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TO: **KARIN CLARK**
Virginia Department of Social Services

FROM: **MICHELLE A. L'HOMMEDIEU** 
Assistant Attorney General

DATE: **October 16, 2015**

SUBJECT: **Fast-Track Regulations for Personnel Policies for Local Departments of Social Services 22 VAC 40-675 (4077/7229)**

I am in receipt of the attached regulations regarding the Personnel Policies for Local Departments of Social Services (22 VAC 40-675). You have asked the Office of the Attorney General to review and determine if the State Board of Social Services ("State Board") has the statutory authority to promulgate the proposed regulations and if the proposed regulations comport with applicable state law.

Virginia Code § 63.2-217 mandates that the State Board promulgate regulations that are necessary to carry out the provisions of Title 63.2, and Virginia Code § 63.2-219 includes promulgation of personnel policies of local departments of social services within the State Board's authority and responsibility. It is my opinion that the State Board has the authority to promulgate these regulations, subject to compliance with the provisions of Article 2 of the Administrative Process Act ("APA"), and has not exceeded that authority. To date, the Board has not yet acted on these regulations; and the Agency Background Document available on Town Hall reflects the anticipated future date of Board action.

Pursuant to Virginia Code § 2.2-4012.1, if an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the Virginia Department of Social Services shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the Fast-Track regulation serving as the Notice of Intended Regulatory Action. If

Karin Clark
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you have any questions or need additional information about these regulations, please contact me at 786-6005.

cc: Kim F. Piner, Esq.

Attachment

Project 3368 - Fast-Track

DEPARTMENT OF SOCIAL SERVICES

Amend Personnel Policies Regulation

Part I

General Provisions

22VAC40-675-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Administrative manual" means the Human Resources Manual for Local Departments of Social Services, which outlines the personnel policies and procedures.

"Board" means the State Board of Social Services.

"Classification" means the systematic grouping of positions based on shared characteristics.

"Commissioner" means the Commissioner of the Virginia Department of Social Services, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Deviate" means to adopt all or portions of the local ~~jurisdiction~~ jurisdiction's personnel policies instead of using policies and procedures outlined in the Administrative Manual.

"Jurisdiction" or "local jurisdiction" means the city, county, or town under which the local department is a governmental unit.

"KSA" means a knowledge, skill, or ability needed to perform the duties of a position.

"Local board" means the local administrative board of social services representing one or more counties or cities.

"Local compensation plan" is the locally developed compensation schedule that lists occupational titles, salary bands/tiers from the minimum to the maximum amounts established for each ~~bands/tiers~~, band/tier, and includes other pay actions.

"Local department" means the local department of social services of any city or county of this Commonwealth.

"Local director" means the director or his designated representative of ~~the~~ a local department of social services for the a city or county.

"Merit system plan" means those regulations adopted by the board in the development and operation of a system of personnel administration meeting requirements of the federal Department of Health and Human Services as relates to compliance with federal merit system standards set forth in the Code of Federal Regulations (5 CFR Part 900).

"Occupational group description" means a detailed statement that describes the characteristic elements of each occupational level within the occupational group.

"Salary range" means the range that identifies the minimum and maximum compensation rate authorized for a specific pay band and a specific tier within the pay band.

"State classification plan" means the department's classification plan that consists of approved occupational titles and their corresponding groups, ~~salary grades~~ pay bands, tiers, classification codes, equal employment opportunity codes and effective dates.

"State compensation plan" means the department's pay plan, which provides local departments a basis for developing local compensation plans.

22VAC40-675-20. Local department designation.

A. Local departments are designated as Levels I through ~~VI~~ III. ~~The level assigned is determined by the number of authorized positions.~~ The level of a local department is based on

the occupational title assigned to the local director. The level assigned to the local director is determined by the management structure, number and types of positions, and mandated and non-mandated social services programs in the administration of social services programs by the local department.

~~B. The levels are used in the development and approval of the local department classification and compensation plans.~~

22VAC40-675-40. Inclusion in local jurisdiction personnel plans.

A. It is the policy of the board to allow local department employees to be included in the approved local jurisdiction personnel plans instead of utilizing personnel policies outlined in the Administrative Manual.

B. Comprehensive jurisdiction plans shall meet merit system standards and be comparable to personnel policies included in the Administrative Manual. Specific personnel functions that must be included in the local jurisdiction personnel plans are listed in the Administrative Manual.

C. Such plans must be documented to the satisfaction of the board.

~~D. The board must approve a jurisdiction personnel plan prior to the inclusion of local department employees in the plan~~ the inclusion of local department employees in a jurisdiction's personnel plan prior to inclusion.

22VAC40-675-50. Adoption of specific policies of the local jurisdiction.

A. A local department, upon approval by the local board, may request approval to ~~deviate from state policies by adopting~~ follow specific local jurisdiction policies instead of ~~using~~ the personnel policies and procedures outlined in the Administrative Manual. The following local policy options may be requested on the Local Policy Request Form:

1. Performance evaluation;

2. Standards of conduct;
3. Leave policies;
4. Holiday schedule;
5. Inclement weather;
6. Probationary period; or
7. Layoff.;
8. Classification and/or compensation;
9. Affirmative action; or
10. Political activity.

~~B. Local policy options also exist for classification, compensation and affirmative action.~~

C. B. When the local department wants to exercise one or more of the allowable options, it must obtain required approvals and submit the required forms to the department in accordance with the Administrative Manual. The commissioner will provide his analysis to the board and the deviation request shall be presented to the board for action.

~~D. C.~~ When policy changes a local department desires to revert from the previously approved local jurisdiction human resources policy to the personnel policy set forth in the Administrative Manual, the local department shall submit a Local Policy Request Form to the department notify the department by submitting an updated Human Resource Policy Record form.

22VAC40-675-90. Local compensation plans.

A. A local department, upon approval by the local board, shall have flexibility in developing the local compensation plan to select salary ranges within the approved state compensation plan that are suitable to local situations. The range for each occupational title shall provide local

minimum and maximum rates. The local plan shall ensure that local minimum salary rates do not fall below the state compensation plan minimum salary for that occupational title. A request to modify salary ranges within the state minimum and maximum rates does not constitute a deviation as described in 22VAC40-675-110.

B. A local compensation plan shall include policies and procedures for awarding salary increments, merit increases, special compensation for child and adult protective service work, employee or position status changes, and any other type of approved increases. Salary determinations shall be rendered in a fair and consistent manner to ensure equal pay for equal work.

C. All requested position actions by local departments must be reviewed and approved by the department prior to implementation.

D. Midyear changes to the local compensation plan must be submitted to the department for review and approval.

E. Local compensation policies and practices shall comply with federal and state laws including the federal Fair Labor Standards Act (~~29 USC §§ 201-219~~), (29 USC §§ 201 et seq.), the Administrative Manual and procedures provided by the department.

22VAC40-675-100. Other local compensation issues.

A. In localities where the governing body has elected to have a director of social services serve as the local board, reimbursement for governing body assigned expenses shall be in accordance with § 63.2-310 of the Code of Virginia.

B. Provisions shall be made for overtime worked in accordance with the Fair Labor Standards Act (29 USC §§ 201-219). The reimbursement shall be up to the reimbursable maximum of the applicable state occupational title.

C. Provisions shall be made for other types of compensation as deemed necessary by the board and set forth in the Administrative Manual.

D. Local departments with approved deviating compensation plans will also be reimbursed up to the maximum of the applicable state position occupational title. When the local deviating maximum exceeds the state reimbursable maximum, local-only funds shall be used to compensate for overtime and any federal funds that are available and appropriate for such use.

C.E. Reimbursements shall be made for absences that result from the closing of local departments' operations because of inclement weather conditions or other authorized closing.

D.F. Bonuses for employees of local departments of social services shall be consistent with § 15.2-1508 of the Code of Virginia and with procedures provided by the department.

22VAC40-675-110. Deviations from state classification or compensation plans.

~~A. The board may approve~~ A local department's request for deviation from the state classification plan and state compensation plans plan shall be made to the board.

~~B. Deviation requests may be either for classification, classification and compensation, or compensation only.~~ When the local department wants to exercise one of these options, it must obtain required approvals and submit the required forms to the department in accordance with the Administrative Manual. The commissioner will provide his analysis to the board.

~~C. Local departments shall submit required forms as specified in the Administrative Manual when requesting deviation from the state classification plan and compensation plans.~~

C. Local departments shall submit required forms as specified in the Administrative Manual when requesting deviation from the state classification, classification and compensation, or compensation plan.

22VAC40-675-120. Sanctions Reviews.

A. Policies Personnel policies and practices by the local departments are subject to review or audit by the department.

B. Reviews may include ~~but not be limited to~~ the assessment and analysis of personnel data, records, reports, systems, and feedback from local department employees.

~~C. When the department finds that a local department has not complied with or has violated the provisions of this regulation, the department may impose financial sanctions or require reimbursement of funds. Funds may be withheld until such time as deemed necessary for the proper administration of the local compensation plan.~~

Part III

Recruitment and Selection of Local Department Employees

22VAC40-675-130. General hiring provision.

A. Recruitment, ~~selecting~~ selection and ~~advancing~~ advancement of employees shall be on the basis of their relative ability, knowledge and skills, including open consideration of qualified applicants for original appointment assuring fair treatment of applicants and employees in all aspects of personnel administration and with proper regard to their privacy and constitutional rights as citizens. This fair treatment principle includes compliance with the federal equal employment opportunity and nondiscrimination laws.

B. The department shall determine the application process and employment forms to be used by all applicants for original appointment, promotion, demotion, transfer, and reemployment.

C. In accordance with § 63.2-325 of the Code of Virginia, the commissioner shall provide a list of eligible candidates for the position of local director to the local board or other appropriate appointing authority.

D. The board shall place the responsibility of the final selection process of local department employees with the local director and local board.

E. Local departments adopting local jurisdiction personnel plans shall follow the provisions of the city, county or town of which they are a governmental unit.

Part IV

Employee Status

22VAC40-675-140. Employee status in the merit system plan.

A. Status defines the employee's permanency in the system as it relates to benefits and the use of grievance policies.

B. The types of employee status included in the merit system plan are probationary, ~~nonprobationary~~, regular, restricted, temporary, and emergency.

C. Local departments shall provide benefits in accordance with the requirements of the Administrative Manual.

Part VI

Equal Employment Opportunity

22VAC40-675-180. Equal employment opportunity.

A. The board promotes equal employment opportunity in the recruitment and selection process by ensuring that qualification requirements are job-related and that such requirements do not limit or restrict employment opportunities because of race, color, religion, sex, age, disability, national origin or political affiliation (except where sex or age is a bona fide occupational qualification).

B. All local departments shall prepare their own affirmative action plan in accordance with the Administrative Manual, or comply with a written local jurisdiction plan that provides an

aggressive, coherent management program for equal employment for all employees and applicants for employment.

C. Employees or applicants for employment who believe that they have been discriminated against may file a complaint with the Virginia Department of Human Resource Management, Office of Equal Employment Services, James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219.

D. All local departments are required to cooperate fully with the Office of Equal Employment Services ~~when they are conducting or any other~~ official investigations investigation of charges of discrimination. Cooperation includes providing papers, notes, documents and any other written material, and responding to questions deemed necessary ~~by that office~~ to investigate the charge.

Part VIII

Grievance Procedure

22VAC40-675-200. Employee grievance procedure.

~~Local departments not included in their jurisdiction's grievance procedure shall develop their own in accordance with the Administrative Manual.~~ A local department or local board shall adopt a grievance procedure that is either (i) adopted by the locality in which the local department or local board is located, or in the case of a regional department or board, the grievance procedure adopted by one of its localities in the regional organization; or (ii) approved by the state board. ~~This~~The board approved grievance procedure in the Administrative Manual shall be consistent with the provisions of Chapter 40 30 (§ ~~2-2-1000~~ 2.2-3000 et seq.) of Title 2.2 of the Code of Virginia. The grievance procedure adopted by the local department or local board shall apply to employees, including local directors, of the local boards and local departments.

Part IX

Other Employee Relations Policies

22VAC40-675-210. Political activity.

A. No local department employee shall make use of his official authority or influence to:

1. Interfere with or affect the result of a nomination or election to public office or position;
2. Directly or indirectly coerce, command or advise a state or local officer or employee to pay, lend or contribute anything of value to a party, committee, organization, agency or person for political purposes; or
3. Be a candidate for public elective office in a ~~partisan~~ primary, general or special election.

B. The local department's provisions on political activity are shall be consistent with the federal Hatch Act (~~5 USC §§ 1501-1509~~) (5 USC §§ 1501-1508) and facilitate effective control of prohibited political activity by employees.

C. In general, the Hatch Act covers officers or employees of a state or local department if their principle employment is in connection with an activity that is financed in whole or in part by loans or grants made by a federal agency. An employee subject to political activity laws continues to be covered by these laws and regulations while on annual leave, sick leave, leave without pay, administrative leave or furlough.

D. ~~Local boards shall adopt these provisions or, instead, adopt the provisions of the local governmental jurisdiction consistent with the federal Hatch Act. The board shall promulgate policy consistent with these provisions. Local departments may request to deviate to local jurisdiction political activity policy that is consistent with the federal Hatch Act. When the local department wants to exercise this option, it must obtain required approvals and submit the required forms to the department in accordance with the Administrative Manual. The~~

commissioner will provide his analysis to the board and the deviation request shall be presented to the board for action.

22VAC40-675-220. Outside employment of local department employees.

A. Employees in local departments shall not engage in any other employment, any private business, or in the conduct of a profession that interferes with their usefulness as ~~an employee~~ employees or with their work performance during normal working hours ~~and their work performance, or shall not~~ or be in violation of Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

B. If an employee desires to seek or be engaged in outside employment, the employee must first obtain approval from the local director. If the local director desires to seek or be engaged in outside employment, the local director must first obtain approval from the local board. A local director who serves as the local board and desires to seek or be engaged in outside employment must first obtain approval from the elected governing body or designee.

C. If an employee accepts employment outside the ~~agency~~ local department without receiving prior approval, the employee will be subject to disciplinary action under the standards of conduct.

FORMS (22VAC40-675)

Classification and Compensation Self-Analysis, Form 032-10-0175-00-eng (rev. 9/15)

~~Local Policy Request, Form 032-10-0161-05-eng (rev. 3/14)~~

Local Policy Request, Form 032-10-0161-06-eng (rev. 9/15)

~~Jurisdiction Wide Self-Analysis, Form 032-10-0165-02-eng (rev. 1/14)~~

Jurisdiction Wide Self Analysis, Form 032-10-0165-03-eng (rev. 9/15)

Human Resource Policy Record, Form 032-10-0162-02-eng (eff. 11/13)

Human Resource Policy Record, Form 032-10-0162-04-eng (rev. 10/15)

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DOCUMENT INCORPORATED BY REFERENCE (22VAC40-675)

~~Human Resource Manual for Local Departments of Social Services, Virginia Department of Social Services, revised July 1, 2009~~

Human Resource Manual for Local Departments of Social Services, Virginia Department of Social Services, revised May 1, 2015.