at the time of hire.

### **Section 2. Vacancies**

For each classified vacancy in the bargaining unit to be filled, the Employer shall post a job requisition on the central notice of vacancy report administered by the Director of Personnel Services within the Department of Administration, except as provided below. Each job requisition posted on the central notice of vacancy report shall be open to applications from the following individuals: employees within the agency that is posting the job requisition; persons in the reemployment pool; and persons who separate from state service due to a permanent disability for which the employee receives disability benefits from either the Kansas public employee retirement system or the United States social security administration.

The Employer may then determine whether recruitment will also be conducted among the following additional groups of individuals: all state employees and persons eligible for reinstatement; or all state employees, persons eligible for reinstatement, and the general public. Notices of the vacancy shall be made available to all agency personnel offices. Appropriate and reasonable distribution within each agency shall be the responsibility of the appointing authority. The appointing authority, within guidelines established by the director, shall establish a period of time in which applications will be accepted for each vacancy.

Notices of a vacancy shall not be required under any of the following conditions:

1. A temporary position is to be filled.
2. A position is to be filled by demotion or transfer.
3. A position is to be reallocated.
4. A governor's trainee position is to be filled.
5. The Director of Personnel Services determines that, for good cause, a notice is not in the best interests of the State. KOSE shall be provided a copy of such determinations.

All other vacancies in bargaining unit positions shall be posted in designated locations and electronically for at least ten (10) days in advance of the vacancy closing date. If all bargaining unit employees have an employer furnished personal computer and access to electronic postings, the Employer may limit postings to an electronic means. Employees in the bargaining units covered by this Agreement who are officed in their homes and receive individual announcements of Employer vacancies in accordance with the terms of a memorandum of agreement in place prior to this Agreement shall continue to receive same. Such notification shall include the date of the closing, the location where the vacancy exists, the person to be contacted, the education, experience or other minimum requirements for the position and any preferred selection criteria relating to specific position related skills, knowledge, competencies or other selection measures in order to eliminate confusion or subjective judgments in the application and selection process to the greatest extent possible.

### **Section 3. Selection Instruments**

The Employer shall develop selection instruments to fairly assess the capacity and fitness of applicants to perform the duties of the position in which employment is sought. Selection instruments may include ratings of training, experience, and other qualifications, written tests, performance tests, interviews, physical fitness tests, assessment center evaluations, medical examinations, or other selection procedures. The Employer shall be responsible for developing, maintaining, and validating selection instruments. Promotional selection instruments shall include, in addition to any or all of the selection instruments identified above, consideration of the applicant's performance and length of service. For Kansas Department of Corrections correction officer positions employees will be given point five zero (.50) points for each ½ (one-half) year of uninterrupted service with the employer. (Leave Without Out Pay for union service in accordance with this MOA shall not be considered an interruption.) These points will be added to the total points earned on the promotional score sheet up to a maximum of ten (10) points, in addition to the points given for experience. Subject to policies established by the Employer to protect the confidentiality of information obtained by using the selection instruments, the document or records containing this information may be inspected by the applicant.

### **Section 4. Information**

An employee who applies for, and is not selected, for a position shall, upon request, be provided with information concerning how he/she can better prepare himself for selection in the future.

### **Section 5. Unclassified Positions**

The Employer shall convert classified positions to unclassified status only in accordance with applicable law. Positions that are currently unclassified may be converted to classified consistent with applicable law.

### **Section 6. Probationary Period**

If an employee does not successfully serve a promotion probationary period, he/she shall be demoted with permanent status in accordance with K.S.A. 75-2944.

### **Section 7. Vacancy Cancellation**

If the Employer decides not to fill a vacancy after posting an announcement, it shall, upon written request, notify the Union in writing of the reasons for the cancellation.

### **Section 8. Length of Service**

- A. "Length of Service" shall mean total time worked in the classified service or unclassified service. Length of service shall exclude:
  - 1. Time worked as a temporary employee;
  - 2. Time worked as a student employed by any board of regents institution;
  - 3. Time worked as a resident worker in any social and rehabilitation services institution or the Kansas commission of veteran's affairs;
  - 4. Time worked as an inmate.
- B. Leave without pay for union service in accordance with this MOA shall not be considered an interruption in length of service
- C. Time spent on military leave, time off while receiving workers compensation wage replacement for loss of work time, or FMLA shall be considered to be time worked in the classified or unclassified service. Time on leave while receiving workers compensation wage replacement for a disability attributable to state employment prior to May 1, 1983 shall not be credited.
- D. An employee's length of service accumulation shall be interrupted during any period of time the employee is on approved leave of absence without pay in excess of thirty (30) days and length of service accumulation shall resume when the employee properly returns to permanent employment at the end of such leave.
- E. Length of service for computing vacation and sick leave accrual rates and for layoff or compensation purposes shall not be recalculated using prior methods of calculation for employees who have no break in service. Length of service for an individual returning to state service shall be the amount of length of service on record as of December 17, 1995, or the date the individual left state service, whichever date is later.
- F. Ties in length of service shall be broken by using the last four (4) digits of the affected employees Social Security Numbers. The highest number shall be considered the

winning number and shall be given priority in determining length of service until the tie is broken.

## **ARTICLE 18 LEAVE**

### **Section 1. Holiday Leave**

- A. Employees shall have the following legal holidays with pay:
- New Year's Day
  - Martin Luther King Day
  - Memorial Day
  - Independence Day
  - Labor Day
  - Veteran's Day
  - Thanksgiving Day
  - Friday after Thanksgiving
  - Christmas Day
- Other days designated by the Governor as days on which state office buildings will be closed.
- B. In addition to the above holidays, each employee shall be granted one (1) discretionary holiday per year to use on the same basis as vacation leave. Such discretionary days may not be carried over from year to year.
- C. A full time employee who is required to work on a legal holiday or on an officially observed holiday shall be awarded holiday credit in addition to holiday compensation which means either pay or holiday compensatory time at a time-and-a-half rate for those hours worked on a holiday. Hours worked on a holiday by a non-exempt employee that result in overtime hours during that workweek or work period shall be compensated at the rate of one and one-half (1.5) the employee's regular rate of pay plus an additional half-time (1/2) rate for the resulting overtime hours.
- D. If a legal holiday (such as New Year's Day) is preceded or followed by an officially observed holiday, (for example, December 31 or January 2) each employee shall receive holiday credit for only one (1) of the two (2) days. Each full-time employee who is required to work on both the legal holiday and the officially observed holiday shall receive holiday compensation for only one (1) of the two (2) days. If the number of hours worked on the two (2) days is not the same, the employee shall receive holiday compensation for the day on which the employee worked the greater number of hours.
- E. Each non-exempt employee who works less than full-time on a regular schedule shall receive, for each holiday that falls on a day included in the employee's regular work schedule, holiday credit equal to the time the employee is regularly scheduled to work on that day. If the employee works on the holiday, the employee shall receive, in addition, holiday compensation for the hours worked on the holiday. Each non-exempt employee who works less than full-time on an irregular schedule, as determined by the appointing authority, shall not receive holiday credit but shall be paid at the time-and-a-half rate for

those hours worked on the holiday. An employee who is on leave without pay for any amount of time either on the last working day before a holiday or the first working day following the holiday shall not receive holiday credit, unless approved by the appointing authority. Any employee whose last day at work before separating from the state service is the day before a regularly schedule holiday shall not receive holiday credit for holiday.

F. When one of the legal or designated holidays falls on a Saturday, the preceding Friday shall be the officially observed holiday. When one of the legal or designated holidays falls on a Sunday, the following Monday shall be the officially observed holiday.

G. When one of the legally or officially observed holidays falls during an employee’s vacation, such holiday shall not be counted as a day of vacation.

**Section 2. Sick Leave Accumulation**

A. Each classified employee in a regular position shall be credited and accumulate sick leave as provided in this section. The maximum sick leave credit an employee may accrue in any payroll period shall be three point seven (3.7) hours. The amount of sick leave hours earned each payroll period and the increments in which sick leave may be used shall be determined as follows. Each non-exempt employee shall accrue sick leave in accordance with the following table.

**Sick Leave Table for Non-Exempt Employees**

<u>Hours in Pay Status Per Pay Period</u>	<u>Hours Earned Per Pay Period</u>
0-7	0.0
8-15	0.4
16-23	0.8
24-31	1.2
32-39	1.6
40-47	2.0
48-55	2.4
56-63	2.8
64-71	3.2
72-79	3.6
80-	3.7

Non-exempt employees shall use sick leave only in increments of a quarter of an hour (.25). Each exempt employee in a position that is eligible for benefits shall accrue sick leave in accordance with the following table.

**Sick Leave Table for Exempt Employees**

<u>Time in Pay Status Per Pay Period</u>	<u>Hours Earned Per Pay Period</u>
0	0.0
> 0	3.7

B. Sick leave earned by an employee during a pay period shall be credited to the employee, and available for use, on the first day of the following pay period. Exempt employees, including part-time exempt employees, shall use sick leave only in half-day or full-day increments.

- C. For the purpose of this article, hours in pay status shall include time off while receiving workers' compensation wage replacement for loss of work time.
- D. Each exempt employee in a position that is not eligible for benefits shall earn one-half the amount of leave set out in the sick leave table for exempt employees above.
- E. Each employee who is injured on the job and awarded workers compensation shall be granted use of accumulated leave upon the employee's request. The compensation for accumulated leave used each payroll period shall be that amount which, together with workers compensation, equals the regular pay for the employee. Unless the employee requests otherwise, vacation leave and compensatory time credits shall be used only after sick leave credits have been exhausted. The appointing authority shall not require the use of accumulated compensatory time credits in conjunction with workers compensation.
- F. Each former employee who had unused sick leave at the time of separation, and who returns to state service in a regular position within one (1) year shall have the unused sick leave returned to the employee's credit. This provision shall not apply to a person who has retired from state service.
- G. Payments for sick leave accumulated by the date of retirement, in accordance with K.S.A. 75-5517, and amendments thereto, shall be calculated using the hourly or salary rates set forth in K.A.R. 1-5-21.

**Section 3. Sick Leave Use**

Use of accumulated sick leave shall be granted to employees:

- A. for illness, medical appointment or disability of the employee;
- B. for illness, medical appointment or disability of a member of the employee's family meaning any person related to the employee by blood, marriage, or adoption and any minor residing in the employee's residence as a result of court proceedings pursuant to the Kansas code for care of children or the Kansas juvenile offenders code;
- C. following the birth of the employee's child; or
- D. when a child is placed with the employee for adoption.

An employee request to use accumulated vacation leave or other appropriate paid leave shall be approved if the employee's reason for the leave meets the above criteria.

**Section 4. Notification**

When an employee is unable to work due to circumstances provided in Section 3, the employee or employee's designee will call in accordance with established practice or policy. The employee or designee must call each day of absence until the employee notifies the Employer of a date he/she will return to duty. The Employer shall not ask the employee to provide information as to his/her diagnosis or condition except as permitted by applicable law. The Employer may inquire as to the anticipated length of absence. An employee shall not be required or responsible for identifying coverage for the employee's shift.

**Section 5. Sick Leave Policy**

The Employer will not unreasonably deny sick leave to employees when requested, or, for the purpose of inconveniencing the employee, require employees to provide evidence to establish that the employee is entitled to use of sick leave. It is also the policy of the State to take

corrective and/or disciplinary action for unauthorized use of sick leave and/or misuse of sick leave.

- A. An employee may be required to provide evidence necessary to establish that the employee is entitled to use sick leave under the circumstances of the request when:
  - 1. an employee has a consistent pattern of maintaining a zero or near zero sick leave balance without documentation of the need for such relatively high utilization; or
  - 2. when an employee has an unreasonable number of occurrences of undocumented sick leave within a given period; or
  - 3. when an employee establishes a pattern of utilizing sick leave in conjunction with days off or holidays, or
  - 4. when the Employer needs to determine whether Family Medical Leave Act obligations apply or are implicated; or
  - 5. when the Employer has a reasonable basis to believe the employee is misusing sick leave. "Misuse" is requesting the use of sick leave for purposes other than authorized by this MOA or law or regulation.
  
- B. Prior to imposing a prospective requirement on an employee that documentation will need to be submitted for sick leave requests to be approved, the Employer shall counsel the employee about the employee's use of sick leave including, as appropriate, that:
  - 1. future maintenance of a zero or near zero sick leave balance without documentation of the need for such relatively high utilization; or
  - 2. use of an unreasonable number of occurrences of undocumented sick leave within a given period, or
  - 3. a continued pattern of utilizing sick leave in conjunction with days off or holidays, or
  - 4. misusing sick leave

may trigger a requirement for documentation of future instances of sick leave. Any such requirement imposed shall not exceed six months in duration. At the conclusion of the six (6) months, the documentation requirement will be rescinded provided the employee has complied with the documentation requirement. In addition to appropriate discipline under Section 8, if the employee has not complied with the documentation requirement, the requirement shall be extended for six (6) months from the date of the lack of compliance with the requirement. In the event the employee is subsequently placed back on a documentation requirement, the length of the subsequent requirement may be up to twelve (12) months and may be extended for twelve (12) month periods from the date of lack of compliance.

An employee may grieve allegations of misapplication of this procedure.

### **Section 6. Chronic Conditions**

Employees (and/or dependent as defined in Section 3B) who suffer from chronic or recurring illnesses or disabling conditions that constitute Family Medical Leave Act qualifying conditions that do not require a visit to a health care provider each time the condition is manifested, shall not be required to provide documentation for each absence, provided that a general certification is provided. Such frequent absences shall also not be used as the basis for a documentation requirement. Unless the employee (and/or dependent) has a condition identified as a permanent disabling condition, the Employer may require documentation and follow-up reports from a



health care provider no more frequently than every six (6) months of the continued existence of the chronic condition.

**Section 7. Acceptable Documentation**

When an employee is required to provide evidence necessary to establish that the employee is entitled to use sick leave under the terms of this MOA, acceptable documentation shall consist of the following:

- A. A certificate from a health care provider that the employee (or member of the employee's immediate family) visited the office and/or the employee was unavailable for duty for the reasons specified in Section 3 on the day or dates of absence. For absences of four (4) hours or less, at the employee's option, he or she may submit a copy of the universal health insurance claim form or similar document from the health care provider's office showing the name of the provider, the date of treatment and address and telephone number of the provider.
- B. An employee who works less than his/her full work day due to having to provide care to the employee's child or member of his/her immediate family shall not be required to provide certification from an acceptable health care provider unless management has a basis to believe sick leave is being used for a purpose other than described in Section 8 of this article.

**Section 8. Disciplinary Actions**

The Employer may take appropriate disciplinary action against an employee for using sick leave for purposes other than described in this Agreement; for failing to properly notify the Employer of the use of sick leave; or for failure to provide appropriate documentation when properly required to do so.

The Employer may not penalize an employee with regard to scheduling, overtime eligibility, performance evaluations or other right or benefit for sick leave usage solely for being subject to documentation requirement. The procedure described in this Article, and disciplinary procedures, shall be the sole procedures available to address issues related to sick leave use and misuse. The misuse of sick leave may be addressed through disciplinary procedures and performance evaluations.

**Section 9. Vacation Leave**

- A. Each classified employee in a regular position shall be entitled to vacation with pay, which shall be earned and accumulated in accordance with this section. Vacation leave earned each payroll period, the maximum amount of vacation leave that may be accumulated, and the increments in which vacation leave may be used shall be determined as follows. Each nonexempt employee shall accrue vacation leave in accordance with the following table.

**Vacation Leave Table for Non-Exempt Employee's Hours  
Earned Per Pay Period Based on Length of Service**

<u>Hours in Pay Status Per Pay Period</u>	<u>Less than 5 Years</u>	<u>5 Years &amp; Less than 10 Years</u>	<u>10 Years &amp; Less than 15 Years</u>	<u>15 Years and Over</u>
---------------------------------------------------	------------------------------	---------------------------------------------	--------------------------------------------------	------------------------------

0-7	0.0	0.0	0.0	0.0
8-15	0.4	0.5	0.6	0.7
16-23	0.8	1.0	1.2	1.4
24-31	1.2	1.5	1.8	2.1
32-39	1.6	2.0	2.4	2.8
40-47	2.0	3.0	2.5	3.6
48-55	2.4	3.0	3.6	4.2
56-63	2.8	3.5	4.2	4.9
64-71	3.2	4.0	4.8	5.6
72-79	3.6	4.5	5.4	6.3
80-	3.7	4.7	5.6	6.5
Maximum Accumulation of Hours	144.0	176.0	208.0	240.0

B. Non-exempt employees shall use vacation leave only in increments of a quarter of an hour. For purposes of this section, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time. Each exempt employee in a position that is eligible for benefits shall accrue vacation leave in accordance with following table.

**Vacation Leave Table for Exempt Employee’s Hours  
Earned Per Pay Period Based on Length of Service**

<u>Time in Pay Status Per Period</u>	<u>Less than 5 Years</u>	<u>10 Years and Less than 15 Years</u>	<u>10 Years and Less than 15 Years</u>	<u>15 Years and Over</u>
0	0.0	0.0	0.0	0.0
>0	3.7	4.7	5.6	6.5
Maximum Accumulation of hours	144.0	176.0	208.0	240.0

C. Exempt employees, including part-time exempt employees, shall use vacation leave only in either half-day or full-day increments. For purposes of this regulation, hours in pay status shall include time off while receiving workers compensation wage replacement for loss of work time. Each exempt employee in a position that is not eligible for benefits shall earn one-half the amount of leave set out in the vacation leave table for exempt employees hours earned per pay period based on the employee's length of service set out above.

- D. 1. At the end of the last payroll period paid in each fiscal year, up to forty 40 hours of any accrued vacation leave that exceeds an employee's maximum accumulation of hours shall be converted to sick leave. After this conversion, all remaining vacation leave over the maximum accumulation of hours shall be forfeited at the end of the last payroll period paid in that fiscal year.
2. In the event an employee believes the combination of accrued vacation leave combined with vacation leave that will be accrued prior to the end of the fiscal year will result in an employee exceeding his/her maximum accumulation of hours, the employee may submit a proposed vacation schedule to the supervisor by no later than January 1, and the supervisor shall respond to the proposal within fourteen (14) days. If operational needs preclude the employee's use of requested vacation leave and the employer is unable to reschedule the leave resulting in the employee exceeding the employee's maximum accumulation of hours, the employee will be granted paid time off equivalent to the requested leave that could not be taken. The paid time off shall be utilized by the end of the calendar year.
- E. If an employee terminates from the service, and if at the time of termination, the employee has more than the maximum accumulation of vacation leave permitted, the employee shall not be paid for any vacation leave in excess of the maximum accumulation to which that employee is entitled.
- F. Increased rates of vacation leave earnings based on length of service shall be calculated in accordance with K.A.R. 1-2-46.
- G. The appointing authority shall not be arbitrary in approving or rejecting vacation leave requests. The appointing authority shall not disapprove request of vacation time off so that for all practical purposes the employee is deprived of vacation rights.
- H. Vacation leave earned by an employee during a pay period shall be available for use on the first day of the following pay period subject to the restrictions established herein, if the employee resigns or is otherwise separated from the service, any vacation leave earned in the pay period in which the separation occurs shall be credited to the employee, and payment for that leave shall be made to the employee as provided in K.A.R. 1-9-13.
- I. If a holiday on which state offices are closed occurs during an employee's vacation, the holiday hours shall not be charged against the employee's vacation leave.
- J. If an employee, or a member of the employee's family as defined in K.A.R. 1-9-5(e)(2), becomes ill while the employee is taking vacation leave and, for all intents and purposes, the employee is deprived of all or a significant portion of the vacation due to the illness, the appointing authority, upon request of the employee, may charge to sick leave some or all of the time the employee or family member was ill during the vacation. For purposes of this subsection, "illness" shall include any of the reasons for sick leave identified in K.A.R. 1-9-5(e)(1).

## **Section 10 Funeral Leave**

- A. Upon request, employees shall be granted funeral leave with pay in the event of the death of a close relative or a domestic partner. Domestic partners share a personal relationship and common domestic life but are neither joined by marriage or a civil union. Such leave shall in no case exceed six (6) working days. The employee's relationship to the deceased and necessary travel time shall be among the factors considered in determining whether to grant funeral or death leave, and if so, the amount of leave to be granted.
- B. Employees may request to use other accumulated leave to provide additional days off if needed. Such requests shall be considered on an individualized basis and shall not be unreasonably denied.

**Section 11. Jury Duty and Other Required Appearances Before a Court or other Public Body**

- A. Each employee in a regular position, shall be granted leave with pay by their appointing authority for required jury duty; or in order to comply with a subpoena as a witness before the civil service board, the Kansas commission on civil rights, the United States equal employment opportunity commission, or a court.
- B. Employees are not entitled to leave with pay in circumstances where the employee is called as a witness on the employee's own behalf in an action in which the employee is a party in interest.
- C. Leave with pay may be granted to any employee for an appearance before a court, a legislative committee, or other public body, if the Employer considers the granting of leave with pay to be in the best interest of the state.
- D. When an employee travels in a state vehicle for a required appearance before a court, or a legislative committee, or other public body, the employee shall turn over to the state any mileage expenses payments received.
- E. Each employee who is granted leave and who receives pay or fees for a required appearance, other than jury duty, shall turn over to the state the pay or fees in excess of fifty dollars (\$50.00). The employee may retain any amount paid to the employee for expenses in traveling to and from the place of the jury duty or required appearance, except as provided in paragraph D.

**Section 12. Transfer of Leave Credits**

- A. When an employee is appointed to a position in a different state agency, all types of leave for which the employee has a balance at the time of the appointment, except for compensatory time credits and holiday compensatory time credits, shall be transferred with the employee.
- B. All accumulated compensatory time and holiday compensatory time shall be paid by the agency from which the employee is leaving at the time the employee leaves that agency. The accumulated compensatory time and holiday compensatory time shall be paid as a lump sum addition to the employee's last paycheck from that agency as provided in K.A.R. 1-9-13. However, upon request, an employee may transfer accumulated

compensatory time and holiday compensatory time if approved by both the agency from which the employee is leaving and the agency to which the employee is going.

### **Section 13. Shared Leave**

- A. Each employee in a classified, regular position or in an unclassified position that is eligible for benefits may be eligible to receive or donate shared leave as provided in this article.
- B. Shared leave may be granted to an employee if the employee or a family member is experiencing a serious, extreme or life-threatening illness, injury, impairment or physical or mental condition which has caused, or is likely to cause, the employee to take leave without pay or terminate employment; and the illness, injury, impairment or condition keeps the employee from performing regular work duties.
- C. To be eligible to receive shared leave, an employee must have exhausted all paid leave available for use including vacation leave, sick leave, compensatory time, holiday compensatory time and the employee's discretionary holiday and have six months of continuous service.
- D. An employee shall be eligible to donate vacation leave or sick leave to another employee if the donation of vacation leave does not cause the accumulated leave balances of the donating employee to be less than 80 hours for vacation leave and not less than four hundred and eighty (480) hours of sick leave, unless the employee donates vacation or sick leave at the time of separation from state service. If the employee is retiring from state service and receiving compensation for sick leave upon retirement, the donated sick leave consists only of the accumulated sick leave in excess of the applicable minimum accumulation amount required for eligibility for a sick leave payout in accordance with K.S.A. 75-5517, and amendments thereto.
- E. When requesting shared leave the employee shall be required by the employer to provide, and at any time during the use of shared leave, the employee may be required by the employer to provide, a physician's statement or other medical evidence necessary to establish that the illness, injury, impairment or physical or mental condition of the employee or family member is serious, extreme or life threatening and keeps the employee from performing regular work duties. If such evidence is not provided, the employer may deny or terminate the shared leave. Shared leave may be denied if it is determined by the employer that the requesting employee has a documented history of leave abuse. Any employee receiving worker's compensation or who has submitted an application to the Division of Workers Compensation for the illness, injury, impairment or physical or mental condition that is the basis of the shared leave request shall not be eligible to receive shared leave.
- F. No employee shall be coerced, threatened, intimidated, or financially induced into donating, or not donating, leave for purposes of the shared leave program.
- G. Shared leave may be used only for the duration of the condition for which it was approved and collected. The maximum number of hours of shared leave that may be used

by an employee shall be the total hours that the employee would regularly be scheduled to work during a six-(6) month period. No employee shall be eligible to use shared leave after meeting the eligibility requirements for disability benefits under the Kansas Public Employees Retirement System or the federal Social Security laws. Employees shall use shared leave in accordance with their regular work schedules. Exempt employees shall use shared leave only in half-day or full-day increments. Shared leave may be applied retroactively for a maximum of two (2) pay periods preceding the date the employee signed the shared leave request form.

- H. When an employee is granted shared leave due to his or her illness or injury, the maximum duration of the shared leave shall be six (6) months from the date the employee began using the shared leave. After six (6) months, if the employee does not meet the conditions for long-term disability payments, shared leave may be extended for up to an additional six (6) months.
- I. When the shared leave is granted due to the illness or injury of a family member, the maximum duration of the shared leave shall be twelve (12) months from the date the employee began using the shared leave.
- J. The employee shall no longer be eligible to receive shared leave for the particular occurrence if the illness, injury, impairment or condition of the employee or the employee's family member improves so that it is no longer serious, extreme or life threatening and the employee is no longer prevented from performing regular work duties; if the employee terminates or retires; or the employee returns to work and works the employee's regular work schedule for at least twenty (20) continuous working days.
- K. Any unused portion of the shared leave shall be prorated among all donating employees based on the original amount and type of donated leave and returned to those employees within two pay periods of the date on which it is determined that the employee receiving the donated leave is no longer eligible for shared leave, except that shared leave shall not be returned to donating employees in increments of less than one full hour or to any person who has left state service.
- L. Shared leave shall be paid according to the receiving employee's regular rate of pay by the receiving employee's agency. The rate of pay of the donating employee shall not be used in figuring the amount of shared leave the requesting employee receives. Shared leave shall be donated in full-hour increments.
- M. An employee may appeal in writing the shared leave committee's denial of an employee's request for shared leave to the Appointing Authority. The Appointing Authority or designee may, at the request of the employee, meet with the employee and his or her KOSE representative and then issue a written decision. The appointing authority may approve the employee's request for shared leave regardless of the determination of the shared leave committee.
- N. Timelines

- a. Agencies shall submit applications for shared leave to the shared leave committee upon receipt from the employee of information necessary to complete the application, and shall notify the employee upon submission that the application has been submitted and when the shared leave committee will review the application, which shall be no later than fourteen (14) days from the date of submission.
- b. Decisions of the committee will be issued in writing to agencies the day the decision is made. Agencies shall notify affected employees in writing within two (2) days of being notified of the decision.
- c. Appeals to the Appointing Authority shall be made within seven (7) days of receipt of the committee's decision.
- d. The Appointing Authority shall issue a decision within fourteen (14) days of receipt of an appeal.

#### **Section 14. Leave Without Pay**

- A. An employee may request and may be granted leave of absence without pay for any good and sufficient reason such as illness or disability including pregnancy, childbirth, miscarriage, abortion and recovery there from, adoption, initial placement of a foster child in the employee's home, or to care for a family member who has a serious health condition.
- B. The provisions of this article shall be applied in a manner consistent with the Family and Medical Leave Act of 1993.
- C. Leave of absence without pay shall not exceed sixty (60) calendar days, extendible or renewable to a maximum of six (6) months for a new hire in a regular position without permanent status. For permanent employees a leave of absence shall not exceed one (1) year. Any employee currently without permanent status as a result of promotion or reinstatement may be granted leave without pay under the same conditions as an 41 employee with permanent status, if the employee had permanent status in the class in which the employee was employed immediately prior to the promotion or reinstatement.
- D. Upon return to work at the expiration of an authorized leave without pay or upon notice by the employer that the leave without pay has been terminated, the employee shall be returned to a position in the same class as the position which the employee held at the time the leave was granted, or in another class in the same pay grade for which the employee meets the qualifications.
- E. If the interests of the service make it necessary, the appointing authority may terminate a leave of absence without pay by giving written notice to the employee at least two weeks prior to the termination date. With the approval of the appointing authority, an employee may return from leave on an earlier date than originally scheduled.

- F. When an employee returns at the expiration of an approved leave without pay or upon notice by the appointing authority that a leave without pay has been terminated, the employee shall be returned to a position in the same class as the position which the employee held at the time the leave was granted, or in another class in the same pay grade for which the employee meets the qualifications.
- G. Failure to return to work at the expiration of an authorized leave of absence, or upon notice by the appointing authority that a leave has been terminated, shall be deemed a resignation. Such resignation shall be reported by the appointing authority to the director of personnel services in the manner provided by the director. Before terminating an employee for failure to return from leave, the appointing authority shall make a reasonable effort to contact the employee, and a summary of the steps taken to try to contact the employee shall be submitted to the director of personnel services with the resignation.
- H. As used in this regulation, the term "family member" shall have the meaning set out in K.A.R. 1-9-5(e)(2).

### **Section 15. Aggravated Battery Job Injury Leave**

- A. Any classified or unclassified employee who sustains a qualifying job injury, shall be eligible for job injury leave in accordance with this section. A qualifying job injury means an injury which renders the employee unable to perform regular job duties and which arises out of and in the course of employment with the state and was sustained as a result of a shooting, stabbing or aggravated battery as defined in K.S.A. 21-3414, by another against the employee; was sustained as a result of a confrontation with a patient or client in a mental health or mental retardation facility or ward wherein the client either inflicts great bodily harm, causes disfigurement, or causes bodily harm with a deadly weapon or in any manner whereby great bodily harm, disfigurement, dismemberment, or death can be inflicted; or for a law enforcement officer was sustained while in fresh pursuit of a person or while operating under the provisions of K.S.A. 8-1506. Qualifying job injuries shall not include injuries sustained as a result of the intentional actions of a co-worker. Job injury leave shall not exceed six total months away from work.
- B. While an employee is on an approved job injury leave pursuant to this section, the employing state agency shall continue to pay the employee's regular compensation. If the employee is awarded worker's compensation, the state agency shall pay the employee compensation in an amount which, together with worker's compensation pay, equals the regular pay of the employee. The employee shall not be required to use accrued sick leave or vacation leave. The employee shall continue to accrue sick and vacation leave as long as the employee remains in pay status. Nothing herein shall be construed as providing voluntary or gratuitous compensation payments in addition to temporary total disability compensation payments pursuant to the worker's compensation laws.
- C. The appointing authority may require an employee on approved job injury leave pursuant to this section to return to full or limited duty if the employee is physically able to perform the duty as determined by a physician selected by the appointing authority or selected by a representative of the state self-insurance fund. However, any limited duty



allowed shall not, in combination with time away from work on job injury leave, exceed the total six months allowed for job injury leave. If the employee remains unable to return to full duty, the appointing authority shall take such action as deemed to be in the best interest of the state.

- D. When an employee is on approved job injury leave pursuant to this section, the appointing authority may require the employee to be examined by a physician selected by the appointing authority to determine the capability of the employee to return to full or limited duty.
- E. Employees on approved job injury leave shall be prohibited from being gainfully employed by any other employer.
- F. In accordance with K.A.R. 1-9-22(g), the Employer may grant leave provided for by this section in other justifiable circumstances. The failure to extend leave in circumstances not provided for in this Section shall not be grievable.

**Section 16. Other Paid Leave**

The Employer may authorize leave with pay to an employee to participate in activities where the good of the State is involved.

**Section 17. Military Leave**

Military leave shall be granted to employees in accordance with Kansas Administrative Regulations 1-9-7a and 1-9-7b and the Employer agrees to comply with USERRA.

**ARTICLE 19  
PERSONNEL FILES**

**Section 1.** The employer shall maintain an official personnel record for each employee in the personnel office as provided in Kansas Administrative Regulations 1-13-1a. The official personnel record of each state employee shall include the following information:

- 1. Records showing the employee's hires, transfers, promotions, demotions, separations, changes of pay rates, leaves of absence and any other changes in employment status;
- 2. performance reviews, letters of reprimand and letters of rebuttal, and letters of commendation;
- 3. the application for each position for which the employee was hired;
- 4. letters of disciplinary action; and
- 5. any other information related to state service that the appointing authority deems appropriate.

The records may be maintained in paper or electronic form or by using other appropriate media. The official personnel record of each state employee shall be transferred with the employee if the employee is appointed to a position in another agency.

**Section 2.** Any employee may also request that material pertinent to his or her employment be placed into his or her official personnel record.

**Section 3.** Any current or former employee, or any other individual or an organization if authorized in writing by the current or former employee, may review that employee's official personnel record upon written request to the appointing authority. The appointing authority shall place in the employee's personnel record a copy of the written request and the written authorization from the employee. The review shall be consistent with the conditions established by the appointing authority and at a time and place mutually convenient to the parties. Copies shall be made upon request, and, at the option of the Employer, the cost shall be paid by the individual or their authorized representative at the rate of no more than five cents (\$.05) per page unless another amount is required by statute.

**Section 4.** If an employee's review of his or her official personnel record reveals any documents included under K.A.R 1-13-1a(5) that the employee feels are detrimental to his or her record, the employee shall have the right to place into his or her official record written comments or explanations concerning these documents or the employee may file written notification and the documents may, at the employer's discretion, be removed from the employee's file.

**Section 5.** Employees will be provided with either a copy of any document of a disciplinary or adverse nature placed into his or her personnel record, or the employee will be sent the original document with a copy to the official personnel record.

**Section 6.** When documents are considered for placement into the official personnel record are based in part upon information provided by an individual who will not agree to be 44 identified, the information must be otherwise documented by a named individual, or the material will not be placed in the official personnel record.

**Section 7.** Except as otherwise provided in this section, and the Kansas Open Records Act, K.S.A. 45-215 et seq., and amendments thereto, information contained in each state employee's official personnel record shall not be open to public inspection.

**Section 8.** On any inquiry, the appointing authority shall disclose the following information concerning any current or former employee:

1. the name of the employee;
2. the employee's current job title;
3. the employee's current or prior pay;
4. the employee's length of employment with the state;
5. the name of the employing agency; and
6. the length of time the employee has served in the employee's current position.

**Section 9.** Upon inquiry of a prospective employer, the Division of Personnel Services, or the agency maintaining the personnel records, may disclose the following additional information concerning an employee:

1. the name of employing state agency;
2. the length of time the employee has served in the employee's current job position;
3. any letters of commendation; and
4. any documents regarding personal conduct and work performance to the extent consistent with K.S.A. 44-1 17.

Each appointing authority responding to job-related reference and performance questions from another state agency shall answer the questions in good faith. If a prospective employer, other than another state agency, requests information about a current or former state employee as part of a reference check, the response of the appointing authority shall be consistent with the requirements of K.S.A. 44-119a, and amendments thereto.

**Section 10.** When appropriate personnel from one of the following agencies, in carrying forth their official duties, establish a need for information contained in an employee's official personnel record, the appropriate personnel from these agencies shall be permitted to access the other employee's personnel record:

1. the Kansas department of administration;
2. the Kansas attorney general's office, including the Kansas bureau of investigation;
3. the federal equal employment opportunity commission and Kansas human rights commission;
4. the Kansas civil service board;
5. legislative post audit;
6. the agency employing that employee; and
7. employees of the Kansas department of social and rehabilitation services responsible for that agency's child support enforcement activities.

**Section 11.** Access to information in an employee's official personnel record shall also be permitted to individuals in the agency maintaining the personnel records carrying out their official duties.

**Section 12.** Upon request to the appointing authority in the agency maintaining the personnel records or the Director of the Division of Personnel Services, the head of any state agency or a designee, having a proper interest and an established need to review the personnel record of an employee in another state agency or the Division of Personnel Services, may review the employee's official personnel record, including applications for employment and performance reviews, whether the personnel record is maintained in a state agency or in the Division of Personnel Services.

**Section 13.** The official personnel record of any specifically named employee shall be made available for inspection in connection with litigation pursuant to the terms of an order entered by a judge of any federal, state or municipal court properly having jurisdiction over such litigation.

## **ARTICLE 20 OCCUPATIONAL INJURY AND ILLNESS**

### **Section 1. Employee Right**

Employee's have the right to file a claim for worker's compensation benefits for job related illness and injury. Upon receiving notice of injury, agencies must provide employees with written information to assist injured workers in obtaining compensation.. Employees may obtain additional information by contacting the Kansas Division of Workers Compensation at 1-800-332-0353

### **Section 2. Return to Work**

Employer Representatives must act consistently with medical restrictions ordered by the attending medical specialists authorized by the workers compensation program. The Employer shall release an employee from duty with or without charge to pay or leave as may be appropriate, for the purposes of intermittent absences due to medical treatment, rehabilitation and physical therapy stemming from a compensable on the job injury.

### **Section 3. Duties on Return to Work**

Consistent with the operational needs of the agency and to the extent feasible, employees who suffer on the job injuries and return to work shall be assigned duties consistent with any restrictions recommended by the employee's attending physician. The Employer shall not be obligated to create or make work that would not otherwise exist to enable an employee to return to work.

Both Management Rights and the No Strike/Lock Out clauses are moved to Article 4 and 5 respectively.

## **ARTICLE 21 SAVINGS CLAUSE**

Should any provision of this agreement be declared by the proper judicial authority to be unlawful, unenforceable, or not in accordance with applicable statutes, all other provisions of this agreement shall remain in full force and effect for the duration of this agreement. In addition, at the request of either party, the parties shall meet and confer on the replacement of the voided provision. Any provision of this agreement which is based upon any statute, whether federal or state, either directly or indirectly, shall be construed to conform to the statute upon which the provision is based; such construction is to apply as the statute is presently worded or as it may be subsequently amended or changed.

## **ARTICLE 22 CLOSING CLAUSE**

The parties agree that this document shall represent the complete Agreement between the employer and KOSE. The parties also acknowledge that during the meetings which resulted in this Agreement, each had the unlimited right and opportunity to make requests and proposals with respect to any subject or matter not removed by law from the meet and confer process and that the complete understandings and Agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the employer and KOSE, for the term of this Agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated to meet and confer with respect to any subject or matter not specifically referred to or covered in this Agreement.

## **ARTICLE 23 EROSION**

The employer retains the right to contract for services in order to maintain the efficiency and effectiveness of governmental operations. The employer shall not privatize bargaining unit work for the purpose of eroding the bargaining unit.

**ARTICLE 24**  
**DURATION**

Any provision of this Memorandum of Agreement (M.O.A. or Agreement) requiring legislative action to take effect shall be contingent on such legislative action. The parties agree to actively support the legislative action necessary to give this Agreement full effect. Except as otherwise provided herein, this Agreement shall become effective July 1, 2010 and remain in effect until June 30, 2013. This Agreement shall be automatically renewed from year to year thereafter unless either party provides written notification to the other by July 1 of the calendar year prior to expiration of its intent to terminate, modify or amend this M.O.A. If such notice is given, it shall contain a statement of Articles to be opened. If meet and confer is reopened under this paragraph, all provisions of this Memorandum of Agreement shall remain in full force and effect during any such re-opener.

## APPENDIX A

**Unit 1** - Agricultural Assistant, Airfield Electrician, Animal Science Technician I, Assistive Technology Specialist, Automotive Driver, Building System Technician, CAD Technician, Carpenter, Carpenter Senior, Clothing Specialist, Computer Operations Facility Technician, Conservation Worker, Cook, Cook Senior, Cosmetologist, Custodial Crew Leader, Custodial Specialist, Custodial Worker, Education Technician, Electrician, Electrician Senior, Electronic Control Center Technician, Electronics Technician, Electronics Technician Sr., Engineering Technician, Engineering Technician Senior, Engineering Technician Associate, Engineering Technician Specialist, Environmental Technician I, II, III and IV, Equipment Body Mechanic, Equipment Body Mechanic I, II and III, Equipment Mechanic, Equipment Mechanic Senior, Equipment Mechanic Senior, Equipment Operator, Equipment Operator Senior, Equipment Operator Specialist, Equipment Operator Trainee, Facility Custodian, Facility Maintenance Repair Technician, Facilities Specialist, Facilities Technician, Food Service Worker, General Maintenance and Repair Technician, General Maintenance and Repair Technician Sr., Graphic Designer, Graphic Designer Senior, Graphic Designer Specialist, Groundskeeper, Laboratory Technician I, II and III, Laundry Worker, Lock System Specialist, Lock System Specialist Senior, Machinist, Material Handler, Mechanic, Mechanic I, II and III, Mechanic's Helper, Mechanical Maintenance Inspector, Mechanic Senior, Media Production Technician, Museum Exhibits Technician, Network Service Technician I, II and III, Painter, Painter Senior, Petroleum Industry Regulatory Technician I, II and III, Photographer, Photographer Senior, Plumber, Plumber Senior, Power Plant Operator, Power Plant Operator Senior, Printing Service Coordinator, Printer Specialist, Range Maintenance Specialist, Refrigeration and Air Conditioning Service Technician, Refrigeration and Air Conditioning Service Technician Senior, Radiologic Technologist I, Security Systems Senior Technician, Service Assistant, Sign Shop Worker, Small Project Construction Designer, Storekeeper, Storekeeper Senior, Storekeeper Specialist, Tax Examiner Senior, Technology Support Consultant I, II and III, Technology Support Technician I and II, Training Technician, Trades Trainee, Transportation & Site Safety Specialist, Utility Worker, Welder

**Unit 2** - Accounting Specialist, Administrative Assistant, Administrative Officer, Administrative Specialist, Chief Document Clerk, Collector, Collector Senior, Communications Specialist I and II, Computer Operator I and II, Instructional Assistant, Legal Assistant, Library Assistant, Library Assistant I, II and III, Museum Assistant, Network Control Technician I, II and III, Office Assistant, Office Specialist, Order Sales Representative, Revenue Customer Representative, Revenue Customer Representative Senior, Revenue Customer Representative Specialist, Sales Representative, Senior Administrative Assistant, Senior Administrative Specialist, Tourist Counselor, Teacher Aide, Secretary I, Secretary II, Secretary II/ Lobbyist Coordinator, Secretary III

**Unit 3** - Activity Specialist I and II, Activity Therapy Technician, Certified Nurse Aide I and II, Dental Assistant, Developmental Disability Specialist, Health Care Assistant, Health Care Technician II, Human Services Assistant, Human Services Specialist, Licensed Practical Nurse, Licensed Practical Nurse Senior, Licensed Mental Health Technician

MHDD Technician, MHDD Technician Trainee, Medical Technologist, Nutritionist, Nutritionist Senior, Rehabilitation Instructor, Rehabilitation Support Worker I

**Unit 4** - Activity Coordinator, Chemical Dependency Counselor, Clinical Chaplain, Client Training Supervisor, Counselor, Dormitory Teacher, Education Specialist, Foster Grandparent (Federal), Foster Grandparent (State), Human Services Consultant, Human Services Counselor, Psychiatrist, Psychologist I, II and III, Social Worker, Social Worker-academic, Social Worker Specialist, Teacher

**Unit 6** - Capitol Area Guard I, Corrections Counselor I and II, Corrections Officer I (A), Corrections Officer I (B), Corrections Officer II, Corrections Specialist I, Resource Protection Officer, Safety And Security Officer I

**Unit 16** - Enforcement Agent, Fire Investigator, Securities Special Investigator I, Securities Special Investigator II, Special Agent – KBI, Senior Special Agent - KBI

## **APPENDIX B DEFINITIONS**

**Emergency:** Emergency is defined as an occurrence or occasion outside the control of either party and requiring immediate action.

**Union Representative:** Union representative is defined as a person designated and authorized by KOSE to act on its behalf. KOSE agrees to provide a list of authorized union representatives to the Director of Labor Relations. The State agrees that in the event a manager does not have a list which shows the name of an individual claiming they are a KOSE representative, the manager shall call the Director of Labor Relations or the KOSE office for verification.

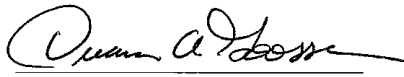
## **APPENDIX C PRESIDENTIAL LEAVE**

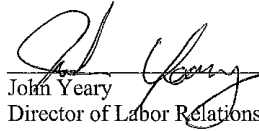
In addition to leaves of absence without pay granted to bargaining unit employees by the Employer for up to ninety days in accordance with Article 3, Section 12, upon request the Employer shall grant unpaid leaves of absence to employees serving as the duly elected or serving president of the Union and its State affiliates: KAPE/AFT-KS and AFSCME Council 72, for no longer than the duration of his/her term of office, unless the absences of the employees would adversely affect the operations of the employee's department or agency or cause a substantial hardship on the operating efficiency of the employing unit. Upon expiration of the respective term, the employees shall be reinstated to the positions and jobs previously held with all accrued time and benefits. It is understood by the parties that vacation and sick leave balances for the employees will not continue to accrue while the employee is on such leaves of absence.



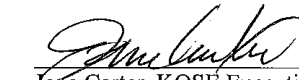
FOR THE STATE OF KANSAS

  
Mark Parkinson  
Governor State of Kansas

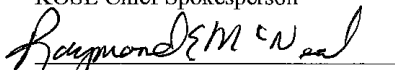
  
Duane Goossen  
Secretary, Kansas Department of Administration


  
John Yeary  
Director of Labor Relations

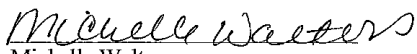
FOR THE KANSAS ORGANIZATION OF STATE EMPLOYEES

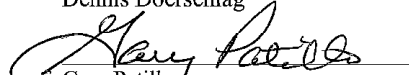
  
Jane Carter, KOSE Executive Director  
KOSE Chief Spokesperson

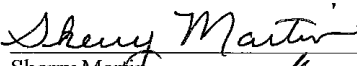
  
Lisa Ochs, KOSE President

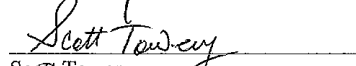
  
Raymond McNeal

  
Dennis Doerschlag

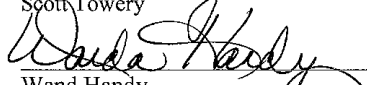
  
Michelle Walters

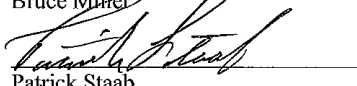
  
Gary Patillo

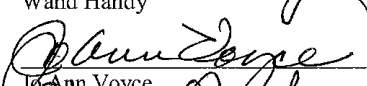
  
Sherry Martin

  
Scott Towery

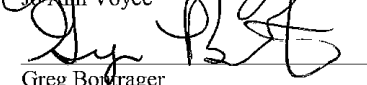
  
Bruce Miller

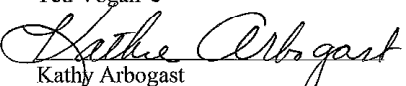
  
Wand Handy

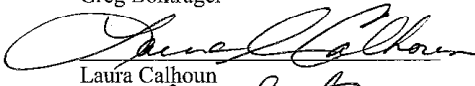
  
Patrick Staab

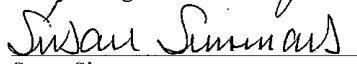
  
Jo Ann Voyce

  
Ted Vogan

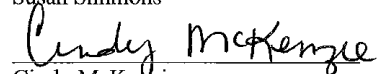
  
Greg Bomtrager

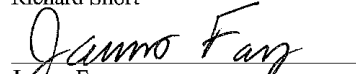
  
Kathy Arbogast

  
Laura Calhoun

  
Susan Simmons

  
Richard Short

  
Cindy McKenzie

  
James Fay