

TRANSMITTAL SHEET FOR NOTICE OF INTENDED ACTION

Control No. _____ Department or Agency State Personnel Board

Rule No. 670-X-14

Rule Title: Sick Leave

_____ New _____ Amend _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?

No _____

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?

No _____

Is there another, less restrictive method of regulation available that could adequately protect the public?

No _____

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

No _____

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?

No _____

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?

Yes _____

Does the proposed rule have an economic impact? _____

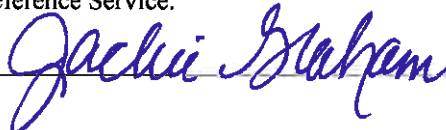
If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer _____

Date 3/19/15 _____



(DATE FILED)
(STAMP)

APA-2
07/04

ALABAMA STATE PERSONNEL BOARD

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama State Personnel Board

RULE NO. & TITLE:

670-X-1: Organization
670-X-2: Application of Policy and Rules
670-X-3: Definitions
670-X-4: Prohibition of Discrimination
670-X-5: Meetings, Minutes and Hearing Procedure
670-X-6: Responsibilities of the State Personnel Director
670-X-7: Position Classification Plan
670-X-8: Pay Plan and Pay Administration
670-X-9: Personnel Selection Procedures
670-X-10: The Working Test (Probationary) Period
670-X-11: Hours of Work
670-X-12: Holidays
670-X-13: Annual Leave (Vacation)
670-X-14: Sick Leave
670-X-15: Other Types of Leave
670-X-16: Performance (Service) Ratings
670-X-17: Records and Reports
670-X-18: Separations from Service
670-X-19: Employee Work Rules

INTENDED ACTION: Amend

SUBSTANCE OF PROPOSED ACTION:

670-X-1: Organization

The changes are not substantive and are only grammatical.

670-X-2: Application of Policy and Rules

The change will mirror the statutory language of Ala. Code, 1975, § 36-26-9.

670-X-3: Definitions

The changes are clarification changes, such as adding the definitions of job abandonment, separation during probation, and retirement.

670-X-4: Prohibition of Discrimination

The changes are simply updates to terminology.

670-X-5: Meetings, Minutes and Hearing Procedure

There are minor changes that reference statutory authority or clarify the hearing procedure. One addition was made to allow the hearing officer to dismiss an appeal should the employee fail to prosecute his or her case. Also, if the employee fails to attend the hearing, he or she forfeits his or her right to oral argument before the Board.

670-X-6: Responsibilities of the State Personnel Director

The changes are simple language clarifications.

670-X-7: Position Classification Plan

There are minor word changes throughout. There is an addition that the Governor must approve new classes and pay range changes. There will be a change under 670-X-7-.06 to increase the time that an incumbent must perform the duties for the reallocated classification from three months to one year. There is also an addition that an employee that is reallocated will be given permanent status in the new class and will not be eligible for a promotional or probationary increase. Paragraphs 6 and 7 under 670-X-7-.06 will be deleted.

670-X-8: Pay Plan and Pay Administration

There are minor wording changes throughout the chapter. There is an addition to 670-X-8-.01 that the State fiscal officer will be consulted on all of the maintenance and administration of the pay plan. Delete the archaic “impossibility” language in 670-X-8-.02. Also, there is an addition that an above the minimum appointment will be based on the employee’s prior salary or experience of the new employee or competitive market. Under 670-X-8-.04(2), there is clarification of the procedures in the event raises are frozen. Also, there will be a cap of two steps for annual merit raises. There is a complete revision of demotions. There is a provision added to allow an employee to voluntarily diminish his or her salary under 670-X-8-.09(b). Under 670-X-8-.11, there is a provision that an employee will not receive a salary increase upon a transfer to a new agency.

670-X-9: Personnel Selection Procedures

There are wording and clarification changes throughout the chapter. Under 670-X-9-.01, an applicant must certify the truthfulness of his or her application. Any falsification may result in removal and bar from any and all employment registers. Under 670-X-9-.02, a probationary employee that is laid off will have to finish his or her probationary period upon reemployment. An applicant may request to be placed inactive on a register rather than be removed from the register. Limited tenure has been added under 670-X-9-.03. Under 670-X-9-.04, the State Personnel Director will be allowed to place an employee in a comparable classification for demotion purposes. Also, the rule is redefined to be more specific as to the rights of classified employees appointed to unclassified and exempt positions.

670-X-10: The Working Test (Probationary) Period

Clarification changes were made. Rule 670-X-10-.03 is deleted due to duplication in a previous rule.

670-X-11: Hours of Work

There are wording and clarification changes throughout the chapter. The requirement of the same number of hours for all positions in a classification is being deleted. The additions are as follows: (1) that FLSA exempt employees do not earn paid overtime or compensatory time without the approval of the State Personnel Board; (2) that the employee will be liable for any repayment of time improperly credited or paid; (3) that compensatory time may not be taken to work a second job during his or her regular work schedule; and (4) that subsistence for authorized law enforcement officers will be prorated in accordance with the actual time that the employee performs his or her duties as a law enforcement officer.

670-X-12: Holidays

The changes bring the chapter into statutory compliance with Ala. Code, 1975, § 1-3-8.

670-X-13: Annual Leave (Vacation)

There are statutory updates throughout this chapter. The additions are as follows: that employment time where leave was not accumulated in accordance with these rules will not be used in length of service calculations, and that an employee may not use annual leave to work a second job during his or her regular work schedule. There are clarification that an employee will be paid a maximum of 480 hours of accumulated annual leave in his or her career, and that an employee may not return to State service until he or she has been absent from State service for longer than the payment of annual leave.

670-X-14: Sick Leave

There are wording and clarification changes as well as changes to bring the chapter into statutory compliance. There is an addition that an employee will only be compensated for a maximum of 600 hours of accumulated sick leave in his or her career. There is an addition that an appointing authority may require an employee to maintain a minimum number of sick leave hours.

670-X-15: Other Types of Leave

There are wording and clarification changes as well as changes to bring the chapter into statutory compliance. One addition states that leave without pay may not be used for the employee to work during his or her regular work schedule.

670-X-16: Performance (Service) Ratings

The changes are clarification changes.

670-X-17: Records and Reports

The changes bring the chapter into statutory compliance.

670-X-18: Separations from Service

There are clarification and statutory changes throughout this chapter. There are additional changes that at the discretion of the appointing authority, an employee in an abolished position may move to a position in a lower classification and that at the discretion of the appointing authority and the approval of the State Personnel Director, a permanent employee may bump another employee during a layoff. Another change adds that an employee who abandons his or her position will have his or her action treated as a voluntary resignation.

670-X-19: Employee Work Rules

The changes remove outdated work rules, add new work rules, and move some work rules to the section that allows for suspension or discharge on the first offense, including “conduct unbecoming a State employee.”

TIME, PLACE, MANNER OF PRESENTING VIEWS:

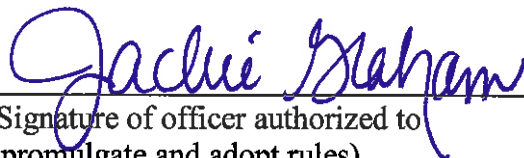
Comments can be presented at the public hearing scheduled at 9:00 am on Thursday, April 30, 2015 at the Alabama State Personnel Department located at the Folsom Administrative Building, 64 North Union Street, Room 319, Montgomery, Alabama 36130. Written comments may be addressed to the Tara Hetzel, Alabama State Personnel Department, at the same address or at www.personnel.alabama.gov. Written comments must be received by the close of business on Tuesday, May 5, 2015.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

Tuesday, May 5, 2015

CONTACT PERSON AT AGENCY:

Tara Hetzel, General Counsel
334-353-0046



(Signature of officer authorized to
promulgate and adopt rules)

CHAPTER 670-X-14
SICK LEAVE

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670-X-14-.01	<u>Sick Leave.</u>

(1) An allowance of four hours and twenty minutes for each semi-monthly period of service shall be made for sick leave. Unused portions of such allowance may accumulate but ~~not more than 150 days to exceed a maximum of 1200 hours~~ may be carried over beyond the end of the calendar year; provided that, where an employee suffers extended illness or disability lasting more than 150 days 1200 hours and requiring the employee to have exhausted all accumulated leave, the State Personnel Board may, on the recommendation of the appointing authority, approve the restoration and use of any sick leave which he might have earned in excess of this maximum. An employee who retires shall be entitled to be paid for fifty percent of his accumulated sick leave at the time of his retirement up to a maximum of 600 hours in his career. Such payment constitutes liquidation of the sick leave balance of the employee.

~~NOTE: Beginning with the payday on April 3, 2006, all persons who are regularly employed by the state and who are subject to the provisions of the state Merit System, and all legislative personnel, officers, and employees, including, but not limited to, Legislative Reference Service personnel, whether subject to the state Merit System or not, shall be entitled to accumulate sick leave on the basis of semi-monthly pay periods at a rate of 4 hours and 20 minutes per pay period. This revision to sick leave accumulation will be reflected in future amendments to the Rules of the State Personnel Board.~~

(a) Neither annual nor sick leave shall accrue except when an employee is actually working or on

authorized leave with pay, and in no case shall leave accrue subsequent to actual separation from the service.

(b) Sick leave is hereby defined to mean the absence from duty of an employee because of: (1) illness; (2) bodily injury not incurred in line of duty, or bodily injury or occupational illness incurred in line of duty, ~~but for which special leave is not granted~~; (3) attendance upon members of the immediate family whose illness requires the care of such employee; (4) death in the immediate family of the employee. Immediate family is hereby defined to include ~~wife or husband~~ spouse, children as defined by the Family and Medical Leave Act, grandchildren, parents or grandparents, sister or brother, mother-in-law, father-in-law, daughter-in-law and son-in-law. Where unusually strong personal ties exist, due to an employee's having been supported or educated by a person of some relationship other than those listed, this relationship may be recognized for leave purposes. In each such case, the employee concerned shall file with his appointing authority a written statement of the circumstances which justify an exception to the general rule.

(c) Sick leave with pay is not a right for which employees may make demand, but a privilege granted in accordance with prescribed rules and regulations, to which the Board may make exceptions as the best interest of the service demand. At the discretion of the appointing authority, employees may be required to maintain a minimum number of sick leave hours.

(d) Either the appointing authority or the Board may require at any time a claim for a sick leave be supported by adequate evidence; and any unjustified or fraudulent claim for sick leave may be punished by loss of pay, loss of accumulated leave, suspension and/or dismissal.

(e) Employees may shall not be compensated for accumulated sick leave when they are separated from the state service, except in the case of retirement or death. However, if they leave the service in good standing and are reemployed within a period of four years from date of separation, sick leave accumulated during previous employment or any part thereof, may be restored upon recommendation by the appointing authority and approval by the Director. Under no circumstance can an employee use

sick leave to engage in any other employment during his scheduled working hours.

(f) In case of serious disability or illness, sick leave may be advanced to any permanent employee under the following conditions: (1) All accrued leave (sick and annual) must be exhausted before a request for an advance is made. (2) No advance shall be made to any employee unless the absence from duty because of disability is for a period of five days or more. (3) Each application for an advance shall be supported by a certificate from a ~~registered practicing physician~~ health care provider. (4) The total of advances of sick leave shall not at any time exceed 24 work days.

(g) Employees shall file requests for advance of sick leave with the appointing authority of the department in which they are employed, on forms to be provided by the State Personnel Department. After making such investigations as he deems advisable, the appointing authority shall either approve or disapprove such applications. ~~Provided, that when applications are disapproved, the reason for such action must be stated on the face thereof.~~

(h) Advances of sick leave shall be charged against such leave subsequently accumulating. In the case of separation from the state service of an employee to whom sick leave has been advanced in an amount in excess of that subsequently accumulated, the employee shall be liable for the period of such excess, and a deduction therefor shall be made from any salary due him on the basis of the salary rate obtained during the period of advanced sick leave. If no salary is due such employee from which deductions may be made, or the salary due is insufficient to cover the amount due the state, a written request shall be filed with him asking that the amount due be paid into the state funds from which it was drawn. If he refuses to comply with this request the amount due may be recovered by suit to be filed upon request of the ~~State Personnel~~ Director. No such employee shall be readmitted to the state service unless he shall first satisfy any or all outstanding claims or liabilities which have accrued against him under the foregoing provisions of this rule.

(i) Transfer of Sick Leave into State Merit System. Persons entering the state merit system may not

transfer into the state merit system sick leave accumulated outside the state merit system with the following exceptions:

1. Individuals employed by a non-merit system State entity or agency who ~~accumulate~~ maintain a sick leave system in accordance with the procedures established by the Rules of the State Personnel Board may transfer their accumulated sick leave into the state merit system provided the appointing authority approves the acceptance of the leave. The non-merit system state agency or entity must certify the amount of sick leave the employee has accumulated and further certify that the accumulation of sick leave is in accordance with procedures established by the Rules of the State Personnel Board. This provision does not apply to public schools or public postsecondary institutions.

2. Those persons entering the state merit system from the public schools or public postsecondary institutions of the State of Alabama may, upon the approval of the appointing authority, retain a record of accumulated sick leave that may be used only in the case of illness and only at such times that all state merit system sick and annual leave has been exhausted.

Author: Jackie B. Graham, State Personnel Director

Statutory Authority: Code of Ala. 1975, §§36-6-1(d); 36-26-9; 36-26-36.

History: Filed September 29, 1981. **Amended:** Filed May 24, 1985. **Amended:** Filed October 3, 1995; effective November 7, 1995. **Amended:** Filed August 13, 2001; effective September 17, 2001. **Amended:** Filed May 22, 2006; effective June 26, 2006. **Amended:** March 19, 2015, effective .

670-X-14-.02 Use Of Sick Leave For Maternity.

Accumulated sick leave may be used for purposes of maternity leave so long as: (1) the employee works up until the time she is disabled as a result of pregnancy, and (2) returns to work as soon as she ceases to be disabled for this reason. A doctor's verification of disability may be required by the appointing authority.

Author:

Statutory Authority: Code of Ala. 1975, §36-26-9.

History: Filed September 29, 1981.

670-X-14-.03 — Restoration Of Leave And Payment For Time Lest Due To On-The-Job Injury Or Occupational Illness.

——— (1) ——— An on-the-job injury is an injury to an employee caused by an accident arising out of and in the course of his employment when it occurs within the period of his employment at a place where he may reasonably be, and while he is reasonably fulfilling the duties of his employment or engaged in doing something incident to it. An occupational illness is a disease arising out of and in the course of employment which is due to hazards in excess of those ordinarily incident to employment in general and is peculiar to the occupation in which the employee is engaged.

——— (2) ——— When an employee is required to use accumulated sick or annual leave or leave without pay due to a serious injury on the job or serious occupational illness, up to one hundred percent (100%) of such leave may be restored (or reimbursement made for leave without pay). "Serious" injury or illness is defined to mean work time lost in excess of three (3) days; provided that in the event that time off due to the injury/illness exceeds 21 days, the three days shall automatically be restored.

——— (3) ——— An appointing authority must request approval of such restoration (or reimbursement) no later than sixty (60) days following the employee's return to work, on State Personnel Department form, and recommend the percent of restoration.

——— (4) ——— Any payments the employee receives from Workmen's Compensation type coverage must be deducted from any wages the employee receives.

——— (5) ——— The total amount of time off allowed under this procedure is twenty-six (26) weeks.

——— (6) ——— Leave time under this procedure of one to three (1-3) days must be covered by the employee's regular sick or annual leave, compensatory time (for non-exempt employees only), or leave without pay, and is not subject to restoration (or reimbursement); unless waiver is

~~recommended by the appointing authority and approved by the Board.~~

~~———— (7) ——— The Board reserves the right to restore leave at less than one hundred percent (100%), if circumstances warrant.~~

~~———— (8) ——— Out-of-class work assignments for light duty are encouraged. Light duty must be limited to twenty (20) work days or less. Extensions of light duty time may be approved by the Board upon the recommendation of the appointing authority.~~

~~———— (9) ——— A second medical opinion by a physician selected and paid for by the appointing authority is required to substantiate a request for Special Leave. (See paragraph 11 below.)~~

~~———— (10) ——— To be eligible to file a Special Leave Request form (i.e., Form 7), notification of the job related accident or incident must be filed by the employee at the department level before the end of the work shift on which it occurred. An official incident/injury report as well as the Form 7 must be notarized and sworn to under oath before being submitted to the State Personnel Board.~~

~~———— (11) ——— Under exceptional circumstances, the appointing authority may recommend waiver for any or all of the following:~~

~~———— (a) ——— the requirement of a second medical opinion,~~

~~———— (b) ——— the three day waiting period,~~

~~———— (c) ——— the requirement for the employee to file a notification with his department by the end of his work shift.~~

~~———— (12) ——— Any indication of lack of compliance with these rules shall be brought to the attention of the Personnel Board by the Personnel Director.~~

~~———— (13) ——— The foregoing provisions of this Rule shall continue in force and effect only for on-the-job injuries and occupational illnesses which have occurred prior to October 1, 1994. Compensation for such injuries and illnesses occurring on or after October 1, 1994 will be~~

~~governed exclusively by the State Employee Injury Compensation Program established by Act 94-680, Regular Session, and Finance Department (Division of Risk Management) Rule 355-8-1, and this Rule shall have no applicability to any injury or illness of any kind, extent or nature which occurs on or after October 1, 1994.~~

Author: Halycon Vance Ballard

Statutory Authority: ~~Code of Ala. 1975, §36-26-9.~~

History: ~~Filed September 29, 1981. Amended: Filed July 23, 1990. Amended: Filed December 16, 1994; effective January 20, 1995.~~

670-X-14-.043 Sick Leave Bank Donated Leave. Upon the recommendation of an appointing authority and the approval of the Personnel Director, an employee may receive transfer a specified number of unused sick leave days (within the prescribed 150-day maximum) a total of up to 480 hours of leave donations to from another employee or employees of equal or lower classification for a maximum of 480 hours in his entire state career. A lower classification may donate to a higher classification pending Board approval. The donated leave request: provided such transfer request (1) is made in writing, (2) is justified by catastrophic circumstances or maternity, (3) is recommended by the appointing authority, (4) is acted upon prior to the leave being used, and (5) is recommended only after all other available sick and annual leave has been used. Records of such transfers shall be maintained by the State Personnel Department. The donated leave for the employee shall remain in effect for twelve months after donation or until used by such employee, whichever occurs first; provided however, the employee remains employed with the State of Alabama.

Author: Halycon Vance Ballard

Statutory Authority: Code of Ala. 1957, §36-26-9.

History: Filed February 28, 1991. Amended: March 19, 2015, effective .