



# Number, Cost, And Policies Related To Non-Merit Employees

Research Report No. 433

Program Review And Investigations Committee

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# **Number, Cost, And Policies Related To Non-Merit Employees**

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### **Research Report No. 433**

## **Legislative Research Commission**

Frankfort, Kentucky

[lrc.ky.gov](http://lrc.ky.gov)

Adopted June 12, 2014



## **Abstract**

*Non-merit* is not defined in statute. In general, under KRS Chapter 18A a non-merit executive branch employee is equivalent to an “unclassified” employee. In the judicial branch, non-merit is equivalent to “non-tenured.” Executive branch employees may be non-merit because they are covered by exemptions to the merit system listed in KRS 18A.115 or employed by entities enabled by statute to create their own personnel systems or particular group of employees who are non-merit. There were nearly 3,500 executive branch non-merit employees in 2012. The estimated cost in 2012 was \$238 million. The Court of Justice operates its own personnel administration system; its employees are not covered by the KRS 18A system. As of December 2012, there were 675 non-merit employees in the judicial branch, with total annual compensation of nearly \$36 million. Among six states selected for comparison, three have what are considered traditional merit systems, as does Kentucky. One state has an at-will system. Two states have components of merit and at-will systems. The report has three recommendations to revise relevant statutes and regulations.



## Foreword

Program Review staff thank staff of the Kentucky Court of Justice, especially Jason L. McGinnis, Joy Kiser, and Kim Redmon; the Personnel Cabinet, especially Crystal Staley, Dinah Bevington, and Mary Elizabeth Harrod; and the Department of Education, especially Hiren Desai and Rebecca Ogden, for providing or explaining the primary data used for this report. The assistance of Personnel Board Executive Director Mark A. Sipek; Kevin Brown and Amy Peabody of the Department of Education; Commissioner Rodney Brewer and Angela L. Parker of the State Police; Rachelle Wilkins of the Governor's Office of Policy and Management; and Gina Carey of the Office of the Prosecutors Advisory Council is also appreciated.

Among Legislative Research Commission staff, Katherine Halloran and Stuart Weatherford of the Office of Budget Review compiled the data that were instrumental to the report. Frank Willey of the Office of Budget Review provided valuable assistance.

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June 2014



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## Summary

At its December 13, 2012, meeting, the Program Review and Investigations Committee voted to initiate a study of non-merit state employees, focusing on their number and cost.

Kentucky statute does not define “non-merit” employee. In general, a non-merit executive branch employee is equivalent to an “unclassified” employee. A merit employee is equivalent to a “classified” employee. In the judicial branch, non-merit is equivalent to “non-tenured” and merit is equivalent to “tenured.”

### **Executive Branch Non-Merit Employees**

The key distinction is that a non-merit employee serves at the pleasure of the appointing agency or authority, whereas a merit employee may only be dismissed for cause following a process defined in statutes and regulations. Hiring, promotion, and penalization are strictly defined for merit employees. These processes for non-merit employees are primarily at the discretion of the agency.

KRS 18A.005 to 18A.200 govern Kentucky’s executive branch merit system. Other statutes under KRS Chapter 18A apply to non-merit employees or to all state employees. Merit employees are often referred to as “chapter employees” or “18A employees”; non-merit employees are often called “non-chapter” employees. This is confusing because both types of employees are covered by “chapter” KRS 18A. Some statutes within KRS 18A.005 to 18A.200 refer to “this chapter,” meaning all of KRS Chapter 18A, instead of being clear that they refer only to KRS 18A.005 to 18A.200, which are supposed to be the merit system statutes. A similar situation occurs with some of the regulations in KAR Title 101. Although they are nominally separated into classified (merit) and unclassified (non-merit) chapters, some of the classified chapters contain references to non-merit employees.

### **Recommendation 1**

**The General Assembly may wish to consider revising the KRS Chapter 18A statutes to clearly separate the body of law that governs only the merit system from the body of law that governs the non-merit system.**

### **Recommendation 2**

**The General Assembly may wish to consider revising the KRS Chapter 18A statutes so that statutes referring to “this chapter” that refer only to KRS 18A.005 to 18A.200 reflect that meaning.**

### **Recommendation 3**

**The Personnel Cabinet may wish to consider revising KAR Title 101 to clearly separate the body of law that governs only the merit system from the body of law that governs the non-merit system.**

Some executive branch employees are non-merit because they are covered by exemptions to the merit system listed in KRS 18A.115. Examples from the lengthy list are elected officials, employees of the governor and lieutenant governor, members of boards and commissions, cabinet secretaries, commissioners, office heads, and some principal assistants and deputies. The list includes employees of specified entities, such as Kentucky State Police troopers and county and commonwealth's attorneys and their appointees.

The Personnel Cabinet uses the term *non-chapter* for recordkeeping purposes to help track the number of non-merit employees, so this study uses the term to describe categories of non-merit employees. Non-chapter entities are those enabled by statute to create their own personnel systems or to create a particular group of employees who are exempt from KRS 18A.005 to KRS 18A.200 and are therefore non-merit.

Some entities are statutorily authorized to have separate personnel systems. They decide for themselves which employees are merit and which are non-merit. For example, KRS 16.050 enables the Department of Kentucky State Police to set up its own personnel board. Kentucky State Police troopers are non-merit employees per KRS 18A.115(1)(r), but the state police department considers them merit employees under its personnel system. The non-chapter entity with the most non-merit employees is the Unified Prosecutorial System, which consists of the commonwealth's attorneys, county attorneys, and their employees.

Some entities with non-chapter employees do not have separate personnel systems of their own. They are, however, statutorily authorized to create specific groups of employees who are exempt from KRS 18A.005 to 18A.200 and who are thus non-merit. The Department of Military Affairs is an example. Some non-chapter employees are non-chapter because their appointing authority's enabling statute specifically says the appointing authority's employees are exempt from KRS 18A.005 to KRS 18A.200. Examples are specified employees of the State Fair Board.

The Personnel Cabinet provided the data on the number of non-merit executive branch employees used in this report. These data were compiled from the Uniform Personnel and Payroll System (UPPS) and the Kentucky Human Resource Information System (KHRIS). Because of differences in the systems, the number of non-merit employees in 2011 and 2012, which were compiled from KHRIS, are not directly comparable to the numbers in earlier years, which were compiled from UPPS.

As defined in this report, there were nearly 3,500 executive branch non-merit employees in 2012, a 2.3 percent decrease from 2011. The number of non-merit employees per year in the executive branch was relatively stable from 2003 to 2010, ranging from just more than 3,500 to just less than 4,000. Nearly 40 percent were non-merit under KRS 18A.115. Approximately 30 percent each were non-merit through another KRS chapter or as employees of the Unified Prosecutorial System. The Personnel Cabinet did not provide salary data on executive branch non-merit employees, so Program Review staff estimated the cost using data compiled by LRC Budget Review staff from the Info Advantage eMars Data Warehouse. The warehouse data are also based on information from the UPPS and KHRIS systems, so the same caveat about comparisons across the systems applies. Data were available only for the years 2006 to 2012 and do not include salary amounts for part-time hourly employees. The estimates of costs in the report are

based on adding 45 percent for estimated benefits for full-time employees and part-time salaried employees working at least 100 hours per month.

Based on these data, the estimated cost for executive branch non-merit employees in 2012 was \$238 million. The annual cost in 2010 was lower than in 2006 in nominal dollars and even lower when adjusted for inflation. From 2011 to 2012, the cost increased by 1 percent in nominal dollars but declined by 1 percent when adjusted for inflation.

### **Judicial Branch Non-Merit Employees**

Employees of the judicial branch are not covered by the KRS Chapter 18A system. The Kentucky Court of Justice operates its own personnel administration system, which has the force and effect of law. Employees are hired for tenured or non-tenured positions. Non-tenured employees are equivalent to non-merit; tenured employees are equivalent to merit. A non-tenured employee serves “at will” and does not have the right to appeal disciplinary actions.

As of December 31, 2012, there were 675 non-merit employees in the judicial branch. More than one-half of the employees were in two job titles: judicial secretary and chief deputy I. The number of non-merit employees in the judicial branch has ranged from 601 in 2004 to 692 in 2009.

Total compensation for these employees was nearly \$35.7 million in 2012. Adjusted for inflation, this represents a 16 percent increase from 2003, due to increased costs of retirement and health and life insurance benefits. Adjusted for inflation, total salaries were lower in 2012 than in 2003.

### **Changes In Governing Statutes Regarding Non-Merit Employees**

The two main changes to Kentucky law in recent years regarding non-merit employees are laws enacted in the 2010 Regular Session related to reporting requirements for the Personnel Cabinet and the probationary period for certain non-merit employees who are appointed to positions in the merit system.

HB 149 requires the secretary of the Personnel Cabinet to establish and maintain a list of designated filled non-merit positions, with specified information to be provided for each position. The secretary is to provide a copy of the list every 6 months to the governor and the Legislative Research Commission.

HB 149 also requires that designated categories of non-merit employees who are appointed to a position in the merit system serve an initial probationary period of 12 months instead of the usual 6 months for new merit position hires.

House Bill 387 requires the secretary of the Personnel Cabinet to report quarterly to the Legislative Research Commission the number of employees in each program, cabinet, and department of the executive branch of state government. The report must include the number of all full-time, non-merit employees employed pursuant to KRS Chapters 16, 18A, and 151B, listed by cabinet and department.

**Non-Merit Employees In Other States**

Program Review staff examined personnel systems in six other states. Merit systems in other states include both merit and non-merit positions. Three of the states have what are considered traditional merit systems, as does Kentucky. One state has an at-will system. Two states have components of merit and at-will systems. In two of the three merit states, there are two types of non-merit employees, with one type having some of the protections provided to merit employees.

## Number, Cost, And Policies Related To Non-Merit Employees

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This report covers non-merit employees of the executive and judicial branches.

At its December 13, 2012, meeting, the Program Review and Investigations Committee voted to initiate a study of non-merit state employees, focusing on the number and cost. This resulting report covers employees of the executive and judicial branches, with sections on defining non-merit employees, their numbers and cost over time, governing statutes and regulations, and personnel systems in selected other states.

### Major Conclusions

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The report has seven major conclusions.

This report has seven major conclusions.

- Kentucky statute does not define “non-merit” employee. In general, a non-merit executive branch employee is equivalent to an “unclassified” employee. A merit employee is equivalent to a “classified” employee. The body of law considered “the merit system” is KRS 18A.005 to KRS 18A.200. In the judicial branch, non-merit is equivalent to “non-tenured” and merit is equivalent to “tenured.”
- Some executive branch employees are non-merit because they are covered by the exemptions to the merit system listed in KRS 18A.115. In practice, some of these employees are treated as merit under their entity’s separate personnel system. Some entities are enabled by statute to create their own personnel systems or to create a particular group of employees who are exempt from KRS 18A.005 to KRS 18A.200 and are therefore non-merit.
- As non-merit is defined in this report, there were nearly 3,500 executive branch non-merit employees in 2012, a slight decrease from 2011. Nearly one-third of these employees worked for the Unified Prosecutorial System, which consists of the commonwealth’s attorneys, county attorneys, and their employees in each county. The estimated cost for executive branch non-merit employees in 2012 was \$238 million, a 1 percent increase from 2011 in nominal dollars and a 1 percent decrease when adjusted for inflation.

- The Kentucky Court of Justice operates its own personnel administration system, which has the force and effect of law. Its employees are not covered by the KRS Chapter 18A system.
- As of December 2012, there were 675 non-merit employees in the judicial branch, nearly the same as in 2011. Total compensation was nearly \$36 million in 2012. Adjusted for inflation, this represents a 16 percent increase from 10 years earlier, resulting from increased costs of retirement and health and life insurance benefits.
- The two main changes to Kentucky law in recent years regarding non-merit employees are related to Personnel Cabinet reporting requirements and increasing from 6 to 12 months the probationary period for certain non-merit employees who are appointed to positions in the merit system.
- Three of six states selected for comparison have what are considered traditional merit systems, as does Kentucky. One state has an at-will system. Two states have components of merit and at-will systems. In two of the three merit states, there are two types of non-merit employees, with one type having some of the protections provided to merit employees.

### **Designation Of Executive Branch Non-Merit Employees**

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Once an employee in an executive branch merit position completes the initial probationary period, the employee attains status and is entitled to merit system rights. An unclassified employee is an individual serving in a non-merit position. Rules and procedures are different than for merit employees.

Once an employee in a merit position completes the initial probationary period, the employee attains status and is entitled to merit system rights. Rules and procedures are different for non-merit and merit employees.

According to KRS 18A.010(1), which establishes the executive branch merit system,

The general purpose of KRS 18A.005 to 18A.200 is to establish for the state a system of personnel administration based on merit principles and scientific methods governing the recruitment, examination, appointment, promotion, transfer, lay-off, removal, discipline, and welfare of its classified employees and other incidents of state employment. All appointments and promotions to positions in the state classified service shall be made solely on the basis of merit and fitness ....

The key distinction is that a non-merit employee serves at the pleasure of his or her appointing agency or authority, whereas a merit employee can only be dismissed for cause following a process defined in statutes and regulations. The hiring, promotion, and penalization processes are strictly defined for merit employees; for non-merit employees they are left largely to the discretion of the agency. Allowable political activities are not defined for non-merit employees; they are spelled out in specific terms for merit employees. A comparison of selected areas of law and policy pertaining to non-merit and merit employees who fall under the direct supervision of the Kentucky Personnel Cabinet is provided in Appendix B.

KRS 18A.005 to 18A.200 is the body of law that governs Kentucky's executive branch merit system. Other statutes under KRS Chapter 18A apply to non-merit employees or to all state employees. In colloquial terms, merit employees are often referred to as "chapter employees" or "18A employees," while non-merit employees are often called "non-chapter" employees. This terminology can be confusing because both types of employees are covered by the "chapter" KRS 18A. Here are some examples:

- KRS 18A.005 is the definitions statute for the entire Chapter 18A. It contains definitions for all state government employees, not just merit employees.
- KRS 18A.115 lists positions in the state service that are not governed by the merit system statutes 18A.005 to 18A.200.
- KRS 18A.030(2)(j) says the secretary of the Kentucky Personnel Cabinet must provide personnel services to non-merit employees in agreement with the agencies involved not otherwise provided for in KRS 18A.005 to 18A.200.

Further, some statutes within KRS 18A.005 to 18A.200 refer to "this chapter," meaning all of KRS Chapter 18A, instead of being clear that they refer only to KRS 18A.005 to 18A.200, which are supposed to be the merit system statutes. For example, KRS 18A.005(9) says "'Classified service' includes all the employment subject to the terms of this chapter." A clearer statement would be that "classified service" (meaning merit system service) includes all the employment subject to the terms of KRS 18A.005 to 18A.200.

The above also holds true for some of the regulations in KAR Title 101. Even though they are nominally separated into classified (merit) and unclassified (non-merit) chapters, some of the classified regulations contain references to non-merit employees.

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**Recommendations 1, 2, and 3****Recommendation 1**

**The General Assembly may wish to consider revising the KRS Chapter 18A statutes to clearly separate the body of law that governs only the merit system from the body of law that governs the non-merit system.**

**Recommendation 2**

**The General Assembly may wish to consider revising the KRS Chapter 18A statutes so that statutes referring to “this chapter” that refer only to KRS 18A.005 to 18A.200 reflect that meaning.**

**Recommendation 3**

**The Personnel Cabinet may wish to consider revising KAR Title 101 to clearly separate the body of law that governs only the merit system from the body of law that governs the non-merit system.**

**KRS 18A.115 Employees**

Some executive branch employees are non-merit because they are covered by the exemptions to the merit system listed in KRS 18A.115.

Non-chapter entities are those enabled by statute to create their own personnel systems or to create a particular group of employees who are exempt from KRS 18A.005 to KRS 18A.200 and are therefore non-merit.

Some executive branch employees are non-merit because they are covered by the exemptions to the merit system listed in KRS 18A.115. Examples from the lengthy list are elected officials, employees of the governor and lieutenant governor, members of boards and commissions, cabinet secretaries, commissioners, office heads, and some principal assistants and deputies. The list includes employees of specified entities, such as Kentucky State Police troopers, county and commonwealth’s attorneys and their appointees, and employees of Kentucky Educational Television who have been determined to be exempt from the merit service by the Kentucky Authority for Educational Television.

When an entity under the supervision of the Personnel Cabinet wishes to create a non-merit position, it submits the request to the Personnel Cabinet. The Classification and Compensation Branch of the cabinet’s Department of Human Resources Administration determines that

- the entity has the authority to create such a position and
- the position meets an exemption to the merit system under KRS 18A.115.<sup>1</sup>

The secretary of the Personnel Cabinet sends a request for approval to the governor (KRS 18A.155).

## Non-Chapter Employees

The Personnel Cabinet uses the term *non-chapter* for recordkeeping purposes to track the number of non-merit employees, so this study uses the term to describe categories of non-merit employees. Non-chapter entities are those enabled by statute to create their own personnel systems or to create a particular group of employees who are exempt from KRS 18A.005 to KRS 18A.200 and are therefore non-merit.

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Some entities are statutorily authorized to have separate personnel systems. They decide for themselves which employees are merit and which are non-merit. Examples include the State Police and the Unified Prosecutorial System.

**Non-Chapter Personnel System Entities.** Some entities are statutorily authorized to have separate personnel systems. They decide for themselves which employees are merit and which are non-merit. For example, KRS 16.050 enables the Department of Kentucky State Police to set up its own personnel board. State Police troopers are non-merit employees per KRS 18A.115(1)(r), but the department considers them merit employees under its personnel system. Thus, state police troopers are non-chapter employees and merit employees simultaneously.

The non-chapter entity with the most non-merit employees is the Unified Prosecutorial System (UPS), which consists of commonwealth's attorneys, county attorneys, and their employees. UPS staff are non-merit, serving at the pleasure of the elected commonwealth's attorney or elected county attorney for whom they work. The elected official hires and dismisses staff and sets personnel policy for staff.

UPS, created in KRS 15.700, is administered by the Prosecutors Advisory Council. The attorney general chairs the council; other members serve at the pleasure of the governor. The council and its staff administer the UPS budget and provide personnel, payroll and fringe benefit services for UPS employees.<sup>2</sup> Each commonwealth's attorney is authorized to employ at least one victim advocate (KRS 15.760(6)). Other staff positions in the offices of the commonwealth's and county attorneys are established with the consent of the council.

Within the Education and Workforce Development Cabinet, the Department of Education and the Education Professional Standards Board overseeing Kentucky school employees are authorized to create their own personnel systems. The statutes relevant to these employees are within KRS Chapters 156 and 161.<sup>a</sup>

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<sup>a</sup> Executive Order 2012-0737, effective October 16, 2012, reorganized the cabinet. The changes were codified effective June 25, 2013, and consisted of renumbering what were KRS Chapter 151B statutes as KRS Chapter 156 statutes.

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Some entities with non-chapter employees do not have separate personnel systems of their own. They are statutorily authorized to create specific groups of employees who are exempt from KRS 18A.005 to 18A.200 and who are thus non-merit. An example is the Department of Military Affairs.

**Non-Chapter Personnel Group Entities.** Some entities with non-chapter employees do not have separate personnel systems of their own. They are, however, statutorily authorized to create specific groups of employees who are exempt from KRS 18A.005 to 18A.200 and who are thus non-merit. For example, KRS 36.130 allows that the

adjutant general, by and with the advice and approval of the Governor, shall appoint the officers and other personnel necessary for the proper functioning of the Department of Military Affairs, fix their salaries and prescribe their duties.

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Some non-chapter employees are non-chapter because their appointing authority's enabling statute specifically says the appointing authority's employees are exempt from KRS 18A.005 to KRS 18A.200. Specified employees of the State Fair Board are examples.

**Non-Chapter Employees.** Some non-chapter employees are non-chapter because their appointing authority's enabling statute specifically says the appointing authority's employees are exempt from KRS 18A.005 to KRS 18A.200. Specified employees of the State Fair Board are examples. According to KRS 247.130(4), "The president and any persons employed under this section shall not be subject to the provisions of KRS Chapter 18A."

## **Number And Cost Of Non-Merit Executive Branch Employees**

### **Overview And Limitations Of Data Sources**

In this report, the counts of non-merit employees for the executive branch exclude board and commission members who are paid per diem and federally funded and grant-funded time-limited employees. Also excluded are employees in the Education and Workforce Cabinet and the Tourism, Arts and Heritage Cabinet who are identified as non-chapter, payroll only. Employees under KRS Chapters 151B and 161 are excluded for the years 2011 and 2012. See Appendix A for details.

The Kentucky Human Resource Information System (KHRIS) is the current state government human resource and payroll management system. Before the implementation of KHRIS, the Uniform Personnel and Payroll System (UPPS) served as the primary human resource management system, but there were other systems that were not integrated with UPPS. KHRIS incorporates what was in UPPS and adds other systems. When KHRIS became fully operational in April 2011, it replaced roughly 25 personnel and payroll systems.<sup>3</sup>

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Data provided by the Personnel Cabinet on the number of non-merit executive branch employees were compiled from the Uniform Personnel and Payroll System (UPPS) and the Kentucky Human Resource Information System (KHRIS). Because of differences in the systems, the number of non-merit employees in 2011 and 2012, compiled from KHRIS, are not directly comparable to the numbers for the years 2003 to 2010, compiled from UPPS.

The Personnel Cabinet provided the data on the number of non-merit executive branch employees used in this report. These data were compiled from UPPS and KHRIS. Because of differences in the systems, the number of non-merit employees in 2011 and 2012, which were compiled from KHRIS, are not directly comparable to the numbers in earlier years, which were compiled from UPPS.

Two main data-related issues affect the numbers used in this report. First, some of the employees counted as non-merit for the years 2003 to 2010 are likely to be merit employees. Specifically, it was not possible to identify which employees were under personnel systems authorized for the Education and Workforce Development Cabinet by KRS 151B and KRS 161. It is estimated that there were 600 to 700 such employees per year from 2006 to 2010.<sup>b</sup> Second, the data do not include information on non-merit employees not included in UPPS, which means that an unknown number of non-merit employees are not included in the counts for the years 2003 to 2010. The largest group of non-merit employees added to KHRIS in 2011 appears to be more than 500 employees of the Department of Military Affairs.

Because the number of non-merit employees added by KHRIS in 2011 appears similar to the number of merit employees who were previously counted as non-merit, the number of employees counted as non-merit does not change significantly from 2010 (the last year of the UPPS system) to 2011 (the first year of the KHRIS system). This consistency may be a coincidence; it does not mean the systems are directly comparable over time because it is unknown how many non-merit employees were not included in UPPS and thus not counted for the years 2003 to 2010.

### Number Of Employees

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There were nearly 3,500 executive branch non-merit employees in 2012, down 2.3 percent from 2011. The number of non-merit employees per year in the executive branch was relatively stable from 2003 to 2010, ranging from just more than 3,500 to just less than 4,000.

Keeping in mind the caveats related to the data sources, Table 1 indicates that there were nearly 3,500 executive branch non-merit employees in 2012, a 2.3 percent decrease from 2011.

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<sup>b</sup> As an alternative data source, Legislative Research Commission staff compiled data from the Info Advantage eMars Data Warehouse. The warehouse data are also based on information from the UPPS and KHRIS systems, but accessing the data in this way allowed for identification of KRS 151B and KRS 161 employees. The estimated number of such employees per year takes into account identification by the Department of Education of 66 KRS 151B and KRS 161 employees as of December 2012 who were considered non-merit. It was assumed that approximately this many were non-merit in earlier years.

The number of non-merit employees per year in the executive branch was relatively stable from 2003 to 2010, ranging from just more than 3,500 to just less than 4,000. The difference between the number of non-merit employees in 2003 and 2010 was just more than 100. The largest annual increase was 7 percent; the largest decrease was 5.9 percent.

**Table 1**  
**Non-Merit Executive Branch Employees**  
**2003 To 2012**

<b>Data Source</b>	<b>Year</b>	<b>Employees</b>	<b>Annual % Change</b>
Uniform Personnel and Payroll System	2003	3,519	
	2004	3,767	7.0%
	2005	3,941	4.6
	2006	3,878	-1.6
	2007	3,841	-1.0
	2008	3,696	-3.8
	2009	3,859	4.4
	2010	3,631	-5.9
Ky. Human Resource Information System	2011	3,527	
	2012	3,447	-2.3

Note: For each year, the number of employees is as of a specified date in the following January. For example, the number of employees shown for 2003 is as of January 1, 2004.

Source: Compiled by Program Review staff using data provided by the Personnel Cabinet.

In 2012, 38 percent of non-merit executive employees were non-merit under KRS 18A.115. Approximately 30 percent each were non-merit through another KRS chapter or as employees of the Unified Prosecutorial System.

Table 2 shows the number of executive branch employees in 2012 by major group based on how they were designated as non-merit. Approximately 38 percent were non-merit under KRS 18A.115. Approximately 30 percent each were non-merit through another KRS chapter or as employees of the Unified Prosecutorial System.

**Table 2**  
**Non-Merit Executive Branch Employees By Employee Group**  
**2012**

<b>Employee Group</b>	<b>Employees</b>	<b>% Of Total</b>
KRS 18A.115	1,322	38.3%
Non-chapter: Unified Prosecutorial System	1,112	32.3
Non-chapter: other	1,013	29.4
<b>Total</b>	<b>3,447</b>	<b>100.0%</b>

Note: The number of employees is as of January 1, 2013.

Source: Data provided by the Personnel Cabinet, Sept. 25, 2013.

Table 3 shows the number of non-merit executive branch employees by cabinet. More than one-half are in agencies defined as general government, which includes the Unified Prosecutorial System and Department of Military Affairs. Non-merit employees are spread among the other cabinets, with only three cabinets each having more than 5 percent of the total.

**Table 3**  
**Non-Merit Executive Branch Employees By Cabinet**  
**2012**

<b>Cabinet</b>	<b>Employees</b>	<b>% Of Total</b>
Health and Family Services	106	3.1%
Economic Development	25	0.7
Education and Workforce Development	268	7.8
Energy and Environment	151	4.4
Finance and Administration	147	4.3
<b>General Government</b>		
Department of Military Affairs	570	16.5
Unified Prosecutorial System	1,112	32.3
Other General Government	385	11.2
Justice and Public Safety	93	2.7
Labor	87	2.5
Personnel	28	0.8
Public Protection	78	2.3
Tourism, Arts and Heritage	191	5.5
Transportation	206	6.0
<b>Total</b>	<b>3,447</b>	<b>100.0%</b>

Note: The number of employees is as of January 1, 2013. Percentages shown do not add to 100.0% because of rounding.

Source: Compiled by Program Review Staff using data provided by the Personnel Cabinet.

## Overview Of Cost Data

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Costs of executive branch non-merit employees are approximate. Program Review staff estimated cost using data compiled by Legislative Research Commission Budget Review staff from the Info Advantage eMars Data Warehouse. These data are based on information from the UPPS and KHRIS systems. Data were available for 2006 to 2012 and do not include salary amounts for part-time hourly employees. The data indicate salaries only, not employee benefits. The estimates of costs in this report are based on adding 45 percent for estimated benefits for full-time employees and part-time salary employees working at least 100 hours per month.

The cost of non-merit employees for the executive branch excludes board and commission members who are paid per diem, federally funded and grant-funded time-limited employees, and part-time hourly employees. At most, there were just more than 100 part-time hourly employees per year. Also excluded are employees in the Education and Workforce Development Cabinet and the Tourism, Arts and Heritage Cabinet, identified as non-chapter, payroll only. Employees under KRS Chapters 151B and 161 are excluded for all years.

The Personnel Cabinet did not provide salary data on executive branch non-merit employees, so Program Review staff estimated the cost using data compiled by Legislative Research Commission Budget Review staff from the Info Advantage eMars Data Warehouse. The warehouse data are based on information from the UPPS and KHRIS systems, so the same caveat about comparisons across the systems applies. Data were available for 2006 to 2012 only. The data indicate salaries only, not employee benefits. The estimates of costs below are based on adding 45 percent for estimated benefits for full-time employees and part-time salaried employees working at least 100 hours per month.

## Cost Of Employees

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The approximate cost for executive branch non-merit employees in 2012 was \$238 million. The annual cost declined from 2006 to 2010 in nominal dollars, more so when adjusted for inflation.

Based on these data, the estimated cost for executive branch non-merit employees in 2012 was \$238 million. As shown in Table 4, the annual cost was lower in 2010 than in 2006 in nominal dollars, more so when adjusted for inflation. From 2011 to 2012, the cost increased by 1 percent in nominal dollars but declined by 1 percent when adjusted for inflation.

**Table 4**  
**Approximate Cost Of Executive Branch Non-Merit Employees**  
**2006 To 2012**

<b>Data Source</b>	<b>Year</b>	<b>Nominal Cost</b>	<b>% Change</b>	<b>Cost Adjusted For Inflation</b>	<b>% Change</b>
Uniform Personnel and Payroll System	2006	\$222,692,802		\$253,615,731	
	2007	219,605,706	-1.4%	243,173,851	-4.1%
	2008	220,327,021	0.3	234,951,496	-3.4
	2009	231,973,649	5.3	248,254,417	5.7
	2010	220,373,289	-5.0	232,033,903	-6.5
Ky. Human Resource Information System	2011	235,184,890		240,051,924	
	2012	237,661,019	1.1	237,661,019	-1.0

Note: Costs for 2006 to 2010 are for those employed as of a specified day in December of each year. For example, the cost for 2006 is for those employed as of December 21, 2006. For 2011, the cost is for those employed as of January 2, 2012. For 2012, the cost is for those employed as of January 2, 2013. Inflation adjustments are in 2012 dollars based on the Consumer Price Index for all urban consumers.

Source: Data from the Info Advantage eMars Data Warehouse, which were provided by the Legislative Research Commission’s Budget Review Office.

### Designation Of Judicial Branch Non-Merit Employees

Employees of the judicial branch are not covered by the KRS Chapter 18A system. The Court of Justice operates its own personnel administration system. Employees are hired for tenured or non-tenured positions. “Non-tenured employee” means an at-will employee who does not have the right to appeal disciplinary actions. For this report, non-tenured employees are defined as non-merit.

Employees of the judicial branch are not covered by the KRS Chapter 18A system. The Kentucky Court of Justice operates its own personnel administration system, which has the force and effect of law. Employees are hired for tenured or non-tenured positions. “Non-tenured employee” means an at-will employee who does not have the right to appeal disciplinary actions.<sup>4</sup> For this report, judicial non-tenured employees will be defined as non-merit. Judges are not included in the counts or costs.

Non-merit positions include

- judicial staff including secretaries, law clerks, and staff attorneys acting in the capacity of law clerks; family court case specialists hired on or after September 1, 2004; court administrators; and employees of the court administrator’s office;
- chief deputy clerks within the offices of circuit court clerk;
- principal administrative officials of the Supreme Court and the Court of Appeals, and special administrative assistants of the chief justice;
- principal administrative officials of the Administrative Office of the Courts (director, deputy director, general counsel, deputy general counsel, state law librarian, executive officers, managers, assistant managers, executive assistants, family

services administrator, family court liaison, and special assistants to the director);

- federally funded, time-limited positions;
- temporary employees;
- co-ops/interns; and
- other new positions as designated in writing by the chief justice or designee.<sup>5</sup>

Non-merit employees serve at the pleasure of and at the will of their appointing authority for an unspecified period of time. The appointing authority may terminate an employee’s employment for any reason or no reason, with or without notice, at any time.<sup>6</sup>

Non-merit employees do not serve a probationary period. They participate in the fringe benefit programs provided by law for state employees and officials for all departments and branches of Kentucky government.<sup>7</sup>

### Number And Cost Of Judicial Branch Non-Merit Employees

#### Number Of Employees

As of December 2012, there were 675 non-merit employees in the judicial branch. More than one-half of the employees were in two job titles: judicial secretary and chief deputy I. The number of non-merit employees peaked at 692 in 2009.

As of December 31, 2012, there were 675 non-merit employees in the judicial branch. As shown in Table 5, 75 percent of these employees were in five job titles. More than one-half of the employees were in two job titles: judicial secretary and chief deputy I.

**Table 5**  
**Judicial Branch Non-Merit Employees By Job Title**  
**2012**

<b>Job Title</b>	<b>Employees</b>	<b>% of Total</b>	<b>Cumulative %</b>
Judicial secretary	214	31.7%	31.7%
Chief deputy I	144	21.3	53.0
Law clerk–Circuit Court	63	9.3	62.4
Family Court case specialist	43	6.4	68.7
Legal assistant	42	6.2	75.0
Other positions	169	25.0	100.0%
<b>Total</b>	<b>675</b>	<b>100.0%</b>	

Note: Numbers of employees are as of December 31. Percentages shown do not add to 100.0 percent because of rounding.

Source: Compiled by Program Review staff using data provided by the Administrative Office of the Courts.

Table 6 indicates that the number of non-merit employees in the judicial branch has ranged from just more than 600 to just less than 700. The largest annual increase was from 2006 to 2007. Since 2007, the number of non-merit employees has been stable; the largest annual change was a decrease of less than 5 percent.

**Table 6**  
**Judicial Branch Non-Merit Employees**  
**2003 To 2012**

<b>Year</b>	<b>Employees</b>	<b>% Change</b>
2003	610	
2004	601	-1.5%
2005	630	4.8
2006	605	-4.0
2007	688	13.7
2008	687	-0.1
2009	692	0.7
2010	661	-4.5
2011	679	2.7
2012	675	-0.6

Note: Numbers of employees are as of Dec. 31 of each year.

Source: Compiled by Program Review staff using data provided by the Administrative Office of the Courts.

**Cost Of Employees**

Total compensation for judicial branch non-merit employees was nearly \$35.7 million in 2012. Adjusted for inflation, this represents a 16 percent increase from 2003, due to large increases in inflation-adjusted costs for retirement and insurance benefits.

The Administrative Office of the Courts (AOC) provided data on the costs of annual salary, and payments for Social Security and Medicare, retirement, and health and life insurance. Table 7 indicates that total compensation was nearly \$35.7 million in 2012. Adjusted for inflation, this represents a 16 percent increase from 2003. The largest annual increases were from 2004 to 2005 and from 2006 to 2007. In other years, annual change was an increase or decrease of less than 5 percent.

**Table 7**  
**Cost Of Judicial Branch Non-Merit Employees**  
**2003 To 2012**

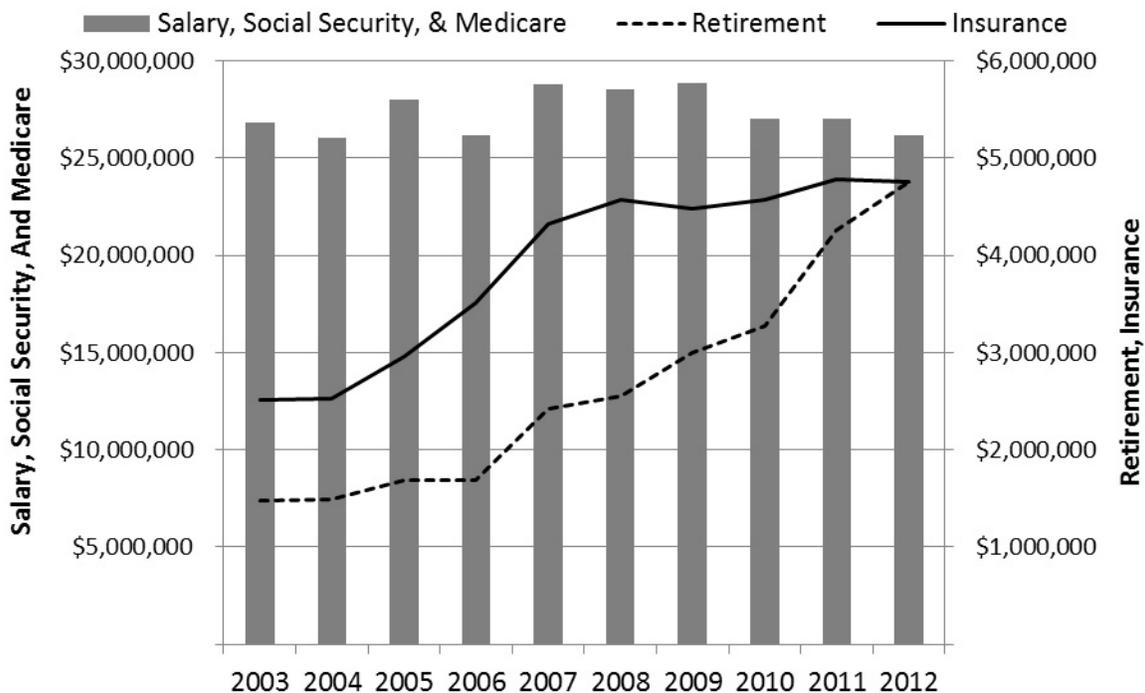
<b>Year</b>	<b>Nominal Cost</b>	<b>% Change</b>	<b>Adjusted For Inflation</b>	<b>% Change</b>
2003	\$24,689,187		\$30,807,007	
2004	24,750,116	0.2%	30,081,938	-2.4%
2005	27,776,075	12.2	32,653,457	8.5
2006	27,548,631	-0.8	31,374,010	-3.9
2007	32,091,425	16.5	35,535,485	13.3
2008	33,432,831	4.2	35,651,976	0.3
2009	33,919,104	1.5	36,299,672	1.8
2010	33,111,865	-2.4	34,863,914	-4.0
2011	35,346,489	6.7	36,077,966	3.5
2012	35,668,278	0.9	35,668,278	-1.1

Note: Inflation adjustments are in 2012 dollars based on the Consumer Price Index for all urban consumers.

Source: Compiled by Program Review staff using data provided by the Administrative Office of the Courts.

Because of the detail of the data provided by AOC, it is possible to show trends for different types of compensation. Figure A indicates the annual change from 2003 to 2012 in inflation-adjusted total costs. Combined salary and Social Security and Medicare payments, which are represented by the gray bars, were just less than \$25 million in 2012, a decrease from 2003. Retirement and insurance benefits, represented by the black lines, were each \$4.75 million in 2012. The lines, which are plotted against the right axis, show that health and life insurance costs nearly doubled from 2003 to 2012 after adjusting for inflation. Retirement benefits in 2012 were more than three times as high as in 2003.

**Figure A**  
**Inflation-Adjusted Cost Of Judicial Branch**  
**Non-Merit Employees By Type Of Compensation**  
**2003 To 2012**



Note: Inflation adjustments are in 2012 dollars based on the Consumer Price Index for all urban consumers.  
 Source: Compiled by Program Review staff using data provided by the Administrative Office of the Courts.

## Changes In Governing Statutes Regarding Non-Merit Employees

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The two main changes to Kentucky law in recent years regarding non-merit employees are related to reporting requirements for the Personnel Cabinet and the probationary period for certain non-merit employees who are appointed to positions in the merit system.

The two main changes to Kentucky law in recent years regarding non-merit employees are related to reporting requirements for the Personnel Cabinet and the probationary period for certain non-merit employees who are appointed to positions in the merit system.

### Personnel Cabinet Reporting Requirements

HB 149 and HB 387, enacted in the 2010 Regular Session, made several changes to Kentucky law regarding non-merit employees.

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HB 149, enacted in 2010, requires the Secretary of the Kentucky Personnel Cabinet to establish and maintain a list of specified filled non-merit positions, with specified information to be provided for each position.

**List Of Certain Filled Non-Merit Positions.** HB 149 requires the secretary of the Personnel Cabinet to establish and maintain a list of all the following filled non-merit positions:

- Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director and deputy executive; director of the Education Professional Standards Board
- One principal assistant or deputy for each of the above persons
- One additional principal assistant or deputy as may be necessary for making and carrying out policy for each of the persons listed in the first bullet
- Such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person listed in the first bullet
- Division directors subject to the provisions of KRS 18A.170. That statute requires the personnel board to determine whether a given division director's duties include policy-making duties. Only division directors with policy-making duties would be non-merit and included in this list.
- One private secretary for each person listed in the first through fourth bullets above
- Superintendents of state mental institutions, including heads of mental retardation centers, and penal and correctional institutions as referred to in KRS 196.180(2)
- Chief district engineers and the state highway engineer
- Executive director of the Commonwealth Office of Technology
- Employees of the Kentucky Commission on Community Volunteerism and Service (HB 149 Sec. 3(6), 2010 RS; codified at KRS 18A.030 (6))

For each filled non-merit position, the list must include the name of the agency to which the position is assigned, the statutory

authority for the non-merit status of the position, the title of the position, the pay grade of the position, the annual salary of the employee in the position, and the work county of the employee in the position.

The secretary of the Personnel Cabinet must provide a copy of the list every 6 months to the governor and the Legislative Research Commission. The list shall indicate positions that have been added since the previous submission (HB 149 Sec. 3(7), 2010 RS; codified at KRS 18A.030 (7)).

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House Bill 387, enacted in 2010, requires the secretary of the Personnel Cabinet to report quarterly to the Legislative Research Commission the number of employees in each program, cabinet, and department of the executive branch of state government. The report must include the number of all full-time non-merit employees employed pursuant to KRS Chapters 16, 18A, and 151B, listed by cabinet and department.

**Number Of Non-Merit Employees By Cabinet And Department.** HB 387 requires the secretary of the Personnel Cabinet to report quarterly to the Legislative Research Commission the number of employees in each program, cabinet, and department of the executive branch of state government. The report must include the number of all full-time, non-merit employees employed pursuant to KRS Chapters 16, 18A, and 151B, listed by cabinet and department. This requirement is codified at KRS 61.392(1).

### **Probationary Period Changed For Certain Non-Merit Employees Moving To Merit System**

Following the investigation into Governor Fletcher's administration's hiring and firing of state government employees, the 2006 *Blue Ribbon Task Force for Merit System Final Report* recommended that employees who move from a non-merit position to a merit position late in an administration to get special merit protections be limited by statute by increasing their probation period to 1 year from the 6 months usually required.<sup>8</sup>

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HB 149 requires that specified categories of non-merit employees who are appointed to a position in the merit system must serve an initial probationary period of 12 months instead of the usual 6 months for new merit position hires.

HB 149 requires that the following categories of non-merit employees who are appointed to a position in the merit system must serve an initial probationary period of 12 months instead of the usual 6 months for new merit position hires:

- Officers and employees on the staff of the governor, the lieutenant governor, the Office of the Secretary of the Governor's Cabinet, and the Office of Program Administration
- Cabinet secretaries, commissioners, office heads, and the administrative heads of all boards and commissions, including the executive director of Kentucky Educational Television and the executive director and deputy executive director of the Education Professional Standards Board

- Employees of Kentucky Educational Television who have been determined to be exempt from the merit service by the Kentucky Authority for Educational Television
- One principal assistant or deputy for each person in the second bullet of this list
- One additional principal assistant or deputy as may be necessary for making and carrying out policy for each person in the second bullet of this list
- Such other principal assistants, deputies, or other major assistants as may be necessary for making and carrying out policy for each person in the second bullet of this list
- Division directors subject to the provisions of KRS 18A.170. That statute requires the Personnel Board to determine whether a given division director's duties include policy-making duties. Only division directors with policy-making duties would be non-merit and subject to this probation provision.

Exceptions to the 12-month probationary period for such employees are those who have previously served in the merit system or have been separated from their non-merit position for at least 180 days prior to being appointed to the merit system (HB 149 Sec. 9(7), 2010 RS; codified at KRS 18A.111(7)).

### **Investigations By The Personnel Board**

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Personnel Board staff estimate that 14 appeals were filed with the board by non-merit staff from December 2003 to December 2012.

Personnel Board staff estimated that 14 appeals were filed with the board by non-merit staff from December 31, 2003, to December 31, 2012. As of December 2013, the outcomes fall into the following categories.

- The board was still hearing appeals on dismissal without cause when the employee alleged dismissal for illegal cause: 6 cases
- The board determined that the employee should be reinstated: 3 cases
- The board dismissed the appeal because it was filed after the statutory 30-day time period for filing: 3 cases
- The board denied the appeal because the employee did not prove that dismissal for cause was for discrimination: 1 case
- The board denied the appeal because the employee did not prove that dismissal not for cause was really based on illegal cause: 1 case<sup>9</sup>

### Non-Merit Employees In Other States

Program Review staff examined non-merit systems in six other states. Alabama, Missouri, and Virginia are classified as traditional merit systems, as is Kentucky. Georgia has an at-will system. Arkansas and Florida are semi-merit, with components of merit and at-will systems.

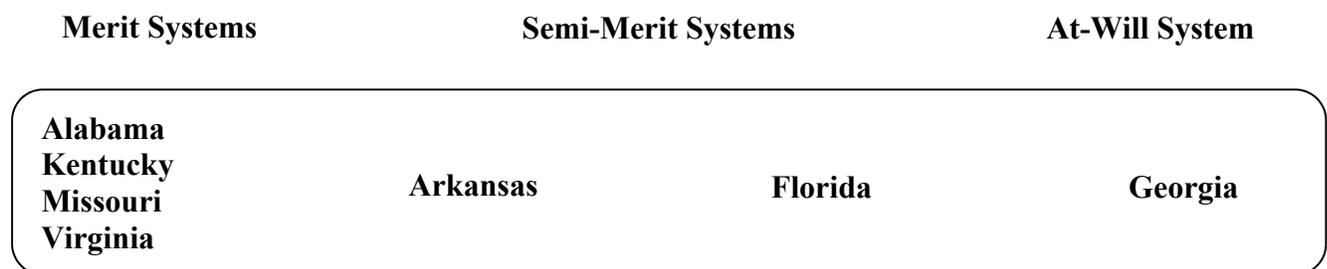
Program Review staff examined personnel systems in six other states. These states have traditional civil service (merit) systems, modified civil service systems, and at-will employment. Merit systems in other states include merit and non-merit positions. The terminology used to identify non-merit positions differs among states. Policies and regulations for non-merit positions also vary; however, most states share similar policies for hiring, dismissal, and appeal for non-merit positions.

Program Review staff chose these states because they have pay and benefits comparable to those of Kentucky and are in the same region. Figure B shows the relationship between states and the types of government employee systems on a continuum. Kentucky, Alabama, Missouri, and Virginia are classified as traditional merit systems. Georgia has an at-will system. Arkansas and Florida are semi-merit, with components of merit and at-will systems.

Alabama and Missouri are distinctive in that they each have two types of non-merit employees. In each state, one type of non-merit employee has some of the protections provided to merit employees.

Two merit systems, Alabama and Missouri, are distinctive in that they each have two types of non-merit employees. In each state, one type of non-merit employee has some of the protections provided to merit employees; the other type has none of those protections.

**Figure B**  
**State Government Employee Systems In Selected States**



Source: Compiled by Program Review staff.

## Merit Systems

**Alabama.** Alabama's state government employee system is managed by the State Personnel Department. The Alabama Code defines classified, unclassified, and exempt service:

- Classified employees are fully covered by the provisions of the merit system.
- Unclassified employees are covered by all the regulations and policies of the merit system except for those concerning appointment and dismissal. The unclassified service consists of governor's office employees not in the exempt service, "one confidential assistant or secretary for each board, commission and elected officer and, when requested by the [g]overnor, for each department head appointed by the [g]overnor" (Ala. Code Sec. 36-26-10).
- Employees in the exempt service are not subject to the provisions pertaining to the merit system. Exempt service includes elected officers, legislative staff, members of boards and commissions, and certain employees in the governor's office (Ala. Code Sec. 36-26-10).

**Missouri.** Missouri's state government employee system includes merit and non-merit positions, which fall under the purview of the Division of Personnel. The division administers payroll for merit and most non-merit agencies.<sup>10</sup> Missouri defines its merit system by agency, with six total merit system agencies, three partial merit system agencies, and seven non-merit agencies. Merit system agencies have classified and unclassified positions. Non-merit system agencies have covered and exempt positions.

The two types of non-merit positions are unclassified and exempt. Unclassified employees work in merit system agencies but are not subject to merit system rules. Exempt employees work in non-merit system agencies and are not subject to merit system rules.

The one type of hybrid position is "covered." Covered employees are not subject to merit system rules regarding selection, appointment, suspension, or separation.<sup>11</sup> The Division of Personnel is responsible for defining the classification and pay plan of covered positions (Mo. Rev. Stat. Sec. 36.100 and 36.140). However, the appointing agency is responsible for other policies regarding covered employees.

Elected officials, legislative staff, and judicial staff are considered non-merit but fall outside the authority of the Division of Personnel.

**Virginia.** Virginia's state government employee system is governed by the Virginia Personnel Act. Those positions that are subject to the provisions in the Act are referred to as covered. Non-covered, or excepted, employees are not subject to the protections specified in the Act and may fall under the personnel policies and regulations of specific agencies. These employees may be at will or may serve at the pleasure of an appointing authority, such as the governor.<sup>12</sup>

Non-covered employees generally consist of legislative and judicial staff; teaching, research, administrative, and professional faculty; and employees of agencies or entities that are exempt from the provisions of the Personnel Act.

### **Semi-Merit Systems**

**Arkansas.** Arkansas does not have a traditional merit system. Employees are hired under the Uniform Classification and Compensation Act (UCC). The Office of Personnel Management is responsible for the oversight of UCC.

Although UCC is not a merit system per se, it does include some merit system characteristics. All classified employees hired under UCC receive a uniform job title and a pay plan. UCC has two pay plans—career service, and professional and executive—based on duties and responsibilities. Most state employees are in the classified service and fall under one of the two pay plans.<sup>13</sup>

Unclassified employees are not subject to UCC but still have access to the Office of Personnel Management's grievance procedure.

**Florida.** Florida enacted its Service First plan in 2001, including a restructuring of its state government employee system. The previous classification system, which included 3,343 classes, was consolidated into 237 occupations.<sup>14</sup>

Executive branch agencies now have four distinct pay plans: State Personnel System, Career Service, Selected Exempt Service (SES), and Senior Management Service. Agencies are permitted to recruit according to their own preferences and procedures. Written exams associated with Florida's old personnel system have been eliminated. Hiring is entirely dependent upon applicant knowledge, skills, and abilities; references; and interviews.<sup>15</sup> Promotions and raises are given on a case-by-case basis and are wholly dependent on performance and knowledge, skills, and abilities. Seniority rules

have been eliminated for all employees except for nurses, firefighters, and law enforcement.<sup>16</sup>

Another key component of the system is that employees in SES may be covered under collective bargaining agreements. Collective bargaining units function outside government for negotiating raises, grievances, and benefits for employees. SES employees not in bargaining units are evaluated in accordance with their respective agency's performance evaluation system.

### **At-Will System**

**Georgia.** Legislation enacted in 2012 abolished the Georgia Personnel Administration, which had been responsible for job promotion in the state since the 1996 Merit System Reform Act. Most functions have been transferred or are being transferred to the Human Resources Administration in the Department of Administrative Services.<sup>17</sup> Hiring protocols are determined by each agency, and merit testing has been largely eliminated. Employees serve at will, which allows the employee and employer the right to terminate a working relationship without warning or cause, so long as there are no prevailing contractual obligations affecting the employment status.<sup>18</sup> Positions are recruited from résumés matching the minimum qualifications, and select positions also require a standardized application form.<sup>19</sup> Georgia does not require a waiting period for job offers, and application windows are not standardized.<sup>20</sup>

Since July 1, 1996, no new employee has merit system protections. Those employees hired before July 1, 1996, who have not transferred or accepted a promotion to unclassified service still receive full merit system protections and benefits. Procedures for current employees hired after July 1, 1996, regarding disciplinary action and dismissal are the responsibility of individual agencies. The appeal process is conducted in-house and does not go above the agency director level.<sup>21</sup>

## **Appendix A**

### **How This Study Was Conducted**

Staff examined relevant statutes, regulations, and court cases; performed a literature review; interviewed officials of relevant oversight agencies; and collected and analyzed data on the number and cost of non-merit employees.

#### **Personnel Cabinet Data On Number Of Employees**

For 2003 to 2010, the Personnel Cabinet provided data in paper form. Program Review staff removed federally funded, time-limited employees based on information provided by the cabinet. It was not possible to remove KRS Chapter 151B and KRS Chapter 161 employees, who were likely mostly merit employees.

For 2011 and 2012, Program Review staff removed federally funded, time-limited employees based on information provided by the Personnel Cabinet. KRS Chapter 151B and KRS Chapter 161 employees were removed. Based on a review of authorizing statutes, data compiled by Legislative Research Commission Budget Review staff, and information from the Education and Workforce Development Cabinet, Program Review staff removed 265 payroll-only employees for 2011 and 313 for 2012. Payroll-only employees were not included in previous years.



## Appendix B

### Laws, Regulations, And Policies For Non-Merit And Merit Employees Under The Kentucky Personnel Cabinet

This table compares the law and policy for non-merit and merit employees who fall under the direct supervision of the Kentucky Personnel Cabinet. Entities with their own personnel systems, such as the Court of Justice, the State Police Department, and the Department of Education may have different statutes, regulations, and policies with the force and effect of law.

	<b>Non-Merit</b>	<b>Merit</b>	<b>Both</b>
Initial hiring	<p>Appointments may be made in the same manner as merit, but are not required to be (KRS 18A.115(5)).</p> <p>For certain positions, the employee must meet minimum requirements established for the position class (100 KAR 3:050, Sec. 1).</p>	<p>Appointments must be made solely on the basis of merit and fitness (KRS 18A.010(1)).</p> <p>The “qualifying selection method” is used, in which the knowledge, skills, and abilities necessary for a job classification are determined by means other than a written examination (KRS 18A.005(28)).<sup>22</sup></p> <p>Vacancies must be filled by promotion whenever practicable and in the best interest of the service (KRS 18A.0751(4)(f)).</p> <p>Selection cannot be because of political opinions or affiliations (KRS 18A.140(1)).</p> <p>Money or favors cannot be given or received in exchange for selection (KRS 18A.145(2)).</p> <p>Interference with an applicant’s rights or prospects for employment is prohibited (KRS 18A.145(3)).</p>	<p>Equal employment opportunity/civil rights law and affirmative action plan apply (KRS 18A.138 and 344.020).</p>

	<b>Non-Merit</b>	<b>Merit</b>	<b>Both</b>
		<p>The probation period is 6 months except for specified job classifications (KRS 18A.111(1)).</p> <p>The probation period is 12 months for certain categories of employees who move from the non-merit system to the merit system (KRS 18A.111(7)).</p>	
Promotions	<p>Promotions may be made in the same manner as merit but are not required to be (KRS 18A.115(5)).</p> <p>A merit employee may be promoted to a non-merit position (101 KAR 1:400).</p>	<p>Promotions must be based on qualifications, record of performance, conduct, seniority, and performance evaluations (101 KAR 1:400, Sec. 1). Employees cannot be promoted because of political opinions or affiliations (KRS 18A.140(1)). Money or favors cannot be given or received in exchange for promotion (KRS 18A.145(2)). An official's use or promise of political influence regarding favorable or retaliatory treatment is prohibited (KRS 18A.140(2)).</p>	<p>Equal employment opportunity/civil rights law and affirmative action plan apply (KRS 18A.138 and 344.020).</p>

	<b>Non-Merit</b>	<b>Merit</b>	<b>Both</b>
Dismissal and other disciplinary actions	<p>An employee can be dismissed with or without cause (101 KAR 3:050, Sec. 7).</p> <p>If dismissed for cause, an employee must be given written notice of reason(s) (101 KAR 3:050, Sec. 7).                      If dismissed without cause, an employee must be given written notice of the decision (101 KAR 3:050, Sec. 7).                      Employees in certain positions can be demoted with or without cause (101 KAR 3:050, Sec. 4).</p>	<p>Appointing authorities can discipline employees for lack of good behavior or the unsatisfactory performance of duties (101 KAR 1:345, Sec. 1).</p> <p>Employees serving initial probation can be dismissed without cause.<sup>23</sup></p> <p>An employee with status can be dismissed or otherwise penalized for cause only (KRS 18A.095 (1)).</p> <p>Prior to dismissal, an employee must be given written notice of reason(s) (KRS 18A.095 (2)).</p> <p>An employee cannot be dismissed or demoted because of political opinions or affiliations (KRS 18A.140(1)).</p>	<p>Equal employment opportunity/civil rights law and affirmative action plan apply (KRS 18.138 and 344.020).</p>

Non-Merit	Merit	Both
<p data-bbox="215 317 345 457">Right of appeal to Personnel Board</p> <p data-bbox="430 758 764 1079">If dismissed or penalized for cause, an employee can appeal within 30 days (KRS 18A.095(9)). Upon dismissal for cause, the employer must provide written notice of appeal rights (101 KAR 3:050, Sec. 7(2)(a)).</p> <p data-bbox="430 1121 756 1331">The board will hear an appeal from an employee dismissed not for cause who alleges he/she was actually dismissed for cause.<sup>25</sup></p> <p data-bbox="430 1346 756 1625">Under certain conditions, the board might hear appeal from employee dismissed not for cause who alleges he/she was actually dismissed for political reasons (KRS 18A.075(3)).</p>	<p data-bbox="794 317 1102 386">Applicants for positions may appeal.<sup>24</sup></p> <p data-bbox="794 758 1122 1115">If dismissed or penalized, an employee can appeal within 60 days (KRS 18A.095(8)). Upon dismissal or other penalization, the employer must provide written notice of appeal rights (KRS 18A.095(2) and 18A.095(8)).</p> <p data-bbox="794 1633 1089 1879">The board must make biennial reports to the General Assembly on the total number of grievances filed with it by employees (KRS 18A.010(1)).</p>	<p data-bbox="1157 317 1414 751">An employee can appeal any action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age 40 and above (KRS 18A.095(12), 18A.010(1), and 344.025).</p>

	<b>Non-Merit</b>	<b>Merit</b>	<b>Both</b>
Job classification plan	<p>For certain categories of positions, the Personnel Cabinet must create a position classification plan based on similar job duties and responsibilities, so that the same qualifications may be required for all positions in the same class (KRS 18A.155).</p> <p>The classification plan must be approved by the governor, after which the personnel secretary must allocate every position to one of the classes of the plan (KRS 18A.155).</p>	<p>Employees are assigned to job classes according to their duties and responsibilities.<sup>26</sup> Class specifications must describe and explain the duties and responsibilities of a position within a particular class (101 KAR 2:020).</p> <p>Class specifications must indicate the kinds of positions to be allocated to the various job classifications (101 KAR 2:020).</p>	

	<b>Non-Merit</b>	<b>Merit</b>	<b>Both</b>
Salaries	Most job classes are assigned to one of the pay grades in the unclassified service salary schedule. <sup>27</sup>	Each job class is assigned to one of the pay grades in the classified service salary schedule. <sup>28</sup>	Each pay grade has an entry-level wage (the lowest salary that state government pays jobs assigned to that pay grade) and a midpoint wage (the maximum salary at which an experienced applicant may be appointed) (101 KAR 3:045; 101 KAR 2:034, Sec. 1).
		The employer must adjust to that salary an employee who is earning less than the new appointee if the incumbent employee <ul style="list-style-type: none"> <li>• is in the same class,</li> <li>• is in the same work county, and</li> <li>• has a similar combination of education and experience (101 KAR 2:034, Sec. 1).</li> </ul>	An appointing authority must hire a new employee at a salary not to exceed the midpoint of the pay grade (101 KAR 2:034, Sec. 1; 101 KAR 3:045, Sec. 1).

	<b>Non-Merit</b>	<b>Merit</b>	<b>Both</b>
Performance evaluations	<p>There are no laws, regulations, or policies requiring performance evaluations. A non-merit employee is not eligible to be evaluated through the merit system.<sup>29</sup></p> <p>Some agencies may have an informal review process; however, they should avoid using the same process as that for merit employees because the merit process involves specific deadlines and ties to rewards. The personnel board discourages agencies that conduct performance evaluations from using the performance evaluation form that is used for merit employees.<sup>31</sup></p>	<p>Supervisors are required to evaluate an employee's performance once a year (KRS 18A.110(1)(i) and 18A.110(7)(j)). All agencies must use the same procedure and use the Annual Employee Performance Evaluation Form.<sup>30</sup></p> <p>The evaluation must be considered in determining eligibility for discretionary salary advancements, promotions and disciplinary actions (KRS 18A.110; 101 KAR 2:180).</p>	

	<b>Non-Merit</b>	<b>Merit</b>	<b>Both</b>
Political activities		<p>Employees may engage in issue advocacy, but not on state time, using state resources, or in a manner which conflicts with official duties.<sup>32</sup></p> <p>Employees can be candidates for elected office on a non-partisan basis but not for a paid partisan office (KRS 18A.155 and 18A.140(4)).</p> <p>Employees cannot be actively involved in partisan political campaigns (KRS 18A.140(4)). They cannot serve on or for any political committee or party.<sup>33</sup></p> <p>Employees can make voluntary cash contributions to political parties or candidates but cannot contribute goods, services, or labor.<sup>34</sup></p>	<p>Candidates or anyone on their behalf cannot solicit contributions or services from state employees. A state employee can, however, receive a solicitation directed to him/her as a registered voter in an identified precinct as part of an overall plan to contact voters not identified as state employees (KRS 121.150(22)).</p>

<b>Non-Merit</b>	<b>Merit</b>	<b>Both</b>
	<p>Employees may join a political club but cannot organize the club, hold office, serve on its committees, or address the club on a partisan political matter.<sup>35</sup></p> <p>Employees may attend political rallies and conventions and may vote at the lowest level of the selection process for delegates to party conventions. They cannot organize such rallies or address a rally or convention on any partisan political matter.<sup>36</sup></p> <p>Employees may display political pictures and signs on their property (including automobiles) and may wear political badges or buttons while not on official duty.<sup>37</sup></p> <p>Employees may work actively for or against constitutional amendments, referenda or municipal ordinances.<sup>38</sup></p> <p>Employees cannot transport voters to the polls as part of an organized service to a political party or candidate.<sup>39</sup></p> <p>Employees cannot sell political party or candidate items or tickets, but may purchase them.<sup>40</sup></p>	

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<b>Non-Merit</b>	<b>Merit</b>	<b>Both</b>
	<p>At election polls, employees cannot serve as checker, challenger, or watcher, or solicit votes or assist voters to mark ballots.<sup>41</sup></p> <p>Employees cannot distribute partisan campaign literature or material, and cannot initiate or circulate partisan political nominating petitions.<sup>42</sup></p> <p>Employees cannot canvass a district or solicit political support for a party or candidate, either in person or in writing.<sup>43</sup></p>	

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## Appendix C

### Executive Branch Non-Merit Employees By Agency 2012

<b>Cabinet And Agency</b>	<b>Employees</b>
<b>Cabinet for Health and Family Services</b>	<b>106</b>
Office of the Secretary	31
Department for Behavioral Health, Development and Intellectual Disabilities	12
Department for Medicaid Services	12
Department for Public Health	11
Department for Community Based Services	9
Department for Family Resource Centers and Volunteer Services	7
Office of Inspector General	6
Office of the Kentucky Health Benefit Exchange	6
Commission for Children With Special Health Care Needs	5
Department for Income Support	4
Office of Health Policy	2
Department for Aging and Independent Living	1
<b>Economic Development Cabinet</b>	<b>25</b>
Office of the Secretary	25
<b>Education and Workforce Development</b>	<b>268</b>
Kentucky Educational Television	133
Department of Education	72
Department for Workforce Investment	32
Office of the Secretary	18
Education Professional Standards Board	5
Department for Libraries and Archives	4
Commission on Deaf and Hard of Hearing	2
Commission on Proprietary Education	1
Environmental Education Council	1
<b>Energy and Environment Cabinet</b>	<b>151</b>
Department for Natural Resources	113
Public Service Commission	16
Department for Environmental Protection	7
Office of the Secretary	7
Department for Energy Development and Independence	5
Environmental Quality Commission	1
Mine Safety Review Commission	1
State Nature Preserves Commission	1

<b>Cabinet And Agency</b>	<b>Employees</b>
<b>Finance and Administration Cabinet</b>	<b>147</b>
Department for Facilities and Support Services	67
Office of the Secretary	23
Commonwealth Office of Technology	21
Department of Revenue	20
Office of the Controller	13
River Authority	2
Higher Education Assistance Authority	1
<b>General Government Cabinet</b>	<b>2,067</b>
Unified Prosecutorial System	1,112
Department of Military Affairs	570
Council on Postsecondary Education	68
Attorney General	43
Governor	35
Department for Local Government	27
Department of Agriculture	22
Agricultural Development Board	16
Auditor of Public Accounts	13
Board of Examiners/Registration of Landscape Architects of Kentucky	11
Real Estate Commission	11
Board of Accountancy	9
Department of Veterans Affairs	9
Personnel Board	9
Office of Homeland Security	8
Board of Dentistry	7
Secretary of State	7
Board of Embalmers and Funeral Home Directors	6
Board of Licensure for Professional Engineers and Land Surveyors	6
Executive Branch Ethics Commission	6
Board of Architects	5
Board of Optometric Examiners	5
Registry of Election Finance	5
State Treasurer	5
Board of Hairdressers and Cosmetologists	4
Board of Nursing	4
Early Childhood Advisory Council	4
Lieutenant Governor	4
Board of Physical Therapist	3
Commission on Women	3
Military Affairs Commission	3
School Facilities Construction Commission	3
Board of Chiropractic Examiners	2
Board of Elections	2

<b>Cabinet And Agency</b>	<b>Employees</b>
Board of Examiners of Social Work	2
Board of Medical Licensure	2
Board of Pharmacy	2
Human Rights Commission	2
Infrastructure Authority	2
Real Estate Appraisers Board	2
Board of Auctioneers	1
Board of Barbering	1
Board of Podiatry	1
Board for Respiratory Care Practitioners	1
Governor's Office of Minority Empowerment	1
Office for Faith-Based and Community Nonprofit Social Services	1
Office of State Budget Director	1
Secretary of the Cabinet	1
<b>Justice and Public Safety Cabinet</b>	<b>93</b>
Department of Corrections	33
Office of the Secretary	27
Department of Juvenile Justice	15
Department of Public Advocacy	7
Department of Criminal Justice Training	6
State Police	5
<b>Labor Cabinet</b>	<b>87</b>
Department of Workers' Claims	50
Workers' Compensation Funding Commission	14
Office of General Administration/Program Support for Shared Services	7
Department of Workplace Standards	5
Occupational Safety and Health Review Commission	5
Office of the Secretary	4
Office of Inspector General for Shared Services	2
<b>Personnel Cabinet</b>	<b>28</b>
Office of the Secretary	19
Department of Employee Insurance	5
Department of Human Resources Administration	4

<b>Cabinet And Agency</b>	<b>Employees</b>
<b>Public Protection Cabinet</b>	<b>78</b>
Horse Racing Commission	18
Office of the Secretary	13
Department of Insurance	12
Department of Housing, Buildings and Construction	8
Board of Claims and Crime Victims Compensation Board	7
Department of Financial Institutions	7
Department of Charitable Gaming	4
Department of Alcoholic Beverage Control	4
Kentucky Board of Tax Appeals	4
Office of Occupations and Professions	1
<b>Tourism, Arts and Heritage Cabinet</b>	<b>191</b>
Historical Society	51
Department of Parks	39
Fish and Wildlife Resources	39
State Fair Board	25
Office of the Secretary	18
Horse Park	9
Department of Travel	5
Arts Council	2
Heritage Council	2
Artisans Center at Berea	1
<b>Transportation Cabinet</b>	<b>206</b>
Department of Highways	152
Office of the Secretary	17
Department of Rural and Municipal Aid	10
Department of Vehicle Regulation	10
Office of Legal Services	5
Office of Human Resource Management	3
Department of Aviation	2
Office of Audits	2
Office of Support Services	2
Office of Transportation Delivery	2
Office of Information Technology	1
<b>Total</b>	<b>3,447</b>

Source: Compiled by Program Review staff using data provided by the Personnel Cabinet.

## Endnotes

- <sup>1</sup> Bevington, Dinah. Personnel Cabinet. Office of Legal Services. Executive dir. Telephone interview. Sept. 23, 2013.
- <sup>2</sup> Kentucky. Office of the Attorney General. *2011 Biennial Report*. Web. Nov. 20, 2013. P. 29; Carey, Gina. Office of the Prosecutors Advisory Council. Telephone interview. Nov. 20, 2013.
- <sup>3</sup> Kentucky. Personnel Cabinet. Division of Technology Services. "Kentucky Human Resource Information System (KHRIS)." 2011. Web. Nov. 7, 2013.
- <sup>4</sup> Kentucky. Court of Justice. *Personnel Policies for the Kentucky Court of Justice*. Rev. May 2014. Sec. 1.04(12). Web. May 27, 2014.
- <sup>5</sup> *Ibid.*, Sec. 1.05(1).
- <sup>6</sup> *Ibid.*, Sec. 1.05(2).
- <sup>7</sup> *Ibid.*, Sec. 6.01.
- <sup>8</sup> Kentucky. *Blue Ribbon Task Force for Merit System Final Report*. Jan. 2006. Web. March 20, 2013. Recommendation #6, P. 45.
- <sup>9</sup> Sipek, Mark. Kentucky Personnel Board. "Information request pertaining to the study of the number and cost of non-merit employees." #7. Memorandum to Katie Kirkland. May 15, 2013.
- <sup>10</sup> Missouri. Office of Administration. Division of Personnel. *Fiscal Year 2012 Annual Report*. Jefferson City: Office of Administration, 2012.
- <sup>11</sup> *Ibid.*
- <sup>12</sup> Virginia. Dept. of Human Resource Management. *Policies and Procedures Manual, Types of Employment*. June 10, 2007. Web. Oct. 23, 2013.
- <sup>13</sup> Arkansas. Dept. of Finance and Administration. Office of Personnel Management. Frequently Asked Questions. 2011. Web. April 24, 2013.
- <sup>14</sup> Florida. Dept. of Management Services. Human Resource Management. Broadband Classification and Compensation Program. Web. Oct. 23, 2013.
- <sup>15</sup> Walters, Jonathan. "Life After Civil Service Reform: The Texas, Georgia, and Florida Experiences." *Human Capital Series*. Arlington: IBM Endowment for The Business of Government, 2002.
- <sup>16</sup> *Ibid.*
- <sup>17</sup> Georgia. Dept. of Administrative Services. Human Resources Administration Division. Frequently Asked Questions. Web. Oct. 23, 2013.
- <sup>18</sup> Green, Richard, et al. "On the Ethics of At-Will Employment in the Public Sector." *Public Integrity* 8.4 (2006): 305-327.
- <sup>19</sup> Georgia. Dept. of Administrative Services. Human Resources Administration Division. Frequently Asked Questions. Web. Oct. 23, 2013.
- <sup>20</sup> Walters, Jonathan. "Life After Civil Service Reform: The Texas, Georgia, and Florida Experiences." *Human Capital Series*. Arlington: IBM Endowment for The Business of Government, 2002.
- <sup>21</sup> *Ibid.*
- <sup>22</sup> Bevington, Dinah. Personnel Cabinet. Office of Legal Services. Executive dir. "Transition of Written Selection Method Classifications." Message to Colleen Kennedy. Oct. 16, 2013. Email.
- <sup>23</sup> Kentucky. Personnel Cabinet. Dept. of Human Resources Administration. *Employee Handbook*. Rev. Sept. 2013. Web. Nov. 21, 2013. P. 22.
- <sup>24</sup> Sipek, Mark. Personnel Board. Telephone interview. Nov. 15, 2013.
- <sup>25</sup> Sipek, Mark. Personnel Board. Personal interview. April 10, 2013.
- <sup>26</sup> Kentucky. Personnel Cabinet. Dept. of Human Resources Administration. *Employee Handbook*. Rev. Sept. 2013. Web. Nov. 21, 2013. P. 7.
- <sup>27</sup> *Ibid.*
- <sup>28</sup> *Ibid.*
- <sup>29</sup> Kentucky. Personnel Cabinet. *Employee Performance Evaluation System: Employee Handbook*. Rev. Jan. 2012. Web. Nov. 15, 2013. P. 14.
- <sup>30</sup> *Ibid.*, P. 6.
- <sup>31</sup> Sipek, Mark. Kentucky Personnel Board. Telephone interview. Nov. 15, 2013.
- <sup>32</sup> Kentucky. Personnel Cabinet. Dept. of Human Resources Administration. *Employee Handbook*. Rev. Sept. 2013. Web. Nov. 21, 2013. P. 69.

<sup>33</sup> Ibid., Pp. 68-69.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid.

<sup>43</sup> Ibid.



