Rules and Regulations of the State of Georgia

Department 478 RULES OF THE STATE PERSONNEL BOARD

Current through Rules and Regulations filed through April 4, 2023

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ADMINISTRATIVE HISTORY

The **Administrative History** following each Rule gives the date on which the Rule was originally filed and its effective date, as well as the date on which any amendment or repeal was filed and its effective date. Principal abbreviations used in the administrative History are as follows:

f. -- filed

eff. -- effective

R. -- Rule (Abbreviated only at the beginning of the control number)

Ch. -- Chapter (Abbreviated only at the beginning of the control number)

ER. -- Emergency Rule

Rev. -- Revised

Note: Emergency Rules are listed in each Rule's Administrative History by Emergency Rule number, date filed and effective date. The Emergency Rule will be in effect for 120 days or until the effective date of a permanent Rule covering the same subject matter superseding this Emergency Rule is adopted, as specified by the Agency.

NOTE: The Rules and Regulations of the State Personnel Board have been accepted by the Administrative Procedure Division of the Office of Secretary of State as filed under the rule

codification system of the State Personnel Board. All Rules have been declared effective on the date they were approved by the Governor.

Chapter 478-1, entitled "Rules of the State Personnel Board" has been adopted. Filed July 31, 1985; effective July 1, 1985, as specified by the Board.

Rules 478-1-.01, .03, .0A, .0B, .0E have been amended. Filed January 9, 1986; effective December 31, 1985, as specified by the Board. Chapter 478-2 entitled "Flexible Benefits Program" has been adopted. Filed September 25, 1986; effective August 8, 1986, as specified by the Board.

Rules 478-1-.01, .03, .10, .11, .12, .14, .0B, .0D have been amended. Filed January 15, 1987; effective December 29, 1986, as specified by the Board.

Rule 478-2-.06 has been amended. Filed May 22, 1987; effective March 26, 1987, as specified by the Board.

Rules 478-1-.01, .02 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Subparagraphs 3.501 D., J., and K.; subparagraphs 3.502 M. and P.; paragraphs 3.504, 3.506, 3.601, 3.602, 3.063, 3.604, 3.802, 3.803, 3.804, 3.806, 3.901 and 3.903 of Rule 478-1-.03 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Sections 4.100 and 4.300; paragraph 4.603; Section 4.800; paragraphs 4.901 and 4.902 of Rule 478-1-.04 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Section 5.300 of Rule 478-1-.05 has been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs 6.102.1, 6.103, 6.204; subparagraphs 6.204 B., F., H., and M.; paragraphs 6.205, 6.304, 6.407; section 6.500; paragraphs 6.602, 6.604, 6.701 and section 6.900 of Rule 478-1-.06 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Section 7.300; subparagraphs 7.401 B., C., D., and E.; paragraph 7.402 and section 7.500 of Rule 478-1-.07 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs 9.101, 9.205, 9.207, 9.208; subparagraphs 9.209B.; section 9.300; section 9.700, and section 9.800 of Rule 478-1-.09 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Subparagraphs 10.101B. and 10.102B.: paragraphs 10.103; subparagraph 10.103B.; paragraphs 10.201, 10.202, 10.203, 10.204, 10.301 and 10.304.1 of Rule 478-1-.10 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs 11.103, 11.104 and 11.202 of Rule 478-1-.11 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs 12.102.1, 12.102.2, 12.202, 12.203, 12.204, 12.205.1, 12.205.2, 12.205.3, 12.206.1; subparagraphs 12.206.1 A., C., and D.; subparagraphs 12.206.2, B. and D.; paragraph 12.206.3; subparagraph 12.206.3C.; paragraphs 12.206.4, 12.206.5, 12.206.6, 12.207, 12.301.1, 12.302.1, 12.302.2, 12.501.1, 12.501.2, 12.501.3, 12.501.4 and section 12.600 of Rule 478-1-.12 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Section 13.100 of Rule 478-1-.13 has been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs 14.105.1, 14.105.2, 14.112, 12.205.2, 14.206, 14.207.2, 14.211, 14.212 and 14.213 of Rule 478-1-.14 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs 15.101, 15.201, 15.201.1, 15.202, 15.203, 15.204, 15.301; subparagraphs 15.302 A., C., and D.; subparagraphs 15.402 B. and D.; paragraphs 15.403.1, 15.403.2, 15.501; subparagraph 15.501D.; section 15.600; paragraph 15.701; subparagraph 15.701B. and paragraph 15.704 of Rule 478-1-.15 have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs A.202, A.203, A.204, A205, A206.2, A.401, subparagraphs A.701D., and paragraph A.702 of Rule 478-1-.0 A have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs B.110.1, B.110.2, B.110.3; subparagraph B.110.4 b. and c.; paragraphs B.111, B.202.1, B.203.1, B.203.2, B.303.1, B.305.1, B.305.2, B.305.4; B.401, B.403.1, B.403.2, B.404.1, B.404.2, B.404.3, B.405.1, B.406, B.502, B.503.1, B.503.2, B.503.3, B.503.4, B.504, B.506.2, B.506.4, B.507, B.601, B.602, B.701, B.702, Section B.800, paragraphs B.901, B.902.2, B.903.1, B.903.2, B.904 and B.1004 of Rule 478-1-.0 B have been amended; said Rule has been further amended by the adoption of paragraphs B.305.6 and B.604. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs C.302, C.303 and Section C.400 of Rule 478-1-.0 C have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Introductory paragraph and paragraph D.104 and Section D.700 of Rule 478-1-.0 D have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraph E.208, Subparagraph E.304B. and paragraph E.404 of Rule 478-1-.0 E have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs F.102, F.105, F.202, F.203, F.402.3, F.403, F.404.2, F.407.2, F.407.3, F.407.4, F.407.5, section F.600 and paragraph F.703 of Rule 478-1-.0 F have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraphs G.302, G.306 and G.307 of Rule 478-1-.0 G have been amended. Filed January 22, 1988; effective November 12, 1987, as specified by the Board.

Paragraph 8.200 of Rule 478-1-.08 has been amended. Filed August 2, 1988; effective July 8, 1988, as specified by the Board.

Rule 478-1-.09 has been amended by the adoption of a new paragraph 9.210. Filed August 2, 1988; effective July 8, 1988, as specified by the Board.

Rule 478-2-.01 has been amended. Filed May 17, 1989, effective January 19, 1989, as specified by the Board.

Rule 478-2-.02 has been amended. Filed May 17, 1989; effective January 19, 1989, as specified by the Board.

Rule 478-2-.03; (3)(a); (4); (4)(a); (4)(b); (4)(c) has been amended and (4)(d) adopted. Filed May 17, 1989; effective January 19, 1989, as specified by the Board.

Rule 478-2-.05 has amended paragraphs (2) and (3) and adopted (6). Filed May 17, 1989; effective January 19, 1989, as specified by the Board.

Rule 478-2-.06 has amended paragraphs (1) and (2) and adopted (3). Filed May 17, 1989; effective January 19, 1989, as specified by the Board.

Rule 478-2-.07 has been repealed and a new Rule entitled "Extended Coverage" adopted.

Rule 478-2-.07, "Termination of Coverage" was renumbered 478-2-.08. Filed May 17, 1989; effective January 19, 1989, as specified by the Board.

Rule 478-2-.08 has been repealed and a new Rule entitled "Termination of Coverage" adopted. Rule 478-2-.08, "Plan Benefits" was renumbered 478-2-.09. Filed May 17, 1989; effective January 19, 1989, as specified by the Board.

Rule 478-2-.09 has been repealed and a new Rule entitled "Plan Benefits" adopted. Rule 478-2-.09, "Request for Plan Component Additions or Modifications" was renumbered 478-2-.10. Filed May 17, 1989; effective January 19, 1989, as specified by the Board.

Rule 478-2-.10 has been adopted. Filed May 17, 1989; effective January 19, 1989, as specified by the Board.

Subparagraph 1.20AC of Rule 478-1-.01 has been amended. Filed June 9, 1989; effective November 11, 1988, as specified by the Board.

Section B.200, paragraph B.201.1 and Section B.300, paragraph B.305.5 of Rule 478-1-.0 B have been amended. Filed June 9, 1989; effective November 11, 1988, as specified by the Board.

Paragraph F.302 of Rule 478-1-.0 F has adopted subparagraph K. Filed June 9, 1989; effective November 11, 1988, as specified by the Board.

Paragraph 1.21 has been amended. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraphs 2.102A, 2.102B, 2.102C, 2.102D and 2.102.I have been amended. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraphs 3.801, 3.802 have been amended and Paragraph 3.803 has been repealed and reserved. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraph 10.101.B has been amended. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraph A.202 has been amended. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Section A.800, entitled "Calculation of Salary Payments" was adopted. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraphs B.105.1 and B.105.2 have been amended. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraphs B.203.3, B.203.4 a, B.203.4 b and B.203.5 have been amended. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraphs B.302, B.303.1 and B.305.3 have been amended. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraphs B.402 and B.406 have been amended. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraphs B.601 and B.603 have been amended. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraphs B.1002.2, B.1002.3 have been amended and B.1002.5 adopted. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraph B.1003 has been amended and Paragraphs B.1003.1 and B.1003.2 adopted. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Paragraph E.302 has been amended and Paragraph E.304K has been repealed and Paragraph E.305 adopted. Filed November 8, 1989; effective June 28, 1989, as specified by the Board.

Section 13.500 entitled "Working Test Management Review" has been adopted. Filed November 8, 1989; effective September 14, 1989, as specified by the Board.

Paragraphs B.104, B.106.1, B.108, B.112 and B.113 have been amended and B.107 was renumbered to B.107.1 and B.107.2 adopted. Filed November 8, 1989; effective September 14, 1989, as specified by the Board.

Section B.1100 entitled "Personal Leave" has been adopted. Filed November 8, 1989; effective September 14, 1989, as specified by the Board.

Paragraph F.302.E has been amended. Filed November 8, 1989, effective September 14, 1989, as specified by the Board.

Chapter 478-3 entitled "Temporary Special Regulations For Implementation of the Central State Hospital Classified Survey" containing Rules 478-3-.01 through 478-3-.06, has been adopted. Filed November 8, 1989; effective October 16, 1989, as specified by the Board.

Paragraphs 1.27 and 1.28 have been amended; Paragraph 1.35 has been amended by the adoption of subparagraphs 1 and 2. Filed June 20, 1990; effective July 1, 1990, as specified by the Board.

Paragraphs 10.205, 10.205.1 through 10.205.3 have been adopted. Filed June 20, 1990; effective July 1, 1990, as specified by the Board.

Paragraphs 12.202, 12.203 and 12.301.1 have been amended. Filed June 20, 1990; effective May 30, 1990, as specified by the Board.

Paragraph 12.301.1 has been amended. Filed June 20, 1990; effective July 1, 1990, as specified by the Board.

Paragraphs 14.214, 14.214.1 through 14.214.4 have been adopted. Filed June 20, 1990; effective May 30, 1990, as specified by the Board.

Paragraph B.115 has been adopted. Filed June 20, 1990; effective May 30, 1990, as specified by the Board.

Paragraph B.305.2 has been amended. Filed June 20, 1990; effective May 30, 1990, as specified by the Board.

Paragraph B.1003.2 has been amended. Filed June 20, 1990; effective May 30, 1990, as specified by the Board.

Rules 478-1-.24 entitled "Random Drug Screening of Employees"; 478-1-.25 entitled "Employee Drug/Alcohol Screening"; 478-1-.26 entitled "Drug Free Public Work Force" adopted. Filed December 11, 1990; effective October 15, 1990, as specified by the Board.

Paragraph E.305 has been amended. Filed December 11, 1990; effective November 26, 1990, as specified by the Board.

Rules 478-2-.01 through 478-2-.09 have been amended. Filed January 29, 1991; effective July 1, 1990, as specified by the Board.

Rule 478-1-.09 has been amended. Filed February 14, 1991; effective January 4, 1991, as specified by the Board.

Rule 478-2-.01 has amended paragraphs (12) to (19); (30), (31). Filed February 14, 1991; effective January 10, 1991, as specified by the Board.

Rule 478-2-.02 has been amended. Filed February 14, 1991; effective January 10, 1991, as specified by the Board.

Rule 478-2-.04 has been amended. Filed February 14, 1991; effective January 10, 1991, as specified by the Board.

Rule 478-2-.05 has been amended. Filed February 14, 1991; effective January 10, 1991, as specified by the Board.

Rule 478-2-.06, has been amended. Filed February 14, 1991; effective January 10, 1991, as specified by the Board.

Paragraphs B.905.1 to B.905.4 have been adopted. Filed August 27, 1991; effective July 31, 1991, as specified by the Board.

Section 9.800 of Rule 478-1-.09 has been amended. Filed March 10, 1992; effective February 12, 1992, as specified by the Board.

Paragraph B.107.1 of Rule 478-1-.0 B has been amended. Filed March 10, 1992; effective February 12, 1992, as specified by the Board.

Paragraph 2.102C, and E. of Rule 478-1-.02; Paragraph 11.102 of Rule 478-1-.11; Paragraph 14.111 and 14.112 of Rule 478-1-.14; Rules 478-1-.0 B and 478-1-.0 F have been amended and Rule 478-1-.16 adopted. Filed August 11, 1992; effective July 2, 1992, as specified by the Board.

Rules 478-1-.02, .03, .06, .09, .10, .14, .0B, .0F have been amended; Rule 478-1-.0 A has been repealed and new Rule 478-1-.17 of same title has been adopted. Filed September 3, 1992; effective August 6, 1992, as specified by the Board.

Emergency Rule 478-1-0.1-.17 was filed November 16, 1992, effective September 14, 1992, the date of adoption. This Emergency Rule shall expire in not more than 120 days immediately following its adoption on September 14, 1992, or upon adoption of permanent Rule covering the same subject matter, as specified by the Board. This Emergency Rule was adopted in order to limit the salary administration program in the area of salary increases. (This Emergency Rule will not be published; copies may be obtained from the Board.)

Rules 478-1-.03, .07, .10, .12, .13, .14 have been amended. Filed November 16, 1992; effective September 21, 1992, as specified by the Board.

Rules 478-1-.0 B, .0D, .0E, .0G have been repealed and new Rules 478-1-.18, .19, .20, .21, .22 of same titles have been adopted. Filed November 16, 1992; effective September 21, 1992, as specified by the Board.

Rule 478-1-.23 entitled "Family Leave" has been adopted. Filed January 28, 1993; effective January 1, 1993, as specified by the Board.

Emergency Rule 478-1-0.1-.17 has been repealed and a permanent Rule 478-1-.17 adopted. Rule 478-1-.17 has been further amended. Rule 478-1-.18 has been amended. Filed January 28, 1993; effective January 6, 1993, as specified by the Board.

Rules 478-1-.10, .18, .23 have been amended. Filed April 9, 1993; effective March 8, 1993, as specified by the Board.

Rules 478-1-.12, .13, .15, .17, .18, .24 have been amended; Chapter 478-3 has been repealed. Filed June 28, 1993; effective June 9, 1993, as specified by the Board.

Rules 478-1-.01, .03, .14, .18 have been amended. Filed August 10, 1993; effective July 30, 1993, as specified by the Board.

Rules 478-1-.03, .06, .23 have been amended. Filed September 23, 1993; effective September 9, 1993, as specified by the Board.

Rule 478-1-.21 has been amended. Filed October 15, 1993; effective October 6, 1993, as specified by the Board.

Section 9.800 of Rule 478-1-.09 and Paragraphs 19.101, 19.103, 19.108, 19.200, 19.300, 19.400, 19.600, 19.602, 19.605, 19.700 and 19.800 of Rule 478-1-.19 have been amended. Filed December 30, 1993; effective December 20, 1993, as specified by the Board.

Rules 478-1-.09, .11 have been amended. Filed March 9, 1994; effective March 3, 1994, as specified by the Board.

Paragraphs 1.29 and 1.30 of Rule 478-1-.01 have been amended. Paragraph 10.301 of Rule 478-1-.10 has been amended. Paragraph 15.202 of Rule 478-1-.15 has been amended. Paragraphs 17.201, 17.202, 17.203.1, 17.204.1, 17.301, 17.302.1, 17.302.2, 17.303, 17.304, 17.305, 17.402.1

have been amended; paragraph 17.501 has been repealed, new paragraph, same title adopted. Section 17.800 has been adopted. Paragraph 18.203.3 of Rule 478-1-.18 has been amended. Filed June 30, 1994; effective July 1, 1994, as specified by the Board.

Rules 478-1-.01, .03, .14 and .18 have been amended. Filed July 20, 1994; effective July 7, 1994, as specified by the Board.

Rules 478-1-.09, .12, .15, .16, .17, .18 have been amended. Filed October 17, 1994; effective October 6, 1994, as specified by the Board.

Rules 478-1-.09 to .13 and .18 have been amended. Filed November 15, 1994; effective November 3, 1994, as specified by the Board.

Paragraphs 14.212 of Rules 478-1-.14; 23.107 of 478-1-.23; 24.102, 24.103, 24.403, 24.501.3, 24.601, 24.603, 24.604 of Rule 478-1-.24 have been amended and Rule 478-1-.27 adopted. Filed April 11, 1995; effective April 5, 1995, as specified by the Board.

Rules 478-1-.01, .09, .10, .11, .12, .17, .18 have been amended, .28 has been adopted. Filed July 11, 1995, effective June 30, 1995, as specified by the Board.

Rules 478-1-.05, .17, .24, .27, .28 has been amended. Filed October 30, 1995; effective October 16, 1995, as specified by the Board.

Rules 478-1-.03, .13, .21, have been amended, .29 has been adopted. Filed December 7, 1995; effective November 30, 1995, as specified by the Board.

Rule 478-1-.30 entitled "Leave Donation" has been adopted. Filed February 21, 1996; effective February 7, 1996, as specified by the Board.

Rule 478-1-.09 has been amended. Filed May 2, 1996; effective April 15, 1996, as specified by the Board.

Rule 478-1-.19 has been amended. Filed May 16, 1996; effective May 7, 1996, as specified by the Board.

Rules 478-1-.01 to .03, .08 to .12, .15, .17 to .20 have been amended. Filed December 31, 1996; effective September 20, 1996, as specified by the Board.

Rules 478-1-.01, .04, .05, .19 have been amended. Rule 478-1-.31 has been adopted. Filed December 31, 1996; effective October 1, 1996, as specified by the Board.

Rules 478-1-.01, .17, .18 have been amended. Filed December 31, 1996; effective November 18, 1996, as specified by the Board.

Rules 478-1-.03, .10, .17 have been amended. Filed February 7, 1997; effective January 29, 1997, as specified by the Board.

Chapter 478-4 entitled "Medical and Physical Examination Program: Prospective State Employees" has been adopted. Filed February 7, 1997; effective January 31, 1997, as specified by the Board.

Rules 478-1-.12, .14, .16 to .19 and Chapter 478-2 have been amended. Filed April 22, 1997; effective April 9, 1997, as specified by the Board.

Rule 478-1-.17 has been amended. Filed June 12, 1997; effective June 6, 1997, as specified by the Board.

Rules 478-1-.02, .12, .14, .15, .18, .19, .20, .24, .26 and .27 have been amended. Filed August 18, 1997; effective June 30, 1997, as specified by the Board.

Rule 478-1-.21 has been amended. Filed September 15, 1997; effective September 4, 1997, as specified by the Board.

Rules 478-1-.03, .06, .07, .08, .10, .11, .13, .16, .18, .19, .22, .23, .30, .31 have been amended. Filed October 8, 1997; effective September 25, 1997, as specified by the Board.

Rules 478-1-.01, .04, .10, .17 have been amended. Filed November 4, 1997; effective October 27, 1997, as specified by the Board.

Rules 478-.1-.12, .18 to .21, .24, .28 and .30 have been amended. Filed May 19, 1998; effective April 2, 1998, as specified by the Board.

Rules 478-1-.09, .13, .14, .15, .18, .24, .28, .29 have been amended. Filed July 22, 1998; effective July 7, 1998, as specified by the Board.

Rules 478-1-.10, .20 have been amended. Filed September 21, 1998; effective September 9, 1998, as specified by the Board.

Rule 478-1-.23 has been repealed. Filed December 31, 1998; effective December 4, 1998, as specified by the Board.

Rules 478-1-.14, .20, .21 have been amended. Filed July 15, 1999; effective June 24, 1999, as specified by the Board.

Rule 478-1-.01 has been amended. Rules 478-1-.17 and .18 have been repealed and new Rules adopted. Filed July 15, 1999; effective October 1, 1999, as specified by the Board.

Rule 478-1-.18 has been amended. Filed December 9, 1999; effective November 15, 1999, as specified by the Board.

Rules 478-1-.03, .09, .12, .17, .18, .19, .22, .26 and .30 have been amended. Rule 478-1-.31 has been repealed. Filed July 31, 2000; effective July 14, 2000, as specified by the Board.

Rule 478-1-.13 has been amended. Filed May 22, 2001; effective May 3, 2001, as specified by the Board.

Rule 478-1-.17 has been amended. Filed August 22, 2001; effective August 13, 2001, as specified by the Board.

Rule 478-1-.23 has been adopted. Filed January 28, 2002; effective November 16, 2001, as specified by the Board.

Rules 478-1-.09 and .17 have been amended. Filed June 12, 2002; effective May 21, 2002, as specified by the Board.

Rule 478-1-.18 has been amended. Filed November 14, 2002; effective August 30, 2002, as specified by the Board.

Rule 478-1-.16 has been amended. Filed January 13, 2003; effective December 4, 2002, as specified by the Board.

Rule 478-1-.17 (17.900 and 17.1000) has been amended. Filed December 8, 2003; effective August 19, 2003, as specified by the Board.

Rules 478-1-.14 (14.112) and .18 (18.500) have been amended. Filed December 8, 2003; effective October 24, 2003, as specified by the Board.

Rule 478-1-.18 (18.303.1) has been amended. Filed April 27, 2004; effective April 13, 2004, as specified by the Board.

Rule 478-1-.02 (2.102.B.) has been amended. Filed June 8, 2004; effective May 25, 2004, as specified by the Board.

Rule 478-1-.15 (15.500) has been amended. Filed July 12, 2005; effective November 1, 2004, as specified by the Board.

Rule 478-2-.02 has been amended. Filed July 12, 2005; effective July 1, 2005, as specified by the Board.

Rule 478-1-.18 (18.103) has been amended. Filed October 17, 2005; effective October 4, 2005, as specified by the Board.

Rules 478-2-.02 and .04 have been amended. Filed November 15, 2005; effective October 26, 2005, as specified by the Board.

Rule 478-2-.06 has been amended. Filed December 15, 2005; effective November 18, 2005, as specified by the Board.

Rule 478-2-.16 (16.100) has been amended. Filed January 5, 2006; eff. Dec. 22, 2005, as specified by the Board.

Rule 478-1-.17 (17.900) and (17.1000) has been amended. Filed January 17, 2007; effective January 4, 2007, as specified by the Board.

Rule 478-1-.18 (18.1101) has been amended. Filed March 25, 2008; effective March 17, 2008, as specified by the Board.

Chapter 478-1 has been repealed and a new Chapter adopted. Filed December 23, 2008; effective December 17, 2008, as specified by the Board.

Rules 478-1-.02, .09 to .11, .16, .21, .22, .24, 478-2-.01, .02, and 478-4-.01 have been amended. Filed October 28, 2009; effective August 27, 2009.

Rule 478-1-.01 has been repealed and a new Rule entitled "Organization of the Board" adopted. Rules 478-1-.07, .16, and .21 have been amended. Filed July 30, 2010; effective July 16, 2010, as specified by the Board.

Rules 478-1-.01, .02, .05, .16, .21 to .24 amended. F. Dec. 30, 2013; eff. Sep. 25, 2013, as specified by the Board.

Rules 478-4-.01, 478-4-.02 amended. F. Jan. 14, 2014; eff. Sep. 25, 2013, as specified by the Board.

Rule 478-1-.30 adopted. F. Feb. 10, 2014; eff. Jan. 6, 2014, as specified by the Board.

Rule 478-1-.14 amended. F. July 2, 2014; eff. June 20, 2014, as specified by the Board.

Rule 478-1-.04 repealed, Rule 478-1-.15 amended, Rules 478-1-.20 and .24 repealed and new rules adopted, Rules 478-1-.25, .26, 27, and .28 adopted. F. July 8, 2014; eff. June 20, 2014, as specified by the Board.

Rule 478-1-.23 amended. F. Dec. 18, 2014; eff. Dec. 12, 2014, as specified by the Board.

Rule 478-1-.16 amended. F. July 1, 2015; eff. June 25, 2015, as specified by the Board.

Rules 478-1-.19, 478-1-.23 amended. F. Oct. 9, 2015; eff. Sep. 15, 2015, as specified by the Board.

Rule 478-1-.20 amended. F. Jan. 8, 2016; eff. Dec. 29, 2015, as specified by the Board.

Rules 478-1-.02, .16 amended. Rule 478-1-.13 repealed and new rule adopted. F. Jan. 17, 2017; eff. Jan. 9, 2017, as specified by the Board.

Rule 478-1-.06 amended. F. May 31, 2017; eff. May 18, 2017, as specified by the Board.

Rule 478-1-.18 amended. F. Nov. 30, 2017; eff. Nov. 28, 2017, as specified by the Board.

Rule 478-1-.04 adopted. Rule 478-1-.25 repealed. F. Aug. 22, 2018; eff. Aug. 8, 2018, as specified by the Board.

Rule 478-1-.21 amended. Rules 478-1-.21A through .21H adopted. F. Jan. 4, 2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.09 amended. F. Mar. 29, 2019; eff. Mar. 21, 2019, as specified by the Board.

Rule 478-1-.20 amended. F. May 29, 2019; eff. May 24, 2019, as specified by the Board.

Rules 478-1-.03, 478-1-.17 amended. F. July 29, 2019; eff. July 24, 2019, as specified by the Board.

Rules 478-1-.10, .11, .14 amended. F. Aug. 25, 2020; eff. Mar. 16, 2020, as specified by the Board.

Rule 478-1-.31 adopted. F. Aug. 25, 2020; eff. July 28, 2020, as specified by the Board.

Rules 478-1-.01, .16 amended. F. July 15, 2021; eff. June 22, 2021, as specified by the Board.

Rule 478-1-.08 amended. F. Mar. 24, 2022; eff. Mar. 10, 2022, as specified by the Board.

Rule 478-1-.16 amended. F. Mar. 29, 2023; eff. Mar. 16, 2023, as specified by the Board.

Chapter 478-1. RULES OF THE STATE PERSONNEL BOARD.

Rule 478-1-.01. Organization of the Board.

(1) **Establishment and Membership of the Board**:

Article IV, Section III, Paragraph I of the Constitution of the State of Georgia establishes a State Personnel Board. The Board provides direction by which the State's personnel policies are administered, and may be vested with such additional powers and duties as provided by law.

The Board consists of five members appointed by the Governor for five-year terms, subject to confirmation by the Senate. Members shall serve until their successors are

appointed and qualified. Vacancies arising from death or resignation shall remain vacant until such time that a successor is appointed and qualified. A member of the State Personnel Board may not be employed in any other capacity in state government.

(2) **Applicability**:

Rules adopted by the State Personnel Board and approved by the Governor have the force and effect of law and apply to departments and agencies as defined in Section 45-20-2 of the Georgia Code.

(3) **Organization of the Board**:

(a) The Board shall, at the last regular meeting of each calendar year or at such time as the chair may determine, elect one member to act as chair for a term of one year, or until a successor is duly elected. At the same meeting, the Board shall elect one of its members to act as vice-chair for the same term and to act for the chair in his or her absence. If the office of chair or vice-chair is vacated because of death or resignation, or in any other manner, the Board, at its next regular meeting, shall elect a successor, who shall serve for the unexpired term.

(b) At the last regular meeting of each calendar year or at such time as the chair may determine, the Board shall establish a schedule of the dates and meeting times for the regular Board meetings for the following calendar year. The Commissioner will publish this schedule and make it available to any interested party upon request. Regular meetings of the Board shall normally be held in the offices of the Department of Administrative Services; however, the chair may cancel or postpone, or change the time, date, and place of any meeting, when deemed necessary. Board members, the Commissioner, appointing authorities, and other appropriate parties shall be notified of the meetings as required by law, at least ten (10) days prior to the meetings.

(c) Special meetings of the Board may be called by any member of the Board or by the Commissioner upon giving reasonable advance notice of the meeting and subjects expected to be considered at the meeting, as required by Section 50-14-1 of the Georgia Code. Notice of such meetings shall be given to each member of the Board, the Commissioner, and other parties as required by state law.

(d) Except as otherwise provided by law, all regular meetings of the Board shall be open to the public. The Board may meet in closed session when discussing or deliberating upon the appointment, employment, hiring, disciplinary action, dismissal, or performance of a public officer or employee.

(e) The Board shall adopt procedures for the conduct of its activities. Meetings of the Board may be informal, subject to such rules of order as may be promulgated by the chair of the Board, and may be conducted by teleconference, provided that such meeting is conducted as required by Code Section 50-14-1.

(f) Three members shall constitute a quorum. Only the votes of a majority of the members present shall be necessary for the transaction of any business or discharge of any duties of the State Personnel Board, provided there is a quorum.

(g) The minutes of each Board meeting shall include the time and place of the meeting, names of the board members present, all official acts of the Board, the votes of each member except when the acts are unanimous, and, when requested, a board member's approval or dissent, with the member's reasons. The Commissioner shall cause the minutes to be transcribed and presented for approval or amendment at the next regular meeting. The minutes or a true copy thereof, certified by a majority of the Board, shall be open to inspection by the appointing authorities and the public.

(h) All decisions, opinions, recommendations and other pertinent matters resulting from a hearing or investigation conducted by the Board, including the votes of each member except when the acts are unanimous, shall be recorded and filed as a part of its proceedings with the minutes.

(i) The Commissioner, as Executive Secretary to the Board, shall have the right to attend or be represented at, and to participate in, all meetings of the Board, but shall be without voting power.

(4) **Functions, Powers, and Duties of the Board; Compensation of Members**:

(a) The Board shall hold regular meetings at such times as the Chair may determine and may hold additional meetings as may be required for the proper discharge of its duties.

It shall be the specific duty and function of the State Personnel Board:

1. To represent the public interest in the improvement of personnel administration in the state departments covered by the Rules of the State Personnel Board.

2. At public hearings, to adopt and amend policies, rules, and regulations effectuating state personnel administration, subject to approval of the Governor.

3. To review adverse personnel actions for employees of the classified service where the Board deems a review appropriate. All appeals determinations of the Board shall be written and documented as to findings of fact, bases for decisions, and prescribed remedies.

4. To assure the administration of state and federal laws relating to state personnel administration.

5. To promote public understanding of the purposes, policies, and practices of state personnel administration and to advise and assist state departments in securing the interest of institutions of learning and of civic, professional, and other organizations in the improvement of personnel standards.

6. To adopt and promulgate rules and regulations for the administration of the program for certification of medical and physical fitness of state employees and to perform such other actions as may be required to administer the program.

7. To adopt and promulgate rules and regulations for administration of meritorious award programs, incentive compensation plans, goal-based plans, and the employee suggestion program and to perform such other actions as may be required to administer the programs.

8. To perform such other actions as may be required by law.

(b) Members of the Board shall receive no salary but shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member is attending meetings or performing official business for the Board, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance or official business.

Cite as Ga. Comp. R. & Regs. R. 478-1-.01
Authority: O.C.G.A. §§ 45-20-2, 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Definitions" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 9, 1986; eff. Dec. 31, 1985, as specified by the Board.
Amended: F. Jan. 15, 1987; eff. Dec. 29, 1986, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. June 9, 1989; eff. November 11, 1988, as specified by the Board.
Amended: F. Nov. 8, 1989; eff. Jun. 28, 1989, as specified by the Board.
Amended: F. June 20, 1990; eff. July 1, 1990, as specified by the Board.
Amended: F. Aug. 10, 1993; eff. July 30, 1993, as specified by the Board.
Amended: F. June 30, 1994; eff. July 1, 1994, as specified by the Board.
Amended: F. July 20, 1994; eff. July 7, 1994, as specified by the Board.
Amended: F. July 11, 1995; eff. June 30, 1995, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Oct. 1, 1996, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Nov. 18, 1996, as specified by the Board.
Amended: F. Nov. 4, 1997; eff. Oct. 27, 1997, as specified by the Board.
Amended: F. July 15, 1999; eff. October 1, 1999, as specified by the Board.
Repealed: Rule reserved. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Repealed: New Rule entitled "Organization of the Board" adopted. F. July 30, 2010; eff. July 16, 2010, as specified by the Board.
Amended: F. Dec. 30, 2013; eff. Sept. 25, 2013, as specified by the Board.
Amended: F. July 15, 2021; eff. June 22, 2021, as specified by the Board.

Rule 478-1-.02. Terms and Definitions.

This Rule provides definitions to be used when applying the Rules of the State Personnel Board. Key terms that are used in only one Rule may be defined within that Rule, rather than below.

(1) "Agency" and "Department" are used interchangeably to mean an Executive Branch employer, local department of Public Health, or Community Service Board. This term excludes the Board of Regents, authorities, and public corporations.

(2) "Agency Head" and "Department Head" are used interchangeably to mean the highest ranking official within a State entity.

(3) "Allocation" means the establishment of a new position and its assignment to the appropriate job title and job code within the classification plan.

(4) "Applicant" means an individual who meets all of the following criteria:

1) expresses written interest in employment,

2) is considered for employment in a particular position for which the individual is qualified, and

3) does not withdraw from consideration at any point in the selection process.

(5) "Appointing Authority" means the person or groups of persons authorized by law or delegated authority to make appointments to fill positions. The "Appointing Authority" for an agency is the agency head and all staff delegated such authority by the agency head or designee.

(6) "Board" and "State Personnel Board" are used interchangeably to mean the body appointed by the Governor to provide direction for State human resources policy administration and which may be vested with such additional powers and duties as provided by law.

(7) "Break in Service" means separation from continuous State employment for at least one workday.

(8) "Classification Plan" means a statewide plan established by the Department of Administrative Services (DOAS) and approved by the State Personnel Board to identify and describe jobs performed in State agencies. The classification plan includes job information such as job title, job summary, responsibilities, and entry qualifications.

(9) "Classified Employee" means an employee with procedural appeal rights set forth in O.C.G.A. §§ 45-20-8 and 45-20-9 who was in a classified position on June 30, 1996, and who has remained in a classified position without a break in service since that date.

(10) "Classified Position" means a position that existed on June 30, 1996, held classified status on that date, and has not been occupied by an unclassified employee since that date.

(11) "Commissioner" means the Governor-appointed head of the Department of Administrative Services.

(12) "Compensation Plan" means a statewide system of pay ranges and pay supplement addenda established by the Department of Administrative Services, adopted by the State Personnel Board, and approved by the Director of the Governor's Office of Planning and Budget.

(13) "Demotion" means the movement of a qualified employee to a job on a lower pay grade within the same compensation plan. When moving between two different pay plans, a pay grade is deemed lower when its market average or midpoint salary is 5% or more below the market average or midpoint of another pay grade.

(14) "Employee" means an individual hired by an agency to provide services for wages and excludes independent contractors, volunteers, unpaid interns, and board members paid on a per diem basis.

(15) "Employment-at-Will" means an employment relationship in which either party to the relationship may sever the relationship at any time for any reason other than an unlawful reason.

(16) "Full-time" means a work schedule of at least 40 hours per workweek, unless otherwise defined in law for purposes of participation in benefit programs.

(17) "Furlough" and "Temporary Reduction-in-Force" are used interchangeably to mean a temporary period of mandatory time off work without pay for budgetary reasons.

(18) "Hourly Employment" means an employment arrangement in which a State employer pays an employee wages on an hourly basis for actual hours worked. Hourly-paid employees are excluded from certain benefits.

(19) "In pay status" means hours during a pay period for which an employee is entitled to pay. It includes time worked, paid holidays, all forms of paid leave, compensatory time, and suspension with pay.

(20) "Job" means a broadly defined collection of duties and responsibilities that is assigned a job title, job code, and pay grade within the State's classification plan. Each State position is assigned to a job. State positions that are sufficiently similar in nature, scope, complexity, and minimum qualifying requirements are assigned to the same job.

(21) "Job Code" means a unique alphabetic or numeric identifier associated with a job.

(22) "Part-time" means a work schedule of fewer than 40 hours per workweek, unless otherwise defined in law for purposes of participation in benefit programs.

(23) "Pay grade" means a range of pay within a minimum and maximum annual base salary to which one or more jobs are assigned.

(24) "Period of armed conflict" means any period of armed military intervention beyond the limits of the United States as well as any confrontation of the armed forces of the United States with foreign nationals in which actual hostilities erupt.

(25) "Permanent Status Employee" and "Employee with Permanent Status" are used interchangeably to mean an employee in the classified service who has successfully completed a working test period in the job in which employed.

(26) "Position" means a set of duties and responsibilities typically assigned to one employee. Each position has a unique numeric identifier and is used to organize and assign work and to manage available head count.

(27) "Promotion" means the movement of a qualified employee to a job on a higher pay grade within the same compensation plan. When moving between two different pay plans, a pay grade is deemed higher when its market average or midpoint salary is at least 5% greater than the market average or midpoint of another pay grade.

(28) "Reallocation" means the change of a position from one job title and job code to a different job title and job code.

(29) "Reassignment" means a structural change in the Classification Plan to move a job from one pay grade to another as a result of action by the DOAS Commissioner.

(30) "Reduction-in-Force" means the separation from a job, the reduction in pay, or the furlough of one or more employees as the result of a shortage of work or funds or a change in organization. The reduction may involve classified employees, unclassified employees, or both.

(31) "Regular Employment" means assignment to a budgeted position with no established end date that is compensated on a salaried basis.

(32) "Salaried Employment" means employment compensated by an established interval amount, such as a semi-monthly or monthly rate, as opposed to being compensated on an hourly basis only for time worked.

(33) "State Personnel Board Rules," "Rules," and "Merit System" are used interchangeably to mean the statewide policies adopted by the State Personnel Board and approved by the Governor that govern human resources in the State.

(34) "Temporary employee" means an employee hired for a time-limited assignment of less than nine (9) months. Temporary employees may be eligible for healthcare benefits depending on the length of assignment and anticipated work hours.

(35) "Time-limited Employee with Benefits" means an employee hired for a time-limited assignment of nine (9) months or longer who is scheduled for a sufficient number of hours to be eligible for employment benefits.

(36) "Transfer" within an agency means the internal movement of an employee from one position to another position on the same or equivalent pay grade without a break in service. Pay grades are considered "equivalent" when there is less than 5% difference between their respective market average or midpoint salaries. "Transfer" between State agencies involves movement of an employee from a position in one State agency to a position in another State agency without a break in service. The two positions may be on either the same or different pay grades.

(37) "Unclassified Employee" means an employee who was hired after June 30, 1996, or who has occupied an unclassified position at any time since July 1, 1996. Unclassified employees have employment-at-will status, with limited exception for employees with more than 18 years of service who established Employees' Retirement System (ERS) membership before April 1, 1972.

(38) "Unclassified Position" means a position created on or after July 1, 1996, or occupied by an unclassified employee on or after this date.

(39) "Working Test" or "Working Test Period" means a probationary period of employment in a classified position during which the employee must demonstrate to the satisfaction of the appointing authority the knowledge, ability, aptitude, and other necessary qualities to perform satisfactorily the duties of the position in which employed.

Cite as Ga. Comp. R. & Regs. R. 478-1-.02
Authority: Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Organization for Merit System" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. Nov. 8, 1989; eff. Jun. 28, 1989, as specified by the Board.
Amended: F. Aug. 11, 1992; eff. July 2, 1992, as specified by the Board.
Amended: F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Aug. 18, 1997; eff. Jun. 30, 1997, as specified by the Board.
Amended: F. June 8, 2004; eff. May 25, 2004, as specified by the Board.
Repealed: New Rule entitled "Terms and Definitions" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.
Amended: F. Dec. 30, 2013; eff. Sept. 25, 2013, as specified by the Board.
Amended: F. Jan. 17, 2017; eff. Jan. 9, 2017, as specified by the Board.

Rule 478-1-.03. Antidiscrimination.

(1) **Introduction**:

The State is committed to providing equal employment opportunity for all individuals and ensuring that all individuals are treated in a fair and non-discriminatory manner throughout the employment process. This includes protection from discrimination, harassment, and retaliation in the workplace. The information provided in this Rule is intended to serve as a summary of agency and employee obligations with regard to preventing unlawful discrimination and harassment in the workplace.

While there are multiple types of workplace harassment, incidents of sexual harassment present unique challenges which warrant special emphasis and implementation of a particularized approach to the prevention, detection, and elimination of sexual harassment from the state workplace. Therefore, in accordance with Executive Order 01.14.19.02, Executive Branch agencies shall receive, process, and investigate complaints and reports of sexual harassment and connected retaliation based on the procedures provided in the Statewide Sexual Harassment Prevention Policy. Please refer to the Statewide Policy for specific information regarding the reporting and handling of sexual harassment complaints and reports.

(2) **Applicability**:

This Rule applies to Executive Branch employers, local departments of Public Health, and Community Service Boards. It does not apply to other public corporations, authorities, or the Board of Regents of the University System of Georgia.

(3) **Definitions**:

For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02, Terms and Definitions:

(a) "Disability" means a physical or mental impairment that substantially limits one or more of an individual's major life activities.

(b) "Disabled individual" means an individual who has such an impairment, has a record of such an impairment, or is regarded as having such an impairment.

(c) "Discrimination" means unequal treatment of an otherwise qualified applicant or employee in hiring, promotion, discharge, or terms and conditions of employment when the decision is based on an individual's race, color, creed, national origin, ancestry, citizenship, religion, political opinions or affiliations, age, disability, genetic information, sex, pregnancy, childbirth or related conditions, military or veteran status, or other status protected by federal or state law or regulation.

(d) "Harassment" means physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of

his or her race, color, creed, national origin, ancestry, citizenship, religion, political opinions or affiliations, age, disability, genetic information, military or veteran status, or status other than sex protected by federal or state law or regulation. Note: Harassment based on sex is also strictly prohibited by the Statewide Sexual Harassment Prevention Policy, which should be referenced for guidance on the reporting and handling of sexual harassment complaints and reports.

(e) "Qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position that the individual holds or for which he/she has applied.

(f) "Retaliation" means an act or omission intended to, or having the reasonably foreseeable effect of, punishing or otherwise impacting an individual for submitting (or assisting with submitting) a complaint or reporting discrimination or harassment, for participating in a discrimination or harassment investigation or proceeding, or for otherwise opposing discrimination or harassment.

(g) "Sexual harassment" means physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of his or her sex. Therefore, for purposes of this Rule,"sexual harassment" includes physical, verbal, or non-verbal/visual conduct constituting:

1. unwanted sexual attention, sexual advances, requests for sexual favors, sexually explicit comments, and other conduct of an expressed or obviously implied sexual nature, by an individual who knows, or reasonably should know, that such conduct is unwanted or offensive; and

2. conduct that is hostile, threatening, derogatory, demeaning, or abusive or intended to insult, embarrass, belittle, or humiliate an individual because of his or her sex, regardless of whether the underlying reason for the conduct is apparent.

(4) **Discrimination Awareness and Prevention**:

The State is committed to maintaining a discrimination-free workplace. Discrimination as defined in this Rule is strictly prohibited.

(a) Agencies must comply fully with all federal and state anti-discrimination laws. Agencies will not discriminate against individuals with regard to the terms and conditions of employment, including but not limited to hiring, rehiring, retention, promotion, and/or the provision of benefits.

(b) The State prohibits and will not tolerate discrimination against any qualified individual with a disability and seeks to provide reasonable accommodation to all

qualified individuals with disabilities. The State also prohibits discrimination against an employee who has a family member with a disability. Similarly, the State strives to reasonably accommodate employees' religious needs.

(5) **Harassment Awareness and Prevention**:

The State is also committed to maintaining a harassment-free workplace. Harassment as defined in this Rule is strictly prohibited. Such harassment violates an individual's fundamental rights and personal dignity and undermines the integrity of the workplace.

(a) The State's policy of maintaining a harassment-free workplace applies to everyone. The State will not permit any employee to be harassed in the course of their work by supervisors, coworkers, or third parties, such as vendors or customers. Any employee who engages in prohibited harassment will be subject to prompt disciplinary action, up to and including termination of employment.

(b) Employees are expected to be aware of and to refrain from any conduct or behavior that could be construed as harassment. Examples of harassment include, but are not limited to:

1. threats, epithets, derogatory comments, slurs;

2. derogatory posters, photographs, cartoons, drawings, gestures; or

3. assault, unwanted touching, or blocking someone's movement.

(6) **Retaliation Awareness and Prevention**:

(a) The State prohibits and will not tolerate retaliation. The State is committed to creating a work environment where no employee is discouraged from submitting a complaint or a report of discrimination or harassment.

(b) Agencies and employees are prohibited from retaliating against an employee for:

1. submitting (or assisting with submitting) a complaint or report of discrimination or harassment;

2. participating in a discrimination or harassment investigation proceeding; or

3. otherwise opposing discrimination or harassment.

(c) If an employee believes that an act of retaliation has occurred, the employee must notify their agency as soon as possible. The agency will act promptly to assure compliance with this rule prohibiting retaliation.

(7) **Obligations to Report Discrimination, Harassment, or Retaliation**:

(a) Employees who have experienced harassment, discrimination, or retaliation are strongly encouraged to submit a complaint. Employees who have witnessed or otherwise have reason to believe that another employee is being or has been subjected to harassment, discrimination, or retaliation shall promptly report this information to a supervisor, manager, human resources official, or to the agency's designee for receiving such reports.

(b) Supervisors and managers are obligated to report incidents of harassment, discrimination, or retaliation to a higher-level manager, human resources official, or to the agency's designee for receiving such reports.

(8) **The Agency's Response**:

(a) Upon receiving a complaint of discrimination based on any protected status or a complaint of harassment or retaliation based on a protected status other than sex, an agency will conduct a prompt, thorough, and objective investigation of the allegations. All state employees are expected to cooperate in these investigations. Investigations will be conducted in as confidential a manner as possible, and all employees involved in the process are expected to refrain from discussing the matter outside of the investigation process.

(b) If the investigation concludes that improper conduct has occurred, the agency will take corrective and remedial action commensurate with the circumstances, up to and including terminating the employment of employees found to have engaged in such misconduct. Appropriate action will also be taken to deter any future discrimination, harassment, and/or retaliation.

(c) Complaints of sexual harassment or retaliation related to a complaint of sexual harassment shall be received, processed, and investigated in accordance with procedures provided in the Appendix to the Statewide Sexual Harassment Prevention Policy.

(d) Complaints of discrimination based on any protected class that also contain allegations of sexual harassment or related retaliation will be received, processed, and investigated in accordance with procedures provided in the Appendix to the Statewide Sexual Harassment Prevention Policy.

Cite as Ga. Comp. R. & Regs. R. 478-1-.03
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "General Provisions" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 9, 1986; eff. Dec. 31, 1985, as specified by the Board.
Amended: F. Jan. 15, 1987; eff. Dec. 29, 1986, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. Nov. 8, 1989; eff. Jun. 28, 1989, as specified by the Board.
Amended: F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.
Amended: F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.

Amended: F. Aug. 10, 1993; eff. July 30, 1993, as specified by the Board.
Amended: F. Sept. 23, 1993; eff. Sept. 9, 1993, as specified by the Board.
Amended: F. July 20, 1994; eff. July 7, 1994, as specified by the Board.
Amended: F. Dec. 7, 1995; eff. Nov. 30, 1995, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Feb. 7, 1997; eff. Jan. 29, 1997, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: F. July 31, 2000; eff. July 14, 2000, as specified by the Board.
Repealed: New Rule entitled "Antidiscrimination" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. July 29, 2019; eff. July 24, 2019, as specified by the Board.

Rule 478-1-.04. Reduction in Force.

(1) **Introduction:**

A reduction in force is the separation from a job, furlough, or salary reduction of one (1) or more employees as the result of a shortage of work or funds, a change in organization or operations, or to otherwise support the financial health and viability of an agency. This Rule defines the process for implementing reduction in force actions.

(2) **Applicability:**

This Rule applies to Executive Branch employers, local departments of Public Health, and Community Service Boards. It does not apply to other public corporations, Authorities, or the Board of Regents of the University System of Georgia.

(3) **Definitions:**

For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02, *Terms and Definitions*:

(a) "Average Summary Rating" means the average of the summary ratings of all annual performance evaluations issued in the two years immediately prior to the performance evaluation cutoff date.

(b) "Competitive Area" means an organizational, budgetary, or geographic part of the agency to which a reduction in force is to apply, such as a particular worksite, budget unit, function, or the entire agency. A reduction in force may include multiple competitive areas.

(c) "Competitive Jobs" means those job titles/codes to which the reduction in force is to apply.

(d) "Overtime" means work time that qualifies for premium compensation under the Fair Labor Standards Act (FLSA). Typically it is time worked over 40 hours in an

FLSA workweek with limited exceptions that may apply to law enforcement, fire protection, and health care employees.

(e) "Summary Rating" means the overall rating provided on an annual performance evaluation.

(4) **Types of Reduction in Force:**

A reduction in force may involve layoff, furlough, or reduction in salary.

(a) Reduction in Force - Layoff:

1. An agency may lay off staff in accordance with a plan filed with DOAS when necessary to meet business needs.

2. Layoff results in the employee's separation from employment. The separation is not considered disciplinary.

(b) Reduction in Force - Furlough:

1. An appointing authority may place employees in non-pay (furlough) status as a temporary reduction in force in accordance with a plan filed by DOAS.

2. Employees may be furloughed no more than 30 workdays within any 12-month period. (See Section (22)(h) of Rule 478-1-.16, *Absence from Work*.)

3. All affected classified employees in the same competitive job within a competitive area must be placed in non-pay status for the same number of days. Therefore, competition is not necessary and retention credits are not calculated. (See Section (5)(c) of this Rule.)

4. The agency has discretion to vary the number of furlough days for unclassified employees in the same competitive job within a competitive area, if necessary to meet business needs. A competitive process is necessary when the number of furlough days will vary among employees in the same competitive job. (See Section (5)(c) of this Rule.)

5. When furloughing an FLSA exempt employee, the agency will follow FLSA provisions to treat the employee as a non-exempt employee during any workweek in which a furlough occurs. During an FLSA workweek that includes furlough time, both exempt and non-exempt employees will be compensated for all hours worked, and if overtime is inadvertently worked, the overtime compensation rate will be time and a half.

(c) Reduction in Force - Salary Reduction:

1. An appointing authority may reduce the salary of employees to conserve funds in accordance with a plan filed with DOAS. (See Rule 478-1-.12, *Salary*.)

2. The plan will define the amount or percentage of salary reduction and the period of reduction for each competitive job within each competitive area.

3. All affected classified employees in the same competitive job within a competitive area must have their salary reduced by the same amount or percentage and for the same amount of time. Therefore, competition is not necessary and retention credits are not calculated. (See Section (5)(c) of this Rule.)

4. The agency has discretion to vary the conditions of salary reduction for unclassified employees in the same competitive job within a competitive area, if necessary to meet business needs. A competitive process is necessary when the conditions will vary among employees in the same competitive job. (See Section (5)(c) of this Rule.)

5. Prior to reducing the salary of a Fair Labor Standards Act (FLSA) exempt employee, the agency should determine whether such action would result in the loss of the FLSA exemption.

(5) **Process Overview:**

(a) The agency determines the scope of the reduction in force, including the segments of the agency to be affected (i.e., competitive areas), the jobs to be affected (i.e., competitive jobs), and the number of employees to be affected.

(b) Identifying Affected Employees:

1. The agency must use a competitive process to identify which employees in competitive jobs within a competitive area will be affected under the following conditions:

   (i) if some employees in the same competitive job within a competitive area will be affected and others will not;

   (ii) if employees in the same competitive job within a competitive area will be laid off at different times, furloughed a different number of days, or reduced in salary dissimilarly.

2. A competitive process is not needed when all employees in the same competitive job within a competitive area will be laid off on the same date,

furloughed the same number of days, or reduced in salary under the same conditions.

3. When determining whether a competitive process is necessary, each competitive job within a competitive area is reviewed separately. Employees within the same job in a competitive area compete among themselves, not with other potentially affected employees in different jobs.

4. An agency may further restrict competition by classified/unclassified status, or may allow classified and unclassified employees within the same competitive job to compete with one another.

5. When a competitive process will include a classified employee, the agency must calculate retention credits and determine the order of retention as defined in this Rule.

(c) The agency will file a reduction in force plan with the Department of Administrative Services (DOAS) and adhere to other notice requirements outlined in this Rule.

(6) **Employees on Contingent Leave or Working Test:**

In the event of a reduction in force that involves a layoff, the following provisions apply for employees in a competitive job within a competitive area who are either on contingent leave or working test.

(a) Classified and unclassified employees on contingent leave without pay shall be the first to be separated, except as set forth in Section (7)(d) of this Rule.

(b) Classified employees on working test following a promotion shall revert to the last job (or equivalent if such job is not available) in which they hold permanent status and shall, if necessary, compete with other employees in that job, provided the job exists in the competitive area.

(7) **Competitive Process for Classified Employees:**

(a) The order of retention of classified employees involved in a competitive process is determined by a combination of retention credits, average summary performance rating, and status as a veteran of a period of armed conflict, as outlined in this section.

(b) Retention Credits:

1. Retention credits are calculated using an employee's average summary rating of annual performance and length of continuous and most recent service.

2. Summary Rating of annual performance:

   Summary ratings on performance evaluations are assigned the following numerical values for the purpose of computing retention credits:

   (i) zero (0) for a summary rating of "Unsatisfactory Performer"

   (ii) two (2) for a summary rating of "Successful Performer - Minus"

   (iii) three (3) for a summary rating of "Successful Performer"

   (iv) four (4) for a summary rating of "Successful Performer - Plus"

   (v) five (5) for a summary rating of "Exceptional Performer"

3. The average summary rating is derived by adding the numerical values assigned to the summary ratings of all annual performance evaluations issued in the two (2) years immediately prior to the performance evaluation cutoff date set by the agency in the reduction in force plan and dividing the sum thereof by the number of ratings, rounded to the nearest tenth of a point.

4. If no performance evaluation was issued during the two-year period, an employee will be assigned a presumptive average summary rating of three (3) Successful Performer.

5. The average summary rating converts to retention credits as follows:

   (i) 0 retention credits for an average summary rating of 1.0 to 1.9

   (ii) 60 retention credits for an average summary rating of 2.0 to 2.4

   (iii) 68 retention credits for an average summary rating of 2.5 to 2.9

   (iv) 76 retention credits for an average summary rating of 3.0 to 3.4

   (v) 84 retention credits for an average summary rating of 3.5 to 3.9

   (vi) 92 retention credits for an average summary rating of 4.0 to 4.4

   (vii) 100 retention credits for an average summary rating of 4.5 to 4.9

(viii) 108 retention credits for an average summary rating of 5.0

6. Employees receive one (1) additional retention credit for each full year of continuous service, including any period of leave which has been allowed in accordance with these Rules.

   (i) One-half year or more will be considered as one (1) year; less than one-half year will be disregarded.

   (ii) For determining years of continuous service as provided in this section, service shall be computed up to the effective date of the reduction in force.

   (iii) If a classified employee was hired into the Executive Branch from a local department of Public Health or Community Service Board, or vice versa, without a break in employment, then continuous classified service with these employers is considered when determining retention credits.

7. The sum of the retention credits for the average summary rating of performance and length of continuous service equals the total number of retention credits for an employee.

(c) Sequence for Reduction of Employees with Permanent Status:

1. Within a competitive job in a competitive area the order of reduction in force of employees in each job shall be:

   (i) First group to be reduced - from the lowest to highest number of retention credits, employees who are not honorably discharged veterans of a period of armed conflict and whose average summary rating of performance is lower than three (3) "Successful Performer";

   (ii) Second group to be reduced - from the lowest to highest number of retention credits, employees who are honorably discharged veterans of a period of armed conflict and whose average summary rating of performance is lower than three (3) "Successful Performer";

   (iii) Third group to be reduced - from the lowest to highest number of retention credits, employees who are not honorably discharged veterans of a period of armed conflict and whose average summary rating of performance is three (3) "Successful Performer" or higher; and,

(iv) Fourth group to be reduced - from the lowest to highest number of retention credits, employees who are honorably discharged veterans of a period of armed conflict and whose average summary rating of performance is three (3) "Successful Performer" or higher.

2. If two (2) or more employees are tied in the total number of retention credits and one (1) or more, but not all, employees so tied will be more affected by the reduction in force than the other(s), the appointing authority will select the manner in which the order of retention shall be determined.

(d) Exception to the Sequence for Reduction:

Classified employees in the same competitive job in a competitive area are affected by reduction in force in the sequence within Section (7)(c) of this Rule, except as outlined in this paragraph. If the position of an employee is not to be abolished and the appointing authority determines its duties cannot be satisfactorily performed after a reasonable training period by an employee higher in the order of retention whose position is to be abolished, the employee who can satisfactorily perform the duties may be retained in preference to an employee higher in the order of retention. The facts supporting use of this provision must be stated in the reduction in force plan.

(8) **Competitive Process for Unclassified Employees:**

When a competitive process will include only unclassified employees, the agency has discretion to use the classified employee formula or implement another non-discriminatory process that effectively supports its business needs. For example, the agency may consider some combination of performance, tenure, competencies, discipline history, etc.

(9) **Reduction in Force Plan:**

(a) To implement a reduction in force, the agency creates a plan. The reduction in force plan will include the following information:

1. the type of reduction in force action (i.e., layoff, furlough, or salary reduction);

2. the proposed effective date(s);

3. the reason for the action (e.g., reorganization, outsourcing, funding, etc.);

4. a definition of the competitive area(s) and list of competitive jobs within each competitive area;

5. the total number of classified and unclassified employees in each competitive job by competitive area and the number of classified and unclassified employees proposed to be impacted by reduction in force within each competitive job by competitive area;

6. the amount or percentage of reduction if the reduction in force involves salary reduction;

7. the basis used to determine the order of retention if competition among unclassified employees is required; and,

8. if competition among classified employees is required for a competitive job:

   (i) the cutoff date after which performance evaluations will not be accepted;

   (ii) list of employees in the competitive job in order of retention, showing veterans' preference status and retention credits;

   (iii) justification of any retentions under Section (7)(d) of this Rule, if applicable; and,

   (iv) if applicable, the method used to determine the order of retention when employees are tied in total retention credits and at least one (1), but not all, will be laid off or will be laid off earlier than others.

(b) The plan must be filed with the Department of Administrative Services (DOAS). When practicable, the plan should be sent to DOAS before implementing the reduction in force.

(c) DOAS will review the plan and provide consultation, as appropriate.

(d) No classified employee will be affected by reduction in force except in accordance with a plan submitted to DOAS.

(e) The appointing authority will make available, upon request, a copy of the reduction in force plan for inspection by any employee or former employee who was directly affected by the reduction in force.

(10) **Legislative Notification:**

If a reduction in force would result in the elimination of 25 or more positions or the layoff of 25 or more employees (including classified and/or unclassified employees), the appointing authority shall, at least 15 calendar days prior to notifying employees of the

proposed action, notify the President of the Georgia Senate and the Speaker of the Georgia House of the proposed reduction. The notice shall:

(a) identify the facility(ies) and operation(s) to be affected and the estimated number of employees to be affected; and,

(b) state the reasons for the proposed action.

(11) **Employee Notice:**

(a) Except as set forth in Section (12) of this Rule, each classified employee laid off, furloughed, or subjected to salary reduction by a reduction in force will be notified in writing at least 30 calendar days prior to the action.

(b) Such notice to classified employees shall contain, at a minimum:

1. a statement of the proposed action to be taken with respect to the affected employee;

2. an explanation of the affected employee's right of appeal;

3. if the employee is being laid off, any opportunities for possible continued employment or opportunities to apply for employment with any public or private party assuming the functions of the employee, or any other similar opportunities; and,

4. an explanation of any rights and options with respect to employment benefits, including, but not limited to, any right to continue participation in any retirement system or insurance plan.

(c) Each unclassified employee laid off, furloughed, or subjected to salary reduction by a reduction in force is to be notified in writing. The notice may be similar to the classified employee notice with the exception that Section (11)(b)2 is not to be included because unclassified employees have no appeal rights. The minimum 30-day notice is not mandatory for unclassified employees, but should be considered when practicable.

(12) **Advance Notice Exception Based on Unavailability of Funds:**

The advance notice requirements in Sections (10) and (11) of this Rule shall not apply to a reduction in force which must become effective immediately if the agency has insufficient funds available to pay the salaries of the affected employees. Each employee affected by a reduction in force must still be notified in writing prior to the action.

(13) **Reinstatement for Classified Employees:**

A classified employee who has been laid off as a result of reduction in force, and who meets all the qualifications (including any licensure and certification requirements and special qualifications), shall retain status in and right to reinstatement to a vacant classified position in the job in the competitive area from which the employee was laid off for a period of one (1) year from the date of separation and shall be offered reinstatement in inverse order to the order of layoff. A refusal by the employee of reinstatement upon reasonable notice by the appointing authority nullifies the right to reinstatement.

Cite as Ga. Comp. R. & Regs. R. 478-1-.04
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4, 45-20-19.
History. Original Rule entitled "Classification Plan" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Repealed: New Rule of same title adopted. F. Dec. 31, 1996; eff. Oct. 1, 1996, as specified by the Board.
Amended: F. Nov. 4, 1997; eff. Oct. 27, 1997, as specified by the Board.
Repealed: New Rule entitled "Employer-Employee Relations" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Repealed: F. Jul. 8, 2014; eff. Jun. 20, 2014, as specified by the Board.
Adopted: New Rule entitled "Reduction in Force." F. Aug. 22, 2018; eff. Aug. 8, 2018, as specified by the Board.

Rule 478-1-.05. Policy Guidelines.

(1) **Introduction.** All Rules adopted by the State Personnel Board must follow the guidelines outlined in this rule and must also comply with applicable federal, state, and local laws and regulations, including those that govern the use of federal funds received by an Agency.

(2) **Amending Rules.** Any employee may submit a petition to the Agency in writing, requesting amendment(s) to these Rules. The State Personnel Board will consider proposed amendment(s) on written record only and will adopt them only at public hearings. The State Personnel Board has established the following procedures to ensure that interested parties and/or their representative have an opportunity to comment on the proposed amendment(s) and attend the related public hearing. When deemed appropriate, the Agency should submit a proposed amendment to the State Personnel Board.

(a) At Least 45 Days in Advance of the Public Hearing the State Personnel Board must prepare, post and distribute a notice containing:

1. An exact copy of the proposed amendment(s);

2. A citation to the authority that permits the proposed amendment(s);

3. Any corresponding rule (if the proposed amendment(s) relate to existing policies);

4. The date by which all written comments must be submitted to the State Personnel Board; and

5. The date, time, and place of the public hearing at which adoption of the proposed amendment(s) will be considered.

   (i) The notice must be posted in compliance with O.C.G.A. 45-20-3.1 and the Open Meetings Act (O.C.G.A. 50-14-1*et. seq.*), and provided to each member of the Government Oversight Committee of the Senate and the Governmental Affairs Committee of the House of Representatives.

(b) At Least 15 Days in Advance of the Public Hearing the written comment period must close, to allow the State Personnel Board an opportunity to consider all written comments received prior to the public hearing.

(3) **Exceptions to General Procedure**. With justifiable cause, the State Personnel Board may suspend the provisions of 478-1-.5(2) to adopt Rule amendment(s) immediately and without waiting for comment from legislative committees or the public provided the Board adopts a resolution declaring the existence of an emergency and provides the reason(s) the rule amendment(s) must be adopted on an emergency basis. Any amendment adopted in this manner may be in effect for no more than 120 days after its adoption. An identical proposed rule amendment may subsequently be adopted under the general procedure outlined above.

(4) The Board authorizes the Commissioner to proceed directly into the public commentary period for administrative changes to these Rules without preapproval from the Board. For purposes of this provision, administrative changes is defined as grammar, spelling or typographical errors, format changes, and corrections to cross references.

(5) **Approval by the Governor and Filing with the Secretary of State.** Modifications to the Rules adopted by the State Personnel Board are not effective until approved by the Governor. Upon such approval by the Governor, the Commissioner must immediately file an original and two (2) copies of the rule amendment(s) in the Office of the Secretary of State. The filing must include a citation to the authority that allowed the proposed amendment(s) and must specify the affected rule.

(6) **Pilot Programs.** The State Personnel Board may institute pilot programs to assess the potential impact of proposed rule amendments on employees and administration. Pilot programs may be administered on a trial basis for no more than two (2) years, are not required to be in full compliance with other provisions of these Rules, and may be made applicable only to specified agencies. Proposals for pilot programs must be submitted to the State Personnel Board and must include:

(a) A statement of purpose and intent describing the reasons for establishing the program;

(b) The proposed duration of the program;

(c) The method(s) for determining the impact of the program on employees, the budget and delivery of services;

(d) The measures to be used to evaluate the success of the program;

(e) The mechanism for resolving employee problems and complaints;

(f) A list of each rule, policy and procedure with which the program would not comply;

(g) Possible impediments to successful implementation of the program and proposed solutions; and

(h) Method(s) for compiling and reporting results to affected employees and the State Personnel Board and the frequency of such reporting.

(a) A final report of the pilot program must be submitted to the Commissioner prior to the expiration of the program.

(7) **Rule Violations.** The State Personnel Board has established rules, policies and procedures to ensure that operations are conducted in a consistent, quality manner and that employees can serve the public effectively. Employees are expected to comply fully with these policies and procedures. When an employee violates a rule, policy or procedure, the employee's Agency, and the Department of Administrative Services, if appropriate, should consider the circumstances under which the violation occurred and take appropriate action. Appropriate action may result in discipline, up to and including termination of employment, and/or ineligibility for future employment with the Agency and/or State. Employees are responsible for reporting suspected violations of policies to the Commissioner.

Cite as Ga. Comp. R. & Regs. R. 478-1-.05
Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Compensation Plan" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. Oct. 30, 1995; eff. Oct. 16, 1995, as specified by the Board.
Repealed: New Rule of same title adopted. F. Dec. 31, 1996; eff. Oct. 1, 1996, as specified by the Board.
Repealed: New Rule entitled "Policy Guidelines" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. Dec. 30, 2013; eff. Sept. 25, 2013, as specified by the Board.

Rule 478-1-.06. Recruiting, Screening, and Hiring.

(1) **Introduction:**

This Rule provides a framework to support effective hiring and compliance with applicable employment laws and state wide policies. Each agency is responsible for developing and maintaining its own procedures for recruitment and selection that adhere to the general requirements of this Rule.

(2) **Applicability:**

The provisions of this Rule apply when filling any vacant position within an agency covered by the Rules of the State Personnel Board.

(3) **Definitions:**

For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02, *Terms and Definitions*:

(a) "Adverse impact" means a substantially disproportionate rate of selection in hiring, promotion, or other employment decision of individuals of a particular race, color, religion, sex, or national origin.

(b) "Background check" means third-party verification of background information including credit history checks, criminal history checks, and driving history checks. "Background report" is the actual report resulting from a background check.

(c) "Business necessity" means a requirement that justifies an employment practice as necessary for effective, safe, or efficient operations.

(d) "Job-related" means necessary for successful performance of a job.

(e) "Sensitive government position" means a position for which the law prohibits the employment of individuals with certain criminal convictions or for which the agency head has pre-determined that certain criminal history would be an immediate disqualification from employment.

(f) "Social Media" means all methods of communication or posting information or content of any sort on the Internet or intranet, including to one's own or someone else's web log or blog, personal web site, social networking or affinity web site, web bulletin board or a chat room, as well as any other form of electronic communication.

(g) "Vacancy" means a position that is unoccupied, or soon-to-be unoccupied, or in the case of a position with multiple part-time staff, that which is not fully occupied.

(4) **Filling a Vacancy:**

(a) Agencies have the following options for filling a vacancy:

1. Through the promotion, transfer, or demotion of a qualified employee;

2. Through the competitive selection of a qualified individual; or,

3. Through direct appointment of a qualified individual, as authorized within agency policy.

(b) Agencies may fill a vacancy that is currently fully occupied (i.e., double-encumber a position) for a period of time determined reasonable by the agency to allow for the current occupant to provide needed instruction to the incoming successor.

(5) **Recruiting:**

(a) Agencies have the authority to determine the scope of their recruitment activities. Any limitations that are imposed on an application process, such as accepting applications only from current State employees or agency employees, must be non-discriminatory and business-related.

(b) Agencies will refrain from requesting applicants to disclose criminal conviction information on applications for positions that are not designated by the agency head as "sensitive government positions." Applications for positions designated as "sensitive government positions" may continue to request criminal conviction information from applicants.

(c) Agencies may establish and include preferred qualifications on vacancy announcements to facilitate the goal of obtaining well-qualified applicants. Any preferred qualification must be job-related.

(6) **Screening:**

(a) Criteria used to screen applicants must be job-related. Examples of screening criteria include, but are not limited to: interview questions, skills or knowledge examinations, reference checks, background checks, etc.

(b) If an agency identifies screening criteria as having an adverse impact on a protected class, the agency must determine whether there is a reasonable and effective alternative that would reduce the adverse impact. If such alternative is

not available, the agency may continue to use the screening criteria only if it is both job-related and consistent with business necessity.

(c) Prior to hire, agencies are responsible for checking references and sufficiently verifying suitability for hire including, but not limited to, the experience, education, and/or other credentials that contributed to an individual meeting position qualifications.

(d) Criminal history checks and credit history checks may be conducted only on individuals who have been selected for hire.

(e) Applicants cannot be required to undergo any pre-employment physical or medical examination or drug testing until after they have received a conditional offer of employment.

(f) Agencies are to give appropriate consideration to individuals eligible for veterans' preference as defined in Rule 478-1-.18, *Veterans' Preference*.

(7) **Background Checks:**

(a) Each agency is to assess its positions to determine those subject to a criminal history check.

(b) Applicants for positions not designated as "sensitive government positions" will not be asked to disclose any criminal history before the interview component of a hiring process.

(c) Before accessing criminal history or seeking a background report from a third party (including the Georgia Crime Information Center), agencies will obtain written consent from the applicant and provide notice that the background information might be used for employment decisions.

1. The notice must be a stand-alone form separate from the job application.

2. If an agency seeks to obtain an "investigative report" involving interviews about an applicant's character, reputation, personal characteristics, or lifestyle, the agency must also notify the applicant of the right to a description of the nature and scope of the investigation.

(d) Upon receiving criminal history or other background information that would prevent employment, agencies are to give the applicant:

1. Notice that information from the background report may prevent employment;

2. A copy of the background report; and,

3. A copy of "A Summary of Your Rights Under the Fair Credit Reporting Act."

(e) Agencies are to provide an opportunity to discuss any inaccuracies, content, and relevance of a criminal history record before making an employment decision.

(f) Agencies may also provide a similar opportunity for an individualized assessment before denying employment due to other background information.

(g) If it is determined that employment will be denied based on a background report provided by a third party, the agency will inform the applicant that employment was denied because of the report. The notice will also include:

1. The name, address, and phone number of the company that compiled the report;

2. A statement that the company providing the report did not make the hiring decision and cannot provide the specific reasons for the decision; and,

3. Notice that the applicant has the right to dispute the accuracy or completeness of the report and request an additional report within 60 days without cost to the applicant.

(h) When using background information to make employment decisions, agencies will use the information to make objective determinations about suitability for employment in a position, without regard to race, color, national origin, religion, age, disability, sex, genetic information, political affiliation, protected uniformed service, or other legally protected category.

(i) If background checks disproportionately exclude applicants of a particular race, national origin, or other protected category from a particular job, the agency must ensure the criteria used to deny the employment are job-related and consistent with business necessity.

(8) **Social Media:**

(a) Agencies that use social media as part of their hiring process should have written policies and procedures in place to support compliance with applicable equal employment opportunity laws.

(b) An agency that uses social media during the hiring process should disclose to potential applicants, in a manner determined appropriate by the agency, that information found on publicly posted social media accounts may be examined.

(9) **Selection:**

(a) The State will not unlawfully consider an applicant's race, color, national origin, religion, age, disability, sex, genetic information, political affiliation, protected uniformed service, or other legally protected category when making selections.

(b) Any applicants selected for hire must meet the established minimum entry qualifications for the positions, including any required license or certification, no later than the first date of employment in the position.

(10) **Post-Offer Requirements:**

(a) Agencies are to ensure the timely completion of the Employment Eligibility Verification Form I-9 and E-Verify process for all hires and transfers between agencies.

(b) Agencies are to ensure all hires and transfers are reported to the Georgia New Hire Reporting Program.

(c) Agencies are to confirm each male hire between the ages of 18 and 26 years of age is registered with the Selective Service System or is exempt from registration.

(d) As a condition of employment, hires and transfers must comply with the requirements of the Medical and Physical Examination Program (MAPEP) to certify they can meet the requirements of the position, with or without reasonable accommodation. (See State Personnel Board MAPEP Rules Section 478-4.)

(e) Agencies are to comply with additional post-offer employment eligibility requirements that certain State positions may have, such as pre-employment drug testing, in accordance with applicable law, regulation, or policy.

(11) **Recordkeeping Requirements:**

(a) All records related to recruiting, screening, and hiring should be retained in compliance with the State Records Retention Schedule. Such records may include, but are not limited to:

1. Vacancy advertisements and announcements;

2. All materials submitted by applicants for consideration (applications, resumes, etc.);

3. References;

4. Testing materials;

5. Interview notes and/or records; and,

6. Background reports.

(b) When an agency becomes aware of an allegation of discrimination, harassment, or retaliation made by an applicant or an employee, all relevant records must be retained during the investigation and as required by law after the conclusion of the investigation.

Cite as Ga. Comp. R. & Regs. R. 478-1-.06
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Examinations" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.
Amended: F. Sept. 23, 1993; eff. Sept. 9, 1993, as specified by the Board.
Repealed: Rule reserved. F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: New Rule entitled "Recruiting, Interviewing and Hiring" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: New title "Recruiting, Screening, and Hiring." F. May 31, 2017; eff. May 18, 2017, as specified by the Board.

Rule 478-1-.07. Outside Employment.

(1) **Introduction.** Employees may seek employment and engage in a variety of activities outside of their work for the State. However, such other employment activities may not conflict with an employee's State employment. Employees who desire to engage in other employment must notify their supervisor and abide by the policies of their agency.

(a) Employees engaged in outside employment, including consultant relationships, must inform their supervisor of the nature of the additional work and their corresponding work hours. Employees must also disclose actual or potential conflicts of interest related to their outside employment activities and/or relationships as soon as they become aware of them.

(b) For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02 (Terms and Definitions):

1. "Other employment" includes working as an employee for any employer (including another State Agency), owning a business, contracting to provide services for a fee, serving as a consultant for a fee or honorarium, or being self-employed. "Other employment" also includes any elected or appointed public office (whether federal, state, or local), or a position in a political party or organization. "Other employment" does not include participating in yard sales, hosting home parties (provided that the employee is not a paid representative or commissioned sales representative of the company),

babysitting, or boarding animals (provided that such services are not offered to the general public).

2. "State employment" means the employee's primary employment with a State agency.

3. "Primary Agency" means the agency in which the employee is employed at the time of the request to obtain employment with another agency.

4. "Secondary Agency" means the agency in which the employee is requesting to be hired.

(2) **Additional State Employment.** State employees who desire to work for more than one State agency must have prior written authorization from both their current and prospective employers before commencing employment with a second State employer. The primary and secondary agencies must ensure that the request complies with State and Federal guidelines. Employment and payroll records are to be maintained and accessed in accordance with the provisions of SPB Rule 478-1-.09 Records.

Agencies are required to identify and address instances where employee are engaged in secondary employment.

(3) **Conflicting Employment Activities.** Employees must avoid employment, activities and/or relationships that actually conflict or could conflict with the State's interests; create a perception of impropriety; or, adversely affect the State's or the employing agency's reputation.

(a) Examples of conflicting employment activities include but are not limited to the following:

1. Concurrent employment that interferes with the time or attention that should be devoted to State employment;

2. Holding a financial interest in any present or potential competitor, customer, supplier, or contractor of the State, unless the ownership interest is less than 5% of that business;

3. Acceptance of a membership on the Board of Directors or serving as a consultant or advisor to any board or management of any business that is a present or potential competitor, customer, supplier or contractor of the State;

4. Engaging in any transaction involving the State from which the employee can benefit, financially or otherwise (including lending or borrowing money, guaranteeing debts or accepting gifts, entertainment, or favors from

a present or potential competitor, customer, supplier, or contractor), except as he/she may be compensated in the usual course by the State;

5. Use of the State's time, equipment, or other resources in pursuing outside business activities; or

6. Use for the employee's personal benefit or the disclosure by the employee to a third party of any confidential, unpublished information obtained in connection with his/her employment with the State.

(b) In all cases, the determination as to whether a conflict or potential conflict exists will be made by the agency.

(4) **Prohibited Public Employment and Political Appointments.** Employees are prohibited from holding any full-time elective or appointive: public office of a state or political subdivision of a state, civil office of the federal government, office of a political party or political organization, or any other office if the duties or responsibilities of such office conflict with the employee's State employment.

(a) Employees also may not hold office or be employed in the legislative or judicial branch, with one limited exception: an employee who has taken a leave of absence without pay may serve temporarily as an employee of the legislative branch while it is in session and during the authorized stay-over period.

(b) For additional guidelines regarding political activities, refer to Rule 478-1-.08.

(5) **Termination of Other Employment.** If an agency determines that an employee's other employment interferes with the employee's performance or creates an actual or an apparent conflict of interest, the employee will be asked to terminate the other employment.

(6) **Consequences of Rule Violation.** Failure to make required disclosures or take action to resolve express or direct conflicts of interest may result in disciplinary action, up to and including suspension without pay and/or termination of employment.

Cite as Ga. Comp. R. & Regs. R. 478-1-.07
Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Registers of Eligibles" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
Repealed: Rule reserved. F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: New Rule entitled "Outside Employment" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. July 30, 2010; eff. July 16, 2010, as specified by the Board.

Rule 478-1-.08. Political Activity.

(1) **Introduction**:

(a) Employees engaging in political activity are responsible for complying with the provisions within this Rule, applicable laws, and their agency policy. Employees who are uncertain whether political activity is permissible are expected to seek guidance from their agency ethics officer or other designated official.

(b) Typically, employees may engage in political activity as private citizens that does not:

1. Conflict with their employment or take place during work time or on work premises;

2. Disrupt their work environment or otherwise negatively affect business operations;

3. Coerce or appear to coerce the political action of other employees, contractors, vendors, or customers; or,

4. Create the perception that the employee's personal political views or actions are representative of the State.

(2) **Applicability**:

The policies and procedures within this Rule apply to all agencies of the executive branch, local departments of public health, and community service boards, but do not apply to authorities, public corporations, and the Board of Regents of the University System of Georgia.

(3) **Definitions**:

(a) "Political activity" means activity directed toward the success or failure of a political party, candidate for partisan political office, or partisan political group.

(b) "Recall application or petition" means an application or petition to remove a public official from elective office.

(c) "Work time" means time an employee is scheduled to work, but does not include time during which an employee is using leave or compensatory time.

(4) **Candidacy and Holding Office**:

(a) Candidacy for Office:

1. An employee wishing to campaign for any elective office must consult with the employing agency and notify the agency ethics officer before announcing and/or qualifying for the office.

2. An employee may campaign for elective office if doing so does not conflict with the performance of the employee's official duties and is not otherwise prohibited by law.

3. An agency, by written policy, may require an employee campaigning for office to be placed on a leave of absence without pay upon determination that candidacy conflicts with current employment.

4. Candidacy for federal, state, county, or municipal office will be established when an employee files a notice of candidacy with the Georgia Secretary of State's Office. Candidacy for office in a political party or organization will be established upon official public announcement of candidacy.

5. Any employee whose salary is entirely federally funded is covered by the Hatch Act and is prohibited from being a candidate for public elective office in a partisan election.

    i. This prohibition applies to candidacy for both part-time and full-time offices.

    ii. This prohibition does not apply to the Governor, Lieutenant Governor, duly elected agency heads, or other elected officials.

(b) Holding Office:

1. Any employee who is elected or is appointed to full-time office or other office that conflicts with current employment must resign or forfeit employment upon assuming office.

2. Executive branch employees are not permitted to simultaneously hold office or employment in the legislative or judicial branches of state government except that an employee may be temporarily employed with the legislative branch during the legislative session provided that the employee is on an authorized leave of absence without pay.

(5) **Prohibited Political Activities**:

Employees are prohibited from engaging in the following political activities:

(a) Conducting political activities of any nature during work time or on work premises and/or using state property or resources to do so;

(b) Soliciting other employees for any political purpose, whether or not during work hours or on work premises;

(c) Coercing other employees, contractors, vendors, or customers to pay, lend, or contribute items of value for political purposes;

(d) Soliciting or knowingly accepting any campaign contributions in a state building or office except when the space is rented for the specific purpose of holding a campaign fundraiser;

(e) Holding or being a candidate for political office that conflicts with current employment (see Section (4) of this Rule);

(f) Seeking, using, or attempting to use any coercive political pressure to secure for themselves or any other person an appointment, promotion, salary increase, or any other employment advantage;

(g) Using or promising to use any official authority to influence or coerce the political action of any other person (including other employees, contractors, vendors, or customers), or to affect the results of a nomination, campaign, or election for office;

(h) Representing that a personal endorsement of or opposition to a political candidate is the official position of the State or a state agency;

(i) Circulating a recall application or petition by any means, including email or social media; or,

(j) Receiving state-paid transportation mileage while transporting any political campaign literature or matter, soliciting votes, or transporting any person soliciting votes in any election.

(6) **Consequences for Prohibited or Conflicting Political Activity**:

(a) Any applicant or employee who seeks, uses, or attempts to use any coercive political pressure to secure an advantage in employment will be subject to appropriate action up to and including denial or termination of employment.

(b) Any employee who is elected or appointed to full-time office or other office that conflicts with current employment must resign or forfeit employment upon assuming office.

(c) Any employee whose employment is entirely federally funded must resign from or forfeit such employment upon becoming a candidate for any elective office.

(d) Any employee who engages in prohibited political activity will be subject to appropriate action, up to and including termination of employment. Such termination of employment will be considered a voluntary forfeiture of employment under Rule 478-1-.15, Changes to Employment Status and Rule 478-1-.28, Voluntary Separation for Classified Employees.

(7) **Non-discrimination and Anti-Retaliation**:

(a) The State will not discriminate for or against any person or employee in any employment matter because of political affiliation.

(b) Retaliating against any employee, contractor, vendor, or customer for engaging in permissible political activity is prohibited.

Cite as Ga. Comp. R. & Regs. R. 478-1-.08
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Vacancies" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Aug. 2, 1988; eff. July 8, 1988, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Repealed: New Rule entitled "Political Activity" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Agency.
Amended: F. Mar. 24, 2022; eff. Mar. 10, 2022, as specified by the Board.

Rule 478-1-.09. Records.

(1) **Introduction:**

The proper maintenance of employee records is an important component of agency administration. Well-maintained employment files assist agencies in making sound employment decisions and help to ensure that agencies comply with recordkeeping and reporting obligations in accordance with state and federal laws.

This Rule provides guidance regarding the proper handling, confidentiality, and use of employment-related records.

(2) **Applicability:**

This Rule applies to all agencies of the executive branch, local departments of public health, and community service boards. It does not apply to other public corporations, authorities, or the Board of Regents of the University System of Georgia.

(3) **Definitions:**

For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02, Terms and Definitions:

(a) "Confidential employment records" means records which must be maintained in files separate from or in a separate folder within the official personnel file. Such items include but are not limited to medical records, documents relating to certifications or recertifications under the federal Family and Medical Leave Act (FMLA), I-9 forms, workers' compensation records, and background check records.

(b) "Official personnel file" means records documenting an employee's work history with an agency. Official personnel files should be stored in a secure location. Access should be restricted to those with a legitimate need for access or as required by law.

(c) "Records" means all documents, papers, letters, maps, books (except books in formally organized libraries), microfilm, magnetic tape, computer-based or computer-generated information, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in performance of functions by any agency.

(d) "Retention schedule" means a set of disposition instructions prescribing how long, where, and in what form a record series shall be kept.

(4) **Employment Records:**

(a) Each agency will maintain an official personnel file for each employee that includes information such as the employee's job application, resume, training records, performance-related documentation, salary history, dates of leave taken in accordance with the federal Family and Medical Leave Act (FMLA), as well as dates of other extended leaves of absence, and other employment-related information. If confidential employment records are stored in the official personnel file given lack of storage space or other reasons, they must be in a separate folder within the file and clearly marked as confidential so that confidential information can be easily removed by designated persons when necessary.

(b) Employment records are the property of the employing agency and are subject to the Georgia Open Records Act.

(c) When creating and maintaining employment records, agencies will strive to ensure that:

1. All employment records are securely maintained;

2. All personal and job-related information is accurate, complete, and relevant for its intended purpose; and

3. All personal and job-related information is handled in a confidential, appropriate manner.

(d) When collecting, maintaining, and disclosing employment information, agencies will make every effort to protect every employee's privacy rights and interests and to prevent inappropriate or unnecessary disclosures.

(e) Agencies will collect and retain personal information only to the extent necessary to effectively conduct business and administer employment and benefit programs. Wherever possible, if additional personal information is needed, agencies will notify affected employees and provide them an opportunity to supply the requested data.

(f) The Commissioner, agencies, and human resources officers may access agency employment records and any other records of the State Personnel Board and the Department of Administrative Services to the extent necessary to perform their duties. Such access will not be construed as impairing the confidential nature of human resources records or permitting disclosure of information protected by employees' privacy rights.

(5) **Employee Transfers:**

(a) In the event of an employee transfer from one executive branch agency to another, the employee's official personnel file must be transferred to the new employing agency within two weeks of the employee's last day of employment with the previous agency.

(b) Confidential employment records should be removed from the personnel file before it is transferred and should be retained in accordance with applicable records retention schedules.

(6) **Accuracy of Information:**

Employees are required to provide their employing agency with accurate, up-to-date personal information, including but not limited to, name, home address, telephone numbers, tax withholding information, marital status, number of dependents, beneficiary designations, and emergency contacts.

(7) **Employee Access:**

Employees are entitled to review their employment records upon request. The review must take place in the presence of a member of the agency human resources office. An

employee cannot remove any contents of the file, but photocopies must be provided within a reasonable time after the employee's review of the file and at the employee's expense, pursuant to the Georgia Open Records Act.

(8) **Employment Records and the Georgia Open Records Act:**

Unless specifically exempted by federal law, state law, or by an order of court, all documents, papers, letters, maps, books, tapes, photographs, data, data fields, computer-based or computer-generated information, or similar materials prepared and maintained or received by an agency in the course of its operations are public records that may be inspected by any individual at a reasonable time and place. When documents are to be produced to individuals other than the employee, confidential information must be redacted from the file prior to release.

Cite as Ga. Comp. R. & Regs. R. 478-1-.09
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Appointments" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. Aug. 2, 1988; eff. July 8, 1988, as specified by the Board.
Amended: F. Feb. 14, 1991; eff. Jan. 4, 1991, as specified by the Board.
Amended: F. Mar. 10, 1992; eff. Feb. 12, 1992, as specified by the Board.
Amended: F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.
Amended: F. Dec. 30, 1993; eff. Dec. 20, 1993, as specified by the Board.
Amended: F. Mar. 9, 1994; eff. Mar. 3, 1994, as specified by the Board.
Amended: F. Oct. 17, 1994; eff. Oct. 6, 1994, as specified by the Board.
Amended: F. Nov. 15, 1994; eff. Nov. 3, 1994, as specified by the Board.
Amended: F. July 11, 1995; eff. June 30, 1995, as specified by the Board.
Amended: F. May 2, 1996; eff. April 15, 1996, as specified by the Board.
Repealed: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: New Rule entitled "Substance Abuse Testing" adopted. F. July 22, 1998; eff. July 7, 1998, as specified by the Board.
Amended: F. July 31, 2000; eff. July 14, 2000, as specified by the Board.
Amended: F. June 12, 2002; eff. May 21, 2002, as specified by the Board.
Repealed: New Rule entitled "Records" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.
Amended: F. Mar. 29, 2019; eff. Mar. 21, 2019, as specified by the Board.

Rule 478-1-.10. Classification Plan.

(1) **Introduction**:

Under state law, the Department of Administrative Services (DOAS) is required to define job classes, establish associated minimum qualifications, and assign classes to appropriate pay ranges. This Rule sets forth the procedures by which the statewide classification plan is established and maintained.

(2) **Applicability**:

This Rule applies to all agencies of the executive branch, local departments of public health, and community service boards. This Rule does not apply to other public corporations, authorities, the Board of Regents of the University System of Georgia, the legislative branch, or the judicial branch.

(3) **Definitions**:

(a) "Entry qualifications" mean the competencies, experience and education necessary to perform job responsibilities satisfactorily.

(b) "Job description" means information applicable to a grouping of job duties and responsibilities, to include job title, job code, job summary, list of primary duties and responsibilities, and entry qualifications. Job descriptions provide broad illustrations of the types of work performed by incumbents and should not be construed as limiting an agency's authority to modify the duties and responsibilities of its employees or to direct or control their work.

(c) "Position description" means a detailed written statement of the duties and responsibilities assigned to an individual employee. If appropriate, a position description will contain preferred qualifications.

(4) **Preparation and Adoption of the Plan**:

(a) After consulting with the Office of Planning and Budget (OPB), the Commissioner will have the authority to prepare and recommend a new comprehensive statewide classification plan to the State Personnel Board. The new plan will be based on position data analysis provided by the agencies and will include information for each job, including job title, job summary, responsibilities, and entry qualifications. DOAS, in partnership with the agencies, will develop entry qualifications for each job in the classification plan.

(b) A public comment period of 30 calendar days will commence following plan publication. Notice of plan publication will include instructions for submitting written comments during the public comment period, as well as the starting and ending dates of the public comment period.

(c) Comments received during the 30-calendar-day period will be thoroughly reviewed, considered, and, if determined appropriate, incorporated into the plan as recommended by the Commissioner and presented to the Board. The Board may modify the plan in any way it deems appropriate and formally adopt the plan at a public hearing. The Commissioner will submit the approved plan to the Governor. The plan will be effective at the time agreed upon by the Commissioner and the Office of Planning and Budget.

(5) **Amendments to the Plan**:

(a) Following consultation with agencies directly affected, the Commissioner may make the following material amendments to the classification plan:

1. establishing or abolishing a job or job series;
2. activating or deactivating a job code;
3. merging or dividing jobs;
4. modifying a job description; or
5. reassignment of a job or job series.

(b) The Commissioner may make the following non-material amendments to the classification plan without consultation with agencies:

1. correcting a published error or inaccuracy; or
2. correcting grammar, spelling, typographical errors, formatting, or references.

(c) Amendments will take effect in accordance with the following guidelines:

1. Material amendments without significant budgetary impact will take effect on the date agreed upon by the Commissioner and agencies directly affected.
2. Material amendments with significant budgetary impact will take effect upon approval by the Office of Planning and Budget.
3. Non-material amendments will take effect when processed.

(d) The Commissioner will report material amendments to the Board and will publish all amendments in a manner accessible to the agencies.

(6) **Reconsideration of Amendments to the Plan**:

Any agency affected by an amendment to the classification plan may submit a written request for reconsideration by the Commissioner. The Commissioner must review the request and issue a decision no later than 30 business days following receipt of the request.

(7) **Allocation and Reallocation of Positions**:

(a) Positions that are substantially similar with respect to the type and level of work to be performed, responsibilities assigned, level of supervision received,

qualifications necessary for successful job performance, and external market value (where relevant) will be assigned to the same job.

(b) Agencies must allocate every position to the appropriate job and may submit requests for technical assistance to DOAS. Allocations and reallocations should be reported in a manner prescribed by the Commissioner.

(c) When a filled position is reallocated due to a reevaluation of the position or a change in job responsibilities, the incumbent, if determined as eligible for promotion, transfer, or demotion to the new job, may remain in the position at the discretion of the agency. The employment status of an incumbent who does not remain in a reallocated position will be determined in accordance with other applicable provisions of these Rules.

(d) Except as provided in Rule 478-1-.27, Appeals and Hearings for Classified Employees, an employee does not have the right to appeal decisions relating to the allocation or reallocation of positions.

(e) Periodically, the Commissioner will assess the classification of positions for consistency in application across agencies and with the classification plan.

Cite as Ga. Comp. R. & Regs. R. 478-1-.10
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4; § 45-20-1.
History. Original Rule entitled "Promotions, Transfers, Demotions, Relocations" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 15, 1987; eff. Dec. 29, 1986, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. Nov. 8, 1989; eff. Jun. 28, 1989, as specified by the Board.
Amended: F. June 20, 1990; eff. July 1, 1990, as specified by the Board.
Amended: F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.
Amended: F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
Amended: F. Apr. 9, 1993; eff. Mar. 8, 1993, as specified by the Board.
Amended: F. June 30, 1994; eff. July 1, 1994, as specified by the Board.
Amended: F. Nov. 15, 1994; eff. Nov. 3, 1994, as specified by the Board.
Amended: F. July 11, 1995; eff. June 30, 1995, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Feb. 7, 1997; eff. Jan. 29, 1997, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: F. Nov. 4, 1997; eff. Oct. 27, 1997, as specified by the Board.
Amended: F. Sept. 21, 1998; eff. Sept. 9, 1998, as specified by the Board.
Repealed: New Rule entitled "Classification Plan" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.
Amended: F. Aug. 25, 2020; eff. Mar. 16, 2020, as specified by the Board.

Rule 478-1-.11. Compensation Plan.

(1) **Introduction**:

Under state law, the Department of Administrative Services (DOAS) is required to establish and maintain a statewide system of pay ranges for all job classes, assign classes to appropriate pay ranges, and develop compensation rules and policies. The Rule sets forth the procedures by which the statewide compensation plan is established and maintained.

(2) **Applicability**:

This Rule applies to all agencies of the executive branch, local departments of public health, and community service boards. This Rule does not apply to other public corporations, authorities, the Board of Regents of the University System of Georgia, the legislative branch, or the judicial branch.

(3) **Preparation and Adoption of the Plan**:

(a) After consulting with agencies and the State's fiscal officers, the Commissioner will have the authority to prepare and recommend a new statewide compensation plan to the State Personnel Board. The new plan will include salary schedules, including minimum, midpoint, and maximum rates of pay by grade for the jobs outlined in the classification plan, and pay addenda. In establishing salary schedules, the Commissioner will consider:

1. the intent and appropriations of the General Assembly;
2. rates of pay in effect in the agencies;
3. rates of pay for similar services among public and private employers with whom the State competes for employees;
4. other benefits received by employees;
5. cost of living;
6. the State's financial condition and policies; and
7. any other relevant factors.

(b) A public comment period of 30 calendar days will commence following plan publication. Notice of plan publication will include instructions for submitting written comments during the public comment period, as well as the starting and ending dates of the public comment period.

(c) Comments received during the 30-calendar-day period will be thoroughly reviewed, considered, and, if determined appropriate, incorporated into the plan as recommended by the Commissioner in consultation with the Governor's Office of

Planning and Budget. The compensation plan will be presented to the State Personnel Board for adoption and will take effect upon approval of the Director of the Office of Planning and Budget.

(4) **Amendments to the Plan**:

(a) Agencies may request that the Commissioner review the pay grade(s) assigned to a job or job series to determine whether recommendation for amendment is appropriate. Following consultation with agencies directly affected, the Commissioner may make such recommendations to the Office of Planning and Budget.

(b) The Commissioner will submit to the Office of Planning and Budget recommendations for amendments to the compensation plan on an annual basis. These recommendations should include relevant information for adjustments to the entire plan and to specific jobs, including economic and labor market conditions or other pertinent data.

(c) Amendments to the compensation plan will take effect in accordance with the date(s) provided by the Office of Planning and Budget through its approval process.

(d) The Commissioner will report amendments to the Board and publish amendments in a manner accessible to the agencies.

(5) **Reconsideration of Amendments to the Plan**:

Any agency affected by an amendment to the compensation plan may submit a written request for reconsideration to the Commissioner. The Commissioner must review the request and issue a decision no later than 30 business days following receipt of the request.

Cite as Ga. Comp. R. & Regs. R. 478-1-.11
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4; § 45-20-1.
History. Original Rule entitled "Working Test and Permanent Status" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 15, 1987; eff. Dec. 29, 1986, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. Aug. 11, 1992; eff. July 2, 1992, as specified by the Board.
Amended: F. Mar. 9, 1994; eff. Mar. 3, 1994, as specified by the Board.
Amended: F. Nov. 15, 1994; eff. Nov. 3, 1994, as specified by the Board.
Amended: F. July 11, 1995; eff. June 30, 1995, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Repealed: New Rule entitled "Compensation Plan" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.

Amended: F. Aug. 25, 2020; eff. Mar. 16, 2020, as specified by the Board.

Rule 478-1-.12. Salary.

(1) **Terms and Definitions.** For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02 (Terms and Definitions):

(a) "Standard hours" in a pay period means the number of hours worked times the number of days worked based on an eight hour day, forty-hour week, Monday through Friday schedule.

(b) "Scheduled hours" per pay period means the number of hours an employee is scheduled to work during the monthly or semi-monthly pay period. If an employee works other than eight hours per day or on days other than that which establish the standard, the scheduled hours may vary from the standard hours per pay period.

(c) "Hours" are calculated and reported in whole hours and decimal fractions of hours.

(2) **In Pay Status.** An employee is considered to be in pay status for regularly scheduled work hours except when on leave without pay or when suspended without pay, and will be paid only for hours actually on duty or for properly authorized paid leave or compensatory time. Salary payments are either made on a monthly or semi-monthly basis.

(a) An employee beginning a new period of state employment is considered as being hired on the day the employee actually reports for work.

(b) When an employee transfers from one agency to another on the last scheduled work day of a pay period, the losing agency will be responsible for the employee through the end of the pay period and any holidays that occur during that pay period. The receiving agency will be responsible for the employee at the beginning of the next pay period and for any holidays that occur during that pay period.

(c) When an employee transfers from one agency to another at any time other than the last scheduled work day of a pay period, the losing agency will be responsible for a holiday that is observed on the calendar day following the employee's last scheduled work day at that agency. The receiving agency will be responsible for a holiday that falls on any other calendar day prior to the employee's reporting for duty at that agency.

(3) **Reporting Hours in Pay Status.** The standard number of hours in the pay period will be reported. Hours are calculated and reported in whole hours and quarter fractions of hours. Pay for hourly employees should be reported in hours worked.

(a) Hours of pay to be docked should be reported separately. If an agency uses an independent payroll provider, it may disregard this paragraph.

(4) **Calculating Salary Payments.** Any method of calculating salary payments that is not in accordance with the provisions of this Rule must be submitted in advance to the Commissioner for consideration and approval.

(a) Paid Monthly. If salary payments are made on a monthly basis, the pay period will consist of 160, 168, 176, or 184 hours, depending on the number of standard hours in the pay period. (For example, a month with 28 days has a pay period of 160 hours; 28 days = four weeks; four weeks x 40 = 160.)

(b) Paid Semi-Monthly. If salary payments are made on a semi-monthly basis, the first pay period is from the first through the fifteenth of the month and the second is from the sixteenth through the last day of the month. Each pay period will consist of 72, 80, 88, or 96 hours, depending on the number of standard hours in the pay period. One-half of a monthly salary will be considered as earned for each semi-monthly pay period.

(c) Transfer. If an employee transfers to a different agency during a month, both the losing agency and the receiving agency will calculate the employee's pay for that month on a semi-monthly basis.

(d) In Pay Status Less than Full Month. A salaried employee who is in pay status less than a full pay period should be paid as follows:

1. Determine the value of one hour of pay by dividing the pay period salary by the scheduled hours for the pay period; then

2. Determine the amount to be paid by multiplying the number of hours actually worked by the value of one hour.

(i) For example, an employee is paid $3,000 monthly and a particular month has 28 days (160 hours). The employee is in pay status for one-half (14 days or 80 hours) of the month. To determine the amount the employee should be paid, divide the employee's total pay period or monthly salary ($3,000) by total scheduled or monthly hours (160) to determine an hourly rate ($18.75), then multiply the number of hours the employee actually worked (80) by the employee's hourly rate ($18.75), to reach a sum of $1,500.

(e) Exceptions. Agencies using independent payroll systems as of July 1, 1999 may elect to use then existing methods of calculating and reporting salary payments until those systems are modified or replaced.

(5) **Salary Adjustments.** An agency may adjust the salary of an employee who meets or exceeds performance expectations to a higher salary, when the adjustment is necessary to meet agency objectives. However, a salary adjustment may not exceed the maximum of the pay range applicable to the job to which the employee's position is assigned, unless authorized by specific Rule.

(a) **Salary Upon Promotion.** When an employee is promoted, the employee's salary should be raised to any salary in the new pay range that provides an increase of at least 5%, with the following exceptions:

1. The employee's new salary may not be less than the pay range minimum or more than the pay range maximum for the new job.

2. The employee may voluntarily agree in writing to accept a lower salary, provided that the salary is not below the pay range minimum. (The written agreement should be maintained in the employee's personnel file.)

3. An employee whose salary is above the pay range for the employee's current job is only eligible for an increase of up to the maximum of the new range.

(b) **Salary Upon Demotion.** When an employee is demoted, the employee's salary may be set at any salary in the new pay range that is not higher than the salary received prior to the demotion. The new salary may not be less than the pay range minimum or more than the pay range maximum for the new job. If an employee is demoted to a position at a different agency, the employee is not eligible for a salary increase for six months after the demotion, other than those approved by the General Assembly, and is then only eligible after a performance evaluation in the new position for which the employee received a "meets expectations" rating or higher.

(c) **Salary Upon Lateral Transfer.** When an employee is transferred to another agency, the employee's base salary must be the same as the base salary prior to transfer, which may not be less than the pay range minimum for the new job. Transferred employees are not eligible for increases to base salary during their first six months in the new job other than those approved by the General Assembly. Additionally, an employee who transfers to another agency is only eligible for an increase after a performance evaluation in the new position for which a "meets expectations" rating or higher is received.

(d) **Criteria Based Adjustments.** An agency may develop and implement plan(s) to provide salary adjustments to employees who meet established criteria. The plan(s) must specify the established criteria for eligibility and the amount of adjustment that will be awarded to each employee who meets the specified criteria. Any salary adjusted under the provisions of this Rule may not exceed the maximum of the pay range. Any salary adjustment plan developed under this section is subject to audit by the Commissioner and the Commissioner may require the plan to be discontinued.

(e) **Salary Upon Job Reassignment.** When a new or different pay range is applicable to a job, the salary of employees in positions assigned to that job on the effective date of the reassignment may not be decreased. A salary increase may be authorized by the agency if the increased salary is not above the maximum salary for the new pay range.

(6) **Performance-Based Salary Increases.** Every employee is eligible for a salary increase based on performance that meets or exceeds minimum criteria established by the employee's agency. The Commissioner will determine, in accordance with the intent and appropriations of the General Assembly, when increases will be available to employees and how the increases will be applied to employees' base salary.

(a) The State Personnel Board will adopt policies to establish the following:

1. How the amount of increase to be made available to qualifying employees will be determined;

2. The date each qualifying employee will be eligible to receive a performance-based salary increase;

3. The relationship between a performance evaluation and a performance-based salary increase; and

4. A procedure to provide an opportunity for an employee to request reconsideration of an evaluation that does not qualify the employee for a performance-based salary increase.

(b) A performance-based salary increase may not exceed the pay range maximum applicable to the job to which the employee's position is assigned, unless authorized by Rule.

(7) **Salary Reductions.** A salary reduction is a decrease in an employee's salary without a change in the employee's job or pay range. Salary reductions may be made for disciplinary purposes, for the purpose of conserving funds or may be agreed to by employees on a voluntary basis. If salaries are to be reduced on a voluntary basis, there must be a written agreement with each employee, which should be kept in the employee's personnel file.

(8) **Restoration of Salary Reductions.** An employee whose salary has been reduced for disciplinary purposes or on a voluntary basis retains eligibility for the salary received prior to the reduction. The agency may restore the salary effective the first day of any pay period following the reduction.

(9) **Conditional Pay Supplements.** An agency may develop and implement plan(s) to provide conditional pay supplements to employees who meet established criteria (e.g.,

attaining a certain certification, performing additional duties, etc.). Such plans are subject to approval by the Commissioner and Director of the Office of Planning and Budget.

(a) Conditional pay supplements provide additional compensation to all eligible employees and should be discontinued whenever the qualifying conditions no longer apply. These plans are part of the Addendum to the Compensation Plan. They do not:

1. Change base salary;

2. Provide a basis for the computation of salary increases;

3. Affect eligibility for salary increases; or

4. Provide a basis for the computation of pay upon promotion, demotion, transfer, reappointment, or terminal leave.

(b) An employee may be awarded multiple conditional pay supplements, according to agency policy. Any agency may discontinue payment of conditional pay supplements when fiscal needs dictate, provided the discontinuance is handled in a fair and equitable manner.

(10) **County Supplements.** Counties may provide supplemental payments to their employees.

(a) For example:

1. County departments of family and children services may supplement salaries of employees from county funds, subject to the approval of the Commissioner of the Department of Human Resources or the Commissioner's designee.

2. County boards of health may supplement salaries of employees from county funds, subject to the approval of the appropriate District Health Director.

(b) All county supplements to salaries must be in accordance with a plan providing for similar treatment of employees in the same job, taking into account such factors as length of service, status, and service rating, and should be included on the regular payroll of each agency. The Commissioner may require any of these supplements to be discontinued.

(c) Such supplemental payments do not:

1. Change base salary;

2. Provide a basis for the computation of salary increases;

3. Affect eligibility for salary increases;

4. Provide a basis for the computation of pay upon promotion, demotion, transfer, reappointment, or terminal leave; or

5. Constitute earnable compensation for retirement benefits.

Cite as Ga. Comp. R. & Regs. R. 478-1-.12
Authority: O.C.G.A. Secs. 45-20-2, 45-20-3, 45-20-3.1, 45-20-4, 45-20-8.
History. Original Rule entitled "Separations, Suspensions and Reductions in Force" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 15, 1987; eff. Dec. 29, 1986, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. June 20, 1990; eff. May 30, 1990, as specified by the Board.
Amended: F. June 20, 1990; eff. July 1, 1990, as specified by the Board.
Amended: F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
Amended: F. June 28, 1993; eff. June 9, 1993, as specified by the Board.
Amended: F. Oct. 17, 1994; eff. Oct. 6, 1994, as specified by the Board.
Amended: F. Nov. 15, 1994; eff. Nov. 3, 1994, as specified by the Board.
Amended: F. July 11, 1995; eff. June 30, 1995, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Repealed: New Rule of same title adopted. F. Aug. 18, 1997; eff. Jun. 30, 1997, as specified by the Board.
Amended: F. May 18, 1998; eff. April 2, 1998, as specified by the Board.
Amended: F. July 31, 2000; eff. July 14, 2000, as specified by the Board.
Repealed: New Rule entitled "Salary" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.

Rule 478-1-.13. Meritorious Award, Hiring Incentive, and Goal-based Incentive Programs.

(1) **Introduction.** The State authorizes use of the incentive compensation and awards, as outlined in this Rule, to support the recruitment and retention of qualified talent. Each agency may adopt specific incentive policies, procedures, or plans to implement incentive compensation and awards, as long as they are consistent with this Rule. Incentive compensation and awards are available through the following:

(a) Meritorious Award Program (including Employee Suggestion Program),

(b) Hiring Incentive Program, and

(c) Goal-based Incentive Program.

Incentive compensation and award programs are funded by individual agency budgets.

(2) **Applicability.** The policies and procedures within this Rule apply to all agencies of the Executive Branch, local departments of Public Health, Authorities, Community Service Boards, and other public corporations. This Rule does not apply to the Board of Regents of the University System of Georgia, Legislative Branch entities, or Judicial Branch entities.

(3) **Definitions.** For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02, *Terms and Definitions*:

(a) "Agency" means, for the purpose of this Rule, departments of the Executive Branch, local departments of Public Health, authorities, Community Service Boards, and other public corporations.

(b) "Goal-based Incentive Program" is a program providing a one-time payment to reward an employee for exceeding established revenue goals.

(c) "Hiring Incentive Program" is a program providing a one-time payment to induce the employment of a prospective employee with particularly desirable qualifications or for a position that is difficult to fill.

(d) "Meritorious Award Program" is a program providing awards to employees for extraordinary service, acts, achievements, or suggestions outside regularly assigned duties.

(4) **Meritorious Award Program.**

(a) The Meritorious Award Program includes two components.

1. Agencies may use the first component to recognize an employee or group of employees who go beyond the ordinary demands of the job in performing an extraordinary service, act, or achievement. Possible awards include: certificates of merit, pins, buttons, or other emblems. Lump sum payment awards are not available.

2. The second component is the Employee Suggestion Program for which lump sum payment awards are available. (See section (5), below).

(b) Service, acts, or achievements deserving of a meritorious award include, but are not limited to, the following:

1. Performing an act of heroism above and beyond the normal demands of the job;

2. Responding in an extraordinary manner to an unanticipated problem or opportunity on behalf of the agency;

3. Performing a service, act, or achievement that particularly enhances public perception of the agency; or,

4. Obtaining innovative or unique success when others' efforts have failed or it has been stated that the job could not be done.

(c) The appointing authority, or designee, within an agency that implements a meritorious award program for extraordinary service, acts, or achievements, will determine the manner for nominating employees and approving awards. Such awards are considered pre-certified by the Commissioner of the Department of Administrative Services (DOAS) and Director of the Office of Planning and Budget (OPB).

(5) **Employee Suggestion Program.**

(a) The Employee Suggestion Program is a Meritorious Award Program used to recognize employees who provide a suggestion or idea to improve operations and/or efficiency that is implemented by an agency covered by this Rule.

(b) Awards under the Employee Suggestion Program include certificates of merit, pins, buttons, other emblems, and the potential for a lump sum payment award. See Rule 478-1-.22, *Employee Suggestion Program*, for more information on the criteria and administration of the Employee Suggestion Program.

(c) Payments made under the Employee Suggestion Program are included as salary in the pay period issued and are taxed as such. They shall not, however, be included in the regular rate of pay for purposes of calculating overtime or as earnable compensation for determining retirement benefits.

(6) **Hiring Incentive Program.**

(a) The Hiring Incentive Program is a formalized incentive payment program designed to provide agencies greater flexibility to hire prospective employees with particularly desirable qualifications necessary to meet departmental business objectives.

(b) Hiring Incentive Payment. A hiring incentive payment is a one-time payment for the hire of a prospective employee with particularly desirable qualifications.

1. Agency policy may require hiring incentive payment to be contingent upon the employee's agreement in writing to repay a portion thereof upon separation if the employee does not remain employed a minimum specified period. Such specified period and the repayment schedule are determined at agency discretion.

2. Funding for hiring incentive payments shall come from individual agency budgets.

3. Hiring incentive payments are included as salary in the pay period issued and are taxed as such. They shall not, however, be included in the regular rate of pay for purposes of calculating overtime or as earnable compensation for determining retirement benefits.

(c) Hiring Incentive Plan. For an agency to utilize hiring incentive payments, such agency shall establish and maintain a certified Hiring Incentive Plan prior to such utilization.

1. A Hiring Incentive Plan shall list the jobs and/or positions the agency will make eligible for hiring incentive compensation based on one or more of the criteria listed below in (6)(c)2 and the incentive amount(s). Hiring incentive payments may only be used for jobs and/or positions listed in the plan.

2. The Hiring Incentive Program may be used to support hiring into one of the following types of positions:

(i) A position determined by the agency to be hard-to-fill (such as a position that has been vacant an excessive period of time with no qualified applicants, or that requires a skill set that is unavailable or rare in a particular geographic area, etc.);

(ii) A position that is critical to a facility meeting its accreditation standards;

(iii) A position that is critical to maintaining public safety;

(iv) A position with a required skill critical to the agency; or,

(v) A position that is associated with unique preferred skills that are critical to the agency.

(d) Certification of Hiring Incentive Plan. A Hiring Incentive Plan becomes effective upon certification by the OPB Director, or designee, that funding is available, and certification by the DOAS Commissioner, or designee, that the plan meets the criteria provided in this Rule. OPB certification must be renewed for each fiscal year the plan is to be effective. DOAS certification remains in effect until a substantive change is made to the plan.

(7) **Goal-based Incentive Program.**

(a) The Goal-based Incentive Program may be used by an agency to compensate an employee for generating or securing income or revenue for the agency beyond predetermined and objectively measurable goals.

(b) Goal-based Incentive Payment. A Goal-based incentive payment is a one-time payment for exceeding established revenue goals.

1. Funding for Goal-based incentive payments shall come from individual agency budgets.

2. Goal-based incentive payments are included as salary in the pay period issued and are taxed as such. Goal-based incentive payments are included in the regular rate of pay for purposes of calculating overtime. They shall not, however, be included as earnable compensation for determining retirement benefits.

(c) Goal-based Incentive Plan:

1. For an agency to issue a Goal-based incentive payment, such agency shall establish and maintain a certified Goal-based Incentive Plan prior to such payment.

2. A Goal-based Incentive Plan shall list the eligible jobs and/or positions, terms and conditions of employee eligibility, the revenue goal(s), and the amount(s) to be awarded to eligible employees who meet the criteria. Goal-based incentives may be paid only to eligible employees in jobs and/or positions listed in the plan.

(d) Certification of Goal-based Incentive Plan. A Goal-based Incentive Plan becomes effective upon certification by the OPB Director, or designee, that funding is available, and certification by the DOAS Commissioner, or designee, that the plan meets the criteria provided in this Rule. OPB certification must be renewed each fiscal year the plan is to be effective. DOAS certification remains in effect until a substantive change is made to the plan.

Cite as Ga. Comp. R. & Regs. R. 478-1-.13
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4, 45-21-1, 45-21-2, 45-21-3, 45-21-4, 45-21-7, 45-21-8, 45-21-9.
History. Original Rule entitled "Service Regulations" adopted. F. July 31, 1985, eff. July 1, 1985, as specified by the Board.
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Amended: F. Nov. 8, 1989; eff. Sept. 14, 1989, as specified by the Board.
Amended: F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
Amended: F. June 28, 1993; eff. June 9, 1993, as specified by the Board.
Amended: F. Nov. 15, 1994; eff. Nov. 3, 1994, as specified by the Board.
Amended: F. Dec. 7, 1995; eff. Nov. 30, 1995, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: F. July 22, 1998; eff. July 7, 1998, as specified by the Board.

Amended: F. May 22, 2001; eff. May 3, 2001, as specified by the Board.
Repealed: New Rule entitled "Incentive Compensation and Award Programs" adopted. F. Dec. 23, 2008; eff. Dec. 16, 2008, as specified by the Board.
Repealed: New Rule entitled "Meritorious Award, Hiring Incentive, and Goal-based Incentive Programs" adopted. F. Jan. 17, 2017; eff. Jan. 9, 2017, as specified by the Board.

Rule 478-1-.14. Performance Management.

(1) **Introduction**:

The State has implemented a performance management program through which agency supervisors and managers set performance expectations, conduct interim performance reviews, and annually evaluate and rate the work performed by employees. Performance management can serve as an effective retention tool, and the State's performance management program provides supervisors and employees with the opportunity to align work with agency goals and plans, discuss performance expectations, identify and correct areas for improvement, encourage and recognize strengths, and discuss positive, purposeful approaches for meeting goals. Performance discussions should ideally occur throughout the year during interim reviews and coaching, but must occur in conjunction with performance planning and end-of-year performance evaluation.

(2) **Applicability**:

This Rule is applicable to all full-time and part-time regular employees in executive branch agencies except the Board of Regents of the University System of Georgia. Agencies have the discretion to include their hourly and temporary employees in their performance management program.

(3) **Definitions**:

For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02, Terms and Definitions:

(a) "Coaching" refers to periodic meetings between the supervisor and employee to discuss how effectively the employee is performing and applying competencies to meet job responsibilities and/or goals.

(b) "Competencies" mean observable and measurable behaviors, knowledge, skills, abilities, and other characteristics that are necessary to perform successfully in the position.

(c) "Goal" means a measurable outcome or result to be achieved as defined in a performance plan.

(d) "Individual Development Plan" or "IDP" means an action plan that identifies an employee's short-term and long-term goals as well as projects, activities, and support that contribute to the employee's continual learning and development in the organization. IDPs should be a collaborative effort between the supervisor and employee.

(e) "Job Responsibilities" include job tasks that are necessary for successful performance in the employee's current position.

(f) "Performance Plan" is the document shared with and acknowledged by the employee that identifies the competencies, goals, job responsibilities, and/or expectations upon which an employee will be evaluated. The performance plan should also include unrated employee development activities in an Individual Development Plan.

(4) **Performance Management Process**:

The performance management process involves four components: performance planning, performance coaching, performance evaluation, and performance recognition.

(a) Performance Planning:

1. The performance management program requires that supervisors develop a performance plan for each employee upon the employee's hire into a new job and then annually thereafter. The performance plan identifies performance standards and expectations on which the employee will be evaluated. Supervisors are to present performance plans to their employees within 45 calendar days of an employee being placed in a new job and annually within 45 calendar days of the start of a new performance period.

2. Performance planning is intended to be a collaborative effort between the supervisor and employee. The agency head, or designee, however, has sole discretion to make the final determination of individual competencies, goals, job responsibilities, and expectations to be included in the performance plan.

3. A performance plan may be modified at any time during a performance period and shall be modified when new or different responsibilities and/or expectations are added to a position. Employees should be immediately notified of such modifications to their performance plan, and the written performance plan must be updated within 15 calendar days of the modification.

4. Given the importance of Individual Development Plans in improving and/or expanding employees' knowledge, skills, and abilities, all agencies are encouraged to include IDPs in their employees' performance plans. The

focus of the IDP may be development in the current role, building new skill sets or knowledge, and/or preparation for a future role.

(b) Performance Coaching:

1. The performance management program requires that supervisors monitor and document their employees' performance and provide coaching throughout the performance period.

2. At least once during the performance period, supervisors are encouraged to conduct an interim performance review with each supervised employee. Interim reviews need not be as formal as annual performance evaluations but have the option of including detailed assessments and ratings. At a minimum, interim reviews must offer sufficient feedback to employees to reinforce successful performance and redirect less than successful performance.

(c) Performance Evaluation:

1. At the conclusion of each annual performance period, supervisors are responsible for documenting, evaluating, and rating the performance of each employee who has been in the current position for five months or more. If there has been a change in supervision during the performance period, agencies should develop a process for ensuring that all documentation maintained on an employee is considered in the evaluation.

2. An employee who has been in the current position for less than five months may receive a "no-rating" at the discretion of the employing agency. The summary rating should be based on the rating scale currently supported by the State and reflect the employee's overall level of performance.

3. Performance evaluations are to be conducted in a fair, unbiased, and equitable manner. When practicable, the performance evaluation should include a one-on-one, in-person meeting between the supervisor and the employee.

4. Employees are encouraged to actively participate in the evaluation process by completing and submitting a self-evaluation. The agency head, or designee, however, has sole discretion to make the final determination on employees' overall summary performance ratings.

(d) Performance Recognition:

1. Performance recognition may be monetary or non-monetary and includes any activity designed to acknowledge individual or collective performance results.

2. When monetary performance rewards based on employee overall summary ratings are appropriated statewide, such rewards are implemented as approved by the State Personnel Board.

(5) **Review of Performance Plans or Evaluations**:

(a) Employees may request a review of their performance plan if they consider the expectations to be non-job-related or unachievable.

(b) Employees may request a review of their annual performance evaluation if the overall summary rating is "Unsatisfactory Performer," or its equivalent, and they disagree with such rating.

(c) Each agency shall designate at least one official to serve as an "Agency Review Official" to review performance plans, evaluations, and supporting documentation, and to render a decision to either uphold or direct the responsible supervisor to revise the performance plan or rating. The Agency Review Official reviewing a particular plan or evaluation should be familiar with the work described and must not be a first- or second-level supervisor of the employee requesting the review.

(d) The agency may define procedures and timeframes for requesting reviews and require such to be followed as a condition of granting a review.

1. Agencies are responsible for ensuring their employees are aware of the procedure for requesting a review of a performance plan or evaluation and any applicable timeframes.

2. The identity of an Agency Review Official must be provided to each employee upon presentation of an overall summary rating of "Unsatisfactory Performer," or its equivalent.

(6) **Recordkeeping**:

(a) Performance evaluations must be dated and acknowledged by the employee and supervisor. Electronic acknowledgement meets these criteria. Once the employee has acknowledged the document, no changes can be made or comments added to the performance evaluation without the employee's knowledge.

(b) Agencies must determine an alternate method of documenting that the evaluation has been discussed with the employee when the employee refuses to acknowledge the performance evaluation.

(c) Completed performance evaluations are maintained in the Human Resources Information System (HRIS) or as otherwise designated by the agency in accordance with the State's official retention schedule.

(d) Overall summary evaluation ratings are to be entered into the HRIS, as communicated to agencies.

(7) **Performance Management Program Evaluation**:

The DOAS Commissioner, or designee, shall conduct an annual review and evaluation of the statewide application of the performance management program. Such review and evaluation shall be undertaken with the goal of assuring, to the extent possible, consistency of employee evaluation throughout the State.

(8) **Coordination with Other Personnel Policies**:

(a) Overall summary performance ratings are considered when implementing performance-based salary increases and Reductions in Force, as appropriate within these Rules.

(b) Typically, employment actions resulting from an employee's performance, such as promotions or demotions, should be consistent with the most recent annual overall summary performance rating. Significant accomplishments or deficiencies occurring after the most recent annual evaluation could support an exception.

Cite as Ga. Comp. R. & Regs. R. 478-1-.14
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4; §§ 45-20-1, 45-20-21.
History. Original Rule entitled "Appeals and Hearings" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 15, 1987; eff. Dec. 29, 1986, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. June 20, 1990; eff. May 30, 1990, as specified by the Board.
Amended: F. Aug. 11, 1992; eff. July 2, 1992, as specified by the Board.
Amended: F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.
Amended: F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
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Amended: F. July 20, 1994; eff. July 7, 1994, as specified by the Board.
Amended: F. Apr. 11, 1995; eff. Apr. 5, 1995, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Repealed: New Rule of same title adopted. F. Aug. 18, 1997; eff. Jun. 30, 1997, as specified by the Board.
Amended: F. July 22, 1998; eff. July 7, 1998, as specified by the Board.
Amended: F. July 15, 1999; eff. June 24, 1999, as specified by the Board.
Amended: F. Dec. 8, 2003; eff. Oct. 24, 2003, as specified by the Board.
Repealed: New Rule entitled "Performance Management" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008.
Amended: F. Jul. 2, 2014; eff. Jun. 20, 2014, as specified by the Board.
Amended: F. Aug. 25, 2020; eff. Mar. 16, 2020, as specified by the Board.

Rule 478-1-.15. Changes to Employment Status.

(1) **Promotions.** A promotion is the advancement of an employee to a job on a higher pay grade. An agency may fill a vacancy by promoting an employee determined to be qualified for the higher job.

(2) **Demotions.** A demotion is the movement of an employee to a job on a lower pay grade. Demotions may be voluntary or involuntary. In all cases, the employee must be qualified for the lower job at the time of demotion.

(a) Voluntary Demotion:

An agency may demote an employee on a voluntary basis under the following conditions:

1. The employee requests to be assigned to a job on a lower pay grade. In such case, the employee must make the request to the agency in writing and should include the reasons for requesting demotion.

2. The employee accepts a job on a lower pay grade that is offered as part of a reorganization or for other reasons determined to be in the best interest of the agency.

3. In either case, the employee must acknowledge written notice of the new job on the lower pay grade and salary change, if any, and whether the new position is in the classified or unclassified service.

(b) Involuntary Demotion:

1. An unclassified employee may be demoted if the agency determines such action is in the best interest of the agency and consistent with Rule 478-1-.03(Antidiscrimination).

2. Provisions for involuntarily demoting a classified employee are defined in Rule 478-1-.24 (Working Test and Permanent Status for Classified Employees) and Rule 478-1-.26 (Adverse Actions for Classified Employees).

(3) **Transfers.**

(a) To a Position on the Same Job: An agency may fill a vacancy by transferring a qualified employee from another position on the same job, as long as such transfer is not otherwise prohibited by this Rule.

(b) To a Position on a Different Job: An employee may be transferred to any vacancy in another job on the same pay grade, as long as the employee meets the qualifications for the job and the transfer is not otherwise prohibited by this Rule.

(c) An involuntary transfer that involves a change in shift or location or change in other terms and conditions of employment, must be consistent with Rule 478-1-.03(Antidiscrimination).

(d) Employees returning from Family and Medical Leave or military leave are subject to transfer only when such action complies with laws applicable to such leave.

(4) **Relocations.**

(a) An employee may be relocated from one duty station to another as a result of transfer, promotion, demotion, or relocation of function by an agency.

(b) If the costs of relocation are reimbursable under regulations established by the Office of Planning and Budget Policy No: 2 (Rules, Regulations and Procedures Governing the Payment of Intrastate Relocation Expenses to State Employees), the following provisions apply:

1. Unless there is a need to relocate a specific individual, staff should be given the opportunity to volunteer for relocation before involuntary relocation is required.

2. If one or more, but not all, classified positions in a job are to be involuntarily relocated, the agency is to follow the procedures in Rule 478-1-.25 (Reduction-in-Force for Classified Employees) to determine the order of relocation. Any exception to the calculated order of relocation must be requested in the plan for relocation and approved by the Department of Administrative Services.

3. Relocation is subject to review through the Employee Complaint Resolution Procedure. (See Rule 478-1-.20.)

4. Involuntary relocation actions must be consistent with Rule 478-1-.03(Antidiscrimination).

(5) **Suspensions.**

(a) Suspension with Pay. An agency may suspend an employee with pay if it is determined by the agency to be in the best interest of the agency. A written notice must be provided to the employee.

(b) Suspension without Pay:

1. Disciplinary Action:

a. An agency may suspend an unclassified employee without pay for disciplinary purposes. Such suspension should be proportional to the

offense and should not exceed 30 calendar days for any one offense, or for multiple offenses arising out of the same incident.

b. Provisions for suspending a classified employee without pay for disciplinary purposes are defined in Rule 478-1-.26 (Adverse Actions for Classified Employees).

2. Pending Criminal Court Action:

a. An agency may suspend an unclassified employee without pay due to pending criminal court action. Such suspension should not exceed the period of time necessary for the disposition of the action. An exception exists for the agency to continue the suspension beyond the court disposition date for the period necessary to conclude any internal investigation of the issue.

b. Provisions for suspending a classified employee without pay due to pending criminal court action are defined in Rule 478-1-.26 (Adverse Actions for Classified Employees).

c. At the end of the suspension period, the employee should be returned to duty or terminated in accordance with section (6) or (7) of this Rule, as applicable.

d. If the disposition of the criminal action does not include any penalty to a classified employee, the employee must be reinstated in accordance with the provisions of Rule 478-1-.27(18)(d)3 (Appeals and Hearings for Classified Employees).

3. An agency may define other circumstances under which an unclassified employee may be suspended without pay and the time parameters for such suspension.

4. Prior to suspending a Fair Labor Standards Act (FLSA) exempt employee without pay, the agency should determine whether such action would result in the loss of the FLSA exemption.

(6) **Voluntary Separations.**

(a) An agency may consider an unclassified employee to have voluntarily resigned from employment with the agency when any of the following occur:

1. The employee is absent from duty for three (3) consecutive workdays or equivalent without proper authorization.

2. The employee fails to return from approved leave and has not received approval for an extension. Prior to separating an employee for failure to return from approved leave, the Appointing Authority, or designee, must ensure the agency has met any obligation it may have related to reasonable accommodation, Family and Medical Leave, and military leave protection, as applicable.

3. A suitable vacancy is not available at the expiration of a contingent leave of absence.

(b) An agency may consider an unclassified employee to have forfeited employment when any of the following occur:

1. The employee fails to secure or maintain a license, certification, or registration as required for the duties of the position.

2. The employee makes a false statement of material fact on an application for examination or employment.

3. The employee engages in conflicting employment in violation of Rule 478-1-.07 (Outside Employment).

4. The employee engages in political activity in violation of Rule 478-1-.08 (Political Activity).

(c) Provisions for voluntarily separating classified employees are defined in Rule 478-1-.28 (Voluntary Separations for Classified Employees).

(7) **Involuntary Separations.** An agency may terminate an unclassified employee as deemed necessary to meet the needs of the agency and in keeping with State and Federal laws and guidelines. Provisions for involuntarily separating a classified employee are defined in Rule 478-1-.26 (Adverse Actions for Classified Employees) and Rule 478-1-.25 (Reduction-in-Force for Classified Employees).

(8) **Position Level Reduction.** When an agency determines that the responsibilities of a position have been reduced to the extent that the position would be more appropriately assigned to a job on a lower pay grade, the agency shall reallocate the position to the appropriate job. Such position level reduction is a classification action and, if the position is filled, should not be considered a reflection of the incumbent employee's quality of work.

(a) When a filled position is reallocated through position level reduction, the incumbent employee has the right to request a review of the action in accordance with procedures established by the agency. The decision of the review official is final.

(b) The salary of an incumbent employee remains the same upon position level reduction, even if such salary is above the pay grade maximum for the new job.

(c) The employment status of an incumbent employee remains the same upon position level reduction. An exception exists if a classified employee was serving a working test in the position at the time of the position level reduction and had previously attained permanent status in the job to which the position is being reallocated. In such case, the employee would have permanent status in the lower job upon position level reduction. In all cases, a classified employee remains classified, and an unclassified employee remains unclassified.

(d) Position level reduction shall not be appealable to the Board.

(9) **Staff Reduction.** At times, a staff reduction is necessary due to lack of work, lack of funds, economic slowdowns, technological or structural changes in the agency's operations, or because a staff reduction is determined to be necessary to ensure the financial health and viability of the agency.

(a) Unclassified Employees. An agency may layoff unclassified employees when staff reduction is necessary and consistent with Rule 478-1-.03(Antidiscrimination).

(b) Classified Employees. Provisions for the staff reduction and recall of classified employees are defined in Rule 478-1-.25 (Reduction in Force for Classified Employees).

(c) Legislative Notification. If a staff reduction would result in the elimination of 25 or more positions or the layoff of 25 or more employees (classified and/or unclassified), the Appointing Authority shall, at least 15 days before notifying employees of the action, notify the President of the Senate and Speaker of the House of the proposed action. The notification must identify the facility(ies) and operation(s) to be affected, the estimated number of employees to be affected, and the reasons for the proposed action.

(d) Provisions for furlough are defined in Rule 478-1-.16 (Absence from Work) and in Rule 478-1-.25 (Reduction in Force for Classified Employees).

(10) **Effects of Job Changes on Classified Status.**

(a) Employees with classified status as of June 30, 1996, remain classified until they move into an unclassified position.

(b) Positions created July 1, 1996, or after, are unclassified positions.

(c) Classified employees who move into a different classified position without a break in service remain classified in the new position.

(d) Classified employees lose their classified status effective the date they move into an unclassified position and cannot regain classified status at a later date.

(e) Classified employees who are involuntarily demoted on working test or as a result of adverse action retain their classified status in the lower job to which they are demoted.

(f) Classified employees are not to be involuntarily transferred into an unclassified position.

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Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Adverse Actions and Intra- Agency Appeals" adopted. F. July 31, 1985, eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
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Repealed: New Rule entitled "Changes to Employment Status" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
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Rule 478-1-.16. Absence from Work.

(1) **Introduction**:

The State recognizes value in providing a reasonable amount of time off to assist employees with balancing work and personal needs. To be a responsible steward of public funds, however, the State must account for any pay provided to employees for time not worked. Paid time off must be charged to appropriate paid leave, accumulated compensatory time, paid holiday time, or suspension with pay.

This Rule defines the available types of paid and unpaid leave and the eligibility for each. It further provides a framework for leave, compensatory time, and holiday administration. Information about paid suspension is available in Rule 478-1-.15, Changes to Employment Status, and more detailed information about compensatory time can be found in statewide policy #7 - Rules, Regulations, and Procedures Governing Working Hours, the Payment of Overtime, and the Granting of Compensatory Time, jointly issued by the Governor's Office of Planning and Budget and the Department of Administrative Services.

(2) **Applicability**:

(a) The policies and procedures described in this Rule apply to all agencies of the Executive branch, excluding the Board of Regents of the University System of Georgia.

(b) In accordance with State law (O.C.G.A. § 45-20-32), Section (18) of this Rule, Education Support Leave, is applicable to all branches and entities of State government.

(3) **Definitions**:

For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02, Terms and Definitions:

(a) "Administrative Leave" means paid time off for specified reasons defined in State law. This paid time off is not charged to accrued leave, and the duration is defined in applicable statute.

(b) "Immediate family" means the employee's spouse, child, parent, grandparent, grandchild, brother, and sister, including active step and in-law relationships. Immediate family also includes any other person who resides in the employee's household and is recognized by law as a dependent of the employee.

(c) "Seasonal activity" means work during periods of significantly increased demand, which are of a regular and recurring nature.

(d) "Workday" means a day an employee is regularly scheduled to work.

(4) **General Leave Administration Provisions**:

(a) Each agency should establish procedures for employees to request and receive approval for absence from work.

(b) Employees are expected to properly request and receive approval for absence from work. Failure to follow the employer's procedures may result in denial of the request and/or other employment action deemed appropriate by the agency, up to and including termination of employment.

(c) If a request for absence is denied, the employee is expected to work, as scheduled. Failure to do so might result in leave without pay and/or other employment action deemed appropriate by the agency, up to and including termination of employment.

(d) The agency may require an employee on leave with an uncertain end date to provide periodic reports during the leave regarding the employee's status and intent to return to work.

(e) An employee absent on official agency business is not considered to be on leave.

(f) An employee is expected to return to work as scheduled at the expiration of approved absence. If an extension is desired, the employee must request it in writing from her/his supervisor prior to the leave expiration or adhere to other agency procedures for timely requesting an extension.

(g) Failure to obtain approval for additional time off beyond the expiration of an approved absence may result in separation from employment or other employment action deemed appropriate by the agency.

(h) Each agency may, as a condition of return, require an employee who is absent from work because of illness or injury to supply an appropriate medical release or certification that the employee is able to return to work. The release or certification must explain the extent to which the employee is able to perform the essential functions of her/his position, with or without reasonable accommodation.

1. Each agency must comply with the requirements of the Americans with Disabilities Act, as amended, including providing reasonable accommodation to its qualified employees with disabilities.

2. A limitation exists for employees returning to work from using intermittent or reduced schedule Family and Medical Leave. An agency may require fitness-for-duty certification only if the agency reasonably believes the return could pose significant risk of harm to the employee or others. Such certification may be required no more often than every 30 calendar days.

3. If the medical certification does not release the employee to perform essential functions, and there is no available reasonable accommodation, as defined in the Americans with Disabilities Act, as amended, or if the employee fails to provide the required release, the agency may take the employment action it deems appropriate, up to and including termination of employment.

(i) Prior to engaging in other employment, including self-employment, while on leave employees must comply with the notice and other requirements set forth in Rule 478-1-.07, Outside Employment.

(j) Misrepresenting reasons for requesting or continuing an absence may result in disciplinary action, up to and including termination of employment.

(k) Exceptions to this Rule will occur if necessary to comply with applicable laws.

(5) **Types of Paid Leave**:

(a) The State's paid leave program offers a combination of accrued, personal, and administrative leave for eligible employees.

(b) The following employees are not eligible for any paid leave benefits:

1. All temporary employees except for those eligible to receive Paid Parental Leave under Section (26) of this Rule,

2. All hourly employees except for those eligible to receive Paid Parental Leave under Section (26) of this Rule, and

3. Active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia (ERS) while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

   Eligibility for other employees is defined in the applicable leave section within this Rule.

(c) Accrued Leave:

1. Accrued leave includes annual leave and sick leave. Both annual and sick leave are earned based on time in pay status and automatically accrue to eligible employees. (See Section (6) Annual Leave and Section (7) Sick Leave of this Rule).

2. Each agency, by written policy, may set a minimum period of annual and/or sick leave to be charged for any use which is only a fraction of that period. The minimum leave period cannot be greater than 15 minutes.

3. Dual Eligibility Relating to Leave Accrual:

   (i) An employee who is simultaneously employed in two different agencies and is entitled to earn leave under each position s/he holds will independently accrue leave in accordance with each agency's policies.

   (ii) If employment is terminated with one agency but not the other, all leave accruals will be combined and available in the remaining position, provided both agencies use the same leave accrual program. An exception applies when one of the agencies is a Community Service Board, County Board of Health, or Board of Health Community Operated Program. Leave accrued in these organizations cannot be transferred to an Executive Branch agency.

(iii) If the leave programs differ or if leave cannot otherwise transfer, the terminating agency will payout/divest the employee's leave as provided in the Annual, Sick, and Personal Leave sections of this Rule.

(d) Administrative Leave:

State law provides paid administrative leave to eligible employees for certain activities. Such leave is in addition to, and not charged against, an employee's accrued leave. Administrative leave is available for/during the following:

1. Absence Due to Emergency Office Closures (See Section (12) of this Rule.),
2. Blood Donation Leave (See Section (13) of this Rule.),
3. Bone Marrow Donation Leave (See Section (14) of this Rule.),
4. Organ Donation Leave (See Section (15) of this Rule.),
5. Court Leave (See Section (16) of this Rule.),
6. Employee Voting Leave (See Section (17) of this Rule.),
7. Education Support Leave (See Section (18) of this Rule.),
8. Disaster Volunteer Leave (See Section (19) of this Rule.),
9. Line-of-Duty Injury Leave, also known as Special Injury Leave (See Section (20) of this Rule.),
10. Leave for Contracting TB or infectious Hepatitis on the job (See Section (21) of this Rule.),
11. Military Leave (See Rule 478-1-.19, Military Leave.), and
12. Paid Parental Leave (See Section (26) of this Rule).

(e) Limitation on Concurrent Use of Paid Leave and Wage Substitutes:

An employee is not allowed to use any type of paid leave, except in special situations discussed in Section (20) of this Rule, for any time that the employee receives any form of State of Georgia-funded wage substitute, including but not limited to Workers' Compensation.

(6) **Annual Leave**:

(a) Eligibility:

1. Each agency provides paid annual leave for non-temporary salaried employees who are regularly scheduled to work 20 or more hours a week.

2. The Georgia Industries for the Blind provides paid annual leave for non-temporary manufacturing employees who are regularly scheduled to work 20 hours or more a week.

3. The following employees are not eligible to accrue annual leave:

   (i) All temporary employees,

   (ii) All hourly employees, and

   (iii) Active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(b) Accrual:

1. The accrual process begins on the first date of employment. Annual leave is credited to eligible employees at the end of each pay period.

2. Annual leave accrues on a graduated scale based on an employee's length of continuous, unbroken State service in a position entitled to accrue leave under this Rule.

3. Full-time employees scheduled for at least 40 hours per workweek accrue annual leave at the following rates:

Complete Months of Continuous Service	Paid Semi-Monthly	Paid Monthly
0 through 60	5 hours per pay period	10 hours per pay period
60+ through 120	6 hours per pay period	12 hours per pay period
120+	7 hours per pay period	14 hours per pay period

   (i) Employees paid semi-monthly must be in pay status for at least 40 hours during the pay period to accrue annual leave at the end of that pay period.

(ii) Employees paid on a monthly basis must be in pay status for at least 80 hours during the pay period to accrue annual leave at the end of that pay period. An agency that compensates employees on a monthly basis may choose to administer annual leave as if those employees were compensated on a semi-monthly basis.

4. Part-time employees scheduled to work at least 20 (but fewer than 40) hours per workweek accrue annual leave as outlined for full-time employees, but at a prorated rate.

   (i) The prorated rate is determined by dividing the employee's standard weekly work hours by 40. For example, a part-time employee scheduled for 20 hours per workweek would accrue annual leave at 50% of the rate a full-time employee accrues annual leave (20 hours ÷ 40 = .5 or 50%). A new 20-hour employee would earn 2.5 hours of annual leave semi-monthly or 5 hours monthly.

   (ii) The minimum periods of time in pay status required for annual leave accrual noted in Section (6)(b)3(i)-(ii), above, are similarly prorated for part-time employees. A 20-hour employee would need to be in pay status at least 20 hours during a semi-monthly pay period, or 40 hours during a monthly pay period, in order to accrue leave at the end of that pay period.

(c) Use and Limitations of Annual Leave:

1. Annual leave may be used for vacation or other personal reasons.

2. Employees may not take annual leave before it is actually earned.

3. An agency may by written policy require its employees to use compensatory time and/or deferred holiday time before using annual leave.

4. An agency may by written policy require its employees to use available sick leave before using annual leave when the absence involves medical reasons that would qualify for sick leave.

5. In scheduling annual leave, agencies should try to accommodate employee preferences. However, employees who request annual leave during busy periods or at times when coworkers have already requested leave might need to make alternate plans. Supervisors must weigh the agency's business needs and the timeliness of the requests in approving annual leave.

(d) Carryover and Forfeiture of Annual Leave:

1. An employee may accrue up to 360 hours of annual leave. Any leave balance in excess of 360 is forfeited at the end of each month.

2. Annual leave that is forfeited may be restored as sick leave by the agency if an employee exhausts all paid leave and compensatory time and must be absent because of a personal or immediate family medical condition. The restoration of leave is limited to:

   (i) The amount required by the circumstances of the medical condition; and

   (ii) The leave forfeited during the current period of employment. Forfeited leave accrued prior to a break in service cannot be restored except as outlined in Section (7)(h) of this Rule.

(e) Annual Leave Payout:

1. Annual leave payout can occur in four circumstances:

   (i) Payout Upon Separation. Employees are paid for their accrued and unused annual leave, which has not been forfeited, upon separation from State employment for at least one full workday for any reason.

      A. Annual leave payout is limited to a maximum of 360 hours.

      B. Annual leave is not paid out when an employee transfers between State agencies with no break in service or when annual leave will otherwise transfer to the new employer. (See Section (10) of this Rule.)

      C. Once a separation date has been determined, the pay status of an employee cannot be extended for the purpose of granting a holiday or unanticipated non- workday occurring after the last day in pay status. Once an employee notifies the agency of the intent to terminate employment, the employee cannot be continued on the payroll on leave with pay status for the purpose of increasing the current salary, the rate of leave accrual, or the rate at which accrued leave would be paid.

   (ii) Extended Leave of Absence Payout: An employee who is taking an approved leave of absence without pay of 30 calendar days or more may request and receive an annual leave payout for all accrued annual leave excluding forfeited leave, up to a maximum of 360 hours. The lump sum payment will be calculated as outlined in (6)(e)2, below.

(iii) Payout Upon Transfer to Position Ineligible to Earn Leave: Upon transfer into a position that is not entitled to earn annual leave (i.e., temporary position, hourly position for which the employee is paid only for the time worked, or part-time position scheduled for fewer than 20 hours per week) an employee will be paid for accrued and unused annual leave, up to a maximum of 360 hours.

(iv) Annual Leave Conversion Payout: Employees may convert annual leave into a cash payout once per fiscal year upon notice of the availability of this payout option.

A. The availability of the annual leave conversion program shall be determined on an annual basis by the Governor's Office of Planning and Budget. The Governor's Office of Planning and Budget shall determine both the availability of funding and timing of the annual leave conversion payout.

B. Agencies shall annually certify to the Governor's Office of Planning and Budget the intention to participate in the program and the availability of sufficient funding within individual agency budgets to do so.

C. Upon notice of the availability of the annual leave conversion payout, an employee may elect to irrevocably convert an increment of 40 hours of annual leave to a cash payout if the employee has an accrued annual leave balance of at least 160 hours and a sick leave balance of 80 hours at the time of request.

D. Agencies should ensure that employees who are absent in a protected leave status (e.g., FMLA, military leave) during the election period are advised of any eligibility to convert annual leave to a cash payout and provided reasonable opportunity to make the conversion.

E. Each agency is required to track employee transfers between state agencies to ensure that the payout limitation of 40 hours per fiscal year per employee is not exceeded.

2. To calculate annual leave payout for a full-time employee, the annual base pay last received by the employee is divided by 2,080 hours to determine the value of each hour of leave. (Annual base pay for a part-time employee must first be converted to the equivalent full-time salary for purposes of this calculation.) The hourly rate is then multiplied by the number of hours to be

paid. Decimal fractions of an hour will be rounded to the next highest hundredth of an hour.

3. Each agency has discretion to determine whether it will pay out accrued annual leave for its active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia when they become ineligible for paid leave benefits upon reinstatement of retirement annuity payments at the beginning of each calendar year. If any agency chooses not to pay out the accrued annual leave, the leave balance will remain credited to the rehired retiree who can then use the leave upon regaining eligibility for paid leave benefits.

(7) **Sick Leave**:

(a) Eligibility:

1. Each agency provides paid sick leave for non-temporary salaried employees who are regularly scheduled to work 20 or more hours a week.

2. The Georgia Industries for the Blind provides paid sick leave for non-temporary manufacturing employees who are regularly scheduled to work 20 or more hours a week.

3. The following employees are not eligible to accrue sick leave:

(i) All temporary employees,

(ii) All hourly employees, and

(iii) Active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(b) Accrual:

1. The accrual process begins on the first date of employment. Sick leave is credited to eligible employees at the end of each pay period.

2. Full-time employees paid on a semi-monthly basis will accrue five (5) hours of sick leave at the end of each pay period, provided the employee is in pay status for at least 40 hours during the pay period.

3. Full-time employees paid on a monthly basis will accrue 10 hours of sick leave at the end of each pay period, provided the employee is in pay status for at least 80 hours during the pay period. An agency that compensates

employees on a monthly basis may choose to administer sick leave as if those employees were compensated on a semi-monthly basis.

4. Part-time employees scheduled to work at least 20 (but fewer than 40) hours per workweek accrue sick leave as outlined for full-time employees, but at a prorated rate.

   (i) The prorated rate is determined by dividing the employee's standard weekly work hours by 40. For example, a part-time employee scheduled for 20 hours per workweek would accrue sick leave at 50% of the rate a full-time employee accrues sick leave (20 hours ÷ 40 = .5 or 50%). A 20-hour employee would earn 2.5 hours of sick leave semi-monthly or five (5) hours monthly.

   (ii) The minimum periods of time in pay status required for sick leave accrual noted in Section (7)(b)2-3, above, are similarly prorated for part-time employees. A 20-hour employee would need to be in pay status at least 20 hours during a semi-monthly pay period or 40 hours during a monthly pay period in order to accrue leave at the end of that pay period.

(c) Use and Limitations of Sick Leave:

1. Provided the employee adheres to the procedures for approval of leave, an employee may use accrued sick leave for any absence due to:

   (i) Personal illness, injury, or disability;

   (ii) Adoption of a child by the employee when the employee's presence is required for health-related reasons;

   (iii) Dental or medical care;

   (iv) Illness, injury, or disability in the employee's immediate family which requires the employee's presence; or,

   (v) Death in the employee's immediate family which requires the employee's presence; however, sick leave used for this purpose shall be limited to five (5) workdays or the equivalent of a workweek.

2. Sick leave may also be used to allow an employee paid time off from work because s/he has been exposed to a contagious disease and may reasonably expose others and endanger their health by being present at work.

3. Employees may not use sick leave before it is actually earned.

4. An agency may by written policy require its employees to use compensatory time and/or deferred holiday time before using sick leave.

5. An employee may be required to furnish evidence to support the use of sick leave if the employee uses 17 or more hours of sick leave in a 30 calendar day period or has demonstrated excessive or abusive use of sick leave.

6. Employees using sick leave during a period of Family and Medical Leave (FMLA) are also subject to the medical certification provisions associated with FMLA. (See Rule 478-1-.23, Family and Medical Leave.)

(d) Excessive or Abusive Use of Sick Leave:

Excessive or abusive use of sick leave is defined as a pattern of intermittent, short-term usage that includes, but is not limited to, the following:

1. Frequent use of sick leave in conjunction with holidays, scheduled off days, weekends, or paydays;

2. Frequent use of sick leave when scheduled for undesirable temporary shifts or assignments, or during periods of peak workload;

3. A request for sick leave for an absence for which other paid leave has previously been denied;

4. Frequent occurrences of illness during the workday;

5. Peculiar and increasingly improbable excuses;

6. Repetitive use of fewer than 17 hours of sick leave in 30-day periods; or,

7. Prior written notification of failure to adhere to procedures for approval of leave, inappropriate attendance, or inappropriate use of leave (e.g., written warning, active attendance plan, etc.).

(e) Illness during Annual Leave:

If an employee is ill for three (3) workdays or more during a period of annual leave, the period of illness may be charged to sick leave if the employee provides satisfactory written evidence supporting the illness during annual leave. A request for substitution of sick leave for annual leave must be made to the agency within two (2) weeks after the employee has returned to duty. No substitution will be allowed for illness that does not last for three (3) or more workdays.

(f) Exhaustion of Sick Leave:

If an absence because of illness, injury, or disability extends beyond available sick leave, the absence may be charged to available annual leave, personal leave, compensatory time, or deferred holiday time, unless the employee applies for, and the agency approves, a leave of absence without pay. Leave donations may be available to an employee who must be absent for an extended period of time after exhausting all paid leave and compensatory time. (See Rule 478-1-.17, Leave Donation, for program details.)

(g) Carryover and Forfeiture of Sick Leave:

1. An employee may accrue up to 720 hours of sick leave. Any leave balance in excess of 720 is forfeited at the end of each month.

2. Sick leave that is forfeited may be restored by the agency if an employee exhausts all paid leave and compensatory time and must be absent because of a personal or immediate family medical condition. The restoration of leave is limited to:

   (i) The amount required by the circumstances of the medical condition; and,

   (ii) The leave forfeited during the current period of employment. Forfeited leave accrued prior to a break in service cannot be restored except as outlined in Section (7)(h) of this Rule.

(h) Divestment and Restoration of Sick Leave:

1. Upon a break in State service (i.e., separation from State employment for at least one full workday), an employee's accrued sick leave is divested and not paid out. (See Section (10)(e) of this Rule for an exception in such case as when a Community Service Board, County Board of Health, or Board of Health Community Operated Program agrees to accept an employee's leave upon transfer without a break in service.)

2. An employee's accrued sick leave is divested and not paid when an employee transfers into a position that is not entitled to earn sick leave (i.e., temporary position, hourly position for which the employee is paid only for the time worked, or part-time position scheduled for fewer than 20 hours per week).

3. Each agency has discretion to determine whether it will divest accrued sick leave for its active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia when they become ineligible for paid leave benefits upon reinstatement of retirement annuity

payments at the beginning of each calendar year. If an agency chooses not to divest the accrued sick leave, the leave balance will remain credited to the rehired retiree who can then use the leave upon regaining eligibility for paid leave benefits.

4. Employees who return to State employment on or after July 1, 2003, and remain employed for a period of two (2) consecutive years in a position entitled to accrue leave in accordance with this Rule, are eligible to regain sick leave divested when their most recent previous period of State service ended.

5. Divested sick leave includes any sick leave that was available for use at the time of the employee's last separation from State service. It does not include any sick leave forfeited prior to the employee's last separation.

6. The maximum amount of divested sick leave the employee may regain is 720 hours. Divested leave will only be restored to the extent that the restored leave and current unused sick leave total 720 hours. Any remaining balance of divested sick leave will be credited to the employee's current forfeited leave balance.

7. If a Community Service Board, County Board of Health, or Board of Health Community Operated Program accepts leave upon transfer from the State, then sick leave is not considered divested at the time the employee leaves State service. Should the employee later return to State employment, sick leave divested at the time the employee returns to the Executive Branch would not be eligible for reinstatement.

8. To obtain restoration of divested sick leave, an employee must apply in writing to the employing agency and include supporting documentation. The agency will determine the appropriate amount of divested sick leave to be restored.

9. Employees returning to State employment within one year of being laid off by a State agency in accordance with a reduction-in-force plan will immediately receive restoration of the sick and forfeited leave that was lost at the time of layoff, provided they return to a position entitled to accrue leave in accordance with this Rule. (See Section (11) of this Rule.)

(8) **Personal Leave**:

Each year, an employee who has an accrued sick leave balance of more than 120 hours as of November 30 may convert up to 24 hours of the excess sick leave to personal leave.

(a) The employee must have a remaining sick leave balance of at least 120 hours after conversion.

(b) The employee must notify the agency of such a conversion no later than December 31 of that year. Agencies should ensure that employees who are absent in a protected leave status (e.g., FMLA, military leave) during the election period are advised of any eligibility to convert sick leave to personal leave and provided a reasonable opportunity to make the conversion.

(c) Sick leave that is converted during December becomes personal leave on January 1 and cannot be reversed after it is converted. Personal leave is available for use only during the calendar year following conversion.

(d) Each agency, by written policy, may set a minimum period of personal leave to be charged for any use which is only a fraction of that period. The minimum leave period cannot be greater than fifteen (15) minutes.

(e) Personal leave may be used for any reason, upon receiving supervisory approval, with the following exceptions:

1. Employees cannot use personal leave while they are receiving Georgia State-funded wage substitutes, such as Workers' Compensation wage loss benefits.

2. An agency may by written policy require its employees to use available sick leave before using personal leave when the absence involves medical reasons that would qualify for sick leave.

(f) Agencies should make every reasonable effort to accommodate requests to utilize personal leave. An employee is, however, expected to give as much advance notice as possible to minimize disruptions.

(g) Personal leave not used by December 31 of the year the leave was available will be divested and cannot be restored.

(h) Any unused personal leave at the time of an employee's break in State service of at least one full workday is divested and not paid to the employee.

(i) When an employee transfers into a position that is not entitled to earn leave (i.e., temporary position, hourly position for which the employee is paid only for the time worked, or part-time position scheduled for fewer than 20 hours per week) any unused personal leave is divested and not paid.

(j) Personal leave carries no cash value if unused. There will be no payout for unused personal leave upon termination.

(9) **Election to Use Accrued Leave or Personal Leave for Workers' Compensation Absence**:

(a) An employee may not use annual, sick, or personal leave for an accidental injury or occupational disease which is compensable under the Georgia Workers' Compensation Act, unless the employee elects in writing to use paid leave in lieu of receiving Workers' Compensation wage loss benefits.

(b) The leave granted for such purpose will be credited on a day-for-day basis as compensation against any indemnity award by the State Board of Workers' Compensation.

(c) An employee may prospectively submit to the agency a written election to use annual, sick, and/or personal leave in lieu of receiving Workers' Compensation wage loss benefits.

(10) **Transfer of Accrued Leave and Personal Leave**:

The following provisions define the transfer of accrued leave and personal leave when employees transfer to a different State government agency or entity without a break in service from a position entitled to accrue leave into another position entitled to accrue leave. Note that accumulated compensatory time does not transfer between State entities. Upon transfer, the losing organization must payout unused FLSA compensatory time, and unused State compensatory time balances are divested and not paid. (See Sections (23) FLSA Compensatory Time and (24) State Compensatory Time of this Rule.)

(a) Transfer between Executive Branch Agencies:

Unused sick, annual, and personal leave and the record of forfeited leave will transfer between Executive branch agencies.

(b) Transfer between Branches of State Government:

1. Unused sick, annual, and personal leave and the record of forfeited leave will transfer from an Executive branch agency into the Legislative or Judicial branch to the extent the receiving organization agrees to accept the transfer. The employee will be paid for unused annual leave that cannot be transferred, up to a maximum of 360 hours, once the agency has received confirmation that the employee cannot receive credit. Accrued personal leave and sick leave balances that cannot be transferred are not paid and are divested.

2. The unused leave and record of forfeited leave will transfer into an Executive branch agency from the Legislative or Judicial branch only when the losing and receiving organizations have the same leave accrual

program. If the Legislative or Judicial branch entity's leave program deviates from this Rule, leave balances and the record of forfeited leave will not transfer into the Executive branch agency, and the employee will be considered a new hire for purposes of graduated annual leave accrual.

(c) Transfer between Board of Regents and Executive Branch:

1. Unused sick, annual, and personal leave and the record of forfeited leave will transfer from an Executive branch agency into a unit of the Board of Regents/University System of Georgia to the extent the receiving organization agrees to accept the transfer. The employee will be paid for unused annual leave that cannot be transferred, up to a maximum of 360 hours, once the agency has received confirmation that the employee cannot receive credit. Accrued personal leave and sick leave balances that cannot be transferred are not paid and are divested.

2. Unused leave and the record of forfeited leave will not transfer into an Executive branch agency from the Board of Regents/University System of Georgia. Transferring employees are considered new hires for purposes of graduated annual leave accrual.

(d) Transfer between Authorities and Executive Branch:

1. Unused sick, annual, and personal leave and the record of forfeited leave will transfer from an Executive branch agency into an authority to the extent the receiving organization agrees to accept the transfer. The employee will be paid for unused annual leave that cannot be transferred, up to a maximum of 360 hours, once the agency has received confirmation that the employee cannot receive credit. Accrued personal leave and sick leave balances that cannot be transferred are not paid and are divested.

2. The unused leave and record of forfeited leave will transfer into an Executive branch agency from an authority only when the losing and receiving organizations have the same leave accrual program. If the authority's leave program deviates from this Rule, leave balances and the record of forfeited leave will not transfer into the Executive branch agency, and the employee will be considered a new hire for purposes of graduated annual leave accrual.

(e) Transfers between Community Service Boards (CSB), County Boards of Health, and Board of Health Community Operated Programs (BOHCOP) and Executive Branch:

1. Unused sick, annual, and personal leave and the record of forfeited leave will transfer from an Executive branch agency into a unit of a CSB, County

Board of Health, and BOHCOP to the extent the receiving organization agrees to accept the transfer. The employee will be paid for unused annual leave that cannot be transferred, up to a maximum of 360 hours, once the agency has received confirmation that the employee cannot receive credit. Accrued personal leave and sick leave balances that cannot be transferred are not paid and are divested.

2. Unused leave and the record of forfeited leave will not transfer into an Executive branch agency from any CSB, County Board of Health, or BOHCOP. Transferring employees are considered new hires for purposes of graduated annual leave accrual. An exception applies to classified employees whose unused sick, annual, and personal leave and record of forfeited leave will transfer into the Executive branch.

(11) **Credit for Leave on Return from Layoff**:

The provisions in this section apply to employees rehired into State service in a position entitled to accrue leave in accordance with this Rule within one (1) year of being laid off as a result of agency downsizing or reorganization.

(a) Upon rehire, the employee's sick leave balance existing at the time of layoff will be reinstated.

(b) Any record of forfeited leave existing at the time of layoff will be reinstated, but the leave will not be available for the employee's use, except as provided for in Section (7), Sick Leave, of this Rule.

(c) The period of absence for the layoff will not constitute a break in service for purposes of graduated annual leave accrual.

(d) Upon rehire, the employee's personal leave balance will be reinstated, unless the employee returns in the calendar year after the personal leave would have expired.

(12) **Absence Due to Emergency Office Closures**:

When the Governor, or an agency upon delegated authority by the Governor, closes an office or facility because of weather conditions or other emergency circumstances, affected employees are excused from duty without loss of pay as provided in this Rule section. Employees who are not directly affected by an emergency office closure will not be excused from work.

(a) Employees considered directly affected by a closure:

1. Employees who were scheduled to work in an affected area during an emergency office closure are considered affected by the closure.

2. Non-temporary salaried employees affected by the closure are paid for the scheduled work time they do not work because of the closure. This paid time off is not charged against their accrued leave.

3. The following employees are not eligible for compensation for absences due to emergency closure:

   (i) Unaffected employees,

   (ii) All temporary employees,

   (iii) All hourly employees, and

   (iv) Active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(b) Employees considered unaffected by the closure:

Employees who were not scheduled to work in an affected area during an emergency office closure are considered unaffected by the closure. Employees scheduled to use leave or compensatory time during an emergency office closure will be charged for that pre-approved leave or compensatory time because they are considered unaffected by the closure.

(c) Essential Staff:

An agency may determine that it is essential to continue certain functions during an emergency office closure. Employees whose functions are deemed essential may be required to work, rather than excused from duty.

1. Such employees will be compensated as usual for the time worked during their normal work schedule and do not have any right to additional absence or compensation for this time as a result of paid absence authorized for non-essential staff.

2. Essential employees who are required to work additional time because of an office or facility closing will be compensated in accordance with the provisions of statewide policy #7 - Rules, Regulations and Procedures

Governing Working Hours, the Payment of Overtime and the Granting of Compensatory Time.

(d) If an employee is absent from duty because of severe weather conditions or other emergencies that do not cause her/his office or facility to close, the agency may permit the employee to:

1. Make up time lost from work. In order to comply with the Fair Labor Standards Act, a non-exempt employee must make up time during the same workweek as the time lost;

2. Charge the period of absence to accrued compensatory time;

3. Charge the period of absence to accrued annual leave;

4. Charge the period of absence to personal leave;

5. Charge the period of absence to deferred holiday time;

6. Telework (if determined appropriate by the agency); or,

If none of the above options are available, place the employee on leave without pay for the period of absence.

(13) **Blood Donation Leave**:

(a) Non-temporary salaried employees are permitted to take up to two (2) hours of paid time off to donate blood, up to four (4) times each calendar year. Employees who donate blood platelets or granulocytes through the plasmapheresis process may take up to four (4) hours of paid time off, up to four (4) times a calendar year.

(b) An eligibility exception applies to active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia. Such employees are not eligible for blood donation leave while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(c) The agency may specify the hours during which an employee may be absent in order to donate blood. An employee who does not use the entire time allowed at the time of each donation does not accrue any right to any subsequent paid or unpaid leave.

(14) **Bone Marrow Donation Leave**:

(a) Non-temporary salaried employees are granted seven (7) workdays of paid leave to donate bone marrow for transplantation. The amount of leave will not be deducted from any accrued leave balance and will be included as service time for purposes of computing any retirement or pension benefits.

(b) An eligibility exception applies to active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia. Such employees are not eligible for bone marrow donation leave while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(c) To receive paid bone marrow donation leave, the employee must have approval from the agency for absence and provide the agency with a written statement from a medical practitioner performing the procedure. If the donation does not occur, bone marrow donation leave is not applicable.

(15) **Organ Donation Leave**:

(a) Non-temporary salaried employees are granted 30 workdays of paid leave to donate an organ for transplantation. The term "organ" means any human organ, including an eye, which is capable of being transferred from the body of one person to another. The amount of leave will not be deducted from any accrued leave balance and must be included as service time for purposes of computing any retirement or pension benefits.

(b) An eligibility exception applies to active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia. Such employees are not eligible for organ donation leave while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(c) To receive paid organ donation leave, the employee must have approval from the agency for absence and provide the agency with a written statement from a medical practitioner performing the transplant procedure or a hospital administrator indicating that the employee is making an organ donation. If the donation does not occur, organ donation leave is not applicable.

(16) **Court Leave**:

(a) The State recognizes employees' obligation to perform civic duties when summoned as a potential juror or witness and grants time off to employees for such purposes. An employee may not be discharged, disciplined, or otherwise penalized because the employee is absent from employment for the purpose of attending a judicial proceeding in response to a subpoena, summons for jury duty, or other court order or process which requires the attendance of the employee.

(b) Leave Request and Supporting Documentation:

1. An employee who is summoned to perform jury duty or to serve as a witness during scheduled work time and needs to be absent from work is expected to provide a copy of the summons, subpoena, or other court order when requesting leave.

2. Because employees will typically not know in advance how much time will be required to fulfill their court obligation, employees may be required to update the agency at reasonable intervals concerning the time needed for absence from duty.

(c) Paid Court Leave:

1. Paid court leave is granted to non-temporary salaried employees, as outlined in this Rule Section, for the purpose of attending a judicial proceeding in response to a subpoena, summons for jury duty, or other court order or process which requires the attendance of the employee during scheduled work hours. Such paid time off is not charged to an employee's accrued leave.

2. The following employees are not eligible for paid court leave:

   (i) All temporary employees,

   (ii) All hourly employees, and

   (iii) Active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(d) Jury Duty:

1. Eligible employees will receive paid court leave while on jury duty for the time they are otherwise scheduled to work. Employees will be paid only for the time they are required to appear by the court, plus any additional time that is reasonably necessary, in the opinion of the agency, for the employee to prepare for or return from jury duty.

2. Employees will not receive any compensation for time spent serving as a juror that exceeds the employee's regular work schedule.

3. Employees may keep any juror fees and travel allowances they receive from the court.

(e) Court Attendance and Witness Duty Leave:

1. An employee summoned to appear as a witness or required by a court to attend a proceeding will typically be paid in the same manner as an employee serving on a jury. However, an employee will not receive paid court leave to attend a trial, arbitration hearing, or other judicial proceeding in which s/he:

   (i) Is charged with a crime;

   (ii) Is a plaintiff or defendant;

   (iii) Voluntarily appears as a witness;

   (iv) Is a witness in a case arising from or related to her/his outside employment or outside business activity;

   (v) Is testifying for a fee as an expert witness; or,

   (vi) Has any other personal or familial interest in the proceeding.

2. When paid court leave is not applicable, the employee must use annual leave, personal leave, compensatory time, deferred holiday time, or take leave without pay.

(f) Return from Court Leave:

Employees are required to report back to work as soon as they are released from jury duty or other court ordered appearance if the release occurs before the end of the scheduled workday. Management may require verification from the court showing the time served. Failure to return timely from court leave is treated as an unexcused absence.

(17) **Voting Leave**:

The State encourages employees to exercise their right to vote in all federal, state, and local elections. Non-temporary salaried employees may be granted paid time off to vote, up to a maximum of two (2) hours per Election Day, as provided in this section. Paid voting leave is not charged to an employee's accrued leave.

(a) Eligibility for Voting Leave:

1. Paid voting leave is available to employees when their work schedule does not allow them at least two (2) hours (including travel) to vote either before or after work. Employees who are scheduled to begin work at least

two (2) hours after the polls open or end work at least two (2) hours before the polls close are not eligible for voting leave.

2. Paid voting leave is not available for voting midday. It must be used either at the beginning or end of the employee's regular workday.

3. Active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia are not eligible for voting leave while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(b) Voting leave covers only the time necessary to give an employee two (2) hours either before or after work to vote. For example, an employee whose work schedule allows only 1½ hours to vote either before or after work would be eligible for 30 minutes of voting leave.

(c) For those employees not eligible for voting leave, agencies have the discretion to arrange flexible work schedules for voting purposes. Agencies may also allow employees to use other available paid leave, other than sick leave, if they are not eligible for voting leave or need more than two (2) hours to vote.

(d) Early Voting:

An agency may allow employees paid voting leave on early voting days if it determines that doing so minimally disrupts normal operations.

(e) Notification Requirement:

Employees are responsible for requesting and obtaining approval from their supervisor in advance of taking time off to vote and should schedule the time off in a manner that minimally disrupts normal agency operations.

(18) **Education Support Leave**:

To supplement work-life balance options for State employees, the State provides up to eight (8) paid hours of leave per calendar year to eligible employees for the purpose of promoting education in Georgia. Such leave is in addition to, and not charged against, an employee's accrued leave.

(a) Education support leave may be taken in increments of fewer than eight (8) hours utilizing the same minimum period an agency has established for other forms of paid leave.

(b) Eligibility:

All eligibility criteria defined below must be met before an employee can use education support leave.

1. Any non-temporary, full-time employee of the State of Georgia, or of any branch, department, board, bureau, or commission thereof, may request to use and be considered for education support leave. An exception applies to active, salaried, non-temporary employees in the Executive branch who are rehired retirees of the Employees' Retirement System. Such employees are not eligible for education support leave while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

2. Only activities directly related to student achievement and academic support will qualify for education support leave. Such activities may range from early care and learning through higher education. Each State employer maintains the authority to determine, in accordance with the provisions outlined in this Rule, whether an activity would qualify for education support leave.

3. To use education support leave, an employee may be, but is not required to be, the parent of a student.

4. Employees must not receive pay for services they perform while using education support leave.

5. Employees must receive prior approval from their supervisor before providing the services for which they are requesting education support leave. The State employer has discretion to require written verification from a school administrator, teacher, or other official prior to approval.

6. The State employer maintains discretion to approve or deny requests for education support leave based on operational needs or other reasons, such as conduct, attendance, or unsatisfactory work performance. The State employer should ensure that denials are applied consistently for all similarly situated employees.

7. Use of education support leave for any political purpose or agenda is prohibited.

(c) Education support leave does not accumulate, and unused leave does not roll over into subsequent calendar years. Rather, eligible employees may use education support leave for qualifying absences that occur during their regular scheduled work hours, up to a total of eight (8) hours in any calendar year.

(d) Employees can use no more than eight (8) paid hours of education support leave in a calendar year regardless of transfer from one State employer to another. Each State employer is responsible for conducting due diligence to ensure an employee has not exhausted education support leave prior to approving the paid leave.

(e) Education support leave carries no cash value if unused. There will be no payout for unused education support leave upon termination.

(f) Education support leave is not available to support education outside of the State of Georgia.

(19) **Disaster Volunteer Leave**:

The State recognizes that cooperation among government agencies and volunteer service agencies is vital in coping with natural disasters and other emergencies. To help prevent the loss and destruction of life and property, the State believes that employees who are trained and experienced in disaster relief should be able to provide assistance for brief periods without loss of pay and benefits.

(a) Eligibility:

1. To be eligible for paid disaster volunteer leave, an employee must be a certified disaster service volunteer of the American Red Cross whose services have been requested by the American Red Cross or by the Civil Air Patrol Auxiliary of the United States Air Force. The request for leave is subject to approval by the employee's agency and must be coordinated through the Director of Emergency Management.

2. The following employees are not eligible for disaster volunteer leave:

(i) All temporary employees,

(ii) All hourly employees, and

(iii) Active, salaried, non-temporary employees who are rehired retirees of the Employee's Retirement System of Georgia while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(b) Paid Disaster Volunteer Leave:

An eligible employee may be granted leave with pay to participate in specialized disaster relief services for the American Red Cross or for the Civil Air Patrol Auxiliary of the United States Air Force. Paid leave to participate in specialized

disaster relief services for the Civil Air Patrol Auxiliary of the United States Air Force is available only for service on a numbered mission in support of a county emergency management agency, the Georgia Emergency Management and Homeland Security Agency, or a comparable federal agency.

1. Paid leave under this section cannot exceed 15 workdays in any 12-month period and can be granted only for services related to a disaster occurring within the State of Georgia or in a bordering state which has a reciprocal statutory provision.

2. Paid disaster volunteer leave is not charged against an employee's accrued leave.

3. The employee will be compensated at the rate of pay for the regularly scheduled hours during which the employee is absent from work as a result of disaster volunteer leave.

(20) **Line-of-Duty Injury Leave (Special Injury Leave)**:

A non-temporary salaried employee scheduled to work 30 or more hours per week who becomes physically disabled as a result of an injury incurred in the line-of-duty and caused by a willful act of violence committed by a non-agency employee is entitled to a leave of absence for the period the employee is physically unable to perform her/his duties. Such a leave of absence will be provided in lieu of using accrued leave, and the employee will continue to receive regular compensation, subject to the limitations below.

(a) Leave granted under this provision cannot exceed 180 workdays for any single incident.

(b) An employee seeking leave under this section must submit documentation of disability to the agency.

(c) The following employees are not eligible for line-of-duty injury leave:

1. All temporary employees,

2. All hourly employees, and

3. Active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(d) Benefits received under this provision of the Rule will be subordinate to any Workers' Compensation wage loss benefits that the employee is awarded and will be limited to the difference between the amount of Workers' Compensation benefits actually paid and the amount of the employee's regular compensation.

(e) Injury to Employees of the Department of Transportation:

When an employee of the Department of Transportation is disabled while working in the proximity of traffic movements or equipment movements doing maintenance, construction, or other activities which may be construed as hazardous, the reasons that qualify for line-of-duty injury leave are expanded. Qualifying reasons include: an act of violence, accident, or injury that is caused by a person other than an employee of the agency or an employee of a contractor or subcontractor performing duties under a contract with the agency.

(f) Permanent Disability to Law Enforcement Personnel:

Law enforcement personnel who are permanently disabled by an act of external violence or injury on the job and who qualify for a disability retirement benefit under O.C.G.A. § 47-2-221 are not eligible to receive line-of-duty injury leave under this provision.

(21) **Leave for Contracting TB or Hepatitis on the Job**:

(a) A non-temporary salaried employee who contracts tuberculosis or infectious hepatitis while charged with the care, treatment, or diagnosis of a person infected with tuberculosis or infectious hepatitis, and who has exhausted all available sick and annual leave will be granted a paid leave of absence of one-half her/his total compensation or $150 per month, whichever is less, for the duration of the disability due to the tuberculosis or infectious hepatitis, not to exceed 350 weeks.

(b) The following employees are not eligible for paid leave for contracting TB or hepatitis on the job:

1. All temporary employees,

2. All hourly employees, and

3. Active, salaried, non-temporary employees who are rehired retirees of the Employees' Retirement System of Georgia while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(c) An employee receiving leave under this special situation will be given credit for all salary adjustments and advancements, which would have been received had

the employee remained in the same position with the same capacity and status held at the time the leave was granted.

(22) **Leave Without Pay**:

(a) Leave without pay may be used in the following situations:

1. When an employee is authorized for absence but does not have available paid leave to cover the absence;

2. When an employee is authorized for absence but foregoes the use of available paid leave for a Workers' Compensation-related absence or for other absence with the concurrence of the agency;

3. When an employee does not have approval for an absence (See Section (22)(g), below);

4. When there is insufficient funding for salaries (See Section (22)(h), below); and

5. When there is insufficient work available (See Section (22)(i), below).

(b) Leave without pay is not included as service time for purposes of computing retirement or pension benefits, unless otherwise specified.

(c) Short-Term Authorized Leave without Pay:

Agencies may grant an employee who is absent, but does not have accrued leave to cover the period of absence, leave without pay for a period of not more than 10 consecutive workdays in any one continuous absence. At the expiration of the approved leave, the employee shall be returned to the same position without any loss of rights provided the employee returns within the terms of the leave granted.

(d) Regular Leave of Absence without Pay:

1. A regular leave of absence without pay allows an employee to take unpaid time off for up to 12 continuous months and be granted return to work if the employee returns within the terms of the leave approval.

2. The employee must submit a written request to the agency. If approved, a written notice specifying the terms and conditions of the approval must be provided to the employee, including a statement indicating that the employee will be reinstated to the former position or to a position of equal grade and pay without loss of any rights provided the employee returns within the terms of the leave granted.

3. Although a regular leave of absence without pay does not constitute a break in service and does not result in divestment of leave, an employee who is taking an approved leave of absence without pay of 30 calendar days or more may request and receive an annual leave payout for all accrued annual leave excluding forfeited leave, up to a maximum of 360 hours. (See Section (6)(e) 4 of this Rule.)

(e) Contingent Leave of Absence without Pay:

1. A contingent leave of absence without pay is similar to a regular leave of absence, but does not guarantee a position will be available for the employee's return.

2. The employee may submit a written request to the agency to take a continuous leave without pay for a period not exceeding 12 months. The notice of approval must include the terms and conditions of the approval including a statement that the employee's right to return at the expiration of leave is not guaranteed and will be contingent upon a suitable vacancy being available.

3. Because a contingent leave of absence without pay does not guarantee an employee the right to return to work at the expiration, it may not be considered a reasonable accommodation under the Americans with Disabilities Act, as amended.

4. Although a contingent leave of absence without pay does not constitute a break in service and does not result in divestment of leave, an employee who is taking an approved leave of absence without pay of 30 calendar days or more may request and receive an annual leave payout for all accrued annual leave excluding forfeited leave, up to a maximum of 360 hours. (See Section (6)(e)4 of this Rule.)

(f) Extending a Leave of Absence without Pay:

1. The agency may extend an approved leave of absence without pay when such extension is properly requested. The employee must submit a written request for extension before the expiration of approved leave or follow other agency procedures. If approved, a written notice specifying the terms and conditions of the extension, including any rights to reinstatement, must be provided.

2. A continuous unpaid leave of absence may not exceed 24 months, unless otherwise required as a reasonable accommodation.

(g) Unauthorized Leave without Pay:

1. An employee who is absent without approval may be placed in non-pay status and may be subject to disciplinary action, up to and including termination of employment.

2. An unclassified employee who is absent from duty for three (3) consecutive workdays or equivalent without proper authorization may be considered to have voluntarily resigned. (See Rule 478-1-.15, Changes to Employment Status.)

3. A classified employee who is absent from duty for five (5) consecutive workdays or the equivalent of a scheduled workweek without proper authorization may be considered to have voluntarily resigned. (See Rule 478-1-.28, Voluntary Separations for Classified Employees.)

(h) Furlough - Insufficient Funding:

1. Due to a curtailment of funds, an agency may place employees in a non-pay status as a temporary reduction-in-force pursuant to a plan filed with the Department of Administrative Services.

2. On furlough days, an employee does not perform work and does not receive pay.

3. Employees may not be placed in non-pay furlough status for more than a total of 30 workdays in any 12-month period.

4. Absences under these circumstances will not be charged against accrued leave or compensatory time, will not be considered a break in service, and will not affect eligibility for salary increases.

(i) Temporary Layoff - Insufficient Work:

1. If sufficient work is temporarily unavailable or not feasible, the supervisor may, pursuant to a prior written employment agreement with an employee, place the employee in a non-pay status during the period.

2. The agreement should clearly specify the terms and conditions of the leave without pay and any rights to reinstatement.

3. An employee affected by a temporary layoff because of insufficient work may request the use of accrued annual leave, personal leave, deferred holiday time, or compensatory time to remain in pay status.

4. This provision may not be used in lieu of an adverse action against an employee.

(23) **FLSA Compensatory Time**:

Overtime for non-exempt employees will be governed by the provisions of the Fair Labor Standards Act (FLSA). Overtime worked by non-exempt employees will normally be credited as FLSA compensatory time at a rate of one and one-half hours of compensatory time for each hour of overtime worked. (See statewide policy #7 - Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime and the Granting of Compensatory Time.)

(a) Overtime:

1. Each agency is responsible for the control of all overtime worked in the agency and for accurately approving and recording such overtime worked in the agency time and leave system.

2. For most non-exempt employees, overtime is credited when the employee actually works more than 40 hours in a defined workweek. The overtime threshold is defined differently for law enforcement, fire protection, hospital, and nursing home employees if they use extended FLSA work period options as provided in statewide policy #7 - Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime and the Granting of Compensatory Time.

3. Time worked does not include paid time off, such as leave, holidays, or suspension.

4. Unscheduled and unauthorized overtime worked by non-exempt employees will be compensated. However, disciplinary action determined appropriate by the agency, up to and including separation from employment, may be taken against a non-exempt employee who works unscheduled or unauthorized hours.

(b) Use and Limitations of FLSA Compensatory Time:

1. An employee must be granted FLSA compensatory time off within a reasonable time after making the request if the use of such time off does not unduly disrupt operations.

2. An agency may by written policy require its employees to use accumulated FLSA compensatory time before using annual and/or sick leave.

3. For most employees, the maximum FLSA compensatory time accrual is 240 hours at any given time. The maximum accrual is 480 hours for employees in a public safety activity, emergency response activity, or seasonal activity. Compensatory time in excess of 240 hours (480 hours for

employees in a public safety activity, emergency response activity, or seasonal activity) must be paid out.

(c) Payment for Overtime:

1. Employees receive pay for overtime only in the following situations:

   (i) When the agency approves payment in lieu of FLSA compensatory time as provided in statewide policy #7 - Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime and the Granting of Compensatory Time.

   (ii) Upon exceeding the accumulation limits of FLSA compensatory time. (See Section (23)(b)2.)

   (iii) Upon separation from employment with the agency, including transfer from the agency to another State employer.

2. Payment for overtime is typically made the pay period following the pay period in which the overtime is earned. Payment for law enforcement, fire protection, hospital, and nursing home staff with unique FLSA work periods is made the pay period following the FLSA work period during which the overtime is earned.

(24) **State Compensatory Time**:

State compensatory time is hour-for-hour paid time off for employees who work longer than the normally assigned hours in a work period but do not qualify for FLSA compensatory time. Each agency by written policy defines which of its employees, if any, are eligible for state compensatory time as provided in statewide policy #7 - Rules, Regulations and Procedures Governing Working Hours, the Payment of Overtime and the Granting of Compensatory Time.

(a) The maximum state compensatory time accrual allowed is 240 hours at any given time. Any state compensatory time earned in excess of 240 hours is lost and not paid out.

(b) Generally, state compensatory time not used within one (1) year of the date that it is earned is lost and not paid out.

1. An agency may, by written policy, allow state compensatory time earned during the Public Health State of Emergency declared on March 14, 2020, and ended on July 1, 2021, to be used within two (2) years of the date it is earned.

2. Such written policy may be applied to an entire agency or may identify eligible employees or job classes of employees that were so impacted by the increased workload during the Public Health State of Emergency that the state compensatory time was unable to be used prior the regular one (1) year expiration.

(c) Unused state compensatory time is lost upon separation from employment. The employee will not be compensated for such time in any manner, and it will not transfer with the employee to another State entity.

(d) An agency may by written policy require its employees to use accumulated state compensatory time before using annual and/or sick leave.

(25) **Holidays**:

(a) Observing State Holidays:

The State observes 13 public holidays each calendar year on dates declared by the Governor. State offices are closed and employees do not report for work on declared holidays, except as noted below.

1. 24-7 operations, such as hospitals and correctional facilities, will remain open on holidays, and designated staff will report for work.

2. State operations with seasonal fluctuations that result in insufficient availability of work during certain times of the year may establish a policy for its employees to observe holidays during the work down cycle, rather than on the dates declared by the Governor. The policy must be in writing and communicated to all affected employees, and the alternate holidays must be observed within the same calendar year as the dates declared by the Governor.

3. In emergency situations or to meet essential business needs, an agency may require one or more employees to work on a holiday.

(b) Eligibility for Paid Holiday:

1. Salaried employees and other employees designated by the Georgia Industries for the Blind are eligible to receive paid time off for State holidays they observe, as provided in this Rule section.

2. To be eligible for pay on a State holiday, an employee must be in pay status for the full scheduled work shift on either the workday immediately

before or immediately after the holiday. "Pay status" means either working or taking approved paid time off.

3. Employees are not paid for a holiday that occurs the day before they enter or reenter State service.

4. Employees are not paid for a holiday that occurs the day after they leave State employment.

5. Employees are not paid for a holiday that occurs on their last day of State employment, unless the holiday is at the end of their normal workweek. (See item 6, below, for an exception.)

6. The compensation for employees retiring from State employment will not be reduced when their last day of employment before retirement falls on a holiday.

7. The following employees are not eligible for paid State holidays:

   (i) All temporary employees,

   (ii) All hourly employees, and

   (iii) Active, salaried, non-temporary employees who are rehired retirees with the Employees' Retirement System of Georgia while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

8. Part-time salaried employees and part-time employees of the Georgia Industries for the Blind are not paid for a holiday that falls on a day they would not have otherwise been scheduled to work. For example, a part-time employee who is scheduled to work Mondays, Wednesdays, and Fridays, would not be paid for a holiday that falls on a Thursday.

(c) Pay for Holidays and Provisions for Employees on Alternative Work Schedules:

1. Employees eligible for a paid holiday receive pay for the time they would otherwise have worked that day, up to a maximum of eight (8) hours.

2. An agency with full-time salaried employees on alternative work schedules will define the options available to its employees who would have been scheduled for shifts longer than eight (8) hours on the holiday. Such options include allowing employees to:

   (i) Revert to an 8x5 work schedule during the week of the holiday (or for a 2-week cycle for employees on a 9-hour workday schedule);

(ii) Use paid leave to supplement the holiday pay and receive full pay for the day; or,

(iii) Work additional time during the week of the holiday to remain in pay status the full workweek.

3. An agency with full-time salaried employees on alternative work schedules whose scheduled day off falls on a holiday may allow such employees to revert to an 8x5 schedule, as indicated in Section 25(c)2, above, or allow them to remain on their alternative schedule and receive equivalent time off for the holiday, as defined in Section (25)(d), below.

(d) Equivalent Time Off or Deferred Holiday Payout:

1. Equivalent time off (i.e., deferred holiday time) will be made available to employees who would otherwise have been eligible for a paid holiday but were either required to work on part or all of a holiday or whose scheduled day off occurred on a holiday. See exceptions in (i) and (ii), below.

   (i) Neither equivalent time off, nor additional compensation, will be given to those employed on an academic school year basis whose annual compensation is based on a specified number of workdays, and the holiday is a workday on which their salary is based.

   (ii) Part-time employees whose scheduled day off occurred on a holiday are not given equivalent time off or additional compensation for the holiday.

2. Equivalent time off to observe the holiday will not exceed the time actually worked on the holiday or eight (8) hours, whichever is less.

3. An agency may by written policy require its employees to use deferred holiday time before using annual leave, sick leave, personal leave, or compensatory time.

4. Deferred holiday time must be used within 365 days after the day proclaimed as a holiday; otherwise, it must be paid out by the agency.

5. An employee who separates from an agency will be paid for any deferred holiday time not used or paid out prior to separation.

6. An employee will not be paid for a holiday in advance of the observance of the holiday.

7. An employee scheduled to work on a holiday who, without prior approval, fails to report for any portion of the scheduled duty will not be granted deferred holiday time for the time (if any) that was worked on the holiday. Such employee may be subject to leave without pay for the scheduled time not worked and/or other appropriate.

(e) Request to Observe Other Religious Holiday:

1. An employee may request priority consideration for time off from work to observe a religious holiday that is not observed as a State holiday. To receive priority consideration, the request should be made at least seven (7) calendar days in advance.

2. An employee may request priority consideration for up to three (3) workdays in each calendar year.

3. A request by an employee for time off for religious observance cannot be denied unless:

   (i) The duties performed by the employee are urgently required, and the employee, in the agency's judgment, is the only person available who can perform the duties; or,

   (ii) The agency can otherwise show that accommodating the request would be an undue hardship.

4. Any paid time off granted to observe a religious holiday will be deducted from the employee's accrued annual leave, personal leave, compensatory time, or deferred holiday time available at the time of the observance. If the employee does not have sufficient annual leave, personal leave, compensatory time, or deferred holiday time to cover the period of absence, the agency must allow leave without pay for the absence, unless doing so would be an undue hardship.

(26) **Paid Parental Leave**:

To enhance work-life balance for employees, the State provides full-time employees, as well as hourly employees who meet the criteria noted in subsection (a) 2 (ii) below, with up to 120 hours of paid parental leave in a 12-month period. Paid parental leave is not charged against an employee's accrued leave.

(a) Eligibility:

1. Eligibility for paid parental leave is based on one of the following qualifying life events:

   (i) birth of the employee's child;

   (ii) placement of a minor child for adoption with the employee; or

   (iii) placement of a minor child for foster care with the employee.

2. To be eligible to use paid parental leave for a qualifying life event, an employee must meet one of the two following criteria:

   (i) if salaried, the employee must have six continuous months of employment with an employing entity (as defined in O.C.G.A. 45-20-17(a)(2)(A)); or,

   (ii) if hourly, the employee must have worked 700 hours for an employing entity (as defined in O.C.G.A. 45-20-17(a)(2)(A)) in the six months immediately preceding the first requested paid parental leave date.

   Rehired retirees of the Employees' Retirement System of Georgia, whether salaried or hourly, are not eligible for paid parental leave while receiving retirement annuity payments during the first 1,040 hours of work performed in the calendar year.

(b) Usage of Paid Parental Leave

1. An eligible employee may take a maximum of 120 hours of paid parental leave in a rolling 12-month period. The rolling period will be measured backward from the first date of leave taken. The amount of leave in a rolling 12-month period cannot exceed 120 hours, regardless of the number of qualifying events that occur during that period and regardless of transfers between employing entities (as defined in O.C.G.A. § 45-20-17(a)(2)(A)). Each state employer is responsible for conducting due diligence to ensure an employee has not exhausted the 120- hour allotment prior to approval of paid parental leave.

2. Leave may be taken as needed and in increments of less than eight hours, using the same minimum period an agency has established for other forms of paid leave.

(c) If an employee eligible for paid parental leave is also eligible for leave under the federal Family and Medical Leave Act (FMLA) (see Rule 478-1-.23, Family and

Medical Leave), an agency may, by written policy, require paid parental leave to run concurrently with FMLA leave.

(d) Agencies may require employees to submit appropriate supporting documentation for the use of paid parental leave. Any required supporting documentation shall be the same as that required for the use of federal family and medical leave under Section (7) of Rule 478-1-.23, Family and Medical Leave, for the same qualifying event.

(e) Any paid parental leave remaining 12 months after the initial qualifying event shall not carry over for future use.

(f) Unused paid parental leave shall have no cash value and shall not be paid out at the time of the employee's separation from employment.

Cite as Ga. Comp. R. & Regs. R. 478-1-.16
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Veteran's Preference" adopted. F. July 31, 1985, eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: R. 478-1-.0 C repealed and renumbered R. 478-1-.16 of same title adopted. F. Aug. 11, 1992; eff. July 2, 1992, as specified by the Board.
Amended: F. Oct. 17, 1994; eff. Oct. 6, 1994, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: F. Jan. 13, 2003; eff. Dec. 4, 2002, as specified by the Board.
Amended: F. Jan. 5, 2006; eff. Dec. 22, 2005, as specified by the Board.
Repealed: New Rule entitled "Absence from Work" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.
Amended: F. July 30, 2010; eff. July 16, 2010, as specified by the Board.
Amended: F. Dec. 30, 2013; eff. Sept. 25, 2013, as specified by the Board.
Amended: F. July 1, 2015; eff. June 25, 2015, as specified by the Board.
Amended: F. Jan. 17, 2017; eff. Jan. 9, 2017, as specified by the Board.
Amended: F. July 15, 2021; eff. June 22, 2021, as specified by the Board.
Amended: F. Nov. 23, 2021; eff. Nov. 3, 2021, as specified by the Board.
Amended: F. Mar. 29, 2023; eff. Mar. 16, 2023, as specified by the Board.

Rule 478-1-.17. Leave Donation.

(1) **Introduction:**

Agencies may establish a leave donation program to enable eligible employees to voluntarily donate accrued leave to other eligible employees of the same agency who have exhausted all paid leave. This Rule provides parameters for an agency's policy on leave donation.

(2) **Applicability:**

This Rule applies to executive branch employers, local departments of public health, and community service boards. It does not apply to other public corporations, authorities, or the Board of Regents of the University System of Georgia.

(3) **Definitions:**

For the purposes of this Rule, the following terms and definition apply in addition to those in Rule 478-1-.02, Terms and Definitions:

(a) "Donor" means an eligible employee who has elected to donate leave to another eligible employee.

(b) "Eligible" means meeting the requirements set forth in this Rule for leave donation or receipt.

(c) "Extended absence" means a period of absence which is more than ten (10) consecutive workdays.

(d) "Immediate family" means the employee's spouse, child, parent, grandparent, grandchild, brother, and sister, including active step and in-law relationships. Immediate family also includes any other person who resides in the employee's household and is recognized by law as a dependent of the employee.

(e) "Medical hardship" means a medical condition of an employee or the employee's immediate family member that will require the employee's extended absence and will result in a substantial loss of income to the employee.

(f) "Recipient" means an eligible employee who has been authorized by the agency to solicit donations of leave from other employees of the same agency.

(4) **General Provisions:**

An agency's leave donation policy should outline eligibility criteria for donors and recipients, specify limitations on use of donated leave, designate staff to administer leave donations, specify how donations will be credited to the recipient, and be published to employees. The policy may also prescribe a minimum donation amount. The policy must be applied consistently and in a non-discriminatory manner to all employees of the agency.

(5) **Donation of Leave:**

(a) To be eligible to donate leave to a specified recipient for use in connection with a medical hardship, an employee must

1. have been continuously employed for at least twelve (12) months by a state agency in position(s) entitled to earn leave;

2. be a current employee of the same agency as the recipient;

3. if donating annual leave, have a balance of at least sixty (60) hours of annual leave after donation; and

4. if donating sick leave, have a balance of at least sixty (60) hours of sick leave after donation.

(b) The donated leave authorization will designate the recipient and specify that the donor surrenders any claim to donated leave credited to the named recipient.

(c) The donated leave authorization will specify the type and amount of leave being donated. The agency may determine a minimum donation amount, but all donations shall be in increments of whole hours.

(d) In a calendar year, a donor may donate any amount of annual or personal leave so long as the donor retains at least sixty (60) hours of annual leave, but a donor may not donate more than one hundred twenty (120) hours of sick leave. A donation may not be made from a forfeited leave balance.

(6) **Receipt of Donated Leave:**

(a) To be eligible to receive donated leave for use in connection with a medical hardship, a recipient must

1. be employed in a position entitled to earn and use leave and not in contingent leave without pay status;

2. have been continuously employed, as of the date a request to solicit donated leave is filed with the appointing authority, for at least twelve (12) months by a state agency in a position(s) entitled to earn leave;

3. have exhausted all accrued and forfeited leave and all available compensatory time;

4. have been on authorized leave without pay for forty (40) consecutive hours; and

5. have met any additional criteria established by the appointing authority.

(b) If a recipient accrues leave after beginning a period of leave without pay, such leave may be deferred until the 40-hour requirement referenced in subsection (6) (a) 4 has been met.

(c) No more than forty (40) days prior to exhausting paid leave, a recipient may submit a written request for solicitation of donated leave. The request must be in the form and manner specified by the appointing authority and include such documentation as the agency may deem appropriate.

(d) The agency will determine the form, scope, and frequency of solicitation announcements, which will be posted or circulated for a minimum of ten (10) workdays, or until the applicable maximum is reached. The solicitation must not contain medical or other personal information about a recipient, other than the recipient's name, without the recipient's written consent.

(e) Donations, not to exceed five hundred and twenty (520) hours per solicitation, will be credited to a recipient in a manner determined by the agency.

(f) Multiple solicitations and donations are permitted for the same recipient, but no recipient will be credited with more than one thousand forty (1040) hours of donated leave in any period of two consecutive calendar years.

(7) **Use of Donated Leave:**

(a) A recipient may use donated leave only as sick leave and only for purposes related to the medical hardship.

(b) Once a recipient has returned to duty, up to forty (40) hours of previously donated leave may be retained for the recipient's use as sick leave.

(c) Donations received after the maximum for the solicitation or time period has been reached will not be accepted and will be returned to the appropriate donor.

(d) Donations will be used in the order in which they were received. Donations accepted but not used by a recipient or retained in accordance with Section (7) (c) of this Rule will be returned to the appropriate donor(s).

(8) **Prohibitions and Penalties:**

(a) Leave donation is strictly voluntary. No employee may threaten, coerce or attempt to threaten or coerce another employee for the purpose of interfering with rights involving donation, receipt, or use of leave. Prohibited acts include but are not limited to

1. promising to confer or conferring a benefit such as appointment, promotion or salary increase; or

2. making a threat to engage in, or engaging in, an act of retaliation against an employee because of participation in a leave donation program.

(b) Donors are prohibited from accepting compensation or gifts from recipients in exchange for leave donations.

(c) Any employee violating this Rule may be subject to disciplinary action, up to and including termination of employment.

Cite as Ga. Comp. R. & Regs. R. 478-1-.17
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4, 45-20-16.
History. Original Rule entitled "Salary" adopted as R. 478-1-.OA. F. July 31, 1985, eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 9, 1986; eff. Dec. 31, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. Nov. 8, 1989; eff. Jun. 28, 1989, as specified by the Board.
Amended: R. 478-1-.0 A repealed and renumbered R. 478-1-.17 of same title adopted. F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.
Amended: ER. 478-1-0.1-.17 adopted. F. Nov. 16, 1992; eff. Sept. 14, 1992, the date of adoption. This ER. shall expire in not more than 120 days immediately following its adoption or upon adoption of a permanent Rule covering the same subject matter superseding this ER., as specified by the Board.
Amended: Permanent Rule adopted and Rule further amended. F. Jan. 28, 1993; eff. Jan. 6, 1993, as specified by the Board.
Amended: F. June 28, 1993; eff. June 9, 1993, as specified by the Board.
Amended: F. June 30, 1994; eff. July 1, 1994, as specified by the Board.
Amended: F. Oct. 17, 1994; eff. Oct. 6, 1994, as specified by the Board.
Amended: F. July 11, 1995; eff. June 30, 1995, as specified by the Board.
Amended: F. Oct. 30, 1995; eff. Oct. 16, 1995, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Nov. 18, 1996, as specified by the Board.
Amended: F. Feb. 7, 1997; eff. Jan. 29, 1997, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Amended: F. June 12, 1997; eff. June 6, 1997, as specified by the Board.
Amended: F. Nov. 4, 1997; eff. Oct. 27, 1997, as specified by the Board.
Repealed: New Rule of same title adopted. F. July 15, 1999; eff. October 1, 1999, as specified by the Board.
Amended: F. July 31, 2000; eff. July 14, 2000, as specified by the Board.
Amended: F. Aug. 22, 2001; eff. Aug. 13, 2001, as specified by the Board.
Amended: F. June 12, 2002; eff. May 21, 2002, as specified by the Board.
Amended: F. Dec. 8, 2003; eff. Aug. 19, 2003, as specified by the Board.
Amended: F. Jan. 17, 2007; eff. Jan. 4, 2007, as specified by the Board.
Repealed: New Rule entitled "Leave Donation" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. July 29, 2019; eff. July 24, 2019, as specified by the Board.

Rule 478-1-.18. Veterans' Preference.

(1) **Introduction.** The State affords some degree of preference to veterans in certain employment decisions. Recognizing their sacrifice, the State seeks to prevent veterans pursuing State employment from being disadvantaged by time spent in military service. Veterans' preference recognizes the economic loss suffered by citizens who have served

their country in uniform, restores veterans to a favorable competitive position for State employment, and acknowledges the larger obligation owed to disabled veterans.

(a) Preference does not have as its goal the placement of a veteran in every vacant job; this would be incompatible with the merit principle of public employment. However, preference does provide a uniform method by which special consideration is given to qualified veterans seeking employment.

(b) For purposes of this Rule, veterans' preferences are given to veterans defined as any individual who was honorably discharged and:

1. Served on active duty as a member of the Armed Forces of the United States during a time of armed conflict;

2. Served as a member of the National Guard or Armed Forces Reserve on active duty for any length of time during any portion of the time the Armed Forces of the United States were engaged in Operation Iraqi Freedom and Operation Enduring Freedom; or,

3. Served as a member of the National Guard or Armed Forces Reserve on active duty for any length of time during any portion of the time the Armed Forces of the United States were engaged in Operation Desert Shield or Operation Desert Storm and whose service occurred in an area of imminent danger as defined below.

   (i) the Persian Gulf;

   (ii) the Red Sea;

   (iii) Gulf of Oman;

   (iv) the portion of the Arabian Sea that lies north of 10 degrees north latitude and west of 68 degrees east longitude;

   (v) the Gulf of Aden; and,

   (vi) the total land area of Saudi Arabia, Kuwait, Iraq, Yemen, Oman, Bahrain, Qatar, and the United Arab Emirates.

(c) Documentation of honorable discharge and eligible service must be evidenced with the DD 214 Certificate of Release or Discharge from Active Duty.

(2) **Veterans' Preference in Entrance Exams.**

(a) Veterans, as defined in Section (1)(b), will be given five (5) points in addition to their earned passing ratings on any numerically scored written entrance examination.

(b) The following individuals will be given ten (10) points in addition to their earned passing ratings and in lieu of the five (5) points provided in subsection (2)(a):

1. Veterans who establish by official records the present existence of a service-connected disability of at least 10%, as rated and certified by the U.S. Department of Veterans Affairs;

2. Veterans over 55 years of age who because of disability, whether service-connected or not, are entitled to pension or compensation under existing laws;

3. Spouses of disabled veterans (as described in the two preceding provisions) if the spouses are qualified and the disabled veterans themselves are disqualified for appointment because of the disability; or,

4. Unmarried widows or widowers of deceased veterans of any period of armed conflict.

(c) The point preference is in lieu of and not in addition to any other similar preference accorded under federal or state law.

(d) In examinations where experience is an element of qualifications, time spent in the Armed Forces of the United States during a period of armed conflict will be credited in an applicant's ratings, where the applicant's actual employment in a similar vocation to that for which the applicant applies was temporarily interrupted by such service but was resumed after discharge.

(3) **Veterans' Preference in Hiring.** If the hiring agency does not use numerically scored written examination to fill positions, the hiring agency must give appropriate consideration to persons eligible for veterans' preferences as defined in this Rule.

(a) Preference will be given to eligible veterans, as defined above, whose qualifications for a job they have applied for are equivalent to the most suitable non-veteran applicant for that job.

(b) An agency is not required to hire a preference eligible veteran who is not the most suitable applicant for the position.

(4) **Exceptions to Veterans' Preference in Exams and Hiring.** Preference does not apply in cases of promotion, demotion, or transfer to a different job.

(a) Persons who served in a civilian capacity do not receive preference, even if they accompanied military forces.

(b) Persons who were dishonorably discharged or discharged under conditions other than honorable are not eligible for veterans' preferences. NOTE: A general discharge does not disqualify a person for veterans' preferences.

(5) **Veterans' Preference in Reduction of Personnel.** When reductions are being made in personnel, a veteran of any period of armed conflict entitled to military preference in appointment with an average summary performance evaluation rating of successful performer will not be discharged or dropped or reduced in rank or salary before a nonveteran in competition with the veteran.

Cite as Ga. Comp. R. & Regs. R. 478-1-.18
Authority: O.C.G.A. §§ 45-20-1, 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Leave and Holidays" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 9, 1986; eff. Dec. 31, 1985, as specified by the Board.
Amended: F. Jan. 15, 1987; eff. Dec. 19, 1986, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. June 9, 1989; eff. November 11, 1988, as specified by the Board.
Amended: F. Nov. 8, 1989; eff. Sept. 14, 1989, as specified by the Board.
Amended: F. Nov. 8, 1989; eff. Jun. 28, 1989, as specified by the Board.
Amended: F. June 20, 1990; eff. May 30, 1990, as specified by the Board.
Amended: F. Aug. 27, 1991; eff. July 31, 1991, as specified by the Board.
Amended: F. Mar. 10, 1992; eff. Feb. 12, 1992, as specified by the Board.
Amended: F. Aug. 11, 1992; eff. July 2, 1992, as specified by the Board.
Amended: F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.
Amended: R. 478-1-.0 B repealed and renumbered R. 478-1-.18 of same title adopted. F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
Amended: F. Jan. 28, 1993; eff. Jan. 6, 1993, as specified by the Board.
Amended: F. Apr. 9, 1993; eff. Mar. 8, 1993, as specified by the Board.
Amended: F. June 28, 1993; eff. June 9, 1993, as specified by the Board.
Amended: F. Aug. 10, 1993; eff. July 30, 1993, as specified by the Board.
Amended: F. June 30, 1994; eff. July 1, 1994, as specified by the Board.
Amended: F. July 20, 1994; eff. July 7, 1994, as specified by the Board.
Amended: F. Oct. 17, 1994; eff. Oct. 6, 1994, as specified by the Board.
Amended: F. Nov. 15, 1994; eff. Nov. 3, 1994, as specified by Board.
Amended: F. July 11, 1995; eff. June 30, 1995, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Nov. 18, 1996, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Amended: F. Aug. 18, 1997; eff. Jun. 30, 1997, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: F. May 18, 1998; eff. April 2, 1998, as specified by the Board.
Amended: F. July 22, 1998; eff. July 7, 1998, as specified by the Board.
Repealed: New Rule of same title adopted. F. July 15, 1999; eff. October 1, 1999, as specified by the Board.
Amended: F. Dec. 9, 1999; eff. Nov. 15, 1999, as specified by the Board.
Amended: F. July 31, 2000; eff. July 14, 2000, as specified by the Board.
Amended: F. Nov. 14, 2002; eff. Aug. 30, 2002, as specified by the Board.
Amended: F. Dec. 8, 2003; eff. Oct. 24, 2003, as specified by the Board.
Amended: F. Apr. 27, 2004; eff. Apr. 13, 2004, as specified by the Board.
Amended: F. Oct. 17, 2005; eff. Oct. 4, 2005, as specified by the Board.
Amended: F. Mar. 25, 2008; eff. Mar. 17, 2008, as specified by the Board.
Repealed: New Rule entitled "Veterans' Preference" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by

the Board.
Amended: F. Nov. 30, 2017; eff. Nov. 28, 2017, as specified by the Board.

Rule 478-1-.19. Military Leave.

(1) **General Leave Provisions.** For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02 (Terms and Definitions):

(a) "Ordered military duty" includes any military duty performed in the service of the State or of the United States pursuant to orders issued by a State or federal authority, including but not limited to attendance at any service school or schools conducted by the Armed Forces of the United States as a voluntary member of the National Guard, Georgia State Defense Force, or any reserve force or reserve component of the Armed Forces of the United States.

1. An employee who performs ordered military duty is eligible for military leave, whether paid or unpaid.

2. In general, an employee may be absent for ordered military duty for a cumulative period of up to five years and retains reemployment rights with his/her agency. The five year period includes only the time the employee spends actually performing ordered military duty. A period of absence from employment before or after performing ordered military duty does not count against the five year limit.

3. An employee is eligible to receive leave to attend training for a period(s) of up to a total of six months during any four-year period.

4. Time served while on military leave will not be considered a break in service and will be credited for purposes of seniority, length of employment service, annual leave or holiday privileges, or for any other right or privilege of employment, reemployment, reinstatement, transfer or promotion.

(2) **Absence for Examination Purposes.** An employee who is absent from work because he/she is ordered to report for a pre-induction or other examination to determine physical or other fitness for service in the Armed Forces of the United States will be granted a leave of absence without pay as required by law. In order to receive pay, an employee may request that the absence be charged against accrued annual leave or personal leave.

(3) **Timely Notice of Leave.** An employee should verbally notify his/her supervisor immediately when notified of a requirement to report for military duty. The employee also is expected to provide his/her supervisor with as much notice as possible of his/her anticipated date of release from duty and return to work. This notice requirement will be excused only if precluded by military necessity or if giving the notice is otherwise impossible or unreasonable.

(4) **Pay and Benefits.** An employee who performs ordered military duty is entitled to his/her base pay and other compensation for up to a total of 144 hours of military leave in any one federal fiscal year while he/she is on military leave.

(a) In the event the Governor declares an emergency and orders an employee to military duty as a member of the National Guard, while performing such duty, the employee will be paid his/her base pay and other compensation for an additional 96 hours of military leave in any one federal fiscal year while he/she is on military leave.

(b) The employee may be required to provide a copy of his/her military orders or annual training schedule in order to be paid any military leave.

(c) If the period of ordered military duty extends beyond the period covered by paid military leave as described in this section, the employee will be granted an authorized leave of absence without pay as required by law. Agencies may allow employees to use accrued annual leave, personal leave, holiday time, and/or compensatory time for absences due to military duty after paid military leave has been exhausted.

(d) An employee who is scheduled to work for less than 40 hours per week is eligible for prorated paid military leave based on his/her regular work schedule.

(e) An employee reinstated following ordered military duty will be entitled to seniority, status, pay and all other benefits as if the employee had not been absent, in compliance with applicable federal law.

(5) **Health Care Continuation Coverage.** While on paid or unpaid military leave, an employee may continue to receive the same health care benefits as when he/she was an active employee for up to 24 months. If the military leave is unpaid, the employee will be responsible for directly paying the premium plus an administrative fee assessed by the State Health Benefit Plan.

(6) **Rights and Contributions under Retirement System.**An employee on military leave, whether pa id or unpaid, may continue to contribute to the State's pens ion or retirement system as if they had been present and continuously engaged in the performance of their duties. The amount of required contributions will be deducted from the salary or other compensation paid while an employee is on military leave. If the required contributions exceed the amount of such compensation, the available amount will be applied towards the required contributions and the employee can pay the difference.

(7) **Reemployment Rights.** An agency will reemploy an employee after a period of military service, provided the employee complies with applicable federal law, including the advance notice requirement and a timely notification of intent to return to employment, and other qualifying conditions.

(a) Request for Reemployment. Upon completing a period of ordered military service, an employee must notify the agency of the intent to return to the employment position by either reporting to work or submitting a timely application for reemployment according to the following schedule:

1. One (1) regularly scheduled work day from discharge for employees who served for less than 31 days;

2. Fourteen (14) calendar days of discharge by employees who served more than 30 days but less than 181 days; or

3. Ninety (90) calendar days of discharge by employees whose military duty lasted more than 180 days or longer.

(b) Whether the employee is required to report to work or submit a timely application for reemployment depends upon the length of service. Extenuating circumstances may permit an employee a longer period to make a request for reemployment.

(c) Qualifying Conditions. For an employee to be reinstated to their former position, they must be able to perform the essential functions of the position with or without reasonable accommodation. If the employee is no longer able to perform the essential functions because of disability sustained during this service, the employee will be considered for another position in the agency for which they are qualified unless the agency's circumstances have changed as to make it impossible or unreasonable to do so.

1. Additionally, the employee must have received an honorable or general discharge. The employee must provide the State with a certification of completion of military service duly executed by an officer of the applicable force of the Armed Forces of the United States or by an officer of the applicable force of the organized militia.

(d) Reemployment Position. A qualified employee who has been on military leave for 90 days or less will be re instated to the position left, with the employee's seniority, status, and pay adjusted for any promotions, pay increases, or other benefits he/she would have earned had they not been on military leave.

1. A qualified employee who served for 91 days or more may or may not be reinstated to the exact same position held prior to going on military leave. An employee who is not reinstated to their former position will be reemployed in a position with like seniority, status, and pay that takes into account any promotions, pay increases or other benefits they would have been eligible for had they not been on military leave.

(8) **Protection from Discharge.** An employee returning from military leave and who served for more than 30 days but less than 181 days may not be discharged except for cause for

180 days after his/her reemployment. An employee returning from military leave and who served more than 180 days may not be discharged except for cause for a period of one year after his/her reemployment.

(9) **Workforce Replacement.** Supervisors who must hire replacement workers for employees who are on military leave should inform the replacements that they are filling in for employees who are on military leave and may be reassigned or terminated when the employees returns.

Cite as Ga. Comp. R. & Regs. R. 478-1-.19
Authority: O.C.G.A. Secs. 45-20-2, 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Reduction in Force Procedure" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 15, 1987; eff. Dec. 29, 1986, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: R. 478-1-.0 D repealed and renumbered R. 478-1-.19 of same title adopted. F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
Amended: F. Dec. 30, 1993; eff. Dec. 20, 1993, as specified by the Board.
Amended: F. May 16, 1996; eff. May 7, 1996, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Oct. 1, 1996, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Amended: F. Aug. 18, 1997; eff. Jun. 30, 1997, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: F. May 18, 1998; eff. April 2, 1998, as specified by the Board.
Amended: F. July 31, 2000; eff. July 14, 2000, as specified by the Board.
Repealed: New Rule entitled "Military Leave" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. Oct. 9, 2015; eff. Sept. 15, 2015, as specified by the Board.

Rule 478-1-.20. Employee Complaint Resolution Procedure.

(1) **Introduction**:

The State is committed to creating and maintaining a positive work environment in which employees are treated with professionalism, civility and respect. When workplace issues arise due to problems, misunderstandings, or frustrations, it is the State's intent to be responsive to employees and their concerns.

While many situations pose potential workplace issues, incidents of sexual harassment present unique challenges which warrant special emphasis and implementation of a particularized approach to the prevention, detection, and elimination of sexual harassment from the state workplace. Therefore, in accordance with Executive Order 01.14.19.02, Executive Branch agencies shall receive, process, and investigate complaints and reports of sexual harassment and connected retaliation based on the procedures provided in the Statewide Sexual Harassment Policy. Please refer to the Statewide Policy for specific

information regarding the reporting and handling of sexual harassment complaints and reports.

To encourage effective operations and a productive workforce, each agency will implement a complaint resolution program to address employee concerns that are unrelated to sexual harassment.

(a) To ensure that employees have access to fair and timely consideration of their concerns, agencies must make available, as a minimum part of their complaint resolution program, the Employee Complaint Resolution Procedure outlined in this Rule.

(b) Employees and their respective supervisors are encouraged to make reasonable efforts to resolve concerns prior to utilizing the formal Employee Complaint Resolution Procedure.

(c) No employee will be penalized, formally or informally, for voicing a complaint in a reasonable, businesslike manner, or for participating in an established complaint resolution process. Anyone who intentionally supplies false or misleading information in connection with a complaint or anyone who attempts to or actually harasses, intimidates, or retaliates against an employee for using the Employee Complaint Resolution Procedure or for providing information in connection with a complaint will be subject to disciplinary action, up to and including termination of employment.

(2) **Applicability**:

This Rule applies to Executive Branch employers, local departments of public health, and community service boards. It does not apply to other public corporations, authorities, or the Board of Regents of the University System of Georgia.

(3) **Definitions**:

For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02 (Terms and Definitions):

(a) "Agency Complaint Resolution Coordinator" means the person, designated to be responsible for receiving complaints, determining eligibility for the Employee Complaint Resolution Procedure, and tracking the processing of complaints.

(b) "Agency Complaint Review Official" means an impartial individual designated by the agency to conduct complaint reviews.

(c) "Filing" means the act of an employee submitting a complaint to the Agency Complaint Resolution Coordinator.

(d) "Complaint" means a claim filed by an eligible employee that the employee's personal employment has been affected by unfavorable employment decisions or conditions due to unfair treatment.

(e) "Complaint Form" means a form provided by the agency for the filing of employee complaints.

(f) "Harassment" means physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of his or her race, color, national origin, religion, age, disability, genetic information, sex (which does not meet the definition of sexual harassment set forth in Section (3) of this Rule), political affiliation, protected uniformed service, or legally protected category other than sex.

(g) "Receipt" means the date and time at which a document is delivered to the addressee by mail, electronic transmission, or personal delivery.

(h) "Retaliation" means an act or omission intended to, or having the reasonably foreseeable effect of, punishing or otherwise impacting an individual for submitting (or assisting with submitting) a complaint or reporting discrimination or harassment, for participating in a discrimination or harassment investigation or proceeding, or for otherwise opposing discrimination or harassment.

(i) "Sexual harassment" means physical, verbal, or non-verbal/visual conduct that is either directed toward an individual or reasonably offensive to an individual because of his or her sex. Therefore, for purposes of this Rule,"sexual harassment" includes physical, verbal, or non-verbal/visual conduct constituting

1. unwanted sexual attention, sexual advances, requests for sexual favors, sexually explicit comments, and other conduct of an expressed or obviously implied sexual nature, by an individual who knows, or reasonably should know, that such conduct is unwanted or offensive; and

2. conduct that is hostile, threatening, derogatory, demeaning, or abusive or intended to insult, embarrass, belittle, or humiliate an individual because of his or her sex, regardless of whether the underlying reason for the conduct is apparent.

(j) "Workday" means a Monday through Friday business day exclusive of state holidays.

(4) **Notice Requirement**:

Each state agency is responsible for facilitating employee awareness of the Employee Complaint Resolution Procedure. Information about the procedure including deadlines for

filing a formal complaint and who to contact for assistance must be provided in one or more formats through which employee information is typically communicated.

(5) **Eligible Employees**:

(a) Any employee may use the Employee Complaint Resolution Procedure for timely-filed, eligible issues, except an employee who

1. has been notified of separation from employment or

2. is seeking relief on the same matter through other administrative or judicial procedures.

(b) A complaint filed by an eligible employee prior to becoming ineligible will cease to be processed through this procedure upon the employee's separation from employment or upon the employee's filing for relief on the same matter through another administrative process or a judicial process.

(6) **Eligible Issues**:

An employee may use the Employee Complaint Resolution Procedure to address a complaint related to any

(a) allegation of unlawful discrimination based on race, color, national origin, religion, age, disability, genetic information, sex (which does not meet the definition of sexual harassment set forth in Section (3) of this Rule), political affiliation, protected uniformed service, or other legally protected category;

(b) allegation of unlawful harassment other than sexual harassment;

(c) retaliation for participating in the Employee Complaint Resolution Procedure;

(d) retaliation or intimidation for exercising any right under the Rules of the State Personnel Board or policies of the agency;

(e) erroneous, arbitrary, or capricious interpretation or application of policies, procedures, rules, regulations, ordinances, or statutes;

(f) unsafe or unhealthy working condition(s);

(g) any matter specifically included as eligible by an agency's policies or procedures; or

(h) for classified employees only, written reprimand or written confirmation of an oral reprimand.

(7) **Ineligible Issues**:

An employee cannot use the Employee Complaint Resolution Procedure to address a complaint of or related to

(a) sexual harassment or related retaliation (which shall be handled under the procedures provided in the Statewide Sexual Harassment Prevention Policy);

(b) unlawful discrimination containing allegations of sexual harassment (such complaints will be handled under the procedures provided in the Statewide Sexual Harassment Prevention Policy);

(c) suspension, demotion, salary reduction, or separation from employment that is not retaliatory;

(d) issues that are pending or have been adjudicated by the State Personnel Board, the Georgia Commission on Equal Opportunity, or through other state or federal administrative or judicial procedures;

(e) issues that are subject to appeal, review, or relief as provided for in other agency policies and procedures;

(f) performance expectations and evaluations;

(g) actions implementing a reduction in force or furlough plan;

(h) selection of an individual to fill a position, unless an allegation is made that the selection violates an applicable law, regulation, State Personnel Board Rule, or agency policy;

(i) permanent changes in work hours or duties and responsibilities, unless a change is unsafe or unlawful;

(j) temporary work assignments that do not exceed 90 days;

(k) budget and organizational structure, including the number or assignment of positions in any organizational unit;

(l) relocation of employees, unless the relocation qualifies for reimbursement under Office of Planning and Budget regulations;

(m) internal security practices established by the agency;

(n) for unclassified employees only, written reprimand or confirmation of an oral reprimand, or

(o) any matter that is not within the jurisdiction or control of the agency.

(8) **Filing a Complaint**:

(a) An employee accesses the Employee Complaint Resolution Procedure by timely filing a complaint with the Agency Complaint Resolution Coordinator.

(b) The complaint must be filed in a format acceptable to the agency, which may be on a designated agency complaint form.

(c) A complaint is considered received on the day it is delivered to the Agency Complaint Resolution Coordinator by mail, electronic transmission, or personal delivery.

(d) The complaint must identify at a minimum

1. the eligible issue(s) involved;
2. the parties involved;
3. the date(s) the incident(s) or violation(s) occurred (if known);
4. how the employee was unfavorably affected or treated;
5. the relief sought; and
6. any policy, procedure, rule, regulation, ordinance, or statute at issue and how it was erroneously interpreted or applied.

(e) Time Limit for Filing a Complaint

A complaint must be filed within 10 workdays of the occurrence of the subject of the complaint or within 10 workdays of the date the employee becomes aware or should have reasonably been aware of the problem. The Agency Complaint Resolution Coordinator has the discretion to grant a waiver or extend the filing deadline.

(9) **Processing a Complaint**:

(a) Initial Eligibility Determination

Within 10 workdays of receiving a complaint, the Agency Complaint Resolution Coordinator will review the complaint to determine the timeliness and eligibility of the issue(s) and provide a written determination to the complaining employee.

1. If the issue is not eligible to proceed through the Employee Complaint Resolution Procedure, the written determination will include the specific reasons for the determination and notice that the formal complaint process is

being terminated (or if the complaint is related to sexual harassment, notice will be given to explain that the complaint will be handled under the Statewide Sexual Harassment Prevention Policy).

2. If the issue is eligible, the written determination will specify the manner in which the complaint will be processed (i.e., through the Employee Complaint Resolution Procedure or through a separate agency procedure for addressing allegations of unlawful discrimination and/or harassment). A copy of the determination will be provided to the first level of supervision having the authority to grant the requested relief.

(b) Options for Processing Unlawful Discrimination/Harassment Complaints

When a complaint involves allegations of unlawful discrimination and/or harassment based on race, color, national origin, religion, age, disability, sex (which does not meet the definition of sexual harassment set forth in Section (2) of this Rule), genetic information, political affiliation, protected uniformed service, or other legally protected category, the Agency Complaint Resolution Coordinator will process the complaint in one of three ways:

1. Allow the complaint to proceed as set forth in this Rule.

2. Investigate the complaint according to an agency procedure specifically designed to address an unlawful discrimination and/or harassment complaint (other than a complaint of sexual harassment or related retaliation). The time limit for determining eligibility and processing a complaint through such procedure must not exceed 120 calendar days.

3. Advise the employee in writing that the agency has concluded processing the complaint and that the employee may present the matter to the Georgia Commission on Equal Opportunity or the Equal Employment Opportunity Commission.

(c) Complaint Review Process

1. Each state entity will appoint an Agency Complaint Review Official to review the complaint.

2. Within 15 workdays of appointment, the Agency Complaint Review Official will conduct a review of the complaint.

3. The Agency Complaint Review Official has discretion regarding how to conduct the review and may do any of the following:

(i) base the review solely on written statements and documents provided;

(ii) interview the employee, witnesses, and others;

(iii) meet with the parties to facilitate an agreement;

(iv) clarify and/or interpret relevant law, rule, policy, procedure, etc.; or

(v) explore alternative resolutions.

4. If the parties resolve the issue(s) during the complaint review process, the Agency Complaint Resolution Coordinator will provide written notice to the complaining employee and supervisor confirming resolution and the conclusion of the Employee Complaint Resolution Procedure.

5. If the parties do not resolve the issue(s) during the complaint review process, the Agency Complaint Review Official will issue written findings and recommendations to the Agency Head or designee. The Agency Head or designee will then issue a written decision regarding the complaint and requested relief. Such decision will be final and will conclude the Employee Complaint Resolution Procedure.

6. The maximum time for determining eligibility and processing a complaint through the Employee Complaint Resolution Procedure is 90 calendar days. Agencies in their discretion may adopt more specific time frames within this 90-day period. This time frame is extended to 120 calendar days when a complaint is processed through an agency unlawful discrimination/harassment procedure. Complaints of sexual harassment or related retaliation shall be investigated in accordance with the time frames and procedures referenced in the Statewide Policy.

(10) **Extension of Time Limits**:

Upon the agreement of all parties to a complaint, any time limit specified in this Rule may be extended. The Agency Complaint Resolution Coordinator or Agency Complaint Review Official may unilaterally extend any time limit specified in this Rule due to emergency, medical disability, legally mandated absence on the part of a relevant party involved with the complaint issues or review process, or due to operational necessity. The employee shall be immediately notified of the period of extension and the reasons therefor.

(11) **Preparation Time**:

(a) An employee utilizing the Employee Complaint Resolution Procedure will be excused from duty for up to four hours during regular work hours, as approved by the supervisor, to prepare a complaint. Such preparation time is without loss of pay or leave credits. Preparation time includes time spent reviewing the employee's personnel file, preparing a complaint, and meeting with witnesses. Meetings with the Agency Complaint Review Official are considered work time and do not count as preparation time.

(b) No more than 12 hours of regular work hours per employee per calendar year will be permitted for preparation time associated with complaints.

(c) Employees using the Employee Complaint Resolution Procedure must obtain supervisory approval before using preparation time during regular work hours. A request to prepare during a particular time may be denied due to operational or other business needs.

(d) The Agency Complaint Resolution Coordinator has the authority to resolve any dispute regarding the determination of reasonable and necessary time for preparing a complaint and participating in the process.

(12) **Group Complaints**:

Employees having a common complaint may sign and submit one group complaint, identifying up to two of the employees as selected spokespersons for the group. Employees who choose to file a group complaint waive their individual rights to file separate complaints on the same subject.

(13) **Consolidating Complaints**:

(a) The Agency Complaint Resolution Coordinator may consolidate multiple complaints filed by an employee into a single complaint.

(b) The Agency Complaint Resolution Coordinator may consolidate separate complaints filed by two or more employees regarding the same issue(s) into a group complaint.

(14) **Assistance**:

An employee who needs assistance in filing or processing a complaint may contact the Agency Complaint Resolution Coordinator or other agency-designated official. In no case shall the staff assigned to assist an employee be a party or respondent to the employee's complaint. Any complaint that the agency determines to fall within the definition of "sexual harassment" outlined in Section (3) of this Rule must be processed in accordance with the Statewide Sexual Harassment Prevention Policy.

(15) **Withdrawal of Complaint**:

An employee may voluntarily withdraw his/her complaint at any point during the process by submitting a request in writing to the Agency Complaint Resolution Coordinator. A complaint that is withdrawn may not be re-filed.

(16) **Appeal Rights for Classified Employees**:

(a) Upon receipt of the agency's final decision on a complaint and provided remedy is not available through the Georgia Commission on Equal Opportunity, a classified employee may file an appeal in writing with the Office of State Administrative Hearings if

1. the employee is not satisfied with the agency's final decision on the merit of a complaint alleging violation of the Rules of the State Personnel Board;

2. the employee is not satisfied with the agency's final decision on a complaint related to relocation, alleged unlawful discrimination, or alleged unjust coercion or reprisal because of an appeal or internal complaint proceeding; or,

3. the employee believes the agency violated the procedure outlined in Rule 20, Employee Complaint Resolution Procedure, while processing the complaint.

(b) The appeal must be filed or postmarked within 10 calendar days of receipt of the agency's final decision on the complaint. Untimely appeals will not be processed.

(c) The appeal must include the specific provision(s) of the Rules alleged to have been violated and any documentation that would support the allegation.

(17) **Recordkeeping and Reporting Requirements**:

(a) Agencies must maintain a record of each complaint filed through the Employee Complaint Resolution Procedure, including the nature and disposition of the complaint, for a minimum of four years for complaints alleging discrimination or harassment based on race and for two years for all other complaints.

(b) Each agency shall file an annual report with the Department of Administrative Services (DOAS) reflecting the number, nature, and disposition of complaints filed through the Employee Complaint Resolution Procedure. DOAS shall establish further reporting guidance to facilitate the intent of this Section.

Cite as Ga. Comp. R. & Regs. R. 478-1-.20
Authority: : O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4, 45-20-9.
History. Original Rule entitled "Hearing Procedures" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 9, 1986; eff. Dec. 31, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.

Amended: F. Nov. 8, 1989; eff. Sept. 14, 1989, as specified by the Board.
Amended: F. Dec. 11, 1990; eff. Nov. 26, 1990, as specified by the Board.
Amended: R. 478-1-.0 E repealed and renumbered R. 478-1-.20 of same title adopted. F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
Amended: F. Dec. 31, 1996; eff. Sept. 20, 1996, as specified by the Board.
Amended: F. Aug. 18, 1997; eff. Jun. 30, 1997, as specified by the Board.
Amended: F. May 18, 1998; eff. April 2, 1998, as specified by the Board.
Amended: F. Sept. 21, 1998; eff. Sept. 9, 1998, as specified by the Board.
Amended: F. July 15, 1999; eff. June 24, 1999, as specified by the Board.
Repealed: New Rule entitled "Employee Grievance Procedure" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Repealed: New Rule entitled "Employee Complaint Resolution Procedure" adopted. F. Jul. 8, 2014; eff. Jun. 20, 2014, as specified by the Board.
Amended: F. Jan. 8, 2016; eff. Dec. 29, 2015, as specified by the Board.
Amended: F. May 29, 2019; eff. May 24, 2019, as specified by the Board.

Rule 478-1-.21. Drug and Alcohol Free Workplace Program.

(1) **Introduction**:

The General Assembly found that unlawful drug activity is a serious threat to the public health, safety, and welfare and declared that the public workforce must be free of any person who would knowingly engage in such activity.

The State is committed to maintaining a drug-free and alcohol-free workplace. In support of this commitment, the State conducts substance abuse testing as described in this Rule. Employees who violate workplace expectations are subject to disciplinary action, up to and including dismissal and disqualification from employment, as outlined in this Rule and in Sub-Rules 478-1-.21 A through 478-1-.21 G.

(2) **Applicability**:

The policies and procedures within this Rule apply to all agencies of the Executive Branch, local departments of Public Health, Authorities, and Community Service Boards. This Rule does not apply to the Board of Regents of the University System of Georgia, Legislative Branch, or Judicial Branch.

(3) **Definitions**:

For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02, Terms and Definitions:

(a) "Adulterated Sample" means a specimen that has been altered and contains a substance that is not expected to be present in human urine or a substance that is expected to be present but is at an abnormal concentration.

(b) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl and isopropyl alcohol.

(c) "Alcohol Concentration" or "Alcohol Content" means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an alcohol test. For blood alcohol tests it means the level of alcohol in terms of grams of alcohol per 100 milliliters of blood.

(d) "Alcohol Confirmation Test" means a subsequent test using an evidential breath testing device (EBT) following an alcohol screening test with a result of 0.02 or greater. The EBT must be approved by the National Highway Traffic Safety Administration (NHTSA) and placed on its "Conforming Products List of Evidential Breath Measurement Devices." Such testing must be performed by a certified Breath Alcohol Technician.

(e) "Alcohol Screening Device" (ASD) means a breath or saliva device that is approved by NHTSA and placed on a Conforming Products list for such devices.

(f) "Alcohol Screening Test" means an analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath, saliva, or blood specimen.

(g) "Alcohol Test" or "Alcohol Testing" means conducting an alcohol screening test and, if needed, an alcohol confirmation test.

(h) "Appointing Authority" means, for purposes of this Rule, the agency/entity or an official with decision-making authority within the agency/entity.

(i) "Breath Alcohol Technician" (BAT) means an individual who instructs and assists individuals in the alcohol testing process and can operate an evidential breath testing device in accordance with federal alcohol testing regulations.

(j) "Chain of Custody" means the procedure used to document the handling of a urine or other specimen authorized within federal testing programs from the time the donor gives the specimen to the collector until the specimen is destroyed.

(k) "Collector" means a person who: instructs and assists donors during the drug testing collection process; receives and makes an initial inspection of specimens provided by donors; completes the Custody and Control Form (CCF); and, is trained according to either United States Department of Transportation (DOT) standards for federally regulated donors or Health and Human Services standards for non-federally regulated donors.

(l) "Controlled Substance" means a drug or substance in Schedules I-V of O.C.G.A. 16-13-21, et seq., or 21 C.F.R. Part 1308 declared by state or federal law to be

illegal for sale or use, unless used with a valid prescription from a health care practitioner.

(m) "Custody and Control Form (CCF)" means the drug testing form used to follow the chain of custody procedure.

(n) "Dangerous Drug" means any drug or substance, other than a controlled substance, declared by state or federal law to be illegal for sale or use, unless used with a valid prescription from a health care practitioner.

(o) "Donor" means an individual providing a specimen for drug testing.

(p) "Drug Testing" or "Drug Test" means the collection and testing of urine administered as required by applicable regulations for the particular testing program. Testing of substances other than urine is permitted only when authorized by such governing regulations.

(q) "Federally Regulated Transportation Position" means any transportation position whose incumbent is required to undergo drug and alcohol testing pursuant to United States Department of Transportation or United States Coast Guard regulations. In general, such positions are those for which the duties require the possession of a valid commercial driver's license or involve public transportation or maritime functions.

(r) "High-Risk Position" means a position whose incumbent regularly performs high-risk work. Examples include, but are not limited to, officers required to carry a firearm, medical professionals, non-federally regulated drivers, in-home care providers, firefighters, heavy equipment operators, pilots, and aircraft mechanics. The term high-risk position does not include federally regulated transportation positions.

(s) "High-Risk Work" means those duties where inattention or errors in judgment will have the potential for significant risk of harm to the individual or others.

(t) "Illegal Drug" means, but is not limited to, marijuana/cannabinoids (THC), cocaine, amphetamines/meth-amphetamines, opioids, phencyclidine (PCP), or any controlled substance or dangerous drugs not used in a lawful manner. The term illegal drug does not include any drug used pursuant to, and in accordance with, a valid prescription and not otherwise prohibited by state or federal law.

(u) "Medical Marijuana" or "low THC oil" means an oil, prescribed by a physician for medical use, containing no more than 5% tetrahydrocannabinol (THC), and an amount of cannabidiol (CBD) that is at least equal to the amount of THC.

(v) "Medical Review Officer" or "MRO" means a properly licensed physician who receives and reviews the results of drug tests and evaluates those results together

with medical history or any other relevant biomedical information to confirm results.

(w) "Reasonable Suspicion" means a determination by a designated agency/entity official that an employee may not be free of alcohol and/or illegal drugs while at work or performing assigned duties. The designated official may be a manager, supervisor, human resources representative, or other agency/entity staff assigned responsibility for determining whether reasonable suspicion exists.

(x) "Safety-Sensitive Transportation Function or Duties" means transportation-related work that requires an employee, or selected applicant for a position with such work, to undergo drug and/or alcohol testing, pursuant to United States Department of Transportation (US DOT) or United States Coast Guard regulations.

(y) "Sample" or "Specimen" means urine provided by a donor for drug testing. Where regulations governing a drug testing program allow for the testing of some other bodily fluid or tissue, such substance from a donor would also be considered a "sample" or "specimen."

(z) "Split Specimen Collection"means a drug testing collection in which urine is divided into two (2) separate specimen bottles: a primary specimen that is tested and a split specimen that remains unopened and available for retesting.

(aa) "Substance Abuse Professional (SAP)" means a properly certified professional who evaluates employees who have violated drug and/or alcohol regulations or policies and makes recommendations concerning education, treatment, follow-up testing, and aftercare. For federally regulated transportation positions, a Substance Abuse Professional must meet all US DOT qualification requirements.

(bb) "Substance Abuse Testing" means screening for the presence of alcohol or illegal drugs in accordance with this Rule.

(cc) "Substituted Sample" means a specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with human urine.

(4) **Drug-free and Alcohol-free Standards**:

(a) Employees are prohibited from unlawfully manufacturing, distributing, selling, dispensing, possessing, or using a controlled substance, marijuana, or a dangerous drug, which includes the use of prescription medication prescribed to another.

(b) While in the workplace or otherwise in work status, employees must be free from alcohol and illegal drugs.

(c) Employees who are legally using a drug (or other substance) with a warning about a side effect that could substantially impair the safe performance of assigned duties must seek and receive authorization from a designated agency/entity official before performing high-risk work or safety-sensitive transportation functions.

(d) Because of federal prohibitions, an agency/entity cannot authorize federally regulated transportation employees to have medical marijuana in their system while performing safety-sensitive transportation functions.

(e) Appointing authorities are responsible for informing their staff of drug-free and alcohol-free workplace expectations, including testing requirements, procedures, consequences for violations, resource information on possible effects of drug use and alcohol misuse, and available assistance.

(f) Applicants and employees are expected to report for and complete ordered substance abuse testing, as directed. Consequences for failing to do so, for otherwise refusing testing, and for testing positive are outlined in Rule 478-1-.21 and Sub-Rules 478-1-.21 B-G.

(5) **Types of Testing**:

The State conducts drug and alcohol testing based on the type of work assigned to a position and safety interests. Applicants and/or employees are subject to the types of drug and alcohol tests indicated below:

(a) pre-employment (post-job offer) drug testing for high-risk and federally regulated transportation positions (See Sub-Rules 478-1-.21 B and 478-1-.21 D);

(b) random drug and/or alcohol testing for high-risk and federally regulated transportation positions (See Sub-Rules 478-1-.21 C and 478-1-.21 D);

(c) reasonable suspicion drug and/or alcohol testing of any employee when a designated agency/entity official determines there is a compelling reason to suspect an employee is not free from alcohol or illegal drugs (See Sub-Rules 478-1-.21 D and 478-1-.21 E);

(d) post-accident drug and/or alcohol testing for federally regulated transportation positions whose incumbent was involved in an accident, as defined by the applicable federal operating administration (See Sub-Rule 478-1-.21 D);

(e) return-to-duty drug and/or alcohol testing for federally regulated transportation employees previously involved in a drug/alcohol-free workplace violation and for an employee who returns to work following a positive alcohol test or self-disclosure of substance abuse (See Sub-Rules 478-1-.21 A, 478-1-.21 D, and 478-2-.21 F);

(f) follow-up drug and/or alcohol testing as directed by a Substance Abuse Professional for employees previously involved in a drug/alcohol-free workplace violation and for an employee who returns to work following a positive alcohol test or self-disclosure of substance abuse (See Sub-Rules 478-1-.21 A, 478-1-.21 D, and 478-2-.21 G); and

(g) other substance abuse testing programs, as authorized by law.

(6) **Administration of Program**:

(a) Drug and alcohol testing must be conducted in accordance with applicable federal and state laws and regulations, and in accordance with procedures established by the DOAS Commissioner. The DOAS Commissioner will enter into whatever contracts are necessary to provide for testing and verification services. These testing programs shall give due consideration to security of sample collection, chain of custody requirements, accuracy of testing, and confidentiality of results.

(b) Expense of Substance Abuse Testing:

The expense of substance abuse testing is the responsibility of the agency/entity. If a donor requests that a drug test sample be submitted for separate analysis, the appointing authority may seek payment or reimbursement of all or part of the cost of the separate analysis from the donor, if the appointing authority has a written policy which specifies the donor's responsibility to pay for the separate analysis. However, the appointing authority cannot make payment, reimbursement, or ability to pay a condition for performing the separate analysis. The appointing authority is responsible for ensuring that the separate analysis is performed in a timely manner.

(c) Work Time:

1. All time necessary for an employee to undergo substance abuse testing is considered work time, including any travel time to and from the collection or testing facility.

2. Applicants taking pre-employment drug tests before they start employment are not paid, and the time used for drug testing is not considered work time.

(d) Substance Abuse Test Results - Access and Confidentiality:

1. Substance abuse test results are considered confidential and not subject to public disclosure. Any electronic transmission of substance abuse test results must, at a minimum, be encrypted or password protected.

2. Access is limited to staff with a need to know to administer this Rule or comply with law.

3. Staff of DOAS and the agency/entity ordering substance abuse testing have access to results as needed to administer the testing program and facilitate appropriate employment action.

4. Staff of an agency/entity currently employing an individual who did not successfully complete testing ordered by another agency/entity pursuant to this Rule has access to results as needed to administer appropriate employment action.

(e) Situations not expressly covered in this Rule will be addressed in a manner comparable to those in US DOT regulations.

(7) **Substance Abuse Testing Refusal**:

(a) Applicants and employees who are directed to undergo substance abuse testing and subsequently refuse will not be employed or remain employed with the State and are disqualified from state employment for a period of two (2) years from the date of refusal.

(b) An applicant who declines an offer of employment for reasons unrelated to substance abuse testing will not be deemed to have refused testing.

(c) An individual who expressly refuses to undergo directed substance abuse testing, engages in conduct that willfully obstructs the testing process, or otherwise fails to fully cooperate with the collection or testing process will be deemed to have refused testing.

(d) An individual who fails to appear for substance abuse testing, as directed, or who fails to remain at the site until the collection or testing process is complete, will be deemed to have refused testing.

(e) An individual who fails to provide adequate urine (or other substance authorized by applicable federal regulation) for drug testing will be deemed to have refused testing, unless the MRO finds there was a valid medical reason.

(f) An individual who fails to provide adequate breath or saliva (or blood for United States Coast Guard-regulated post-accident testing) for alcohol testing will be deemed to have refused testing, unless the evaluating physician finds there was a valid medical reason.

(g) An individual who is found to have brought a clean urine sample or substitute to the collection site or admits to having tampered with her/his specimen will be deemed to have refused testing.

(h) If the testing laboratory and the Medical Review Officer (MRO) determine that the urine sample of a donor is an adulterated or substituted sample, the donor will be deemed to have refused testing.

(8) **Observed Collection**:

(a) An observed drug testing collection may be conducted only by a representative of the collection facility or a subcontractor who is the same gender as the gender with which the donor identifies, which may be the same as, or different from, the donor's sex assigned at birth.

(b) Collection Site Criteria for Observed Collection:

1. A collection site representative may recommend observed collection when:

(i) a sample temperature is outside the acceptable range of 90 through 100 degrees Fahrenheit,

(ii) the sample has an unusual appearance, or

(iii) the donor's behavior or appearance is suspicious during the collection steps.

2. A sample will not be collected as an observed collection unless the necessity for it has been confirmed by a supervisor of the site representative or other appropriate collection site personnel.

3. Any other circumstances require the approval of the appointing authority.

(c) An appointing authority may direct a sample to be collected under direct observation if the appointing authority has reason to believe that the donor may attempt to alter or falsify the sample, or as otherwise provided in this Rule.

(d) Federally regulated return-to-duty and follow-up test collections will be observed.

(9) **On-Site Drug Testing**:

(a) Eligibility:

Upon establishing a written policy, an appointing authority may conduct on-site drug testing according to the provisions of this Rule for any type of drug testing except testing of federally regulated transportation employees.

(b) On-site collection must be performed with due regard for privacy in a manner designed to prevent substitution or contamination of the specimen.

(c) Specimens will be collected and documented in a manner that ensures chain of custody.

(d) On-site collection may be conducted by any of the following: physician, physician assistant, nurse, person certified or employed by a laboratory certified by the National Institute on Drug Abuse, the College of American Pathologies, or the Georgia Department of Community Health, or person certified or employed by a collection company.

(e) Testing devices used for on-site drug testing will meet applicable United States Food and Drug Administration requirements.

(f) Observed Collection:

If a donor demonstrates behavior that meets the requirements for an observed collection as described in Section (8) of this Rule, the donor will be required to report to an approved collection site to have the observed collection performed by a representative of the collection facility or an approved subcontractor who is the same gender with which the donor identifies, which may be the same as or different from the donor's sex assigned at birth.

(g) On-Site Test Results:

(i) On-site negative results are not subject to further analysis. The collection device should be disposed of immediately in the proper manner as described by the manufacturer. The Custody and Control form (CCF) should be retained by the official conducting the test for a minimum of 30 days.

(ii) The appointing authority must report the results and the CCF information in a method and timeframe established by the Department of Administrative Services.

(iii) Non-negative results must be submitted under complete chain of custody to a Substance Abuse and Mental Health Services Administration certified laboratory for confirmation testing including re-screen, gas chromatography/mass spectrometry confirmation, and forwarded for Medical Review Officer (MRO) verification and release.

(h) The appointing authority may not take dismissal action based on an on-site test result until a certified laboratory and the MRO have confirmed, verified, and released the test result.

(i) The MRO must adhere to the reporting and contact procedure in Section (10) of this Rule.

(10) **Medical Review Officer (MRO) Review Procedure**:

(a) Laboratory Reports:

The testing laboratory must forward the results of all drug tests to the MRO for verification and release.

1. Negative Results:

   The MRO will verify and release negative results of drug tests to the appointing authority as soon as practicable.

2. Non-negative Results:

   Laboratory reports indicating the presence of an illegal drug(s), adulteration, substitution, or an invalid test result will be retained by the MRO until a final determination is reached. Such information is confidential and will be available only to the MRO or designee and the affected donor during the review process. Positive laboratory reports will be reviewed and determinations of legal or illegal usage will be made in accordance with procedures established by the MRO.

(b) Contact Procedure:

The MRO or designee will, upon receipt of a positive, adulterated, substituted, or invalid laboratory test result, attempt to contact the donor at the phone numbers indicated on the CCF/drug testing form to determine whether the donor wants to discuss the result. The MRO will attempt to determine if there is an alternative medical explanation for the test result.

1. If the test result was determined invalid, the MRO will cancel the test and, after speaking with donor, make a recommendation for whether to require another collection under direct observation. If there is no contact with the donor, observed collection will be recommended.

2. If the donor expressly refuses to discuss with the MRO the results of a drug test, declines the opportunity to provide an explanation of the results, or admits to use of an illegal drug(s), adulteration, or substitution, the MRO, without further action or review, will report the test result as positive or a refusal, as applicable.

3. If a donor is unable to provide an alternative medical explanation for the presence of an illegal drug(s), the MRO, after appropriate review, will report the test result as positive for an illegal drug(s).

4. If after reasonable efforts the MRO or designee is unable to directly contact the donor, the MRO or designee will contact the appropriate appointing authority. The appointing authority or designee will attempt to contact and inform the donor that s/he must personally contact the MRO as soon as possible and that the MRO may report the test result as positive or a refusal, as applicable, if not contacted within 72 hours. The appointing authority is to notify the MRO when the message was delivered to the donor.

5. An appointing authority or designee who is unable to contact the donor within two (2) business days of the initial attempt will so notify the MRO. The MRO will deem the donor to have tested positive or refused testing, as applicable.

(c) Final Determination:

The decision of the MRO regarding the verification of a positive, adulterated, or substituted drug test result will be final.

(11) **Substance Abuse Testing Results**:

(a) Rejected or Unsuitable Sample:

A donor whose sample is rejected or determined to be unsuitable by the testing laboratory is subject to retesting as indicated in Sub-Rules 478-1-.21 B through 478-1-.21 G. The retesting may be conducted as an observed collection at the discretion of the appointing authority or as required by federal regulations for return-to-duty and follow-up testing.

(b) Adulterated or Substituted Sample:

A donor whose sample is determined by the MRO to be adulterated or substituted is considered to have refused substance abuse testing.

(c) Negative Result:

1. Upon receiving a negative test result, the applicant/employee fulfills the applicable testing condition of employment.

2. Negative drug test results may be utilized by the appointing authority that ordered the testing for any appropriate purpose for a period of 30 calendar days after the date the test was administered.

(d) Positive Result:

1. An applicant/employee who tests positive for alcohol or use of an illegal drug(s) is subject to disciplinary action and disqualification as outlined in Sub-Rules 478-1-.21 A through 478-1-.21 G.

2. A limited exception is available when a drug test result is positive for marijuana and the MRO notated the result to indicate that the donor provided proof of eligibility to lawfully use medical marijuana.

   (i) This exception gives an appointing authority the option to order and pay for an assessment by an occupational healthcare professional of the employee's ability to safely perform assigned duties. Based on the assessment, the appointing authority would determine appropriate employment action.

   (ii) The exception is not available for federally regulated testing or for pre-employment testing for a high-risk position.

(12) **Dismissal of Classified Employees**:

(a) When a classified employee is dismissed from employment for refusing testing or for having a positive drug or alcohol test, any adverse action taken by the appointing authority must comply with the provisions of Rule 478-1-.26, Adverse Action for Classified Employees.

(b) When this Rule requires immediate dismissal, the appointing authority is to process the action in accordance with Section (11) of Rule 478-1 .26, Adverse Action for Classified Employees.

(c) A classified employee who tests positive for alcohol or an illegal drug(s) is considered to have engaged in misconduct. A classified employee who refuses ordered testing is considered to have engaged in insubordination and misconduct.

(13) **Appeals**:

(a) Dismissal actions can be appealed only by classified employees, as outlined in Rule 478-1-.26, Adverse Actions for Classified Employees, and Rule 478-1-.27, Appeals and Hearings for Classified Employees.

(b) An applicant/employee who was deemed to have refused substance abuse testing may request a review of the two (2) year disqualification if the applicant/employee does not believe that the circumstances described in Section (7) of this Rule were applicable in her/his situation.

1. The request must be submitted in writing to the DOAS Commissioner or designee. It must be postmarked or delivered within ten (10) business days from the date of the notice of the disqualification.

2. The request must identify at a minimum:

   (i) the date on which the applicant/employee was directed to report for testing;

   (ii) the agency that directed the applicant/employee for testing;

   (iii) why the employee/applicant disputes the refusal determination; and,

   (iv) any supporting documentation.

3. The DOAS Commissioner or designee will consider all requests for review and may request additional information necessary to reach a decision.

4. The decision of the DOAS Commissioner or designee is final.

Cite as Ga. Comp. R. & Regs. R. 478-1-.21
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Employee Grievance Procedure" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: F. June 9, 1989; eff. November 11, 1998, as specified by the Board.
Amended: F. Nov. 8, 1989; eff. Sept. 14, 1989, as specified by the Board.
Amended: F. Aug. 11, 1992; eff. July 2, 1992, as specified by the Board.
Amended: F. Sept. 3, 1992; eff. Aug. 6, 1992, as specified by the Board.
Amended: R. 478-1-.0 F repealed and renumbered R. 478-1-.21 of same title adopted. F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
Amended: F. Oct. 15, 1993; eff. Oct. 6, 1993, as specified by the Board.
Amended: Rule retitled "Uniform Employee Grievance Procedure". F. Dec. 7, 1995; eff. Nov. 30, 1995, as specified by the Board.
Amended: Rule retitled "Employee Grievance Procedure". F. Sept. 15, 1997; eff. Sept. 4, 1997, as specified by the Board.
Amended: F. May 18, 1998; eff. April 2, 1998, as specified by the Board.
Amended:F. July 15, 1999; eff. June 24, 1999, as specified by the Board.
Repealed: New Rule entitled "Drug and Alcohol Free Workplace Program" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.
Amended: F. July 30, 2010; eff. July 16, 2010, as specified by the Board.
Amended: F. Dec. 30, 2013; eff. Sept. 25, 2013, as specified by the Board.
Amended: F. Jan. 4, 2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.21A. Self-Disclosure of Substance Abuse.

(1) **Self-Disclosure of Problem Use of Alcohol or Illegal Drugs**:

An employee who notifies the appointing authority of an alcohol or illegal drug problem shall not be dismissed from employment because of the self-disclosure provided:

(a) The notification is made prior to arrest for an offense involving alcohol, if the employee is disclosing an alcohol problem, and prior to arrest for an offense involving a controlled substance, marijuana, or a dangerous drug, if the employee is disclosing an illegal drug problem;

(b) For employees regulated by the Federal Motor Carrier Safety Administration (FMCSA), the disclosure is made prior to reporting for duty to perform safety-sensitive transportation functions;

(c) The employee has not refused ordered substance abuse testing or tested positive for illegal drug use or alcohol. If an employee is ordered to appear for substance abuse testing, then self-discloses a substance abuse problem, the employee is not excused from the ordered testing. The employee must successfully complete the testing process and have a negative result before becoming eligible for the protection outlined in this Section;

(d) The notification is made in writing to an appropriate official designated by the appointing authority and states the employee is receiving or agrees to receive treatment under a properly licensed substance abuse treatment and education program;

(e) The employee follows the treatment plan which will be at the employee's expense;

(f) The employee provides certification of satisfactory completion of the recommended treatment program; and,

(g) The employee successfully completes return-to-duty substance abuse testing and receives a negative result before returning to work.

(2) **Return-to-Duty Agreement and Follow-Up Testing**:

(a) The appointing authority may require the employee to sign a return-to-duty agreement as a condition of employment and be subject to unannounced follow-up testing for illegal drugs and/or alcohol, whichever is applicable to the disclosed substance abuse problem, for up to five (5) years.

(b) The requirement for follow-up testing will be based on the employer's determination that the employee could pose a direct threat in the absence of testing and will be based on an objective, individualized assessment of the employee and the employee's position.

(c) The duration and frequency of the testing must be linked to specific safety concerns.

(3) **Dismissal**:

The employee's failure to complete any requirement within the treatment and education program, failure to comply with the return-to-duty agreement, positive test or test refusal, will result in immediate dismissal and any applicable employment disqualification for a testing violation.

(4) **Entitlement**:

This entitlement shall be available no more than once in a five (5)-year period.

Cite as Ga. Comp. R. & Regs. R. 478-1-.21A
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Self-Disclosure of Substance Abuse" adopted. F. Jan. 4, 2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.21B. Pre-Employment Drug Testing for High-Risk Positions.

(1) **Applicability**:

(a) Individuals offered employment in a high-risk position must successfully complete a pre-employment drug test and receive a negative result as a condition of employment.

(b) Pre-employment drug testing for high-risk work applies to all employment categories (e.g., full-time, part-time, temporary, hourly, internship, etc.).

(c) Pre-employment drug testing applies to new hires offered initial employment into a high-risk position and to current employees moving into a high-risk position subject to pre-employment drug testing.

(2) **Determination of Positions Subject to Pre-Employment Drug Testing**:

(a) Each appointing authority shall determine which positions within the agency/entity have high-risk work and designate these positions for pre-employment drug testing.

(b) Upon creating a new position, reallocating an existing position to a different function, or changing the duties of a position, the appointing authority is to determine whether the position duties include high-risk work, then designate high-risk positions for pre-employment drug testing.

(3) **When to Test**:

Pre-employment drug testing is conducted after an offer of employment. Whenever possible, it should be completed and a negative result received before employment in the high-risk position begins. In no case can the test be conducted more than ten (10) business days after employment in the position begins.

(4) **Directive to Report**:

The appointing authority is to provide a written directive specifying when and where to report for testing. Whenever possible, the directive should not be given in advance of the time the applicant/employee is to proceed for testing. If it is not possible to direct the applicant/employee to report immediately for testing, the appointing authority may specify a date and time by which to report. Such date cannot be later than the business day after the applicant/employee receives the directive.

(5) **Rejected or Unsuitable Sample**:

When a pre-employment drug testing sample is rejected or determined to be unsuitable for testing by the testing laboratory, the donor will be directed to appear for retesting. The pre-employment testing program requires such retesting because a negative result is required for the applicant/employee to be eligible for employment in the position.

(6) **Consequences of Positive Test Result or Refusal**:

Any applicant or employee whose pre-employment drug test result is reported by the Medical Review Officer (MRO) as positive, adulterated, or substituted, or who otherwise refuses a pre-employment test, will be disqualified from State employment for a period of two (2) years from the date of testing or refusal to test.

(a) If the applicant/employee has not begun employment in the high-risk position, the appointing authority will withdraw the offer of employment in writing.

(b) If the applicant/employee has begun employment in the high-risk position, the appointing authority will immediately terminate employment.

(c) If the applicant/employee is employed by another agency/entity, the appointing authority is to notify the Department of Administrative Services (DOAS). DOAS will notify the other agency/entity of the disqualification from employment. The other employer will then dismiss the applicant/employee.

Cite as Ga. Comp. R. & Regs. R. 478-1-.21B
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Pre-Employment Drug Testing for High-Risk Positions" adopted. F. Jan. 4, 2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.21C. Random Substance Abuse Testing for High-Risk Positions.

(1) **Applicability:**

Positions that regularly require high-risk work are subject to random drug testing and may be subject to random alcohol testing. Employees whose position is randomly selected for substance abuse testing must neither refuse testing nor receive a positive result as a condition of employment.

(a) All employees required to be certified under the Georgia Peace Officers Standards and Training Act (P.O.S.T.) and who regularly perform duties where inattention or errors in judgment would have the potential for significant risk of harm to the individual or others are in high-risk positions and subject to random drug testing. An appointing authority may also designate incumbents in high-risk positions for random alcohol testing.

(b) Non-P.O.S.T. certified employees determined by their appointing authority to be employed in positions designated as regularly requiring high-risk work are subject to random drug testing. An appointing authority may also designate incumbents in high-risk positions for random alcohol testing.

(c) Prior to placing an employee in a high-risk position subject to random substance abuse testing, the appointing authority should notify the employee of the testing requirement and the consequences for a positive result or testing refusal.

(d) Random substance abuse testing is applicable for all jobs determined to be high-risk, regardless of the type of employment (full-time, part-time, hourly, temporary, paid-student/intern, etc.).

(2) **Determination of High-Risk Positions Subject to Random Substance Abuse Testing:**

(a) Each appointing authority shall determine, in consultation with the DOAS Commissioner or designee, which positions within the agency/entity regularly perform high-risk work and designate these positions for random substance abuse testing. Examples of high-risk positions may include, but are not limited to: P.O.S.T. certified law enforcement positions, firefighters, medical staff, non-federally regulated drivers, in-home care providers, heavy equipment operators, electricians, pilots, and aircraft mechanics.

(b) Positions will not be designated as high-risk if the incumbents do not regularly perform high-risk work, even if others in the same classification do regularly perform high-risk work.

(c) The appointing authority will update a position's designation, as needed, when assigned duties change.

(3) **Selection Procedures:**

(a) Subject Pools:

1. The DOAS Commissioner will establish pools composed of the positions designated as being high-risk by the appointing authorities.

2. The DOAS Commissioner establishes the random selection rate for each pool.

3. The appointing authority has discretion to select which high-risk pool to use for each high-risk position based on P.O.S.T. certification, the rate of selection, and whether random alcohol testing will apply.

(b) Random Sample:

The DOAS Commissioner or designee will periodically direct that a sample of positions be randomly selected from each pool. Random selection is made such that each position within a pool has an equal chance of being selected each time.

(c) Random Selection Notice:

The DOAS Commissioner or designee will notify each appointing authority of positions, if any, that have been selected from the pool. The notice will contain the effective date to be used for determining the incumbent(s) to be tested and when testing will begin.

(4) **Who to Test:**

(a) The incumbent of each selected position, as of the effective date specified in the random selection notice, will be subject to testing, unless that individual is no longer assigned high-risk work.

(b) Multiple Incumbents:

Should a selected position have more than one incumbent as of the specified effective date, all incumbents will be subject to testing.

(c) Vacant Positions:

If a position was vacant as of the effective date specified in the random selection notice, no incumbent testing for that position will take place.

(5) **When to Test:**

(a) Selected employees may be tested during a 30-calendar-day period that begins on the effective date specified in the random selection notice.

(b) Whenever possible, the appointing authority should send selected employees for testing on the effective date specified in the random selection notice.

(c) To accommodate scheduling, workload, or other business needs, the appointing authority may delay issuing the testing directive to an employee until a later date and time when operations will not be unduly disrupted. The testing date should be as soon as possible and must be within 30 calendar days following the effective date specified in the random selection notice.

(d) Random testing is not permitted before the effective date specified in the random selection notice.

(e) Incumbents on Leave:

If the incumbent of a selected position was on any form of paid or unpaid leave as of the effective date specified in the notice of random selection and returns within 30 calendar days of the effective date, the appointing authority is to send the incumbent for testing as soon as possible following the return-to-duty and within the 30-calendar-day testing window. If the incumbent does not return to work within the 30-calendar-day testing window, the incumbent is not sent for testing.

(6) **Directive to Report:**

The appointing authority is to provide each employee whose position was selected for random substance abuse testing a written directive to report. The directive must specify when and where the employee is to report for testing. Whenever possible, the directive should not be given to the employee in advance of the time to proceed for testing. If it is not possible to direct an employee to report immediately for testing, the appointing authority may specify a date and time by which to report. For random drug testing, such date cannot be later than the business day after the employee receives the directive to report. For random alcohol testing, the time to report can be no more than two (2) hours after the employee receives the directive to report.

(7) **Rejected or Unsuitable Sample:**

When a random drug testing sample is rejected or determined to be unsuitable for testing by the testing laboratory, the appointing authority has the discretion to direct the employee to appear for retesting.

(8) **Consequences of Positive Drug Testing Result or Refusal:**

(a) An employee whose drug test result is reported by the Medical Review Officer (MRO) as positive, adulterated, or substituted, or who otherwise refuses a random drug test will be immediately dismissed and disqualified from State employment for a period of two (2) years from the date of testing or refusal, whichever is later.

(b) If the employee has dual State employment with another agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS). DOAS will notify the other agency/entity employer of the disqualification from employment. The other employer will then dismiss the employee.

(9) **Consequences for Positive Alcohol Result or Refusal:**

(a) An employee whose test indicates an alcohol concentration of 0.02 or greater will be given an alcohol confirmation test not less than 15 minutes nor more than 20 minutes after the original screening test.

(b) Upon receiving a positive alcohol confirmation test result of 0.02 or greater from the testing facility, the appointing authority may take disciplinary action determined appropriate, up to and including dismissal from employment. At a minimum, the appointing authority will not allow the employee to resume high-risk work for at least 24 hours from the time the test was administered. If the employee is not dismissed:

1. All scheduled work time from the time of the positive test until the employee returns to work will be charged to suspension without pay.

2. The appointing authority may require a negative return-to-duty test before allowing the employee to return to work.

3. As a condition of return to work, the appointing authority may also require an employee with a positive alcohol confirmation test result of 0.04 or greater to provide documentation from a Substance Abuse Professional certifying that the employee is fit to perform high-risk work. The employee may also be subject to follow-up testing, as recommended by the Substance Abuse Professional.

(c) An employee who refuses alcohol testing will be immediately dismissed and disqualified from State employment for a period of two (2) years from the date of refusal.

1. If the employee has dual State employment with another agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS).

2. DOAS will notify the other agency/entity employer of the disqualification from employment. The other employer will then dismiss the employee.

Cite as Ga. Comp. R. & Regs. R. 478-1-.21C
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Random Substance Abuse Testing for High-Risk Positions" adopted. F. Jan. 4,

2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.21D. Substance Abuse Testing for Federally Regulated Transportation Positions.

(1) **Applicability:**

(a) Applicants for, and employees in, positions that perform safety-sensitive transportation functions are subject to federally regulated substance abuse testing.

(b) The testing programs in this Sub-Rule apply to all employment categories of federally regulated work (e.g., full-time, part-time, temporary, hourly, internship, etc.).

(c) Prior to placing an individual in a position subject to federally regulated testing, the appointing authority should notify the employee or applicant of the testing requirements and of the consequences for a positive result or testing refusal.

(d) Facilities and procedures used for substance abuse testing of federally regulated transportation employees and applicants must meet all requirements established by the U.S. Department of Transportation in 49 C.F.R. Part 40. Such requirements do not allow for use of "instant" drug testing products, such as on-site testing kits described in Section (9) of Rule 478-1-.21.

(2) **Determination of Federally Regulated Positions Subject to Substance Abuse Testing:**

(a) Each appointing authority must designate as federally regulated those positions whose incumbents perform safety-sensitive transportation functions, as follows:

1. motor carrier functions as defined by the Federal Motor Carrier Safety Administration in 49 C.F.R. Part 382;

2. maritime functions as defined by the US Coast Guard/Department of Homeland Security in 46 C.F.R. Part 16; and,

3. public transportation functions as defined by the Federal Transit Administration in 49 C.F.R. Part 655.

(b) The appointing authority will also designate as federally regulated those other positions that may become subject to substance abuse testing by federal law or regulation.

(c) The appointing authority will update a position's designation, as needed, when assigned duties change.

(3) **Types of Testing:**

(a) Pre-Employment:

Individuals offered employment in a federally regulated transportation position must successfully complete a pre-employment drug test and receive a negative result prior to performing safety-sensitive transportation duties.

(b) Random Testing:

All federally regulated employees are subject to random drug testing. Random alcohol testing requirements vary by federal operating administration. Employees whose positions are randomly selected for substance abuse testing must neither refuse testing nor receive a positive result as a condition of employment.

1. Subject Pool(s):

   The DOAS Commissioner will establish a pool(s) composed of all positions designated as being federally regulated by the appointing authorities. Each pool will have a selection rate that complies with applicable federal standards.

2. Random Sample:

   The DOAS Commissioner will periodically direct that a sample of positions be randomly selected from each pool. Random selection is made such that each position within a pool has an equal chance of being selected each time.

3. Random Selection Notice:

   The DOAS Commissioner or designee will notify each appointing authority of positions, if any, that have been selected from the pool(s). The notice will contain the effective date to be used for determining the incumbent(s) to be tested and when testing will begin.

4. Who to Test:

   The incumbent of each selected position as of the effective date specified in the random selection notice will be subject to testing, unless that individual is no longer assigned safety-sensitive transportation functions.

   (i) Multiple Incumbents:

Should a selected position have more than one incumbent as of the effective date specified in the random selection notice, all incumbents will be subject to testing.

(ii) Vacant Positions:

If a position was vacant as of the effective date specified in the random selection notice, no incumbent testing for that position will take place.

5. When to Test:

Selected employees may be tested during a 30-calendar-day period that begins on the effective date specified in the random selection notice.

(i) Whenever possible, the appointing authority should send selected employees for testing on the effective date specified in the random selection notice.

(ii) To accommodate scheduling, workload, or other business needs, the appointing authority may delay issuing the testing directive to an employee until a later date and time when operations will not be unduly disrupted. The testing date should be as soon as possible and must be within 30 calendar days following the effective date specified in the random selection notice.

(iii) Random testing is not permitted before the effective date specified in the random selection notice.

(iv) Incumbents selected for random alcohol testing must be tested just before or just after performing safety-sensitive transportation functions. If the test is not performed within two (2) hours of the performance of safety-sensitive transportation functions, the appointing authority must create and retain a written record stating the reasons why the alcohol test was not properly administered.

(v) Incumbents on Leave:

If the incumbent of a selected position is on any form of paid or unpaid leave as of the effective date specified in the notice of random selection and the incumbent returns to duty within 30 calendar days of the effective date, the appointing authority is to

send the incumbent for testing as soon as possible following the return-to-duty and within the 30-calendar-day testing window. If the incumbent does not return to duty within the 30-calendar-day testing window, the incumbent is not sent for testing.

(c) Post-Accident Testing:

Any employee performing safety-sensitive transportation functions who is involved in an on-the-job accident, as defined by the applicable federal operating administration, is required to undergo substance abuse testing, as ordered, as soon as possible, and in accordance with applicable federal regulations as a condition of employment.

Post-Accident Testing Requirements				
DOT Agency	Testing Criteria	Who is Tested	Specimen Type	Collection Time Frame
FMCSA	1. There is a fatality; or 2. The driver is cited for a moving violation AND either: a) The vehicle is towed from the scene; or b) Someone is medically evacuated from the scene.	The surviving driver. (FMCSA regulations do not call for testing of deceased drivers.)	Urine for drug testing. Saliva or breath for alcohol screening; breath for alcohol confirmation testing.	Drug testing -Up to 32 hours from time of event. Alcohol testing - Within 2 hours, but cannot exceed 8 hours from time of event.
FTA	1. There is a fatality; or 2. an individual receives medical treatment away from the scene; or	Fatal Accident Each surviving employee operating the mass transit vehicle at the time of the accident. Also, any other covered employee whoseperformance	Urine for drug testing. Saliva or breath for alcohol screening; breath for alcohol	Drug testing -Up to 32 hours from time of event. Alcohol testing - Within 2

	3.the rubber-tired vehicle is towed from the scene due to disabling damage; or 4. the fixed guideway vehicle or vessel is removed from operation.	could have contributed to the accident. <u>Non-Fatal Accident:</u> Each employee operating the mass transit vehicle unless the employee's performance can be completely discounted as a contributing factor. Also, any other covered employee whose performance could have contributed to the accident.	confirmation testing.	hours, but cannot exceed 8 hours from time of event.
USCG	A serious Marine Incident that results, or, in the employer's estimation may result, in any of the following: 1. One or more fatalities. 2.An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to	Those personnel directly involved in a Serious Marine Incident.	Urine for drug testing. Breath, saliva, or blood for alcohol testing.	Drug testing -Within 32 hours from time of event unless precluded by safety concerns, and then as soon as safety concerns are addressed. Alcohol testing - Within 2 hours of the event or as soon as safety concerns are addressed, but cannot exceed 8 hours from time of event.

	perform routine vessel duties. 3.Property damage in excess of $100,000. 4.Actual or constructive total loss of any inspected vessel or any self-propelled vessel of 100 gross tons or more. 5.A discharge of oil exceeding 10,000 gallons into navigable waters. 6.A release of a Hazardous Substance greater than or equal to its reportable quantity into navigable waters.			

(d) Reasonable Suspicion/Reasonable Cause:

Any federally regulated transportation employee may be required to submit to substance abuse testing when a trained agency/entity official determines there is a compelling reason to suspect an employee is not free from illegal drugs and/or alcohol while on duty.

1. The determining official's training must have minimally included one (1) hour of illegal drug training and one (1) hour of alcohol training covering physical, behavioral, speech, and performance indicators of probable illegal drug use or alcohol misuse.

2. The reasonable suspicion must be based on the trained official's specific observations of the employee's current appearance, behavior, speech, and/or smell usually associated with drug or alcohol use.

3. A written record, signed by the observing official, must be made to document the observations leading to reasonable suspicion.

4. Alcohol testing may be conducted only when the employee is scheduled to perform safety-sensitive transportation functions.

(e) Return-to-Duty:

1. Federally regulated individuals with a previous drug/alcohol-free workplace violation must successfully complete drug and/or alcohol testing (whichever applies to the violation) as ordered and receive a negative result as a condition of return to employment in a safety-sensitive transportation function.

2. Federal regulations require return-to-duty testing be conducted under direct observation.

(f) Follow-Up:

Following a determination by a Substance Abuse Professional that an employee who has violated an alcohol or drug provision is in need of assistance in resolving problems associated with alcohol or drug abuse, the appointing authority will ensure that the employee is subject to unannounced follow-up alcohol and/or drug testing, whichever is applicable.

1. Mandatory follow-up testing will be conducted only when the employee is scheduled to perform safety-sensitive transportation functions.

2. Testing must be conducted at least six (6) times in the first 12 months following return to safety-sensitive transportation functions and may, upon the recommendation of the Substance Abuse Professional, be continued for up to 60 months.

3. The employee must successfully complete each follow-up test as ordered and receive a negative result as a condition of employment.

4. Federal regulations require follow-up testing be conducted under direct observation.

(4) **Directive to Report:**

(a) The appointing authority is to provide the applicant or employee a written directive specifying when and where to report for federally regulated substance abuse testing. The directive is not to be given in advance of the time the applicant/ employee is to proceed for testing. If the individual is performing safety-sensitive transportation functions at the time of notification, the individual should cease as soon as possible, then report for testing.

(b) An employee directed to report for reasonable suspicion testing should be accompanied and not permitted to transport her/himself.

(5) **Rejected or Unsuitable Sample:**

(a) When a pre-employment, return-to-duty, or follow-up drug testing sample is rejected or determined to be unsuitable for testing by the testing laboratory, the donor will be directed to appear for retesting. These testing programs require such retesting because a negative result is required for the applicant/employee to be eligible for employment in the position.

(b) The appointing authority has the discretion to require retesting when a random, reasonable suspicion, or post-accident drug testing sample is rejected or determined unsuitable for testing.

(6) **Consequences of Positive Drug Testing Result or Refusal:**

(a) An applicant or employee whose drug test result is reported by the MRO as positive, adulterated, or substituted or who otherwise refuses a drug test will be immediately dismissed or the offer of employment withdrawn.

(b) The applicant or employee is further disqualified from future State employment for a period of two (2) years from the date of testing or refusal, whichever is later.

1. If the applicant/employee is employed with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS).

2. DOAS will notify the other State agency/entity employer of the disqualification from employment. The other employer will dismiss the employee.

(c) The appointing authority is to provide the applicant/employee with a list of qualified Substance Abuse Professionals (SAPs) or contact information for an SAP network that will offer qualified SAPs to the applicant/employee.

(7) **Consequences for Positive Alcohol Result or Refusal:**

(a) An employee whose test indicates an alcohol concentration of 0.02 or greater will be given an alcohol confirmation test not less than 15 minutes nor more than 20 minutes after the original screening test.

(b) The appointing authority must dismiss the employee upon receiving a positive alcohol confirmation test result of 0.02 or greater for return-to-duty or follow-up testing.

(c) The appointing authority may take the disciplinary action determined appropriate, up to and including dismissal, upon receiving a positive alcohol confirmation test result of 0.02 or greater for random, reasonable suspicion, or post-accident testing. At a minimum, the appointing authority will not allow the employee to resume safety-sensitive transportation functions for the period required by the applicable federal operating administration and policies set by this Sub-Rule. (See chart below.)

DOT Alcohol Confirmation Test Result Consequences		
DOT Agency	Result	Action
FMCSA	Less than 0.02	No action required.
	0.02 - 0.039	Employee may not resume safety-sensitive transportation functions for 24 hours.
	0.04 or greater	Immediate removal from safety-sensitive transportation functions. Employee may not resume safety-sensitive transportation functions until successfully completing the return-to-duty process.
FTA	Less than 0.02	No action required.
	0.02 - 0.039	Employee cannot work until (1) the employee's alcohol concentration measures less than 0.02; or (2) the next scheduled duty period, but not less than 8 hours from the time of the test.
	0.04 or greater	Immediate removal from safety-sensitive transportation functions. Employee may not resume safety-sensitive transportation functions until successfully completing the return-to-duty process.
USCG	Less than 0.02	No action required.

	0.02-0.039	Employee may not resume safety-sensitive transportation functions for 24 hours.
	0.04 or greater	Immediate removal from safety-sensitive transportation functions. Employee may not resume safety-sensitive transportation functions until successfully completing the return-to-duty process.

If the employee is not dismissed, all scheduled work time from the time of the positive test until the employee returns to duty will be charged to suspension without pay.

2. The return-to-duty process is as follows:
   (i) Evaluation by a Substance Abuse Professional (SAP).
   (ii) Successful completion of any education, counseling, or treatment prescribed by the SAP.
   (iii) Follow-up evaluation by the same SAP.
   (iv) A negative return-to-duty alcohol test result of less than 0.02.
3. The appointing authority is to provide an employee who refused alcohol testing or whose test result was .04, or higher, with a list of qualified Substance Abuse Professionals (SAPs) or contact information for an SAP network that will offer qualified SAPs to the employee.
4. The appointing authority may require that SAP evaluation and services are at the expense of the employee.

(d) An employee who refuses alcohol testing will be immediately dismissed and disqualified from future State employment for a period of two (2) years from the date of refusal.

1. If the employee has dual employment with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS).
2. DOAS will notify the other employer of the applicable disqualification from employment. The other employer will dismiss the employee.

Cite as Ga. Comp. R. & Regs. R. 478-1-.21D
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Substance Abuse Testing for Federally Regulated Transportation Positions"

adopted. F. Jan. 4, 2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.21E. Reasonable Suspicion Substance Abuse Testing of Non-Federally Regulated Employees.

(1) **Applicability:**

All employees are subject to reasonable suspicion drug and/or alcohol testing when a designated agency/entity official determines there is a compelling reason to suspect an employee is not free from alcohol or illegal drugs.

(2) **Indicators Supporting Reasonable Suspicion:**

Reasonable suspicion may be generated by physical, behavioral, or performance indicators or by other evidence found or reported. Indicators supporting reasonable suspicion include, but are not limited to:

(a) observation of behavior, appearance, speech, or odor likely to result from alcohol or illegal drug use;

(b) an on-the-job incident, such as a medical emergency, likely attributable to alcohol or illegal drug use by an employee;

(c) observation of behavior exhibited by an employee that might render the employee unable to perform her/his job or that might pose a threat to the safety or health of the employee or others;

(d) verifiable information that an employee might not be free from alcohol or illegal drugs at work;

(e) physical on-the-job evidence or alcohol or illegal drug use by an employee;

(f) documented deterioration in an employee's job performance likely attributable to alcohol or illegal drug use by the employee;

(g) the results of other scientific test(s) that indicate possible use of alcohol or illegal drugs; or,

(h) any other specific, timely, and describable action that would give an appointing authority reason to suspect an employee might not be free from alcohol and illegal drugs.

(3) **Directive to Report:**

The appointing authority is to provide the employee a written directive specifying where to report immediately for substance abuse testing. The employee should be accompanied and not permitted to transport her/himself.

(4) **Rejected or Unsuitable Sample:**

When a reasonable suspicion drug testing sample is rejected or determined to be unsuitable for testing by the testing laboratory, the appointing authority has the discretion to direct the employee to appear for retesting.

(5) **Consequences of Positive Drug Testing Result or Refusal:**

(a) An employee whose drug test result is reported by the Medical Review Officer (MRO) as positive, adulterated, or substituted, or who otherwise refuses a reasonable suspicion drug test will be immediately dismissed and disqualified from future State employment for a period of two (2) years from the date of testing or refusal, whichever is later.

(b) If the employee has dual employment with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS). DOAS will notify the other employer of the disqualification from employment. The other agency/entity will dismiss the employee.

(6) **Consequences for Positive Alcohol Result or Refusal:**

(a) An employee whose test indicates an alcohol concentration of 0.02 or greater will be given an alcohol confirmation test not less than 15 minutes nor more than 20 minutes after the original screening test.

(b) Upon receiving a positive alcohol confirmation test result of 0.02 or greater from the testing facility, the appointing authority may take the disciplinary action determined appropriate, up to and including dismissal from employment. At a minimum, the appointing authority will not allow the employee to resume duties for at least 24 hours from the time the test was administered. If the employee is not dismissed:

1. All scheduled work time from the time of the positive test until the employee returns to work will be charged to suspension without pay.

2. The appointing authority has the discretion to require a negative alcohol test result before allowing the employee to return to work.

3. As a condition of return to work, the appointing authority may also require an employee with a positive alcohol confirmation test result of 0.04 or greater to provide documentation from a substance abuse professional

(SAP) certifying that the employee is fit to return to work and subject the employee to follow-up testing at the recommendation of the SAP.

(c) An employee who refuses alcohol testing will be immediately dismissed and disqualified from future State employment for a period of two (2) years from the date of refusal.

1. If the employee has dual employment with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS).

2. DOAS will notify the other agency/entity of the disqualification from employment. The other agency/entity will dismiss the employee.

Cite as Ga. Comp. R. & Regs. R. 478-1-.21E
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Reasonable Suspicion Substance Abuse Testing of Non-Federally Regulated Employees" adopted. F. Jan. 4, 2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.21F. Return-to-Duty Drug and Alcohol Testing of Non-Federally Regulated Employees.

(1) **Applicability:**

(a) Any individual who will be allowed to return to work after self-disclosing a substance abuse problem must successfully complete alcohol and/or drug testing, whichever is applicable, and obtain a negative result before returning to work.

(b) When an individual is allowed to return to work following a positive alcohol confirmation test result of 0.02 or higher in a random or reasonable suspicion test, the appointing authority may require a negative return-to-duty test before allowing the employee to return to work.

(2) **Directive to Report:**

The appointing authority is to provide the employee a written directive specifying where to report immediately for substance abuse testing.

(3) **Rejected or Unsuitable Sample:**

When a return-to-duty drug testing sample is rejected or determined to be unsuitable for testing by the testing laboratory, the appointing authority will direct the employee to

appear for retesting because a negative result is needed before the employee can return to work.

(4) **Consequences of Positive Drug Testing Result or Refusal:**

(a) An employee whose drug test result is reported by the Medical Review Officer (MRO) as positive, adulterated, or substituted, or who otherwise refuses a return-to-duty drug test will be immediately dismissed and disqualified from future State employment for a period of two (2) years from the date of testing or refusal, whichever is later.

(b) If the employee has dual employment with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS). DOAS will notify the other agency/entity of the disqualification from employment. The other agency/entity will dismiss the employee.

(5) **Consequences for Positive Alcohol Result or Refusal:**

(a) An employee whose test indicates an alcohol concentration of 0.02 or greater will be given an alcohol confirmation test not less than 15 minutes nor more than 20 minutes after the original screening test.

(b) Upon receiving a positive alcohol confirmation test result from the testing facility, the appointing authority will not return the employee to work and must dismiss the employee.

(c) An employee who refuses alcohol testing will be immediately dismissed and disqualified from future State employment for a period of two (2) years from the date of refusal.

1. If the employee has dual employment with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS).

2. DOAS will notify the other agency/entity of the applicable disqualification from employment. The other agency/entity will dismiss the employee.

Cite as Ga. Comp. R. & Regs. R. 478-1-.21F
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Return-to-Duty Drug and Alcohol Testing of Non-Federally Regulated Employees" adopted. F. Jan. 4, 2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.21G. Follow-up Substance Abuse Testing of Non-Federally Regulated Employees.

(1) **Applicability:**

(a) Any individual who returns to work following the self-disclosure of a substance abuse problem is subject to unannounced alcohol or drug testing, whichever is applicable, for up to five (5) years.

(b) An individual returning to work following a positive alcohol confirmation test result of .04 or higher in a random or reasonable suspicion test may be subject to follow-up alcohol testing at the recommendation of the treating Substance Abuse Professional.

(2) **Directive to Report:**

The appointing authority is to provide the employee a written directive specifying where to report immediately for substance abuse testing.

(3) **Rejected or Unsuitable Sample:**

When a follow-up drug testing sample is rejected or determined to be unsuitable for testing by the testing laboratory, the appointing authority will direct the employee to appear for retesting because a negative result is needed as a condition of employment.

(4) **Consequences of Positive Drug Testing Result or Refusal:**

(a) An employee whose drug test result is reported by the Medical Review Officer (MRO) as positive, adulterated, or substituted, or who otherwise refuses a follow-up drug test will be immediately dismissed and disqualified from future State employment for a period of two (2) years from the date of testing or refusal, whichever is later.

(b) If the employee has dual employment with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS). DOAS will notify the other agency/entity of the disqualification from employment. The other employer will dismiss the employee.

(5) **Consequences for Positive Alcohol Result or Refusal:**

(a) An employee whose test indicates an alcohol concentration of 0.02 or greater will be given an alcohol confirmation test not less than 15 minutes nor more than 20 minutes after the original screening test.

(b) Upon receiving a positive alcohol confirmation test result of 0.02 or greater from the testing facility, the appointing authority must dismiss the employee.

(c) An employee who refuses alcohol testing will be immediately dismissed and disqualified from future State employment for a period of two (2) years from the date of refusal.

1. If the employee has dual employment with another State agency/entity, the appointing authority that ordered testing is to notify the Department of Administrative Services (DOAS).

2. DOAS will notify the other agency/entity of the applicable disqualification from employment. The other employer will dismiss the employee.

Cite as Ga. Comp. R. & Regs. R. 478-1-.21G
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Follow-up Substance Abuse Testing of Non-Federally Regulated Employees" adopted. F. Jan. 4, 2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.21H. Consequences of Illegal Drug Convictions.

(1) Consequences of Illegal Drug Convictions:

(a) Minimum Sanctions:

The suspension, dismissal, and disqualification sanctions prescribed in this Rule are minimum sanctions. An appointing authority may implement additional or more stringent sanctions.

(b) Applicants with an illegal drug conviction are disqualified from working for any agency/entity for three (3) months from the date of first conviction and five (5) years from the most recent date of conviction if there have been multiple illegal drug convictions since July 1, 1990.

(c) Employees who are convicted of an illegal drug crime:

1. First Offense:

Employees are suspended without pay for a period of not less than two (2) months and can return only after providing certification to the appointing authority of completion of a licensed substance abuse treatment and education program.

2. Subsequent Offense since July 1, 1990:

The employee shall be dismissed and disqualified from any State employment for five (5) years from the most recent date of conviction.

(d) For purposes of this Section,"illegal drug convictions" do not include sentencing under the First Offender Act or pleas of nolo contendere.

(2) Federal Contractors and Grantees:

(a) Employees who are paid by a federal grant or contract are required to notify their agency/entity within five (5) calendar days of being convicted of an illegal drug offense occurring in the workplace.

(b) The appointing authority is to take appropriate employment action in accordance with Section (1)(c) of this Sub-Rule and notify the federal agency issuing the grant or contract of the conviction.

Cite as Ga. Comp. R. & Regs. R. 478-1-.21H
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Consequences of Illegal Drug Convictions" adopted. F. Jan. 4, 2019; eff. Dec. 4, 2018, as specified by the Board.

Rule 478-1-.22. Employee Suggestion Program.

(1) **Introduction.** Employees are encouraged to submit suggestions for improving operations and efficiency through the Employee Suggestion Program (ESP) to assist the State fulfilling its commitment to serving the public effectively. Eligible employees whose suggestions are adopted may receive awards under the provisions of this Rule.

(a) For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02 (Terms and Definitions):

1. "Agency" means any agency as defined in O.C.G.A. § 45-20-2, any authority, or any public corporation, but does not include the Board of Regents and units of the University System of Georgia.

2. "Agency Coordinator" means the chair of an Agency Suggestion Committee.

3. "Agency Suggestion Committee" or "Committee" means the committee appointed by an agency to review suggestions submitted which pertain to the operation of that agency.

4. "Employee" means an employee of any agency as defined by O.C.G.A. § 45-20-2, or authority, or any public corporation, but shall not include employees of the Board of Regents or units of the University System of Georgia.

5. "Employees Suggestion Program" means the program developed by the Board.

6. "Suggestion Program Coordinator" means an employee of the Department of Administrative Services designated by the Commissioner.

(2) **Eligible Employees.** All employees may participate in the ESP, with the following exceptions: Members of the General Assembly; Agency Heads; Members of boards and commissions appointed by the Governor or the General Assembly; Members, justices, judges, officials, and officers of the judicial branch; Officers and officials elected by popular vote; Persons appointed to fill vacancies in elective offices; Employees of the Board of Regents; and Employees of units of the University System of Georgia.

(a) An agency may choose to exclude hourly, seasonal, temporary, and part-time employees from the ESP at its discretion.

(3) **How to Submit a Suggestion.** Suggestions may be submitted online through the Department of Administrative Services website. Alternatively, suggestions may be submitted to the Suggestion Program Coordinator by mail, e-mail, or in person. Verbal suggestions are not considered.

(a) Each suggestion should clearly and concisely identify the issue, propose a detailed solution to the issue, and explain the expected benefit to the state. Inventions, whether patentable or not, will also be considered.

(b) Group suggestions should be signed by all participating individuals. Awards for adopted group suggestions will be prorated.

(c) Suggestions relating to the following areas will not be considered:

1. Personal grievances;

2. Specific assigned duties or responsibilities of a particular employee;

3. Classification and/or pay of positions;

4. Matters recommended for study, review, or summary;

5. Matters that result from assigned or contracted audits, studies, surveys, reviews, or research;

6. Matters requiring the enactment of legislation by the General Assembly; and

7. Rules of the ESP.

(4) **Review Process.** Each agency should appoint three (3) employees to serve as members of the Agency Suggestion Committee (the "Committee"), one of whom will be designated as the Agency Coordinator (chair).

(a) The Commissioner will designate an employee of the Department of Administrative Services as the Suggestion Program Coordinator. The Suggestion Program Coordinator shall review for eligibility each suggestion received and forward those that should be considered to the appropriate Agency Coordinator for evaluation.

(b) The Agency Coordinator should obtain internal feedback on the suggestion, including a determination of the amount of savings, if any, that would be realized by the implementation of the suggestion. Based on feedback provided, the Committee will evaluate the suggestion and provide a written recommendation regarding its adoption to the Suggestion Program Coordinator in the prescribed format within 45 days of receipt. The recommendation should explain in detail why the suggestion should or should not be adopted, and should include any supporting documentation and an estimate of the value of projected annual savings to be generated by adopting the suggestion.

(c) An agency may also appoint a suggestion committee for any institution or division within the agency in addition to an Agency Suggestion Committee. These committees will follow the same procedures set forth above but report their recommendations to the Agency Suggestion Committee instead of directly to the Suggestion Program Coordinator.

(d) Duplicate Suggestions. The Suggestion Program Coordinator will review each suggestion to determine whether it is a duplicate of, or is similar to, a previously submitted suggestion. When duplicate suggestions are received, the suggestion bearing the earliest date of receipt will be submitted for consideration. If duplicate suggestions are received on the same date, both will be considered, and if adopted, any award given will be split as determined by the State Personnel Board.

(e) Inter-Agency Suggestions. The Suggestion Program Coordinator may forward a suggestion to an agency that does not employ the originator of the suggestion, when appropriate.

(f) Re-Evaluation of Suggestions Not Recommended for Adoption. An employee may ask the Suggestion Program Coordinator to forward a suggestion to the appropriate agency for reevaluation if the Committee does not recommend adoption. Likewise, an agency may ask the Agency Coordinator to reevaluate a suggestion that was not recommended for adoption. Reevaluation may only be requested one time per suggestion.

(g) Review by the Commissioner and Final Decision. The Suggestion Program Coordinator will collect and provide the Commissioner with the written recommendations regarding employee suggest ions. After reviewing the written recommendations, the Commissioner will make final recommendations to the State Personnel Board which will make the final determination regarding any action to be taken.

(5) **Notification of Decision.** The Suggestion Program Coordinator is responsible for notifying the employee in writing of the decision, including any award to be received.

(6) **Awards for Adopted Suggestions.** The following factors will be considered by the State Personnel Board in making the final determination regarding an award:

(a) Nature of benefit;

(b) Degree of benefit;

(c) Extent of application (i.e., how many agencies and/or facilities adopt the suggestion);

(d) Originality and ingenuity of idea;

(e) Cost of adoption;

(f) Effort undertaken by the employee in formulating the suggestion; and

(g) Clarity and completeness of the suggestion.

(h) Suggestions for improving safety are given more weight in determining the amount, if any, of a cash award.

(7) **Cash Awards.**

(a) Suggestions Resulting in Quantifiable Savings. An employee whose suggestion is approved by the State Personnel Board and adopted and implemented by an agency that results in direct and measurable cash savings or cost avoidance will receive a cash award. The award will be equal to 10% of the first year's estimated net material and labor savings, with a minimum amount of $10 and a maximum amount of $5,000.

(b) All Other Suggestions. Other suggestions that are approved, adopted and implemented by an agency may result in improvements that cannot be measured (e.g., suggestions involving improvements in working conditions; changes in procedures or forms; or employee morale, health, or safety, etc.). These suggestions may be eligible for a maximum cash award of $100.

(c) Payment of Award. A cash award is generally paid upon adoption of the suggestion and paid by the adopting agency or agencies within the fiscal year it is authorized for payment. Payment may be delayed up to six (6) months if the savings resulting from implementation cannot be immediately determined.

1. In order to receive payment of a cash award, the individual must be a current employee of an agency, retired from service, or deceased at the time of implementation of the suggestion. In the case of a deceased employee or

former employee, the award will be paid as if it were part of the employee's final compensation.

(d) Adoption of Modified Suggestions. An employee may be entitled to an award if a suggestion is adopted in a modified form. The State Personnel Board will determine whether a suggestion was adopted in a modified form and whether the employee making the suggestion should receive an award. The State Personnel Board's decision is final.

(e) Adoption of Rejected Suggestions. An employee may be entitled to an award if a suggestion was rejected but subsequently adopted within a year of the employee's receipt of the initial notification of non-adoption. For an individual to receive any award under these circumstances, the Commissioner must have been notified that the suggestion was implemented and the individual must be a current employee of an agency, retired from service, or deceased at the time of implementation of the suggestion. In the case of a deceased employee or former employee, the award will be paid as if it were part of the employee's final compensation.

(8) **Certificates of Commendation.** When the submitted suggestion results only in minimal savings or minor improvement, the employee may receive a certificate of commendation in lieu of a cash award. An employee receiving a cash award may also receive a certificate of commendation.

(9) **Rights of the Parties.**

(a) Rights of the Submitting Employee. The right to receive a State Personnel Board suggestion award is the submitting employee's sole right under the Employee Suggestion Program.

(b) Rights of the State. An agency has the right to use a suggestion in any form or manner without making any payment, including royalties, other than an award determined by the State Personnel Board pursuant to the Employee Suggestion Program.

Cite as Ga. Comp. R. & Regs. R. 478-1-.22
Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Employee Relocation" adopted. F. July 31, 1985; eff. July 1, 1985, as specified by the Board.
Amended: F. Jan. 22, 1988; eff. Nov. 12, 1987, as specified by the Board.
Amended: R. 478-1-.0 G repealed and renumbered R. 478-1-.22 of same title adopted. F. Nov. 16, 1992; eff. Sept. 21, 1992, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: F. July 31, 2000; eff. July 14, 2000, as specified by the Board.
Repealed: New Rule entitled "Employee Suggestion Program" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.

Amended: F. Dec. 30, 2013; eff. Sept. 25, 2013, as specified by the Board.

Rule 478-1-.23. Family and Medical Leave.

(1) **Introduction**. Family and Medical Leave is a benefit and entitlement intended to assist eligible employees with balancing work/life demands by providing job-protected time off from work for qualifying reasons. State agencies shall administer Family and Medical Leave in accordance with the federal Family and Medical Leave Act (FMLA) and related regulations. Any updates to applicable federal law or regulation take precedence over provisions within this Rule that are found to be in conflict.

(a) State employers will not interfere with, restrain, or deny the rights provided to an employee by the FMLA, but shall be entitled to require appropriate medical certification and/or validation of family member status to determine eligibility for Family and Medical Leave.

(b) State employers will not discriminate or retaliate against an individual for exercising any FMLA right.

(c) Nothing in this Rule or the FMLA shall be construed as limiting an agency's right to discipline, terminate, or otherwise manage its employees as it deems appropriate. However, the use of Family and Medical Leave cannot be considered as a negative factor in any employment decision.

(2) **Applicability.** The policies and procedures within this Rule apply to all agencies of the executive branch, excluding authorities, public corporations, and the Board of Regents of the University System of Georgia.

(3) **Definitions.** For the purposes of this Rule, the following terms and definitions apply in addition to those in Rule 478-1-.02 (Terms and Definitions).

(a) "Child" means a biological, adopted, or foster child, stepchild, legal ward, or a child of an employee standing in loco parentis, who is either under age 18, or age 18 or older and incapable of self-care because of mental or physical disability. This age limit does not apply for purposes of military Family and Medical Leave (i.e., leave for a qualifying exigency or to care for a covered service member.)

(b) "Covered active duty" means deployment to a foreign country as a member of the regular Armed Forces or as a result of a federal call to active National Guard or Reservist military duty in support of a contingency operation (typically during a war or declared national emergency).

(c) "Healthcare provider" means a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor (limited to manual manipulation of the spine to correct a subluxation shown on X-ray), nurse practitioner, nurse midwife, clinical social worker, physician assistant, Christian

Science Practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts, and other provider to whom the State Health Benefit Plan will pay benefits.

(d) "*In loco parentis*" means having day-to-day responsibilities to care for and financially support a child. A biological or legal relationship is not necessary.

(f) "Key employee" means a salaried employee among the highest-paid 10% of the agency's total workforce.

(g) "Parent" means a biological, adoptive, step, or foster father or mother or any other individual who stands or stood in loco parentis to an employee when the employee was a child. "Parent" does not include a parent-in-law.

(h) "Qualifying exigency" means an activity that requires leave because the employee's spouse, child, or parent is a military member on covered active duty or on notice of upcoming covered active duty.

(i) "Reduced Schedule Leave" means using leave to reduce the number of hours worked each workday or each workweek.

(j) "Rolling 12-month Period" or "Rolling Year" is the 12-month period measured backward from the date an employee uses any Family and Medical Leave. Under the "rolling year," each time an employee takes Family and Medical Leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12 months.

(k) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either:

1. An overnight stay in a hospital, hospice, or residential medical facility and any period of incapacity or treatment related to the reason for inpatient care; or,

2. Continuing treatment by a health care provider that involves at least one of the following:

   (i) Incapacity of more than three consecutive days, plus treatment that includes at least two medical examinations or one examination followed by treatment under the healthcare provider's supervision;

   (ii) Prenatal care or incapacity because of pregnancy;

   (iii) Periodic treatment or incapacity for a chronic serious health condition that:

(I) Requires periodic visits (at least twice per year) to a health care provider for treatment,

(II) Continues over an extended period of time, and

(III) May cause episodic rather than continuing periods of incapacity;

(iv) Permanent or long-term condition for which treatment may not be effective; or,

(v) Absence to receive multiple treatments for:

(I) Restorative surgery following an accident or other injury, or

(II) For a condition that, if left untreated, would likely result in incapacity of more than three consecutive days (i.e., chemotherapy, dialysis, etc.).

(l) "Spouse" means a husband or wife in a lawful marriage.

(m) "Workweek" means the number of hours an employee typically works during a seven day period. Most full-time employees have a 40-hour workweek. Appropriate pro rata adjustment is made for part-time employees. Employees required to work overtime, may have a workweek of more than 40 hours.

(4) **Employee Eligibility.**

(a) For purposes of determining an employee's eligibility for Family and Medical Leave, the state is considered one employer.

(b) To be eligible, an employee must meet all of the following four (4) criteria as of the date the Family and Medical Leave is to start.

1. Have been employed by the State of Georgia for a total of at least 12 months, whether consecutive or non-consecutive, within the past seven (7) years. (See Section (4)(e), below).

2. Have worked at least 1,250 hours for the State of Georgia in the 12 months immediately preceding the start date of Family and Medical Leave. Holidays and time spent on paid or unpaid leave or suspension do not count toward the 1,250 hours worked. An exception exists for military leave as outlined in (4)(d), below.

3. Have a qualifying reason for the absence (as outlined in section (5) of this Rule).

4. Have not already exhausted the available Family and Medical Leave entitlement for the 12-month period.

(c) Time worked for the State of Georgia in any employment capacity will count toward meeting the eligibility requirements in (4)(b)1 and (4)(b)2, above. Such employment includes: full-time, part-time, temporary, seasonal, and sporadic employment, whether paid on a salaried or hourly basis, and previous employment with a temporary services agency on assignment with the state.

(d) Absences covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA) will count toward meeting the eligibility requirements in (4)(b)1 and (4)(b)2, above.

(e) State employment that occurred before a break in service of seven (7) years or more will not contribute toward meeting the 12 months of employment eligibility requirement in (4)(b)1, above, unless the break was for the purpose of fulfilling service covered by USERRA.

(f) Agencies are not to extend Family and Medical Leave benefits to ineligible employees.

(5) **FMLA Qualifying Reasons & Leave Entitlement.**

(a) An eligible employee is entitled to take up to 12 workweeks of Family and Medical Leave during a rolling 12-month period, measured backward from the date an employee uses any Family and Medical Leave, for any one or combination of the following reasons.

1. Birth of the employee's child, including care for the employee's child during the first 12 months after birth;

2. Placement of a child with the employee for adoption or foster care, including care for the newly placed child during the first 12 months after placement and any preliminary proceedings required prior to placement;

3. Care for the employee's spouse, child, or parent (not including in-laws) who has a serious health condition;

4. The employee's own serious health condition that makes him or her unable to perform one or more of the essential functions of the job; and,

5. Any qualifying exigency arising because the employee's spouse, child, or parent (not including in-laws) is a military member on covered active duty or on notice of upcoming covered active duty. "Covered active duty" means deployment to a foreign country as a member of the regular Armed Forces or as a result of a federal call to active National Guard or Reservist military duty in support of a contingency operation (typically during a war or declared national emergency). A qualifying exigency refers to any of the following activities that may be required because of the military member's covered active duty:

   (i) Addressing issues resulting from the military member receiving short-notice of deployment (seven days or less advanced notice);

   (ii) Attending military events, family support or assistance activities, or information briefings related to the deployment;

   (iii) Arranging for care of the military member's child or parent incapable of self-care;

   (iv) Making or updating financial or legal arrangements;

   (v) Attending non-medical counseling;

   (vi) Spending time with the military member while on rest and recuperation leave (maximum of 15 calendar days);

   (vii) Engaging in post-deployment activities; and,

   (viii) Other activities related to the military duty as agreed upon by the employer and employee.

(b) Military Caregiver Family and Medical Leave.

1. An eligible employee is entitled to take up to 26 workweeks of Family and Medical Leave during a single 12-month period to care for a covered service member undergoing medical treatment, recuperation, therapy, or outpatient services, or who is otherwise on the temporary disability retired list, for a serious injury or illness received or aggravated in the line of active military duty.

   (i) The single 12-month period begins on the first day the employee takes leave to care for the covered service member and ends 12 months later.

(ii) The 26 workweeks are reduced by any Family and Medical Leave for other qualifying reasons used during the single 12-month period.

2. To qualify for Military Caregiver Family and Medical Leave, the employee must be the spouse, child, parent, or next of kin (nearest blood relative other than a spouse, child, or parent) of the covered service member. In-law relationships do not qualify.

3. The service member may be either a member of the Armed Forces (including the National Guard and Reserves) or a veteran.

   (i) Military Caregiver Family and Medical Leave is not available to care for a dishonorably discharged veteran;

   (ii) Military Caregiver Family and Medical Leave for a veteran must typically begin within five 5 years of the veteran's discharge or release from the military. Exception: In accordance with federal regulation, the period between October 28, 2009, and March 8, 2013, does not count toward this 5-year period.

4. Military Caregiver Family and Medical Leave is to be applied on a per-covered-service member, per-serious-injury/illness basis. An eligible employee with multiple qualifying reasons for Military Caregiver Family and Medical Leave is limited to a combined total of 26 workweeks in any single 12-month period.

(c) Family and Medical Leave for Military Caregivers and for the Serious Health Condition of the employee, spouse, child, or parent, is limited to the time determined medically necessary by the attending healthcare provider.

(d) Spousal Limitation.

1. If an employee's spouse is also a state employee, the couple is limited to a combined total of 12 workweeks of Family and Medical Leave during the rolling 12-month period for any one of the following qualifying reasons.

   (i) To care for the employee's parent with a serious health condition;

   (ii) For the birth of the employee's child, including care for the child after birth; and,

   (iii) For the placement of a child with the employee for adoption or foster care, including care for the child after placement.

2. If an employee's spouse is also a state employee, the couple is limited to a combined total of 26 workweeks of Military Caregiver Family and Medical Leave during a 12-month period.

3. Each spouse is entitled to use the remainder of his/her individual Family and Medical Leave entitlement for other qualifying reasons.

(6) **Intermittent/Reduced Schedule Leave**.

(a) Eligible employees are entitled to take Family and Medical Leave on an intermittent or reduced schedule basis under the following conditions:

1. When certified as medically necessary for a serious health condition of the employee, spouse, child, or parent;

2. When certified as medically necessary to care for a covered service member's serious injury or illness;

3. For a qualifying exigency arising out of a spouse's, child's, or parent's military duty;

4. When required for preliminary activities needed for an adoption or foster care placement to proceed.

(b) An agency has the discretion to permit its eligible employees to use Family and Medical Leave on an intermittent or reduced schedule basis for other FMLA qualifying reasons (such as for care of a healthy newborn or newly placed child), provided such permission is granted in a consistent manner to staff.

(c) An agency may temporarily reassign an employee to a different position for which the employee is qualified and that better accommodates the recurring absences while the employee uses Family and Medical Leave on an intermittent or reduced schedule basis for any of the following reasons.

1. Planned medical treatment, including recovery;

2. Birth of the employee's child, including care of the newborn child; and,

3. Adoption or foster care, including care of the newly placed child.

(d) While in the temporary position, the employee will receive pay and benefits equivalent to the original position; however, the duties need not be equivalent. An employee will not be assigned to a temporary position that represents a hardship for the employee. The agency will return the employee to the original position or an equivalent position at the end of the temporary assignment. The employee will

not be required to continue in the temporary assignment beyond the date on which the employee is able to resume the regular work schedule.

(7) **Notice and Certification Requirements**.

(a) Employee Notice Requirements:

1. When the need for Family and Medical Leave is foreseeable (e.g., childbirth, adoption, planned medical treatment, etc.), an employee is expected to provide the agency with at least 30 calendar days advance notice of the requested leave. When the need for FMLA leave is not foreseeable 30 days in advance, the employee is expected to provide the maximum notice practicable, generally within one to two business days from the date the employee becomes aware of the need for and timing of the leave. When the need for FMLA leave arises suddenly, and the absence is unplanned, the agency may require the employee to follow customary call-in procedures.

2. Employees must make a reasonable effort to schedule medical treatments so as not to unduly disrupt the agency's operations whenever possible.

3. An employee's notice of leave does not need to specifically mention the FMLA, but must include, at a minimum, an FMLA-qualifying reason for the leave, the anticipated start date, and the anticipated duration.

4. If an employee is unable to communicate, then an agency may receive notice of the need for Family and Medical Leave from a responsible spokesperson (e.g., spouse, doctor, etc.);

5. An employee's failure to provide timely notice with no reasonable excuse, as determined by the agency, may result in delay of Family and Medical Leave protection.

(b) Supporting Documentation.

1. An agency may require its employees to submit appropriate supporting documentation for the use of Family and Medical Leave. Examples of supporting documentation include:

(ii) The attending healthcare provider's certification of a serious health condition serving as the basis for Family and Medical Leave;

(ii) The attending healthcare provider's certification of a covered service member's serious injury or illness;

(iii) Certification of qualifying family relationship; and,

(iv) Copy of the spouse's, child's, or parent's orders for covered active duty that supports the qualifying exigency.

2. If an employee does not submit supporting documentation when giving notice of the need for Family and Medical Leave, the agency may request such documentation. The agency must allow the employee at least 15 calendar days from the date of the agency's request to provide the requested documentation.

3. To ensure compliance with the Genetic Information Nondiscrimination Act (GINA), when requesting supporting documentation from an employee's healthcare provider, the agency must specify that it is not seeking genetic information. If an agency receives genetic information from a request for supporting documentation, such information must be treated as a confidential medical record and stored separately from the employee's personnel file.

4. Failure to submit timely, complete, and sufficient supporting documentation may result in delay or denial of Family and Medical Leave.

5. Clarification & Authentication of Medical Certification. An agency may designate one or more officials to contact the certifying healthcare provider, when needed, to clarify or authenticate a Family and Medical Leave medical certification. The employee's direct supervisor is not permitted to contact the certifying healthcare provider.

6. An agency that reasonably doubts the validity of a medical certification may require the employee to obtain a second opinion at the expense of the agency. The healthcare provider will be designated, but not employed, by the agency.

7. When a second opinion differs from the initial medical certification, the agency may require the employee to obtain a third opinion at the expense of the agency. The healthcare provider must be jointly approved by the agency and employee. The opinion of the third healthcare provider will be considered final and binding.

8. An agency may require a second or third opinion for Military Caregiver Family and Medical Leave only when the original certification was completed by a healthcare provider not affiliated with the Department of Defense, Department of Veterans Affairs, or TRICARE.

(c) Recertification.

1. An agency may require reasonable recertification of a medical condition in connection with an employee absence. Typically, such recertification may be required no more often than every 30 calendar days or after the minimum duration of the condition identified on the previous certification expires, whichever occurs later. An agency may require an earlier recertification for the following reasons:

   (i) The employee requests an extension of leave;

   (ii) The circumstances (e.g., duration or frequency of absences) described within the previous certification change significantly; or,

   (iii) The employer receives information that casts doubt on the continuing validity of the previous certification.

2. In any case, even for lifetime conditions, an agency may require recertification every six 6 months.

(d) Employer Notice Requirements. Agencies are responsible for meeting all employer notice requirements for Family and Medical Leave. Requirements include: a posted notice in the workplace, a general notice to employees, an Eligibility, Rights, & Responsibilities notice to each employee who requests Family and Medical Leave or whose leave may qualify for FMLA protection, and a Designation notice for each employee whose absence is being considered for FMLA protection.

1. Posted & General Notices:

   (i) Posted Notice. Each agency will post and keep posted in conspicuous places where notices to employees and applicants are typically posted, notice explaining the provisions of the Family and Medical Leave Act and how to file a complaint.

   (ii) General Notice. In addition to the posted notice, each agency must include the information from the FMLA poster in its handbook or other written material on leave and benefits, or distribute such information to new employees upon hire.

   (iii) Both the posted and general notices may be posted or distributed electronically to meet these requirements.

2. Eligibility, Rights, and Responsibilities Notice: Once an employee requests Family and Medical Leave, or once the agency becomes aware that an employee's leave may qualify for Family and Medical Leave, the agency must notify the employee, within five (5) workdays (unless extenuating

circumstances, such as an emergency office closure, delay notice) of the following.

(i) Whether the employee meets the employment eligibility criteria for Family and Medical Leave;

(ii) Whether the employee has any remaining Family and Medical Leave available; and,

(iii) The employee's rights and responsibilities for taking Family and Medical Leave.

(iv) If the employee did not submit supporting documentation with a request for Family and Medical Leave, the agency should include in this notice any requirement to provide such documentation and give a deadline for submission that is at least 15 calendar days after the notice is provided to the employee.

3. Designation Notice: Once an agency has sufficient information to determine whether the leave qualifies for Family and Medical Leave Protection (e.g., after receiving supporting documentation), the agency must notify the employee within five (5) workdays (unless extenuating circumstances, such as an emergency office closure, delay notice) whether the leave will be designated as Family and Medical Leave and count against the employee's entitlement.

4. The Designation Notice can be combined with the Eligibility, Rights, & Responsibilities Notice if the agency has sufficient information to designate the leave as Family and Medical Leave at the time it becomes aware of the employee's need for leave.

5. A Family and Medical Leave denial must include at least one reason for denial.

(8) **Charging FMLA**.

(a) Each agency is responsible for charging time off that qualifies for Family and Medical Leave protection against an employee's entitlement.

(b) Only the amount of leave actually taken may be counted toward the employee's FMLA entitlement.

1. When calculating the amount of intermittent or partial workweek absences for Family and Medical Leave, an agency must use the shortest increment

used to account for other types of leave. (Refer to Rule 478-1-.16(1)(a) [Absence from Work] for applicable provisions.);

2. Employees will not be required to remain on leave longer than necessary, unless an exception for flight crews or employees of primary or secondary schools is authorized by Family and Medical Leave regulations.

(c) Holidays:

1. If a holiday falls within a full week of Family and Medical Leave, then it counts toward the Family and Medical Leave entitlement as if it were a workday.

2. If a holiday falls within a week during which an employee used Family and Medical Leave for only part of the week, then the holiday does not count toward the Family and Medical Leave entitlement.

(d) Retroactive Designation:

1. An agency may retroactively designate time off as Family and Medical Leave with appropriate notice to the employee, provided the failure to timely designate the leave does not harm the employee.

2. In all cases where leave would qualify for Family and Medical Leave protection, the agency and employee can mutually agree to designate the leave retroactively as Family and Medical Leave.

3. Retroactive designation of Family and Medical Leave should be applied consistently across an agency's workforce.

(9) **Use of Paid Leave during FMLA Leave.**

(a) The Family and Medical Leave Act provides job-protected leave for specified family and medical reasons, but does not provide pay.

(b) An eligible employee is entitled to use available paid leave, State compensatory time, or FLSA compensatory time to continue to receive compensation from the agency during Family and Medical Leave. Use of paid leave must comply with Rule 478-1-.16 (Absence from Work). Any period of Family and Medical Leave not covered by available paid leave or compensatory time will be without pay.

(c) An agency may, by written policy, require an employee to use any available paid leave and/or compensatory time during Family and Medical Leave. Such policy must apply uniformly to all Family and Medical Leave, and the use of available

paid leave must comply with Rule 478-1-.16 (Absence from Work). The following two exceptions apply:

1. If an absence qualifies for Workers' Compensation wage loss benefits, the employee may choose to receive such benefits rather than use paid leave or compensatory time during Family and Medical Leave.

2. An employee will not be required to use paid leave and compensatory time while receiving short-term or long-term disability insurance payments.

(d) Any paid leave or compensatory time used by the employee will run concurrently with Family and Medical Leave.

(e) An employee on paid Family and Medical Leave is eligible to accrue paid leave in accordance with Rule 478-1-.16 (Absence from Work).

(10) **Return to Work/Fitness-for-Duty**.

(a) Typically, at the expiration of Family and Medical Leave, an employee is entitled to reinstatement to the same or equivalent position held prior to the leave, provided the employee is able to perform the essential functions, with or without reasonable accommodation, and has complied with the terms of the Family and Medical Leave;

1. An equivalent position has substantially similar duties and responsibilities and equivalent pay, benefits, terms, and conditions of employment.

2. If an employee cannot perform the essential job functions, the agency is responsible for meeting any obligations it may have for accommodation under the Americans with Disabilities Act, as amended.

(b) Family and Medical Leave does not provide any greater right to reinstatement than if the employee had remained at work, rather than take the leave. For example, an employee whose position is eliminated through staff reduction is not entitled to return to work at the expiration of the Family and Medical Leave.

(c) An employee who fraudulently obtains Family and Medical Leave is not entitled to reinstatement.

(d) A "key employee" may be denied reinstatement if the agency determines that reinstatement would cause substantial and grievous economic injury to its operations and the employee was given the proper notice and failed to return to work by the timeframe identified in such notice.

(e) Fitness-for-Duty Certification:

1. An agency may require as a condition for reinstatement that employees returning to work from a continuous period of Family and Medical Leave for their own serious health condition submit a fitness-for-duty certification from the same attending healthcare provider that certified the Family and Medical Leave. The medical documentation must certify that the employee is able to resume work and perform the essential functions of the job, with or without reasonable accommodation.

2. An agency may require fitness-for-duty certification as a condition of reinstatement following use of intermittent or reduced schedule Family and Medical Leave for an employee's own serious health condition only if the agency has a reasonable belief that reinstatement could pose significant risk of harm to the individual employee or others. Such certification may not be required more often than every 30 calendar days.

3. The need for fitness-for-duty certification must be established at the time an agency designates Family and Medical Leave.

4. An agency may delay and/or deny reinstatement to an employee who does not provide required fitness-for-duty certification.

5. Any fitness-for-duty certification requirement must be applied uniformly to all similarly situated employees (e.g., all in the same job, all with the same serious health condition).

(11) **Record Maintenance.**

(a) Any documentation that includes personal health information must be maintained confidentially.

(b) Agencies are to retain records related to Family and Medical Leave for three years, in accordance with statewide retention schedules.

Cite as Ga. Comp. R. & Regs. R. 478-1-.23
Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4 (duties and functions of the State Personnel Board and Department of Services related to the Rules of the State Personnel Board).

Federal References. 29 USC 2601, *et seq.* - Family and Medical Leave Act; 29 CFR Part 825, US DOL Family and Medical Leave Regulations; 29 CFR Part 1630, EEOC Americans with Disabilities Act Regulations; 29 CFR Part 1635, EEOC Genetic Information Nondiscrimination Act Regulations.

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Amended: F. Apr. 9, 1993; eff. Mar. 8, 1993, as specified by the Board.
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Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Repealed: Rule Reserved. F. Dec. 31, 1998; eff. Dec. 4, 1998, as specified by the Board.
Amended: New Rule entitled "Employees Suggestion Program" adopted. F. Jan. 28, 2002; eff. Nov. 16, 2001, as specified by the Board.
Repealed: New Rule entitled "Family and Medical Leave" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
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Amended: F. Oct. 9, 2015; eff. Sept. 15, 2015, as specified by the Board.

Rule 478-1-.24. Working Test and Permanent Status for Classified Employees.

(1) **General Provisions.**

(a) Working test is a probationary period of employment for a classified employee during which the employee must demonstrate to the satisfaction of the Appointing Authority the knowledge, ability, aptitude, and other necessary qualities to perform satisfactorily the duties of the position in which employed.

(b) Once the employee successfully completes a working test period in a job, the employee gains permanent status in that job. Permanent status grants the employee additional notice and appeal rights that are not required during working test.

(c) While on working test, the employee can be returned without appeal rights to the last lower job in which the employee has permanent status if such action is determined appropriate by the Appointing Authority. If the permanent status job is not used by the Appointing Authority, the employee can be placed in an equivalent lower classified job, for which the employee is qualified.

(2) **Applicability.**

(a) This Rule applies only to employees in the classified service as defined in Rule 478-1-.02 (Terms and Definitions).

(b) Working test applies when an employee is promoted into a higher classified position or when a working test period is part of an agreement to dispose of an adverse action appeal.

(c) Promotions:

1. Following promotion into a classified position, the employee will serve a working test period. The working test shall be an essential part of the promotion process during which the employee must demonstrate the capability to perform satisfactorily.

2. The DOAS Commissioner may fix the length of the working test period for any job at not less than six (6) nor more than eighteen (18) months. The

working test period will be the first six (6) months in a position unless the DOAS Commissioner designates a different length. The length of the working test period shall apply to all positions in the job affected, but if the period is increased in duration, employees employed under the shorter period will acquire permanent status as if the length had not been increased, unless otherwise specified by the DOAS Commissioner.

(d) Adverse Action Appeal Agreements:

As part of an agreement to dispose of an adverse action appeal, a classified employee may be placed on working test. The length of the working test period and the consequences of failure to satisfactorily complete such working test shall be clearly indicated in the terms of the agreement.

(3) **Extending Working Test.** The working test period shall be extended day for day by any time spent on leave with pay under the State Personnel Board Rule provisions for Special Injury Leave (Rules 478-1-.16(8)(c) and 478-1-.16(8)(d)) or in non-pay status. Exception: Time spent in non-pay status for ordered uniformed service (as defined in the Uniformed Services Employment and Reemployment Rights Act) shall not extend the working test period.

(4) **Midpoint Review.**

(a) The Appointing Authority, or designee, shall conduct a midpoint performance review for each employee serving a working test period.

(b) The midpoint review shall be presented to the employee within ten (10) calendar days of the date the employee completes one-half of the working test period or as near to that date as is practicable.

(c) The midpoint review shall include an evaluation of the employee's progress and recommendations, if any, for corrective action.

(5) **Granting Permanent Status.** It shall be the responsibility of the Appointing Authority to determine whether a working test employee is to be granted permanent status. Permanent status is effective on the calendar date following completion of the working test period. An employee who is not transferred, demoted, or separated prior to eligibility for permanent status shall acquire permanent status. Exception: Permanent status shall not be granted to a classified employee prior to the acquisition and submission to the Appointing Authority of any required license or certificate.

(6) **Failure to Attain Permanent Status.**

(a) If it is determined, prior to the completion of the working test, that the employee is not to be granted permanent status, the Appointing Authority may:

1. Demote the employee to a classified position equivalent to the last permanent status position held;

2. Transfer the employee to a classified position for which the employee is qualified as provided in Rule 478-1-.15 (Changes to Employment Status);

3. Separate the employee as provided in Rule 478-1-.26 (Adverse Actions for Classified Employees); or,

4. Pursue a voluntary agreement with the employee on movement to a suitable vacancy for which the employee is qualified.

(b) If an employee is transferred or demoted to a classified position, the employee will be considered to have permanent status in the new job on the effective date of the action.

(c) An employee shall be notified in writing of failure to attain permanent status but the action may not be appealed unless otherwise provided in these Rules. (See Rules 478-1-.26 [Adverse Actions for Classified Employees] and 478-1-.27 [Appeals and Hearings for Classified Employees].)

Cite as Ga. Comp. R. & Regs. R. 478-1-.24
Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4, 45-20-6.
History. Original Rule entitled "Random Drug Screening of Employees" adopted. F. Dec. 11, 1990; eff. Oct. 15, 1990, as specified by the Board.
Amended: F. June 28, 1993; eff. June 9, 1993, as specified by the Board.
Amended: F. Apr. 11, 1995; eff. Apr. 5, 1995, as specified by the Board.
Amended: F. Oct. 30, 1995; eff. Oct. 16, 1995, as specified by the Board.
Amended: F. Aug. 18, 1997; eff. Jun. 30, 1997, as specified by the Board.
Amended: May 18, 1998; eff. April 2, 1998, as specified by the Board.
Repealed: Rule Reserved. F. July 22, 1998; eff. July 7, 1998, as specified by the Board.
Repealed: New Rule entitled "Rules for Classified Employees" adopted. F. Dec. 23, 2008; eff. Dec. 17, 2008.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.
Amended: F. Dec. 30, 2013; eff. Sept. 25, 2013, as specified by the Board.
Repealed: New Rule entitled "Working Test and Permanent Status for Classified Employees" adopted. F. Jul. 8, 2014; eff. Jun. 20, 2014, as specified by the Board.

Rule 478-1-.25. Repealed.

Cite as Ga. Comp. R. & Regs. R. 478-1-.25
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4.
History. Original Rule entitled "Employee Drug/Alcohol Screening" adopted. F. Dec. 11, 1990; eff. Oct. 15, 1990, as specified by the Board.
Repealed: Rule reserved. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Adopted: New Rule entitled "Reduction in Force for Classified Employees." F. Jul. 8, 2014; eff. Jun. 20, 2014, as specified by the Board.

Repealed: F. Aug. 22, 2018; eff. Aug. 8, 2018, as specified by the Board.

Rule 478-1-.26. Adverse Actions for Classified Employees.

(1) **Introduction.** Adverse action is defined as a disciplinary action taken by an Appointing Authority which results in the suspension without pay, demotion, reduction in salary, or dismissal of a classified employee. It does not include action resulting from Reduction in Force, insufficient funds, decrease in funds, or change in departmental needs. Except as set forth in provision (11) of this Rule, an employee against whom an adverse action is proposed shall be provided;

(a) At least fifteen (15) calendar days advance written notice of the proposed action stating the specific charges or reasons for which the action is to be taken;

(b) A reasonable time in which to refute such charges; and

(c) Written determination of the final action.

(2) **Applicability.** This Rule applies only to employees in the classified service as defined in Rule 478-1 .02 (Terms and Definitions).

(3) **Reasons for Adverse Actions.** An Appointing Authority may take adverse action against an employee because of:

(a) negligence or inefficiency in performing assigned duties;

(b) inability or unfitness to perform assigned duties;

(c) insubordination;

(d) misconduct;

(e) conduct reflecting discredit on the department;

(f) commission of a felony or other crime involving moral turpitude;

(g) chronic tardiness or absenteeism; or

(h) failure to report for or remain at work without justifiable cause.

(4) **Types of Adverse Action.**

(a) Suspension Without Pay: The Appointing Authority may suspend an employee without pay for disciplinary reasons specified in provision (3) of this Rule or for pending criminal court action when such pending criminal court action may deter the employee's effectiveness in employment.

1. A suspension without pay for disciplinary purposes should be proportional to the offense and shall not exceed thirty (30) calendar days for any one offense, or for multiple offenses arising out of the same incident.

2. A suspension for pending criminal court action shall not exceed the period of time necessary for the disposition of the action.

3. At the end of a period of suspension without pay for pending criminal action the employee shall be returned to duty or terminated in accordance with other sections of these rules. If the disposition of the criminal action does not include any penalty to the employee, the employee shall be reinstated in accordance with the provisions of Rule 478-1-.27(18)(d)3 (Appeals and Hearings for Classified Employees).

4. Prior to suspending a Fair Labor Standards Act (FLSA) exempt employee without pay, the agency should determine whether such action would result in the loss of the FLSA exemption.

(b) Disciplinary Salary Reduction: The Appointing Authority may reduce an employee's salary for disciplinary reasons specified in provision (3) of this Rule.

1. The reduced salary must remain within the pay range for the employee's job.

2. Prior to reducing an FLSA exempt employee's salary for disciplinary reasons, the agency should determine whether such action would result in the loss of the FLSA exemption.

(c) Demotion:

1. The Appointing Authority may demote an employee to a job in the classified service on a lower pay grade for which the employee is qualified for any of the reasons specified in provision (3) of this Rule. A demotion for failure to attain permanent status is not an adverse action. (See Rule 478-1-.24 [Working Test and Permanent Status for Classified Employees].)

2. The employee retains classified status in the lower job upon demotion as a result of adverse action.

(d) Dismissal: The Appointing Authority may dismiss an employee for any of the reasons specified in provision (3) of this Rule.

(5) **Notice of Proposed Adverse Action.** The Appointing Authority must give a classified employee written notice of any proposed adverse action at least fifteen (15) calendar days prior to the effective date of the adverse action except for an emergency situation as set

forth in provision (11) of this Rule. The notice of proposed adverse action must include the following:

(a) The effective date of the adverse action which must be at least fifteen (15) calendar days after the date on which the notice of the proposed action is presented to or received by the employee, or properly delivered to the employee's last known address;

(b) The specific charges or reasons for the adverse action;

(c) A statement advising that the employee has a right to respond to the charges or reasons in writing, or in person before a named agency official at an agreed upon time during regular business hours, or both, within the response period specified in provision (6) of this Rule;

(d) A statement advising the employee that a failure to respond to the charges during the response period will result in the action being effective on the date specified without further notice; and

(e) A warning that failure to respond by the date set forth in the notice will result in a waiver of all further appeal rights including any appeal to the State Personnel Board under Rule 478-1-.27 (Appeals and Hearings for Classified Employees).

(6) **Employee Response Procedure.** The employee response procedure is created to protect the employee from erroneous or arbitrary adverse action. It is also created to afford the agency an opportunity to re-evaluate its position on proposed adverse actions or forfeiture of position and to affirm or correct if necessary. The procedure does not require a full evidentiary hearing prior to the action. It requires only that the employee be given an opportunity to respond to the charges before a responsible official of the department. The procedure must meet the following minimum requirements:

(a) The person to whom the response is to be made must be someone who has authority to countermand or delay the proposed action;

(b) The employee must respond within ten (10) calendar days from the date the notice of proposed action is received. If there is no response by the employee by the date required in the notice of proposed action, the employee waives all further appeal rights. There can be no further appeal, including any appeal to the State Personnel Board;

(c) The response may be made in writing, or in person, or both;

(d) The employee may submit affidavits to support the response; and

(e) The official who reviews the response may conduct further investigation as to the charges.

(f) The role of the official who reviews the response is to determine whether the facts support the charge and whether the level of adverse action is appropriate based on a review of adverse actions imposed against employees in the past under similar circumstances.

(7) **Determination of Final Action.** The official to whom the response is made shall issue a notice of determination of final action not later than three (3) calendar days after the date of response except as set forth in provision (8) of this Rule. The notice shall include:

(a) A statement upholding the proposed action, reducing the proposed action, or rescinding the proposed action;

(b) The specific charges for which the final action is taken;

(c) The effective date of the final action, which may not be any earlier than the effective date in the notice of proposed action;

(d) A statement advising that the employee may appeal this determination to the State Personnel Board pursuant to Rule 478-1-. 27 (Appeals and Hearings for Classified Employees) by filing an appeal in writing with the Office of State Administrative Hearings within ten (10) calendar days from the date the employee receives written notice of the final action or decision; or the effective date of the action or decision, whichever is later; and

(e) A statement reminding the employee that the ten (10) calendar day appeal period includes Saturdays, Sundays, and Holidays.

(8) **Extension for Response Official.** If the official to whom the response is made determines that more than three (3) calendar days are needed to consider the employee's response to the proposed action, said official may extend the period of consideration for a reasonable number of days by notifying the employee as to the length of the extension. The extension notice shall also state that the effective date of the proposed action shall be delayed by at least the same number of days as the length of the period of extension for consideration.

(9) **Change in the Charges or the Adverse Action.** If the official to whom the response is made determines that charges in addition to, or substantially different from, those enumerated in the Notice of Proposed Adverse Action should be made, or that the adverse action should be more severe than the action specified in the Notice of Proposed Adverse Action, said official shall revoke the proposed adverse action by written notification to the employee. The Appointing Authority may then propose a new action against the employee in accordance with provision (5) of this Rule.

(10) **Employment Status During Notice Period.**

(a) During a notice period of adverse action an employee is expected to perform assigned duties without disrupting fellow employees or the agency's activities. Any action by the employee to the contrary will be considered an emergency situation as defined in provision (11) of this Rule.

(b) The Appointing Authority may by written notice to the employee suspend an employee with pay during the period of notice of proposed adverse action if such suspension is in the best interest of the agency.

(11) **Emergency Situations Resulting in Immediate Adverse Action.**

(a) The Appointing Authority may take immediate adverse action against an employee if any of the following circumstances exist:

1. It is likely that the employee has committed a felony or other crime involving moral turpitude;

2. The retention of the employee in active duty status may result in damage to property or may be disruptive, detrimental or injurious to the employee, fellow workers, persons under the employee's charge or the general public; or,

3. Immediate dismissal is required by law.

(b) The notice of adverse action under this section is the final determination of adverse action and must include the same items required in provision (7) of this Rule. It must also include a statement explaining the emergency situation that caused this section to be invoked.

(c) If on appeal to the State Personnel Board it is determined that the adverse action was correct but there was no emergency situation, the Board may take appropriate steps necessary to remedy the situation. In the case of a dismissal, such action may include back pay for the normal notice period.

(d) Immediate adverse action may be invoked only with the approval of the Appointing Authority.

(e) The emergency provisions of this Rule must not be used to circumvent the notice requirement of this Rule. If an agency is found to have abused these provisions, the Board may suspend the agency's authority to utilize the emergency provisions of this Rule.

Cite as Ga. Comp. R. & Regs. R. 478-1-.26
Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, and 45-20-4,(45-20-8 and 45-20-9.
History. Original Rule entitled "Drug Free Public Work Force" adopted. F. Dec. 11, 1990; eff. Oct. 15, 1990, as specified by the Board.
Amended: F. Aug 18, 1997; eff. June 30, 1997, as specified by the Board.

Amended: F. July 31, 2000; eff. July 14, 2000; as specified by the Board.
Repealed: Rule reserved. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Adopted: New Rule entitled "Adverse Actions for Classified Employees." F. Jul. 8, 2014; eff. Jun. 20, 2014, as specified by the Board.

Rule 478-1-.27. Appeals and Hearings for Classified Employees.

(1) **Introduction.** Classified employees may appeal certain employment actions and conditions to the State Personnel Board as outlined in this Rule. In addition to establishing the provisions for appeal, this Rule also sets uniform procedures for hearings conducted by the State Personnel Board (Board) or an Administrative Law Judge of the Office of State Administrative Hearings.

(2) **Applicability.** This Rule applies only to employees in the classified service as defined in Rule 478-1-.02 (Terms and Definitions).

(3) **Filing an Appeal.**

(a) All appeals to the State Personnel Board shall be filed in writing with the Office of State Administrative Hearings in accordance with procedures established by the Board. Unless a different time period is specifically provided, appeals must be filed and/or postmarked within ten (10) calendar days after:

1. The employee receives written notice of the action or decision, or

2. The effective date of the action or decision, whichever is later.

(b) Any filing shall be considered timely if postmarked within the time allowed for an appeal but shall not be considered filed until actually received by the Office of State Administrative Hearings.

(4) **General Provisions.**

(a) Upon receipt of an appeal the Office of State Administrative Hearings shall assign the appeal to an Administrative Law Judge, unless otherwise directed by the Board.

(b) The Board may, in its discretion, authorize Administrative Law Judges from the Office of State Administrative Hearings to hold a hearing and otherwise assist in the resolution of appeals. Such Administrative Law Judges shall compile evidence, prepare findings of fact, conclusions of law, issue initial decisions and certify records to the Board for its determination and make investigations of matters under the Board's jurisdiction where the Board deems a review appropriate.

(c) Appeal hearings shall be before an Administrative Law Judge unless otherwise specified by the Board.

(d) Upon the motion of either party or upon its own motion, the Board or the Administrative Law Judge may dismiss any appeal if the appeal is clearly moot, is without merit, was not properly filed with the Office of State Administrative Hearings, or is not within the scope of the Board's authority.

(e) Waiver of Appeal Rights:

1. An employee who fails to timely respond to a notice of proposed adverse action or a notice of proposed forfeiture of employment shall be deemed to have waived any right of appeal to the Board.

2. An employee who fails to file an appeal in a timely manner shall be deemed to have waived any right of appeal to the Board.

(f) Timely appeals of actions as identified in this Rule, shall be entitled to a hearing which shall be conducted by an Administrative Law Judge unless the Board, in its discretion, elects to grant a hearing before the Board; provided, with the consent of all parties and approval by the Administrative Law Judge or Board, however, a hearing may be waived and the appeal considered on the written record.

(g) Review of Initial Decisions:

1. Initial decisions of the Administrative Law Judge shall become the decision of the Board; provided, however, a party adversely affected by a decision regarding dismissal, demotion, suspension without pay, or salary reduction may file an application for review by the Board. Application for review by the Board must be in writing and filed with the Executive Secretary within thirty (30) calendar days of the date the initial decision was issued. Both parties shall have the right to present oral arguments to the Board.

2. The Board on its own motion may issue an order for review within thirty (30) calendar days of the date of the initial decision.

(h) Decisions of the Board are final and shall not be reconsidered except for specific correction of a manifest error or to comply with an order of a court of competent jurisdiction.

(i) No person shall attempt by improper means to influence the proceeding or decisions in an appeal hearing authorized by these rules and regulations.

(j) Oral arguments or the filing of written memoranda may be required of both parties at the discretion of the Board or an Administrative Law Judge.

(5) **Appeals Alleging Unlawful Discrimination.**

(a) Notwithstanding any other provision of these Rules to the contrary, no employee governed by these Rules may file an appeal or otherwise seek a hearing before the State Personnel Board on any charge of unlawful employment discrimination if remedy is available through the Georgia Commission on Equal Opportunity under Georgia law. Such prohibition does not prohibit state agencies from processing internal grievances or otherwise investigating such charges of unlawful discrimination, nor does such prohibition apply to appeals from adverse actions as defined in Rule 478-1-.26 (Adverse Actions for Classified Employees).

(b) Notwithstanding any other provision of these Rules to the contrary, if an employee charges in an adverse action appeal that the adverse action was based on an unlawfully discriminatory purpose as defined under these Rules, then the employee shall be advised of the right, if available, to file a charge with the Georgia Commission on Equal Opportunity. The employee shall further be advised by the State Personnel Board, an Administrative Law Judge, or other agent that the employee has the option of either proceeding with a State Personnel Board appeal or with a charge before the Georgia Commission on Equal Opportunity.

1. If the e mployee elects to proceed with a charge before the Georgia Commission on Equal Opportunity, then the proceeding before the State Personnel Board shall be stayed until the completion of the action before the Georgia Commission on Equal Opportunity or a special master. Following the completion of the action before the Georgia Commission on Equal Opportunity or a special master, if the employee wishes to proceed with the appeal to the State Personnel Board, then the employee must file a request to lift the stay with the Office of State Administrative Hearings. This request shall be filed in writing within ten (10) calendar days following the date of issuance of the Georgia Commission on Equal Opportunity's final decision. This request shall be considered timely if postmarked within the time allowed under this Rule but shall not be considered filed until actually received by the Office of State Administrative Hearings.

2. A final decision on the merits of the charge by a special master shall preclude the Board or an Administrative Law Judge from reconsidering the same factual issues between the parties but shall not preclude the Board from acting on any other issues that have not been resolved by the special master's decision nor preclude the Board from applying the rules and the law to the facts as determined in the special master's decision.

(6) **Appeals Alleging Fraud, Waste, or Abuse.** Notwithstanding any other provision of these Rules to the contrary, no employee may file or continue an appeal if the employee is alleging reprisal for having made a complaint or disclosing information relating to fraud, waste, or abuse in state programs or operations, and the employee has instituted, or

institutes, proceedings in superior court. The employee shall be notified by the Executive Secretary that any such appeal shall be stayed until the resolution of the court proceedings. The employee has ten (10) calendar days from the resolution of the court proceedings to request the stay be lifted and proceed with the appeal. A final resolution of the court proceedings shall not preclude the Board from acting on any issues that have not been resolved by the court proceedings nor preclude the Board from applying the rules and the law to the facts as determined in the court proceedings.

(7) **Protection from Reprisal.** No action against any employee shall be taken or threatened by an Appointing Authority as a reprisal for filing an appeal or disclosing information during the course of an appeal, unless the appeal was filed or the information was disclosed with the knowledge that it was false or with willful disregard for its truth or falsity.

(8) **Reasons for which Appeals may be Filed.**

(a) Unlawful Discrimination Against an Employee: Unless prohibited by provision (5) of this Rule, an employee who has been unlawfully discriminated against in employment because of race, color, religion, national origin, sex, disability, age, genetic information, political affiliation, protected uniformed service, or other legally protected category, may appeal to the Board as set forth in provision (3) of this Rule; provided, however, that if administrative remedy for the alleged discrimination is available through the departmental complaint resolution procedure as outlined in Rule 478-1-.20 (Employee Complaint Resolution Procedure), the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

(b) Dismissal:

1. A classified employee who is dismissed from a job in which the employee has permanent status may appeal the dismissal to the Board as set forth in provision (3) of this Rule.

2. A classified employee who is dismissed while serving a working test period following a promotion in the same department may appeal the dismissal to the Board as set forth in provision (3) of this Rule. If the appeal is upheld by the Board, relief shall be limited to reinstatement to a position in the job in which the employee last held permanent status, or to a position to which the employee could have been transferred from the position in which the employee last held permanent status.

(c) Suspension: A classified employee who is suspended without pay may appeal the suspension to the Board as set forth in provision (3) of this Rule.

(d) Demotion:

1. A classified employee who has attained permanent status in the current job who is demoted may appeal the demotion to the Board as set forth in provision (3) of this Rule.

2. A classified employee serving a working test period following a promotion who is demoted to a job lower than the job in which the employee last held permanent status may appeal the demotion to the Board as set forth in provision (3) of this Rule. If the appeal is upheld by the Board, relief shall be limited to reinstatement to a position in the job in which the employee last held permanent status, or to a position to which the employee could have been transferred from the position in which the employee last held permanent status.

(e) Disciplinary Salary Reduction: A classified employee who is subjected to a disciplinary salary reduction may appeal the reduction to the Board as set forth in provision (3) of this Rule.

(f) Relocation: Unless prohibited by provision (5) of this Rule, a classified employee who is subjected to involuntary relocation, the costs of which qualify for reimbursement under Office of Planning and Budget regulations, may appeal the relocation to the Board as set forth in provision (3) of this Rule; provided, however, that if administrative remedy for the relocation is available through the departmental complaint resolution procedure as outlined in Rule 478-1-.20 (Employee Complaint Resolution Procedure), the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

(g) Reduction in Force: A classified employee who has been laid-off, furloughed, or reduced in salary as a result of a Reduction in Force may appeal to the Board as set forth in provision (3) of this Rule if the Reduction in Force, as implemented by the Appointing Authority, is not in accordance with the plan of reduction as approved by the Department of Administrative Services. Such right of appeal shall not be construed to limit the ability of an Appointing Authority to adjust the number of employees to be retained.

(h) Unjust Coercion or Reprisal: Unless prohibited by provision (5) of this Rule, a classified employee who is subjected to unjust coercion or reprisal because of participation in an appeal or grievance proceeding authorized by these rules and regulations may appeal for relief to the Board as set forth in provision (3) of this Rule; provided, however, that if administrative remedy for the coercion or reprisal is available through the departmental complaint resolution procedure as outlined in Rule 478-1-.20 (Employee Complaint Resolution Procedure), the employee shall first seek such remedy and may appeal to the Board only at the conclusion of the procedure.

(i) Other Alleged Violations of the Rules of the Board: Unless prohibited by provision (5) of this Rule, a classified employee who feels that there has been a violation of the Rules or the law which adversely affects the employee's rights may appeal for relief under this provision if the appeal right is not covered elsewhere in these Rules. The appeal must be filed and/or postmarked within ten (10) calendar days after the occurrence of the alleged violation.

(j) Forfeiture of Employment: Unless prohibited by provision (5) of this Rule, a classified employee who has forfeited employment as provided in Rule 478-1-. 28(6) (Voluntary Separations for Classified Employees) may appeal as set forth in provision (3) of this Rule.

(k) Other Voluntary Separations: Unless prohibited by provision (5) of this Rule, a classified employee who has been separated under the provisions of Rule 478-1-.28 (Voluntary Separations for Classified Employees), may appeal as set forth in provision (3) of this Rule. The appeal must include any evidence that would support the employee's belief that the separation was improper. A finding that the separation was improper shall permit, but not require, the Administrative Law Judge to reverse the separation.

(9) **Notice of the Hearing.**

(a) Within seven (7) days from the filing of an appeal in accordance with this Rule, the Administrative Law Judge or the Board shall designate an appropriate time and place to conduct the hearing and shall so notify all parties in writing; provided, however, any hearing on a dismissal must be held in the county in which the employee was employed unless all parties agree to another location.

(b) Such notification shall be mailed or served at least ten (10) calendar days in advance of the date set for the hearing.

(c) Where practical, the hearing will be held within thirty (30) calendar days after receipt of the appeal by the Administrative Law Judge. Any Administrative Law Judge or the Board shall have the authority to postpone or to continue a hearing upon its own motion or upon the motion of either party.

(10) **Representation.** Both parties have the opportunity to represent themselves or to be represented by legal counsel. All arrangements for providing legal counsel shall be the responsibility of the party desiring such representation.

(11) **Pre-Hearing Conference.** The Administrative Law Judge or the Board may arrange a pre-hearing conference for the purpose of reviewing the matter being appealed and establishing stipulations to expedite the hearing.

(12) **Witnesses.** Either party may request the attendance of employees or other persons as witnesses when their testimony will aid in establishing the facts in the case. Employees

appearing as witnesses shall be released from duty without loss of pay or time and without effect on their service rating. No person shall directly or indirectly use, or threaten to use, any official authority or other influence which would tend to discourage any other person from testifying.

(13) **Issuance of Subpoenas.**

(a) The appellant or the agency may request the Board or the Administrative Law Judge to issue subpoenas for witnesses for hearings. The cost of securing the attendance of witnesses, including fees and mileage, shall be computed and assessed in the same manner as prescribed by law in civil cases in the superior court.

(b) Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party may apply to the superior court of the county where the hearing is being held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court.

(c) Once issued, a subpoena may be quashed or limited by the Board or the Administrative Law Judge upon the motion of the Board, the Administrative Law Judge, or any party, or at the request of any witness if it appears that the subpoena was used primarily as a means of harassment, that the testimony or documents sought are cumulative, that the testimony or documents sought are not relevant or material, that to respond to the subpoena would be unduly burdensome, or that for other good reasons basic fairness dictates that the subpoena not be enforced.

(14) **Record of a Hearing Before an Administrative Law Judge.**

(a) A recording shall be made of all hearings; however, such recording will not be transcribed unless the initial decision is appealed to the Board; or a transcript is requested by the Administrative Law Judge or either party to the hearing. If the transcription is made pursuant to a request by either party to the hearing, the cost thereof, as determined by the Office of State Administrative Hearings, will be borne by the party making such request.

(b) In addition to the recording of the hearing, or a transcription thereof, all documents entered into the record during the hearing shall be made part of the official record of the hearing.

(15) **Record of Oral Argument Before the Board.** The Board may, but is not required to, make a recording of any oral argument before the Board on an appeal from an initial decision.

(16) **DOAS Commissioner's Opportunity to be Heard**. At the DOAS Commissioner's discretion or at the invitation of the Administrative Law Judge or the Board, the DOAS

Commissioner shall be entitled to be heard and to submit evidence in any appeal in which the interpretation of a State Personnel Board Rule, regulation, policy, or practice is at issue.

(17) **Hearing Process.**

(a) Role of the Board or Administrative Law Judge: The State Personnel Board, any member of the Board, or any duly assigned Administrative Law Judge shall have the authority to do the following in connection with any hearing:

1. To administer oaths and affirmations;

2. Sign and issue subpoenas;

3. Rule upon offers of proof;

4. Regulate the course of the hearing;

5. Set the time and place for continued hearings and pre-hearing conference;

6. Fix the time for filing briefs;

7. Dispose of motions to dismiss for lack of the Board's jurisdiction over the subject matter or parties or for any other grounds;

8. Dispose of motions to amend or to intervene;

9. Provide for the taking of testimony by deposition or interrogatory;

10. Reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the Board or the administrative law judge; and

11. To make informal disposition of any case by stipulation, agreed settlement, consent order, or default, unless such disposition is precluded by law.

(b) Attendance at the Hearing: Any hearing at which the Board or an Administrative Law Judge receives evidence or hears arguments on appeals of disciplinary actions, dismissals, or other purported violations of the rules shall be open to the public. Witnesses may, however, be sequestered at the discretion of the Board or the Administrative Law Judge.

(c) Evidence: With respect to all hearings before the Board or an Administrative Law Judge,

1. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied to the trial of civil nonjury cases in the

superior courts of Georgia shall be followed. Evidence not admissible there under may be admitted if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The Board shall give effect to the rule of privilege recognized by law.

2. Objections to evidentiary offers may be made and shall be noted in the record.

3. When a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form including, but not limited to, the use of depositions or interrogatories.

4. Documentary evidence may be received in the form of copies of excerpts if the original is not readily available. Upon request, and at the discretion of the Administrative Law Judge or Board, parties shall be given an opportunity to compare the copy with the original.

(d) Conduct of Hearings: In the hearing of an appeal, the proceeding shall be informal but orderly. The following procedures shall prevail:

1. The presiding officer shall open the hearing by explaining the procedure to be followed in the hearing. At the discretion of the Board or Administrative Law Judge, any or all witnesses may be sequestered;

2. The presiding officer shall read or cause to be read the charges and specifications as filed. The presiding officer shall then read or cause to be read the letter of appeal. By agreement these documents may be inserted in the record without reading;

3. The facts not in dispute may be stipulated;

4. Each party shall be given an opportunity to make a brief opening statement identifying the issues and indicating what is to be proven;

5. All witnesses shall testify under oath or affirmation;

6. Each party may conduct such cross examination as shall be required for a full and true disclosure of the facts. In addition, the Administrative Law Judge may examine the witnesses;

7. Official notice may be taken of judicially recognizable facts. In addition, official notice may be taken of technical facts within the specialized knowledge of the Board or the Administrative Law Judge. Parties shall be notified either before or during the hearing, by reference in preliminary

reports or otherwise, of the material officially noted, including any staff memoranda or data, and they shall be afforded an opportunity to contest the materials so noticed;

8. The Board's or Administrative Law Judge's experience, technical competence, and specialized knowledge may be utilized in the evaluation of evidence;

9. Before closing the hearing, the presiding officer may allow both parties the opportunity to make brief oral or written closing statements;

10. With respect to hearings at which the Board did not preside at the reception of the evidence, the Administrative Law Judge who presided shall issue an initial decision within thirty (30) calendar days from the close of the evidence or, if necessary, a longer period of time as ordered by the Board or Administrative Law Judge. The initial decision may modify the action of the Appointing Authority but may not increase the severity of such action on the employee. The initial decision shall be transmitted to the Board with copies mailed to the parties or their representatives;

11. A party adversely affected by a decision of an Administrative Law Judge regarding dismissal, demotion, suspension without pay, or salary reduction may, within thirty (30) calendar days from the date the initial decision was issued, apply to the Board for review of the decision. Any application shall be considered timely if postmarked or received within the time allowed. In the absence of an application for review, or an order by the Board within such time for review on its own motion, the initial decision shall, without further proceedings or notice, become the final decision of the Board and any right of additional appeals shall be extinguished.

(e) Board Review of Administrative Law Judge's Initial Decision:

1. Upon receipt of an application for Board review, or on the Board's own motion, the entire record shall be transmitted to the Board for review and final decision.

2. Both parties in an appeal to the Board shall have the right to present oral arguments to the Board. This shall not preclude the Board from requesting argument, either oral or written, upon request of any member of the Board.

3. On review of the entire record, the Board shall have all the powers it would have had in presiding at the reception of the evidence, including the review of any motions granted or denied by the Administrative Law Judge and

including the review of any action taken by the Administrative Law Judge. In its discretion, the Board may take additional testimony or evidence or remand the matter to the Office of State Administrative Hearings for such purpose.

4. Any hearing to receive additional evidence or hear oral argument shall be open to the public. Deliberations by the Board, which may include a review of the record, may be held in closed session.

(18) **Decision of the Board.**

(a) Upon receipt of an application for review of an Administrative Law Judge's initial decision regarding a dismissal, demotion, suspension without pay, or salary reduction, the Board shall normally render its decision at the first regular monthly meeting after the entire record is made available to it. When an appeal is heard by the Board, it may render its decision immediately thereafter, or at the regular meeting held in the month following the month in which the appeal was heard, or at the first regular meeting after the complete certified record including transcript is made available to it, unless otherwise extended.

(b) As a part of the initial decision or final decision of the Board or order subsequent to any hearing, the Administrative Law Judge or the Board shall include findings of fact and conclusions of law, separately stated, and the effective date of the decision or order.

1. The initial decision of the Administrative Law Judge shall include the reasons for the decision.

2. The Board, when requested to review the record of an appeal, shall make its own findings of fact and conclusions of law which may be by adopting the findings, conclusions, and decision of the Administrative Law Judge.

3. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

4. Copies of the decision or order shall be mailed to all parties of record by the Executive Secretary.

(c) The decision of the Board as to whether an adverse action was in accordance with the Rules shall be binding upon both parties. The Board's decision may modify the action of the Appointing Authority but may not increase the severity of such action on the employee. Such Appointing Authority shall promptly comply with such order as may be issued as a result of the appeal.

(d) If the decision of the Board is in favor of the appellant on appeals of dismissal, demotion, suspension without pay, or disciplinary salary reduction, the employee shall be reinstated in accordance with the decision of the Board to the position from which the employee was removed except as set forth in provisions (8)(b)2 and (8)(d)2 of this Rule.

1. The effective date for the reinstatement shall be the date immediately following the effective date of the appealed action as though there had been no break in service, unless otherwise specified in the order.

2. The employee shall be entitled to the same salary in the position or salary which would have automatically been received had the employee remained in actual service.

3. The employee shall receive payment as though there had been no break in service, minus any amount earned by or paid to the employee from other employment and wage substitutes (including but not limited to unemployment compensation) during the period off the job and minus any amount paid for annual leave. The employee's sick and annual leave shall be restored in the same amount as existed at the time of the appealed action, plus sick and annual leave that would have been earned for the period as though the employee had actually been in service. However, any period of postponement or continuance of the hearing for the convenience of the appellant will be excluded from any payments of benefits due, and this period of time will be considered as though the appellant had been on leave without pay.

4. Prior to any payment, the employee shall be required to certify under oath the amount of income from other employment and wage substitutes during the period off the job.

(e) In any case in which an appeal is disposed of by stipulation, agreed settlement, or consent order, any compensation and leave due the employee shall be calculated in accordance with provision (18)(d), above.

(19) **Judicial Review.** A decision of the Board, or an Administrative Law Judge's Final Decision not subject to review by the Board, shall not limit the rights of either party to judicial review, and such decision shall be stayed by the filing of a petition for review. Any party, including the State or any state board, bureau, commission, or department, who has exhausted all administrative remedies available before the Board and who is aggrieved by a final decision or order of the Board on any hearing may seek judicial review of the final decision or order of the Board in the superior court of the county of the place of employment of the employee.

Cite as Ga. Comp. R. & Regs. R. 478-1-.27
Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4, 45-20-8, 45-20-9.

History. Original Rule entitled "Drug and Alcohol Testing of Safety Sensitive Employees" adopted. F. Apr. 11, 1995; eff. Apr. 5, 1995, as specified by the Board.
Amended: F. Oct. 30, 1995; eff. Oct. 16, 1995, as specified by the Board.
Amended: F. Aug. 18, 1997; eff. Jun. 30, 1997, as specified by the Board.
Repealed: Rule Reserved. F. July 22, 1998; eff. July 7, 1998, as specified by the Board.
Adopted: NewRule entitled "Appeals and Hearings for Classified Employees." F. Jul. 8, 2014; eff. Jun. 20, 2014, as specified by the Board.

Rule 478-1-.28. Voluntary Separations for Classified Employees.

(1) **Introduction.** Actions in this Rule are deemed to be voluntary separations. When taking such action, the Appointing Authority will give written notice of the action to the employee, including a statement that the employee may appeal the separation within the time period specified in Rule 478-1-.27(3) (Appeals and Hearings for Classified Employees).

(2) **Applicability.** This Rule applies only to employees in the classified service as defined in Rule 478-1-.02 (Terms and Definitions).

(3) **Presumptive Resignation.** When an employee is absent from duty for five (5) consecutive workdays, or the equivalent of a scheduled workweek, without proper authorization, the Appointing Authority has the discretion to consider the employee to have voluntarily resigned from employment.

(4) **Failure to Return from Leave of Absence.** When an employee fails to return to duty at the expiration of a leave of absence and has not received approval for an extension, the Appointing Authority has the discretion to consider this action a voluntary resignation from employment. Prior to separating an employee for failure to return from approved leave, the Appointing Authority must ensure the agency has met any obligation it may have related to reasonable accommodation, Family and Medical Leave, and military leave protection, as applicable.

(5) **Suitable Vacancy Not Available.** If a suitable vacancy is not available at the expiration of a Contingent Leave of Absence, the Appointing Authority shall release the employee from employment.

(6) **Forfeiture of Position.**

(a) An employee will be deemed to have voluntarily forfeited employment when the employee is terminated for any of the following reasons:

1. Failure to secure or maintain a license, certificate, or registration required by law or appropriate regulatory authority for the performance of the employee's duties;

2. Engaging in conflicting employment in violation of Rule 478-1-.07 (Outside Employment);

3. Engaging in political activity in violation of 478-1-.08 (Political Activity);

4. Making a false statement of material fact on an application for examination or employment.

(b) Forfeiture Process:

1. To process a forfeiture of employment, the Appointing Authority shall comply with the notice and employment response provisions for adverse actions. (See Rule 478-1-.26 [Adverse Actions for Classified Employees].)

   (i) During the notice period of proposed forfeiture, an employee is expected to perform assigned duties without disrupting fellow employees or the agency's activities.

   (ii) The Appointing Authority may by written notice to the employee suspend an employee with pay during the period of notice of proposed forfeiture if such suspension is determined to be in the best interest of the agency.

2. The Appointing Authority may process an immediate forfeiture of employment if retention of an employee to perform normal duties would violate any state or federal law or regulation which has the force and effect of law. Immediate forfeiture may also be processed if the employee disrupts fellow employees or the agency's activities during the notice period of proposed forfeiture. The notice of forfeiture of employment under this paragraph is the final action and must include the same items required when taking emergency adverse action. (See Rule 478-1-.26 [Adverse Actions for Classified Employees], provision (11).) It must also include a statement explaining why this paragraph was applicable.

Cite as Ga. Comp. R. & Regs. R. 478-1-.28
Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4, 45-20-6, 45-20-8.
History. Original Rule entitled "Preemployment Drug Testing" adopted. F. July 11, 1995; eff. June 30, 1995, as specified by the Board.
Amended: F. Oct. 30, 1995; eff. Oct. 16, 1995, as specified by the board.
Amended: F. May 18, 1998; eff. April 2, 1998, as specified by the Board.
Repealed: Rule Reserved. F. July 22, 1998; eff. July 7, 1998, as specified by the Board.
Adopted: New Rule entitled "Voluntary Separations for Classified Employees." F. Jul. 8, 2014; eff. Jun. 20, 2014, as specified by the Board.

Rule 478-1-.29. Reserved.

Cite as Ga. Comp. R. & Regs. R. 478-1-.29
Authority: O.C.G.A. Secs. 45-20-3, 45-20-3.1, 45-20-4.

History. Original Rule entitled "Dispute Resolution Service" adopted. F. Dec. 7, 1995; eff. Nov. 30, 1995, as specified by the Board.
Repealed: Rule reserved. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.

Rule 478-1-.30. Employee Assistance Program.

State agencies may use an Employee Assistance Program (EAP) to assist their staff with addressing concerns that can negatively affect the workplace. An EAP can be used as both a management tool and employee benefit to build and maintain a quality workforce. Participation in an EAP neither protects an employee from warranted disciplinary action, nor jeopardizes an employee's job or career advancement.

(1) **Definition.** For the purposes of this Rule,"Employee Assistance Program" or "EAP" is a confidential service established to assist state employees in coping with and overcoming problems that may affect work behavior and/or performance. EAP confidentiality standards ensure no one except the EAP and the person seeking assistance from the EAP knows about the issue unless it meets one of the criteria that requires disclosure. The EAP reports aggregate utilization to state employers, but not the identity of participants, unless an exception requiring disclosure applies. (See Sections (5) and (6)(d) of this Rule.)

(2) **Agency Participation and Compliance.**

(a) Each agency chooses whether or not to use an EAP. Agencies who choose to use an EAP have the discretion to participate in a program offered by the Commissioner or may contract separately for EAP services.

(b) Each agency using an EAP may develop internal program policies and/or procedures, provided they are consistent with this Rule.

(3) **Funding.** EAP services are funded from the individual agency's existing budget.

(4) **Confidentiality.**

(a) EAP participation is confidential with limited exceptions as provided in Sections (5) and (6)(d) of this Rule.

(b) Because certain EAP participation may involve information protected by law from public disclosure, agencies offering an EAP must take active steps to ensure that all EAP records in their possession remain confidential. Such actions may include:

1. Maintaining any records referencing employee participation in the EAP separate from the official personnel file in a secure location with controlled access; and

2. Limiting access to such information only to those with a "need to know."

(5) **Exception to Confidentiality.** EAP records (maintained by either the EAP or the employer) disclosing an employee's identity and, as applicable, particular information about the EAP participation, are released only when:

(a) The employee provides written consent;

(b) Disclosure is required by law, such as in the case of child abuse, elder abuse, or abuse to a disabled individual;

(c) In response to a court order;

(d) The EAP provider believes disclosure is necessary to lessen a serious or imminent threat of physical harm to a person or the public; or

(e) As the Commissioner's designee, an Appointing Authority is satisfied that disclosure of EAP records maintained by the agency is needed to assist law enforcement or medical personnel responding to a life-threatening or medical emergency.

(6) **Employee Participation.**

(a) EAP participation is typically voluntary, but may be mandatory in accordance with agency policy.

(b) At any time, an employee may voluntarily seek assistance from an EAP.

(c) Management may offer a non-mandatory referral when it recognizes that the EAP may benefit an employee with unsatisfactory performance or other work-related problems, or when an employee discloses a personal issue that may be negatively affecting work. In these circumstances, the employee's EAP participation is voluntary, and the employee may accept or decline participation without penalty. Such management referral is not intended as a disciplinary measure, nor does it replace the agency's policies and procedures for dealing with work deficiencies.

(d) The Appointing Authority, or designee, may require EAP participation in accordance with agency policy. Mandatory referrals must be job-related and consistent with business necessity.

(7) **Leave and Work Time.**

(a) EAP participation is typically not considered work time. The Appointing Authority may, however, have a policy that authorizes work time for certain EAP participation. Agencies that engage in mandatory referrals must grant work time for EAP participation when required by the Fair Labor Standards Act.

(b) When an employee must use leave for EAP activities, management should make a reasonable effort to approve the requested time off. If the requested leave qualifies

for Family and Medical Leave, the agency is responsible for making such designation. See State Personnel Board Rule 478-1-.23 Family and Medical Leave.

(8) **Data Reporting.**

(a) Agencies must ensure that EAP vendors provide aggregate utilization reports as part of the contractual agreements. Such reports do not identify individual EAP participants.

(b) Agencies are to provide their aggregate EAP data, including aggregate data on mandatory referrals, to the Department of Administrative Services, as directed by the Commissioner.

Cite as Ga. Comp. R. & Regs. R. 478-1-.30
Authority: O.C.G.A Secs. 45-20-3, 45-20-3.1, 45-20-4. 45-20-70, 45-20-71.
History. Original Rule entitled "Leave Donation" adopted. F. Feb. 21, 1996; eff. Feb. 7, 1996, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Amended: F. May 18, 1998; eff. April 2, 1998, as specified by the Board.
Amended: F. July 31, 2000; eff. July 14, 2000, as specified by the Board.
Repealed: Rule reserved. F. Dec. 23, 2008; eff. Dec. 17, 2008, as specified by the Board.
Adopted: New rule entitled "Employee Assistance Program." F. Feb. 10, 2014; eff. Jan. 6, 2014, as specified by the Board.

Rule 478-1-.31. Families First Coronavirus Response Leave.

(1) **Introduction**:

This temporary State Personnel Board Rule shall be read in conjunction with the provisions of State Personnel Board Rule 478-1-.23, Family and Medical Leave, (Rule 23) and State Personnel Board Rule 478-1-.16, Absence from Work, (Rule 16) and shall provide for compliance with the federal Families First Coronavirus Response Act (FFCRA) enacted on March 18, 2020.

(a) The Emergency Family Medical Leave Expansion Act of the FFCRA provides a job-protected leave entitlement for eligible employees who are incapable of teleworking due to a need for leave to care for the employee's son or daughter under 18 years of age if the school or place of care has been closed, or the childcare provider of the son or daughter is unavailable due to a public health emergency. State agencies shall administer the Emergency Family and Medical Leave in accordance with the FFCRA and any related regulations.

(b) The Emergency Paid Sick Leave Act of the FFCRA provides an administrative leave benefit which provides for 80 hours of paid leave for six qualifying reasons (see Section (5)(b)). State agencies shall administer the Emergency Paid Sick Leave Act in accordance with the FFCRA and any related regulations.

(c) Each state employer should establish procedures for employees to request and receive approval for absences from work that meet the eligibility requirements for Emergency Family and Medical Leave or Emergency Paid Sick Leave. An employee is expected to return to work and/or telework as scheduled at the expiration of the approved absence. If an extension is necessary, the employee must follow the agency's established procedures for requesting an extension prior to the leave expiration or adhere to other agency procedures for requesting an extension of leave.

(d) Prior to engaging in other employment, including self-employment, while on leave employees must comply with the notice and other requirements set forth in State Personnel Board Rule 478-1-.07, Outside Employment.

(e) State employers shall not discriminate or retaliate against an individual for exercising any right to Emergency Family and Medical Leave or Emergency Paid Sick Leave.

(f) To the extent that the U.S. Department of Labor or any other federal administration authority issues regulations that conflict with this Rule, the federally issued regulations shall control.

(2) **Applicability**:

The policies and procedures described in this Rule apply to all agencies of the Executive Branch, excluding the Board of Regents of the University System of Georgia.

(3) **Definitions**:

For the purposes of this Rule, the following terms and definitions apply in addition to those in 478-1-.02, Terms and Definitions:

(a) "Administrative leave" means paid time off for specified reasons defined in state or federal law. This paid time off is not charged to accrued leave and the duration is defined in the applicable statute.

(b) "Childcare provider" means a provider who receives compensation for providing childcare services on a regular basis.

(c) "Public health emergency" means an emergency with respect to COVID-19 as declared by the Governor of Georgia, the federal government, or a local authority.

(d) "Rolling 12-month Period" or "Rolling Year" is the 12-month period measured backward from the date an employee uses any Family and Medical Leave. Under the "rolling year," each time an employee takes Family and Medical Leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been using during the immediately preceding 12 months.

(e) "School" means an elementary school, including nonprofit institutional day or residential schools and public elementary charter schools that provide elementary education, as determined under state law. School also means secondary school, including nonprofit institutional day or residential schools and public secondary charter schools that provide secondary education, as determined under state law.

(f) "Workday" means a day an employee is regularly scheduled to work.

(4) **Emergency Expansion of Family and Medical Leave**:

(a) Employee Eligibility:

1. For purposes of determining an employee's eligibility for Emergency Family and Medical Leave, the state is considered one employer.

2. To be eligible an employee must have been employed for at least thirty (30) calendar days.

3. Time worked for the State of Georgia in any employment capacity will count toward meeting the eligibility criteria in Section (4)(a)2 above. Such employment includes full-time, part-time, temporary, and seasonal employment, whether paid on a salaried or hourly basis. Time worked for a state employer as a worker assigned from a temporary staffing agency shall also be counted if the same worker is subsequently hired by the state employer.

(b) Qualifying Need Related to a Public Health Emergency:

The only qualifying need under which an eligible employee may request Emergency Family and Medical Leave is when the employee is unable to work or telework due to a need for leave to care for the employee's son or daughter under 18 years of age if the school or place of care has been closed, or the childcare provider of the son or daughter is unavailable to due to a public health emergency.

(c) Leave Entitlement:

1. An eligible employee is entitled to take up to 12 workweeks of Family and Medical Leave during a rolling 12-month period, measured backward from the date an employee uses any Family and Medical Leave, for any qualifying reason provided in State Personnel Board Rule 23, Family and

Medical Leave, or for the qualifying need related to a public health emergency as described in Section (4)(b) above.

2. Intermittent Leave:

   (i) Eligible employees may take Emergency Family and Medical Leave on an intermittent or reduced schedule basis, upon approval by the state employer, provided intermittent leave is granted in a consistent manner to all staff.

   (ii) Any employee requesting to take Emergency Family and Medical Leave on an intermittent basis must have the schedule of the leave approved by the state employer and must receive prior approval for any adjustments to the schedule.

(d) Paid Leave Provisions:

State employers shall provide compensation for each workday of Emergency Family and Medical Leave an employee takes after the first ten (10) workdays of such leave as follows:

1. For full-time, salaried employees, the amount of compensation provided for Emergency Family and Medical Leave shall be no less than two-thirds (2/3) of the employee's regular rate of pay provided such pay shall never exceed $200.00 per day or $10,000.00 in the aggregate.

2. For part-time and/or hourly employees, the amount of compensation provided for Emergency Family and Medical Leave shall be based upon the number of hours the employee would otherwise normally be scheduled to work at no less than two-thirds (2/3) the regular rate of pay per hour. Such pay shall never exceed $200.00 per day or $10,000.00 in the aggregate.

   If the employee's hours normally vary from week to week, to the extent that the state employer is unable to determine the number of hours the employee would have worked with certainty, then the state employer shall calculate the number of hours as follows:

   (i) The average number of hours the employee was scheduled to work each day over the 6-month period ending on the date on which the employee is to begin the Emergency Family and Medical Leave.

   (ii) If the employee did not work over a 6-month period, then the number of hours shall be based on the reasonable expectation of the

employee at the time of hire of the average number of hours per day the employee would normally be scheduled to work.

3. An employee may elect to use accrued annual leave, personal leave, holiday deferral leave, compensatory time, or emergency paid sick leave (see Section (5) below) during the first ten (10) workdays of Emergency Family Medical Leave.

(e) Employee Notice Requirements:

1. Where the need for Emergency Family and Medical Leave is foreseeable, the employee is expected to provide the state employer the maximum notice practicable. Where the need arises unexpectedly, the state employer may require the employee to follow customary call-in procedures.

2. A state employer may require that an employee's notice of leave include the anticipated start date and the anticipated duration but must consider the employee's potential inability to know when a school or childcare provider may reopen or become available again.

(f) Reinstatement Requirements:

At the expiration of Emergency Family Medical Leave, an employee is entitled to reinstatement to the same or an equivalent position held prior to the leave.

1. An equivalent position is one which has substantially similar duties and responsibilities and equivalent benefits, pay, and other terms and conditions of employment.

2. There is no greater right to reinstatement than if the employee had remained at work, rather than take the leave. For example, if the position or equivalent position held by the employee when the leave began does not exist due to economic conditions or other changes in the operation of the agency that affect employment and were caused by the public health emergency during the period of leave, then the employee is not entitled to reinstatement. See Section (4)(f)3 below regarding the FFCRA requirement to contact the employee regarding future equivalent opportunities.

3. Period of Required Contact:

   If the position or an equivalent position does not exist when the leave expires, the state employers with fewer than twenty-five (25) employees must make reasonable efforts to contact the employee if such an equivalent

position becomes available for a period of one (1) year. The one (1) year must begin on the date the qualifying need related to the public health emergency ends or the date that is 12 weeks after the date on which the employee's leave commences, whichever is earlier.

(5) **Emergency Paid Sick Leave**:

(a) Employee Eligibility:

1. All employees are eligible, regardless of tenure, to receive administrative Emergency Paid Sick Leave if the employee is unable to work or telework due to an approved use for leave listed below in Section (5)(b).

2. No employee shall be required to use other accrued leave or compensatory time prior to Emergency Paid Sick Leave.

3. No employee shall be required to identify a replacement for his or her absence while taking Emergency Paid Sick Leave.

(b) Approved Uses of Emergency Paid Sick Leave:

1. The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19.

2. The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19.

3. The employee is experiencing symptoms of COVID-19 and is seeking medical diagnosis.

4. The employee is caring for an individual who is subject to a federal, state, or local quarantine or isolation order or has been advised by a healthcare provider to self-quarantine.

5. The employee is caring for a son or daughter of such employee if the school or place of care of the son or daughter has been closed or the childcare provider of such son or daughter is unavailable due to COVID-19 precautions.

6. The employee is experiencing any other substantially similar condition specified by the Secretary of Health and Human Services in consultation with the Secretary of the Treasury and the Secretary of Labor.

(c) Amount of Leave:

1. Full-time employees are entitled to 80 hours of leave.

2. Part-time employees are entitled to the number of hours such employee works, on average, over a two-week period.

3. The amount of leave for employees on irregular schedules shall be based on the average number of hours over a two-week period the employee worked the six (6) months prior to taking Emergency Paid Sick Leave. Employees who have been employed for less than six (6) months prior to taking Emergency Paid Sick Leave shall receive the average number of hours the employee reasonably expected to work over a two-week period upon hire.

4. Emergency Paid Sick Leave shall not carry over to the following year.

(d) Amount of Compensation Due:

1. For approved uses of Emergency Paid Sick Leave under Sections (5)(b) 1 - 3 above, the employee's leave is calculated at the regular rate of pay capped at $511.00 per day and $5,110.00 in the aggregate.

2. For approved uses of Emergency Paid Sick Leave under Sections (5)(b) 4 - 6 above, the employee's leave is calculated at two-thirds (2/3) the regular rate of pay capped at $200.00 per day and $2,000.00 in the aggregate.

(e) Employee Notice Requirements:

1. Where the need for Emergency Paid Sick Leave is foreseeable, the employee is expected to provide the state employer the maximum notice practicable. Where the need arises unexpectedly, the state employer may require the employee to follow customary call-in procedures.

2. A state employer may require that an employee's notice of leave include the anticipated start date and the anticipated duration, but must take into account the employee's potential inability to know when a school or childcare provider may reopen or become available again, or when a quarantine or isolation order or recommendation may end.

(f) Interaction with Emergency Expansion of Family and Medical Leave:

1. At the request of an employee, Emergency Paid Sick Leave shall be approved to be used during the first ten (10) unpaid workdays of Emergency Family and Medical Leave.

2. Employees may request to use accrued annual leave, personal leave, holiday deferral leave, or compensatory time, rather than Emergency Paid Sick Leave, to compensate the first ten (10) unpaid workdays of Emergency Family and Medical Leave.

(6) **Employer Notice Requirement**:

Each state employer shall post and keep posted, in conspicuous locations on agency premises where notices to employees are customarily placed, the FFCRA notice prepared by and approved by the US Secretary of Labor. State employers may satisfy this requirement by emailing or direct mailing the model notice to employees or posting the model notice on an employee information internal or external website until such time the state employer can post the notice on agency premises.

(7) **Effective Date and Sunset Provision**:

This Board Rule shall become effective on April 1, 2020, upon the Governor's signature, and shall expire on December 31, 2020.

Cite as Ga. Comp. R. & Regs. R. 478-1-.31
Authority: O.C.G.A. §§ 45-20-3, 45-20-3.1, 45-20-4; § 45-20-16. Federal Law References: Pub. L. No. 116-127 - Families First Coronavirus Response Act, 29 U.S.C. § 2601, et. seq. - Family and Medical Leave Act, 29 C.F.R. Part 825 - US DOL Family and Medical Leave Regulations.
History. Original Rule entitled "Temporary Special Rule for Implementation of the Classification and Compensation Plans Based on the Job Analyses, Compensation Factors, Labor Market Studies, and Other Analyses Conducted as a part of the GeorgiaGain Project" adopted. F. Dec. 31, 1996; eff. Oct. 1, 1996, as specified by the Board.
Amended: F. Oct. 8, 1997; eff. Sept. 25, 1997, as specified by the Board.
Repealed: Rule Reserved. F. July 31, 2000; eff. July 14, 2000, as specified by the Board.
Adopted: New Rule entitled "Families First Coronavirus Response Leave." F. Aug. 25, 2020; eff. July 28, 2020, as specified by the Board.

Chapter 478-2. FLEXIBLE BENEFITS PROGRAM.

Rule 478-2-.01. Definitions.

(1) "Act" means the legislative act that authorized the establishment of a flexible employee benefit plan and is designated in the Official Code of Georgia Annotated as Article 3 of Chapter 18 of Title 45. (07-30-86/08-08-86)

(2) "Active" means that the employee is receiving wages or salary through a department, school system, local employer, employer, agency, authority, board, commission, county department of family and children services, county department of health, or community service board and for whom the employee's cost of the coverage is stated as a payroll deduction or reduction. (03-27-97/04-09-97)

(3) "Administrator" means the State Personnel Administrationor the Commissioner of Personnel Administration.

(4) "After-Tax Premium" or "After-Tax Contribution" means the contract rate approved by the Council for a specific benefit or health care spending account contribution transmitted directly to the Flexible Benefits Program by the employee or extended beneficiary or the contract rate for after-tax options that have been approved by the Council to be offered through payroll deductions. (06-28-90/07-01-90)

(5) "After-Tax Option" means any benefit option that is approved by the Council to be offered to employees through payroll deductions and for which the cost of the option is not a reduction of gross salary for the purposes of federal or state income taxes or FICA taxes. (06-28-90/07-01-90)

(6) "Approved Leave of Absence Without Pay" means a period of time approved by the appropriate organizational official during which the employee is absent from work and is not paid wages or salary. (03-27-97/04-09-97)

(7) "At Work" means that the employee is at the employee's customary place of employment, on paid leave for conditions other than illness or injury, or performing his normal duties at a place other than the place of employment or in a non-scheduled work period, must be able to perform normal duties on that day and cannot be hospitalized or otherwise institutionalized. (03-27-97/04-09-97)

(8) "Annuitant" means a retired employee or surviving spouse or dependent child who receives a monthly retirement benefit from the Employees Retirement System, Legislative Retirement System, Superior Court Judges Retirement System, District Attorney's Retirement System, Teachers Retirement system, or Public School Employees Retirement System. (03-27-97/04-09-97)

(9) "Beneficiary" means the person, individual, trust, or estate named by the employee to receive the value of the insurance proceeds at the employee's death. (07-30-86/08-08-86)

(10) "Benefit" or "benefits" means any of the types of offerings under the Flexible Benefits Program. (07-30-86/08-08-86)

(11) "Benefit Salary" means the amount of compensation used to calculate certain salary based coverages. This compensation is intended to be normal, regular, non-temporary, and shall include base salary and any special salary supplements that are intended to be regular and not of short duration. This salary amount shall not exceed the amount on which retirement contributions are calculated. (03-27-97/04-09-97)

(12) "Cafeteria Plan" means a plan which meets the requirements of the Regulations of the Internal Revenue Service under Internal Revenue Code (IRC) 125. (03-27-97/04-09-97)

(13) "Commissioner" means the Commissioner of Personnel Administration as created by the Official Code of Georgia Annotated 45-20-4. (07-30-86/08-08-86)

(14) "Community Service Board" means a public community mental health, mental retardation, and substance abuse board established pursuant to the Official Code of Georgia Annotated 37-2-6. (03-27-97/04-09-97)

(15) "Contractor" means a company or corporation approved to provide one or more benefit types under the Flexible Benefits Program. (07-30-86/08-08-86)

(16) "Contribution" means the amount to be reduced by a salary agreement transferred to the Administrator for the employee's health and/or dependent care spending accounts. (03-27-97/04-09-97)

(17) "Council" and "Employee Benefit Plan Council" are synonymous and mean the governing body as created in O.C.G.A. 45-18-51. (07-30-86/08-08-86)

(18) "Department," "Employing Entity," and "agency" are synonymous and mean any of the separate and distinct employing entities defined as a State Employer, an Educational Institution, or a Community Service Board that employs an employee as defined in these regulations. (03-27-97/04-09-97)

(19) "Dependent" means any eligible spouse, dependent child, fulltime student under age 26, or disabled child and as more specifically defined by the insurance option contracts and policies. (03-27-97/04-09-97)

(20) "Educational Institution" means any separate and distinct local school system, regional educational services agency, and county or regional library whose heads are legally authorized to appoint employees to positions and whose heads have elected to participate in the Flexible Benefits Program administered by the State Personnel Administration (O.C.G.A. 45-18-52) (12-18-90/01-10-91)

(21) "Employee" means a person eligible to participate in the Flexible Benefits Program. (07-30-86/08-08-86)

(22) "Employer" means the State of Georgia and the department, agency, or entity from which the employee receives his compensation. (03-27-97/04-09-97)

(23) "Extended beneficiary" means the individual who was covered as an active or retired employee or employee on approved leave of absence without pay; or a person who was covered as a spouse or eligible dependent of an active or retired employee or employee on approved leave of absence without pay on the day the dental option or health care spending account option was lost as a result of a qualifying event under the requirements of federal law and regulation known as the Consolidated Omnibus Budget Reconciliation Act (COBRA), as amended; and further defined and expanded under the Health Insurance Portability and Accountability Act (HIPAA) of 1996 to include a child who is born to the covered person, adopted or placed for adoption by a qualified beneficiary while on COBRA continuance. The applicable regulations for the health option are outlined in the Regulations of the State Personnel Board for the Health Benefit Plan. (03-27-97/04-09-97)

(24) "Extended coverage" means coverage required to be made available by federal law or regulation to an extended beneficiary under the dental option or the health care spending account option of the Flexible Benefit Plan upon the occurrence of a qualifying event. The applicable regulations for the health option are outlined in the Regulations of the State Personnel Board for the Health Benefit Plan. (12-20-88/01-19-89)

(25) "Flexible Benefits Program" or "Flexible Benefit Plan" or "Plan" or "Program" means the combination of approved benefits authorized for establishment by O.C.G.A. 45-18-52 and offered to all eligible employees. Benefit options may be those authorized in the Flexible Benefit Plan Document or authorized by the Council as an After-Tax Option and incorporated in these Regulations. (03-27-97/ 04-09-97)

(26) "Flexible Benefit Plan Document" means the legal document required by the Regulations of the Internal Revenue Service for a cafeteria plan under IRC 125. Statutory benefit options as allowed by IRC 125 and authorized by the Council shall be incorporated in the Flexible Benefit Plan Document. (06-28-90/07-01-90)

(27) "Fund" means any moneys received and accounted for on behalf of the Flexible Benefits Program. (12-20-88/01-19-89)

(28) "Health benefit option" means any self-insured or health maintenance organization (HMO) option offered under the State Health Benefit Plan and which is included in the Flexible Benefits Program. (03-27-97/04-09-97)

(29) "Insurance option" or "insurance" means the life, dependent life, accidental death and dismemberment, disability, dental, legal, and long-term care options and any other option for which a contract for underwriting the risk has been or is to be approved by the Council. (03-27-97/04-09-97)

(30) "Option" means any specific benefit offering under the Flexible Benefits Program. (12-20-88/01-19-89)

(31) "Plan Year" means the twelve-month period beginning on July 1, and ending on the following June 30. (06-28-90/07-01-90)

(32) "Premium" means the cost to the employee for each insurance option offered under the Flexible Benefits Program. (03-27-97/ 04-09-97)

(33) "Qualifying event" means an event as defined by federal law or regulation that authorizes eligibility for extended coverage under a health benefit plan. Qualifying events include a change in employment or family status such as: termination of employment (except for gross misconduct), employee layoff, reduction of employee's hours below the minimum number required for coverage eligibility as an active employee, end of twelve (12) month leave without pay period, covered employee's death, divorce or legal separation from the covered employee, or any reason for which a dependent child would otherwise become ineligible for coverage under the applicable option. (03-27-97/04-09-97)

(34) "Retired Employee" means a former state employee, former teacher, or former public school employee who met the eligibility criteria when active, and who receives a monthly benefit from the Employees Retirement System, Legislative Retirement System, Teachers Retirement System, Public School Employees Retirement System, Superior Court Judges Retirement System, or District Attorney's Retirement System. (03-27-97/04-09-97)

(35) "Retiring Employee" means a covered employee who is eligible to receive an immediate retirement benefit payment from the Employees Retirement System, Legislative Retirement System, Teachers Retirement System, Public School Employees Retirement System, Superior Court Judges Retirement System, or District Attorney's Retirement System. (03-27-97/04-09-97)

(36) "Salary deduction" means an agreement between the employee and the employer, on behalf of the Council, to deduct amount from the employee's wages for the purpose of purchasing or contributing to the purchase of benefits as allowed under federal and state laws. (12-20-88/01-19-89)

(37) "Salary reduction" means an agreement between the employee and the employer, on behalf of the Council, to reduce the employee's wages for the purpose of purchasing benefits as allowed under federal and state laws. (12-20-88/01-19-89)

(38) "Spending account option" means the reimbursement accounts for eligible health or dependent care expenses as defined by the Plan. (12-20-88/01-19-89)

(39) "Spouse" means an individual who is not legally separated, who is of the opposite sex to the member and who is legally married or who has submitted satisfactory evidence to the Administrator prior to January 1, 1997 of common law marriage to the employee or retired employee. (03-27-97/04-09-97)

(40) "State Employer" means all separate and distinct divisions and subdivisions of state governments, including authorities, county departments of family and children services, or county departments of health, whose heads are legally authorized to appoint employees to positions. (O.C.G.A. 45-18-50) (03-27-97/04-09-97)

(41) "State Personnel Board" or "Board" means the State Personnel Board established by Article IV, Section III, Paragraph I of the Constitution of the State of Georgia. (12-20-88/01-19-89) Authority O.C.G.A. 45-18-51(g).

(42) "Surviving Spouse" means the living spouse of a deceased active or retired employee who was covered under the dental option offered under the Flexible Benefits Program. (03-27-97/04-09-97)

Cite as Ga. Comp. R. & Regs. R. 478-2-.01
Authority: O.C.G.A. Secs. 45-18-51, 45-18-3.1.
History. Original Rule entitled "Definitions" adopted. F. Sept. 25, 1986; eff. Aug. 8, 1986, as specified by the Board.

Amended: F. May 17, 1989; eff. January 19, 1989, as specified by the Board.
Amended: F. Jan. 29, 1991; eff. July 1, 1990, as specified by the Board.
Amended: F. Feb. 14, 1991; eff. Jan. 10, 1991, as specified by the Board.
Repealed: New Rule of same title adopted. F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.

Rule 478-2-.02. Organization.

(1) Establishment of the Council. The Governor shall appoint an Employee Benefit Plan Council consisting of the following members: (07-30-86/08-08-86)

(a) The five members of the State Personnel Board who shall serve for terms of office which correspond with their terms of office on the State Personnel Board; (07-30-86/08-08-86)

(b) Two department heads who have employees eligible to participate in the employee benefit plans, which department heads shall serve for terms of office of four years provided, however, that the initial term of one of such appointees shall be two years; and provided, further, that the office of such a member shall be vacant if he ceases to be a department head; (07-30-86/08-08-86)

(c) Two State employees who are eligible to participate in the employee benefit plans, which State employees shall serve for terms of office of four years, provided, however, that the initial term of one of such appointees shall be two years; and provided, further, that the office of such a member shall become vacant if he ceases to be a State employee; and (07-30-86/08-08-86)

(d) One member from a corporation domiciled in the State of Georgia that insures or administers employee benefit plans, which member shall serve for a term of office of four years. (07-30-86/08-08-86)

(2) Filling of a Vacancy. Successors to the members of Council shall have the same qualifications and shall be appointed by the Governor for terms of office of four years and until their successors are appointed and qualified. A vacancy on the Council shall be filled by the Governor, who shall appoint a successor who possesses the same qualification as his predecessor and who will serve for the unexpired term. (07-30-86/08-08-86)

(3) Organization of the Council. The chair of the Council shall be appointed by the Governor and shall be synonymous with the chair of the State Personnel Board. (07-30-86/08-08-86)

(a) Election of the chair shall be in accordance with State Personnel Board Rules and Regulations. (07-30-86/08-08-86)

(b) The vice-chair shall be elected from among the members who do not serve as a member of the State Personnel Board. The Council shall elect a vice-chair at a meeting in December of each year for a term of one year. A vice-chair shall be eligible for election to a successive term. If the office of the vice-chair is vacated for any reason before the expiration of his term, the Council shall elect a successor at its next meeting. (07-30-86/08-08-86)

(4) Meetings. Meetings of the Council shall be scheduled at the discretion of the Council chair. Where feasible, the meetings will be scheduled in conjunction with the meetings of the State Personnel Board as provided in Georgia Law, Chapter 20, Title 45. All meetings of the Council shall be open to the public. (07-30-86/08-08-86)

(5) Quorum.Six members shall constitute a quorum. When fewer than ten members have been appointed to the Council, a quorum shall consist of the majority of the members currently serving on the Council. A majority of affirmative votes of the members in attendance is necessary for the transaction of any business or discharge of any duties by the Council. (3-27-97/04-09-97) (7-28-03/7-1-05)

(6) Minutes. The time and place of each meeting of the Council, names of the Council members present, all official acts of the Council, and the votes of each member except when the acts are unanimous shall be recorded in the official minutes of the Council. When requested a Council member's approval or dissent, with the reasons therefor shall be recorded in the minutes. The Commissioner shall cause the minutes to be transcribed and presented for approval or amendment at the next meeting. The minutes or a true copy thereof, certified by a majority of the Council, shall be open to inspection by the departments and the public. (07-30-86/08-08-86)

(7) Participation. The Commissioner and the departments shall have the right to attend or be represented at, and to participate in meetings of the Council, but shall be without voting power. (07-30-86/08-08-86)

(8) Compensation of Members. The Employee Benefit Plan Council members shall receive no compensation, but shall receive reimbursement for expenses or an expense allowance per day as follows: (07-30-86/08-08-86)

(a) Council members who are also Board members shall receive the same expense allowance per day as that allowed in Georgia Law Chapter 20, Title 45, provided that only one allowance for the same day of Board meetings or official business shall be permitted. (07-30-86/08-08-86)

(b) Council members who are in State employment shall be reimbursed by the State department in which employed for all necessary expenses that may be incurred in the performance of their duties. Such reimbursement shall be in conformity with regulations published by the appropriate State officials. (07-30-86/08-08-86)

(c) Council members who are not in State employment shall receive an expense allowance in the same amount as that authorized for the General Assembly and shall be payable from the funds allocated to the State Personnel Administration. (07-30-86/08-08-86)

(9) Functions, Powers and Duties of the Council, The Employee Benefits Plan Council shall prescribe the general policies by which the Plan shall be administered. Specific functions of the Council are: (07-30-86/08-08-86)

(a) to adopt specific regulations to govern the administration of the Plans after review of proposed regulations for a minimum of thirty (30) days; (07-30-86/08-08-86)

(b) to adopt specific benefit plan features after a review of proposed benefit plan(s) for a minimum of thirty (30) days; (07-30-86/ 08-08-86)

(c) to approve the contractor(s) after evaluation of proposals from any qualified entity for providing any part of the benefits, other than health benefits, authorized by the Council; (07-30-86/08-08-86)

(d) to approve self-insurance or self-administration as permitted by law in whole or in part for flexible benefit plan features, other than for health benefits. (Authority O.C.G.A. 45-18-51, 45-18-52) (07-30-86/08-08-86)

(e) to adopt other employee benefit plans authorized for tax-advantage under IRC. All eligibility and administrative policies of other plans approved this provision shall be incorporated into the respective plans.

(f) The Council delegates to the Commissioner authority to effect administrative changes to the Flexible Benefit Plan document, as prescribed by rules, regulations and state and federal law. (Authority O.C.G.A. 45-18-51, 45-18-52) (03-27-97/04-09-97) (10-06-05, 10-26-05)

(10) Functions, Powers, and Duties of the Commissioner. The Commissioner of Personnel Administration shall be the Executive Secretary to the Council and shall provide the Council with staff support and other assistance as necessary in the perfomance of the Council's duties. He shall employ such personnel as may be necessary to carry out his duties and responsibilities and is authorized to delegate duties and responsibilities at his discretion. (Authority O.C.G.A. 45-18-51, 45-18-55) (07-30-86/08-08-86)

(a) Executive Officer. The Commissioner of Personnel Administration shall be the executive officer for the administration of the flexible benefit plans and shall administer the Flexible Benefits Program in accordance with the regulations and policies of the Council. (Authority O.C.G.A. 45-18-51, 45-18-55) (07-30-86/08-08-86)

(b) Custodian of Funds. The Commissioner shall be the custodian of all funds as may be required by the implementation of the Plan. The Commissioner shall establish procedures for accounting for all income from any source which shall constitute a fund in trust on behalf of the employees. Any amounts remaining in such fund after all expenses have been paid shall be retained wholly for the benefit of the employees. (Authority O.C.G.A. 45-18-55) (07-30-86/08-08-86)

(c) Recommend Regulation Amendments. The Commissioner shall recommend to the Council amendments to the regulations, cause all regulations to be published, forward copies thereof to the departments, and maintain supplies thereof in the offices of the State Personnel Administration He shall distribute copies of proposed regulations and approved regulations in conformity with requirements of Georgia Law Chapter 20, Title 45. (Authority O.C.G.A. 45-18-51, 45-18-55) (07-30-86/08-08-86)

(d) Invite Proposals. The Commissioner shall, prior to entering into any contract to provide benefits, invite proposals from and allow a reasonable time for qualified corporations or entities to bid on providing approved Plan benefits. (Authority O.C.G.A. 45-18-56) (07-30-86/08-08-86)

(e) Execute Contracts. The Commissioner is authorized to execute a contract or contracts to provide the benefits as approved in the Plan. Such contract or contracts may be executed with one or more corporations licensed to transact business in Georgia. (Authority O.C.G.A. 45-18-56) (07-30-86/08-08-86)

(f) Develop and Publish Plan Document(s). The Commissioner shall cause to be developed a summary plan document or certificate of coverage for each benefit or group of benefits. The plan document must include the approved schedule of benefits, eligibility requirements, termination of coverage, to whom claims should be submitted, and other administrative requirements. The Commissioner shall cause the plan document(s) to be printed and distributed to each department for each covered employee. (Authority O.C.G.A. 45-18-52) (07-30-86/08-08-86)

(g) Establish Procedures for Administration. The Commissioner shall, in consultation with the departments, establish procedures for the effective administration of the Flexible Benefits Program. Such procedures shall be published and distributed to the departments. (Authority O.C.G.A. 45-18-52) (07-30-86/08-08-86)

(h) Establish Procedures for Quality Assurance. The Commissioner shall, in consultation with the departments, establish procedures and criteria for assuring that Flexible Benefit Plan and employee records are maintained accurately and in compliance with these regulations and contract provisions, and that claims for benefits can be accurately and timely presented to the contractor. (Authority O.C.G.A. 45-18-52) (07-30-86/08-08-86)

(11) Functions, Responsibilities, and Duties of the Departments. Each department or agency is charged with complying with these regulations. Statements made by the staff of the departments that are in conflict with these regulations, the contracted schedule of benefits, or the summary plan document shall not be binding on the Administrator or Contractor. (Authority O.C.G.A. 45-18-52) (12-18-90/01-10-91)

(a) Liability Limited. The Council, the various departments, and their employees shall not incur any liability for errors or omissions made in the performance of the agreement between the departments and agencies and the employee. (Authority O.C.G.A. 45-18-58) (12-18-90/01-10-91)

(b) Enroll Eligible Employees. Each department shall offer the Plan to all persons who are eligible under these regulations. The department shall require each new employee to complete, within fifteen (15) calendar days of reporting to work, a form for enrolling, declining, or waiving enrollment in the benefit options. (Authority O.C.G.A. 45-18-53) (12-18-90/01-10-91)

(c) Deduct Employee Premium Amounts. Each department is authorized to deduct or reduce from salary or wages voluntarily designated amounts by the employees when enrolling in any option offered by the Council, unless participation in a specific benefit is not allowed by underwriting or other contractual requirements. (Authority O.C.G.A. 45-18-53; 45-18-52) (12-18-90/01-10-91)

(d) Collect Premiums for Employees on Suspension or Approved Leave Without Pay. Each department is responsible for informing an employee on suspension or approved leave without pay that the appropriate insurance premium amounts and health care spending account contributions must be paid in order to maintain coverage for the insurance and health care spending account options selected by the employee. When the employee is out of pay status for less than four (4) months, the department shall collect the appropriate insurance premiums and health care spending account contributions from the employee's salary before a planned absence or upon return unless the employee has voluntarily remitted the premiums while out of pay status to the department or to the Administrator. When the employee is absent without pay for longer than three (3) months or collecting the premium payments and health care spending account contributions prior to the absence is not feasible, the department is responsible for instructing the employee to remit the funds to the Administrator. The Regulations of the State Personnel Board for the Health Benefit Plan shall be applied to the health benefits option. (Authority O.C.G.A. 45-18-53) (06-28-90/07-01-90)

(e) Remit Employee Premium Amounts. Each department shall make every effort to remit the amount of premiums deducted or reduced from the employee's compensation within five (5) working days following the payroll end date. Each department shall remit the premiums collected from the employees while on suspension or an approved leave of absence without pay in accordance with

procedures established by the Administrator. (Authority O.C.G.A. 45-18-55) (06-28-90/07-01-90)

(f) Provide Plan Document to Each Enrolled Employee. Each department shall distribute the summary plan document(s) to each enrolled employee and shall make the plan document available for each eligible employee. (Authority O.C.G.A. 45-18-53) (07-30-86/08-08-86)

(g) Provide Certification of Employment Information on Claim. Each department, unless the Administrator instructs otherwise, shall provide certification of employment information to the benefit contractor at the time of an employee claim. A copy of the application or certification form shall be forwarded to the Administrator. (Authority O.C.G.A. 45-18-52) (07-30-86/08-08-86)

(h) Modify Payroll Systems. When applicable, the department shall modify the payroll systems, manual or mechanized, to comply with the salary reduction aspects of the Plan. The department shall also modify the process to calculate the appropriate premiums, calculate the taxable income applicable for each employee, report the taxable income to each employee, and report taxable income to the Internal Revenue Service. (Authority O.C.G.A. 45-18-52) (07-30-86/08-08-86)

(i) Audit Departmental Subdivision Payrolls. Any department having organizational subdivisions which maintain separate payroll systems shall cause to be reported the name, enrollment participation, type of benefits contract, and effective date of the contract for any optional benefit plans for each subdivision. The report should be compiled through internal audits or required in certified public accounting audits. The reports shall be submitted to the department which shall review and report any exceptions to these regulations to the Administrator for appropriate action. (Authority O.C.G.A. 45-18-52) (07-30-86/08-08-86)

(j) Retain Departmental Optional Plans. Each State Employer shall have the option to determine whether or not the employees within that department shall continue payroll deductions for any optional plans that were in operation on January 1, 1986. Each Educational Institution shall have the option to determine whether or not the employees of that educational institution shall continue payroll deductions for any optional plans that were in operation on January 1, 1991. Continuation of any optional plan(s) shall be limited to the same type benefits and the same insurer. Departments may increase coverage amounts of various insurances, but are not permitted to change the structure of the optional plan. Departments shall have the discretion of allowing continued enrollment in the optional plan(s). When continued enrollment is permitted, the departments shall be requested by the Administrator to convert, prior to April 1, 1988, enrollment in the optional plan(s) to the enrollment period as defined in Section 478-2-05. If the departments comply with the request, all future enrollment periods for that

agency's sponsored optional plans shall be in accordance with these regulations. (Authority O.C.G.A. 45-18-52; 45-18-54) (12-18-90/01-10-91)

(k) Educational Institution Election. Each Educational Institution shall have the option to elect to participate in the Plan, as announced by the Administrator. Such election shall be filed with the Administrator in sufficient time for conducting an open enrollment period consistent with the following Plan Year. Termination of an election may occur only at the end of a Plan Year and after a twelve-month written notice to the Administrator. Termination of the election cannot be effectuated for a minimum of twenty-four months following the first effective date of coverage under the Plan. (O.C.G.A. 45-18-54) (12-18-90/01-10-91)

(l) Educational Institution's Administrative Fee. Each Educational Institution that elects to participate in the Plan shall pay a pro rata share of the administrative cost of operating the Plan. The Commissioner shall determine the fee on an annual basis and notify the Educational Institutions. (O.C.G.A. 45-18-52) (12-18-90/01-10-91)

Note: Dates following each paragraph represent (approval/effective) dates.

Cite as Ga. Comp. R. & Regs. R. 478-2-.02
Authority: O.C.G.A. Secs. 45-18-51 to 45-18-58.
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Amended: F. Jan. 29, 1991; eff. July 1, 1990, as specified by the Board.
Amended: F. Feb. 14, 1991; eff. Jan. 10, 1991, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Amended: F. July 12, 2005; eff. July 1, 2005, as specified by the Board.
Amended: F. Nov. 15, 2005; eff. Oct. 26, 2005, as specified by the Board.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.

Rule 478-2-.03. General Provisions.

(1) Applicability. All employees who become eligible for coverage under the Flexible Benefit Plan shall be enrolled or permitted to change coverage type only in accordance with these regulations; all departments covered by the Act shall administer the Plan and any departmental sponsored optional plans in accordance with these regulations. (07-30-86/08-08-86)

(2) Conformity with Federal Requirements. This Plan shall be administered in accordance with the applicable federal laws, including but not limited to the Internal Revenue Code of 1986, as amended, and any other applicable federal laws and the regulations promulgated thereunder. (12-20-88/01-19-89)

(3) Records. The Plan records shall be maintained as directed by the Commissioner in accordance with the provisions of the Georgia Records Act and the applicable provisions of Title 33 of the Official Code of Georgia Annotated. Each department shall maintain the employee personnel and payroll records in accordance with the Georgia Records Act. (Authority O.C.G.A. 50-18-94) (07-30-86/08-08-86)

(a) Minimum Record Standards. The individualized option statement shall constitute the summary enrollment form and summary declination form if the employee chooses not to enroll in the particular option of the Plan, except for the Health Benefit Plan option. Enrollment, changes to the health option and declination forms shall be required in accordance with the State Health Benefit Plan Regulations. Each department shall maintain in the employee's per- sonnel or payroll file the original or a clearly legible copy of the employee's signed option statement; if the employee is enrolled in the life insurance benefits, a signed beneficiary form and a decision statement of medical underwriting requirements, if applicable; if the employee is enrolled in the disability options, a decision statement of medical underwriting requirements, if applicable; and if the employee is enrolled in health benefits, a signed health benefit form indicating the employee's selection shall be maintained in the employee's personnel or payroll file. (06-28-90/07-01-90)

(b) Record Transfer Upon Employment Transfer. Each department shall transfer the employee's option statement, beneficiary form, and medical underwriting forms, if applicable, to the receiving department upon employee transfer to another department. These records substantiate the agreement between the employer and the employee for salary reduction and can be modified only in compliance with these regulations and the Flexible Benefit Plan. The receiving department is authorized to utilize the shared computerized data base maintained by the departments and the Administrator to determine the insurance options for which the employee is enrolled until the employee records have been transferred. (06-28-90/07-01-90)

(4) Employee and Department Responsibilities. The employee and department share the responsibility for assuring that the premium payments and spending account contributions for the options selected are being accurately deducted or reduced from the employee's compensation. Both the employee and the department share the responsibility for assuring compliance with all contractual and administrative requirements as outlined in the communications materials. The employee shall not be permitted to change the selected options after the first of the month in which the deductions or reductions are scheduled, except in accordance with these regulations. (12-20-88/01-19-89)

(a) If the benefit percentage reimbursement level or coverage level is less than that selected by the employee and it is reasonable to conclude by documentation that the employee selected the coverage, premium amounts shall be collected for the applicable reduction or deduction. In such cases, appropriate adjustments corresponding to the applicable premium shall be made in the employee's benefits.

Documentation shall include the employee's completed salary agreement and forms that are required by the Administrator or contractors providing benefits. Benefit adjustments will go into effect on the first eligible effective date or if more than twelve (12) months of premium payments are to be collected, the most recent open enrollment period effective date. Benefit adjustments for the health benefits option will go into effect in accordance with the Regulations of the State Personnel Board for Health Benefit Plan. (06-28-90/07-01-90)

(b) If the benefit percentage reimbursement level or coverage level is greater than that selected by the employee and continues without notification of the error to the department or the Administrator on or before the end of the month following three (3) monthly reductions/deductions or the end of the month of the seventh (7th) semi-monthly reduction/deduction, the employee shall be deemed to have selected the options corresponding to the deduction or reduction amount. If the employee notifies the department or the Administrator of an erroneous deduction or reduction prior to or at the time stipulated in this paragraph of the incorrect premium or contribution payments, the employee shall be refunded or paid the amount of deduction or reduction when there is no liability incurred against the option. (06-28-90/07-01-90)

(c) If the Administrator concludes from documentation that the employee was not provided information on which to make benefit selections, the employee shall be provided the opportunity to enroll under the same conditions that would have applied had the employee been offered benefits in accordance with these Regulations. (12-20-88/01-19-89)

(d) If the Administrator concludes from documentation that the contractual requirements were not met jointly by the department and employee for the benefit reimbursement level or coverage level selected by the employee, coverage will be adjusted retroactively to comply with the contractual agreements. Documentation must indicate a failure by the department and employee to comply with the contractual provisions. (06-28-90/07-01-90)

(5) Employee's Responsibility. The Employee is responsible for the requirements as outlined below. (12-20-88/01-19-89)

(a) Beneficiary Form. The employee is responsible for the accuracy of his Flexible Benefit Program beneficiary form for the life and accidental death and dismemberment options. Benefits will be paid on the basis of the most recently filed beneficiary form. A new beneficiary form is not considered filed until signed by the employee and received by and filed with the employee's department. If there is a conflict regarding the payment of benefits, proceeds will be paid in accordance with applicable laws, regulations, policies and contracts. (03-27-97/04-09-97)

(b) Medical Underwriting. The employee is responsible for the completion of all phases of the medical underwriting process when required by contract for the requested type or level of insurance coverage. If the employee fails to complete all phases of the required process by the established deadlines, upon notification from the Administrator or insurance contractor, the department has the responsibility to notify the employee and adjust the employee's request to the guaranteed amount or discontinue as appropriate. Notification of the failure by the employee to complete the medical underwriting process may be through written correspondence or electronic means. (03-27-97/04-09-97)

(c) Appeals of Medical Underwriting Decisions. The employee may appeal medical underwriting decisions in accordance with specific insurance contract provisions. Should the initial negative decision be reversed, salary reductions/deductions shall be contributed retroactive to the effective date of the requested coverage. (06-28-90/07-01-90)

(6) Gender and Number. Except when otherwise indicated by the context, any masculine terminology herein shall also include the feminine, and the definition of any terms in the singular shall also include the plural. (07-30-86/08-08-86)

Note: Dates following each paragraph represent (approval/effective) dates.

Cite as Ga. Comp. R. & Regs. R. 478-2-.03
Authority: O.C.G.A. Secs. 45-18-52, 45-18-51(g).
History. Original Rule entitled "General Provisions" was filed on September 25, 1986; having become effective August 8, 1986, as specified by the Board.
Amended: F. May 17, 1989; eff. January 19, 1989, as specified by the Board.
Amended: F. Jan. 29, 1991; eff. July 1, 1990, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.

Rule 478-2-.04. Eligibility.

(1) Active State Employees. Employees who are actively at work, on approved leave with pay other than personal sickness or disability, or on suspension with pay may participate in the Flexible Benefit Plan if the employee is a regular full-time employee who works a minimum of thirty (30) hours per week and whose duties are expected to require at least nine (9) months of service. Contingent workers of the Labor Department, employees who are working on a temporary, seasonal, or intermittent basis, and employees working in a sheltered workshop operated by a county family and children services, mental health subdivisions or other employing entities are not eligible to participate in the Program. Eligible employees are as follows: (03-27-97/04-09-97)

(a) a member of the General Assembly or a full-time employee of the General Assembly; (07-30-86/08-08-86)

(b) a person who works full time and receives his compensation in a direct payment from a state department, agency, community service board, authority, or institution of State government, exclusive of the Board of Regents of the University System of Georgia; (03-27-97/04-09-97)

(c) a person who works full time and receives his compensation from a county department of family and children services or a county department of health which receives funds through the grant program of the Department of Human Resources; (07-30-86/08-08-86)

(2) Active Educational System Employees. Employees, who are not considered temporary or emergency employees, and who are actively at work or on approved leave with pay, other than sick or disability, may participate in the Flexible Benefit Plan if the employee receives pay from one of the educational institutions that has elected to participate in the Plan and who meets the work requirements, as follows: (12-18-90/01-01-91)

(a) Persons serving in a certificated position and who work at least 17.5 hours per week; (03-27-97/04-09-97) (10-6-05/10-26-05)

(b) Employees who work at least 17.5 hours per week for a county or regional library; (03-27-97/04-09-97) (10-6-05/10-26-05)

(c) Persons serving a non-certificated position and who work at least 20 hours per week or 60% of the time normally required for these positions, if that's more than 20 hours per week; and (03-27-97/04-09-97) (10-6-05/10-26-05)

(d) Persons eligible for the Public School Employees Retirement System and who work at least fifteen (15) hours per week or 60% of the time normally required for these positions. if that is more than fifteen (15) hours per week, (O.C.G.A. 45-18-50; 45-18-52) (10-6-05/10-26-05)

(3) Employees on Leave Without Pay. Active employees who are eligible to participate in the Flexible Benefits Program may continue all insurance options in which enrolled by paying the required after-tax premium during a period of "approved leave of absence without pay" for a period up to twelve (12) months, subject to the conditions in these regulations. An employee will be considered to have one (1) continuous period of leave without pay if the employee returns to work for a period of time, and fails to have three (3) or more consecutive payroll deductions or reductions during the return to work. (03-27-97/04-09-97)

(4) Employees on Suspension Without Pay. Employees who are eligible to participate in the Flexible Benefits Program may continue all insurance options in which enrolled by paying the required aftertax premiums during a period of "suspension without pay" for a period of up to twelve (12) months, subject to the conditions in these regulations. (Authority O.C.G.A. 45-18-50) (06-28-90/07-01-90)

(5) Employees on Military Leave. Military leave is the period of time during which an employee is ordered to military duty or the period, as provided by law, during which an employee is attending military training. Employees who are eligible to participate in the Flexible Benefits Program may continue the coverages and options, consistent with policy and contractual limitations of each benefit option, not to exceeed twelve (12) consecutive calendar months. (03-27-97/04-09-97)

(6) Employees on Military Reservist Activation Leave. Military Reservist Activation Leave is the period of time during which an employee is activated on an emergency basis. Employees who are eligible to participate in the Flexible Benefits Program may continue the coverages and options, consistent with policy and contractual limitations of each benefit option, not to exceed twelve (12) consecutive calendar months. (03-27-97/04-09-97)

(7) Employees on Reduced Working Hours Due to a Disabilty. Employees who are eligible to participate in the Flexible Benefits Program, but due to disability are placed on reduced working hours by the employing entity, may continue the options for which enrolled by paying the required after-tax premiums during the period of reduced working hours. The premium payments for coverage shall not exceed twelve (12) calendar months, and will be subject to the following condition: (03-27-97/04-09-97)

(a) Notification to the Administrator. The Administrator shall require documentation as necessary to provide certification that the employee is physically or mentally incapable of working the required hours to be considered full-time. (03-27-97/04-09-97)

(b) Documentation and Approval. Appropriate documentation may include but is not limited to certification from a qualified medical practioner that outlines the disability and the timeframe for which the employee is required to remain on reduced working hours. The Administrator may require periodic recertification of the disabling condition and circumstances in order to substantiate the period of coverage continuation.

(8) Retired Employees Enrolled in the Dental Option. Employees who were eligible to participate and were enrolled in the dental option of the Flexible Benefits Program at the time of retirement on or after April 1, 1997, shall be eligible to continue the dental coverage and option in which enrolled if: (03-27-97/04-09-97)

(a) The employee is eligible to immediately receive an annuity from the Employees Retirement System, Legislative Retirement System, Teachers Retirement System, Public School Employees Retirement System, Superior Court Judges or District Attorney's Retirement System.

(b) A retired employee shall be entitled to continue dental coverage for the spouse upon retirement or may enroll the spouse in accordance with Section 478-2-.06. (03-27-97/04-09-97)

(9) Surviving Spouse of an Employee Enrolled in the Dental Option. The surviving spouse of a deceased employee may continue dental coverage provided the spouse is immediately eligible to receive a monthly benefit from the Employees Retirement System, Legislative Retirement System, Teachers Retirement System, Public School Employees Retirement System, Superior Court Judges or District Attorney's Retirement System. The spouse may elect coverage as a surviving spouse, or if an active employee, through payroll reduction, but cannot elect double or dual coverage under this provision. (03-27-97/04-09-97)

(10) Surviving Spouse of a Retired Employee Enrolled in the Dental Option. The surviving spouse of a retired employee may continue dental coverage provided the retired employee was enrolled in the family dental option through March 31, 1997, and the spouse is immediately eligible to receive a monthly benefit from the Employees Retirement System, Legislative Retirement System, Teachers Retirement System, Public School Employees Retirement System, Superior Court Judges or District Attorney's Retirement System. (03-27-97/04-09-97)

(a) Restrictions on Surviving Spouse. The spouse may elect coverage as a surviving spouse, or if an active employee, through payroll reduction, but cannot elect double or dual coverage under this provision.

(b) Surviving Eligible Dependent Children. The surviving spouse may elect to continue coverage for surviving eligible dependent children.

(11) Continuation of Coverage for a Dependent Child of a Deceased Employee. Upon the death of an active or retired employee, an eligible dependent child who was covered under the family dental coverage and is the principal beneficiary under one of the retirement systems may continue coverage consistent with these regulations and the insurance contracts. The dependent child may not be covered under this provision if he is a covered dependent child under another active or retired employee, or is eligible as an active employee. (03-27-97/04-09-97)

(12) Extended Beneficiaries. Persons who meet the definition of Extended Beneficiaries are eligible to participate in the dental options and health care spending account by paying the required aftertax premiums or contributions as established by the Council. (06-28-90/07-01-90)

(13) Judicial Reinstatement of Employees. Employees who were eligible to participate in the Flexible Benefits Program who are reinstated to employment by the State Personnel Board or the judiciary shall have coverage reinstated for themselves and any eligible dependents in accordance with the following: (03-27-97/04-09-97)

(a) If the employment reinstatement occurs within twelve (12) months of discharge and back-pay for continuous employment is awarded, all retroactive premiums for the insurance options must be collected and claims incurred during the period may be filed for processing. Retroactive contributions for the health care spending account may be waived by the Administrator; retroactive contributions for dependent care spending account are not to be made.

(b) If the employment reinstatement occurs following a period longer than twelve (12) months after discharge and back-pay for continuous employment is awarded, coverage for the employee and previously covered dependents will be reinstated upon the employee's return to work or in accordance with judicial review. Medical underwriting and late entrant penalties will not apply for any reinstated coverages. (03-27-97/04-09-97)

(c) If employment reinstatement occurs either within or in excess of twelve (12) months of discharge and retroactive pay is not awarded, coverage may be reinstated with the employee's return to work. Medical underwriting and late entrant penalties will not apply for any reinstated coverages. (03-27-97/04-09-97)

Note: Dates following each paragraph represent (approval/effective) dates. (07-30-86/08-08-86)

Cite as Ga. Comp. R. & Regs. R. 478-2-.04
Authority: O.C.G.A. Sec. 45-18-50.
History. Original Rule entitled "Eligibility" was filed on September 25, 1986; having become effective August 6, 1986, as specified by the Board.
Amended: F. Jan. 29, 1991; eff. July 1, 1990, as specified by the Board.
Amended: F. Feb. 14, 1991; eff. Jan. 10, 1991, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Amended: F. Nov. 15, 2005; eff. Oct. 26, 2005, as specified by the Board.

Rule 478-2-.05. Effective Date of Coverage.

(1) Employment. The employee's coverage under the Flexible Benefit Program shall become effective on the first of the month following employment for the full preceding calendar month if he is at work on that date. If he is not at work on that date, coverage will be effective on the date he returns to work. Coverage for eligible dependents will become effective on the date the employee's coverage is effective unless the eligible dependent is hospitalized. If the dependent is hospitalized on the coverage effective date, coverage will become effective the date following dismissal from the hospital. (06-28-90/07-01-90)

(2) Re-employment During the Plan Year. If the employee is reemployed during the same Plan Year during which he previously participated in the Plan, coverage under the Plan shall be re-instated. The department must reactivate payroll and remit premiums and spending account contributions consistent with the options elected by the employee prior to termination, unless a qualifying change in family status occurred during the period of non-eligibility. The employee shall be considered re-employed during the Plan Year if the employee had one or more deductions or reductions prior to employment termination and subsequent re-employment. When the employee is not re-employed on the first workday of a calendar month, coverage may become effective the first of the month following re-employment, provided the agency remits all premiums and spending account

contributions. However, in the event that the agency fails to collect payments during the partial month, coverage shall become effective as of the first of the month following re-employment for the full preceding calendar month. The Regulations of the State Personnel Board for Health Benefit Plan shall apply to the health benefits options. (03-27-97/04-09-97)

(3) Change in Coverage. If the employee changes coverage to include eligible dependents based upon acquisition of dependent(s), coverage for the dependents shall become effective on the first of the month following the proper premium payment or dependent care spending account contribution. Changes in the health care spending account contribution amounts are not allowed during the Plan Year. For dependent life insurance and dental insurance, if the dependent is hospitalized on the coverage effective date, coverage will become effective the day following dismissal from the hospital. The Regulations of the State Personnel Board for Health Benefit Plan shall be applied to the health benefits option. If such Board Regulation is in conflict with the Internal Revenue Code or Regulations, the Internal Revenue Code or IRS Regulation will govern. (06-28-90/07-01-90)

(4) Open Enrollment Change. The effective date for new enrollments, a change in coverage amounts or the addition of eligible dependents shall be July 1, provided the employee is at work on that day and/or the contractor has approved insurance based on medical underwriting requirements. The applicable regulation for the health benefit option is outlined in the Regulations of the Sate Personnel Board for the Health Benefit Plan. (06-28-90/07-01-90)

(5) Return from Suspension or an Approved Leave Without Pay Within the Same Plan Year. If the employee is returning from suspension or an approved leave without pay during the same Plan Year in which he previously participated in the Plan, the benefit options and coverages previously selected by the employee will be reinstated. If the employee failed to pay premiums for the insurance options and the health care spending account during the leave without pay, the department shall reduce the employee's salary to collect all premiums and health care spending account contributions for continuous coverage during the period of out-of-pay status, unless circumstances invoke a contractual limitation on coverage. If contractual limitations are invoked, the Administrator shall determine the appropriate premium collection procedures. Benefit adjustments for the health benefits option will go into effect in accordance with the Regulations of the State Personnel Board for Health Benefit Plan. (O.C.G.A. 45-18-52) (12-18-90/01-10-91)

(6) Return From Suspension or an Approved Leave Without Pay Across Plans Years. If the employee is returning from suspension or an approved leave without pay in the Plan Year following the Plan Year in which he previously participated in the Plan, the following provisions for benefit options and coverages shall apply. (06-28-90/ 07-01-90)

(a) When the absence without pay is twelve (12) or less months and the employee continued premiums and health care spending contribution for continuous coverage during the leave without pay period, the employee shall have an

opportunity to make selections in accordance with the Open Enrollment provisions. (06-28-90/07-01-90)

(b) When the absence without pay is less than six (6) months and the employee did not pay the insurance premiums and health care spending account contributions, the employee will be provided an enrollment period. The employee can re-instate options by paying the delinquent insurance premiums and health care spending account contributions. The employee who chooses not to re-instate options shall be subject to all conditions for enrollment of a current employee, such as medical underwriting, pre-existing conditions and late entrant limitations. (06-28-90/07-01-90)

(c) When the absence without pay is six (6) or more months and the employee did not pay the insurance premiums and health care spending account contributions, coverages will be terminated in accordance with the Failure to Pay Premium provision. The employee shall be offered an opportunity to re-enroll in the same manner as is allowed during the open enrollment period. The employee shall be subject to all conditions for enrollment of a current employee, such as medical underwriting, preexisting conditions and late entrant limitations. (06-28-90/07-01-90)

(7) Upon Return From Suspension or Leave Without Pay Greater Than Twelve (12) Months. If the employee is returning from a suspension or leave without pay of more than twelve (12) months and the employee paid the appropriate premium amounts for the insurance options, the employee shall be offered an open enrollment period as a continuing employee. (12-20-88/01-19-89)

Note: Dates following each paragraph represent (approval/effective) dates.

Cite as Ga. Comp. R. & Regs. R. 478-2-.05
Authority: O.C.G.A. Secs. 45-18-51, 45-18-52.
History. Original Rule entitled "Effective Date of Coverage" adopted. F. Sept. 25, 1986; eff. Aug. 6, 1986, as specified by the Board.
Amended: F. May 17, 1989; eff. January 19, 1989, as specified by the Board.
Amended: F. Jan 29, 1991; eff. July 1, 1990, as specified by the Board.
Amended: F. Feb. 14, 1991; eff. Jan. 10, 1991, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.

Rule 478-2-.06. Changes in Benefit Options and Amounts.

(1) Open Enrollment Period. Eligible active employees shall be given an opportunity to enroll or change benefit options during the open enrollment period. The open enrollment period shall be no longer than thirty (30) days duration, and shall begin no earlier than four (4) months preceding the beginning of each plan year. The specific dates and

duration shall be designated by the Commissioner. The open enrollment period shall be announced in writing to the employees.

Medical underwriting may be required by contract for the insurance options. The applicable regulation for health benefit options is outlined in the Regulations of the State Personnel Board for Health Benefit Plan. Employees on suspension or on an approved leave of absence without pay during the open enrollment period shall not be provided the opportunity to enroll or change coverages during the period. Extended beneficiaries shall be entitled to the same benefit choice in an applicable option of the Plan during the open enrollment period as if he or she were an active employee. (06-28-90/07-01-90) (11-3-05/11-18-05)

Cite as Ga. Comp. R. & Regs. R. 478-2-.06
Authority: Authority O.C.G.A. Secs. 45-18-51, 45-18-52.
History. Original Rule entitled "Changes in Benefit Options and Amounts" adopted. F. Sept. 25, 1986; eff. Aug. 6, 1986, as specified by the Board.
Amended: F. May 22, 1987; eff. March 26, 1987, as specified by the Board.
Amended: F. May 17, 1989; eff. January 19, 1989, as specified by the Board.
Amended: F. Jan 29, 1991; eff. July 1, 1990, as specified by the Board.
Amended: F. Feb. 14, 1991; eff. Jan. 10, 1991, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.
Amended: F. Dec. 15, 2005; eff. Nov. 18, 2005, as specified by the Board.

Rule 478-2-.07. Extended Coverage (COBRA).

(1) Extended Beneficiary. Persons who lose coverage under the Plan and who meet certain requirements are eligible to continue coverage in the enrolled dental option or health care spending account, as required by federal law or these regulations for the periods designated by the qualifying event. Plan Year limitations and Plan requirements of the health care spending account will apply. An Extended Beneficiary shall have the same opportunities for enrolling eligible dependents and changing coverage options as active employees. The Flexible Benefits Program will be administered in compliance with federal law or regulations under the Consolidated Omnibus Budget Reconciliation Act (COBRA) and the Health Insurance Portability and Accountability Act of 1996 (HIPPA). (03-27-97/04-09-97)

(a) Terminated Employee. An employee who terminates employment or is separated from his employment for any reason other than for gross misconduct, or whose approved leave without pay expires shall be eligible to continue coverage under the Plan for a period not longer than eighteen (18) months following the termination of coverage as an employee. (12-20-88/01-19-89)

(b) Reduction of Required Hours. An employee who continues Flexible Benefit Plan eligibility under the definition of employee, ex- cept for working the required number of hours, shall be eligible to continue coverage under the Plan for a period

not longer than eighteen (18) months following the end of the month in which the reduction of hours occurred. If the reduced hours take effect on a day other than the first workday of the month, the eighteen (18) month period would begin on the first of the month following termination of coverage through payroll deductions. (12-20-88/01-19-89)

(c) Laid-off Employee. An employee who is determined to be a laid-off employee shall be eligible to continue coverage under the Plan for a period not longer than eighteen (18) months. The extended period begins on the first of the month following termination of coverage through payroll deductions. (12-20-88/01-19-89)

(d) Spouse of Deceased Employee. The spouse of a deceased employee who is not eligible as a surviving spouse, an employee, or an annuitant, shall be eligible to continue coverage for a period not longer than thirty-six (36) months. Coverage under the Plan may be continued for the spouse and any eligible dependents. The extended period of coverage begins on the first of the month following termination of coverage through the employee's payroll deductions or if the employee is on an approved leave without pay, at the end of the month in which the employee died or the end of the following month if the premium has been paid. (03-27-97/04-09-97)

(e) Surviving Dependent Child. An eligible dependent child of a deceased employee who is not enrolled as an employee, a dependent of another employee, a surviving beneficiary under Section 478-2-.04, or as an annuitant, shall be eligible to continue coverage for himself under the Plan for a period not longer than thirty-six (36) months following the end of the month in which death occurred. The extended coverage period begins on the first of the month following termination of the employee's coverage through payroll deductions. (03-27-97/04-09-97)

(f) Dependent Child. An eligible dependent child of an employee who is not eligible as an employee or an annuitant shall be eligible to continue coverage under the Plan for a period not longer than thirty-six (36) months following the end of the month in which the child is no longer eligible under the Plan. (03-27-97/04-09-97)

(g) Legally Separated or Divorced Spouse. A legally separated or divorced spouse of an employee who is not eligible as a surviving spouse, an annuitant or an employee shall be eligible to continue coverage for a period not longer than thirty-six (36) months. Coverage may be continued for the spouse and any eligible dependents, who are not covered dependents of the employee. The extended coverage period beings on the first of the month following the month in which the legal separation documents were approved by a court of competent jurisdiction or the divorce was final. (03-27-97/04-09-97)

(h) Employee Pending Approval of Retirement Benefit. An active employee who has made application for disability or service retirement and who may be eligible for

retirement shall be eligible to extend coverage. The extended period of coverage begins on the first of the month following termination of coverage through the employee's payroll deductions or if the employee is on an approved leave without pay, at the end of the month in which the employee remitted the premium. (03-27-97/04-09-97)

(i) Retiree Not Eligible or No Longer Eligible to Receive a Sufficient Retirement Benefit to Pay the Dental Deduction Amount. If the retirement benefit to be received by a retiree eligible to continue the deduction for dental coverage is not sufficient to pay the premium amount by deduction, the retiree shall be permitted to continue the dental option by paying premiums under the extended coverage. The extended coverage period begins on the first of the month following termination of the employee's coverage through deductions by the applicable retirement system. (03-27-97/04-09-97)

(2) Disability under Social Security. Coverage may be extended for an additional eleven (11) months for an extended beneficiary who at any time during the first sixty (60) days of the 18-month COBRA continuation period meets the Social Security definition of disability. Such disability shall be determined under Title II or Title XVI of the Social Security Act. The eleven (11) additional months of coverage applies to the disabled beneficiary and to non-disabled dependents who are entitled to COBRA continuation coverage. In order to be eligible for this additional extension, the beneficiary must notify the Administrator of the determination by the end of the 18-month COBRA continuation period. Additionally, the extended beneficiary must notify the Administrator within thirty (30) days of the date of any final determination that the beneficiary is no longer disabled. (03-27-97/04-09-97)

(3) Departmental Notification Requirements. The employing entity must notify the Administrator of the employee's termination, death, layoff, or reduced hours within thirty (30) days following the event. (12-20-88/01-19-89)

(4) Notice of Divorce, Separation, and Cessation of Dependency. The employee or other qualified beneficiary must notify the Administrator within sixty (60) days of a divorce, legal separation, or a child ceasing to be a dependent under the applicable option of the Plan. Failure to provide such notice to the Administrator within the sixty (60) days will result in the loss of eligibility for extended coverage. (03-27-97/04-09-97)

(5) The Administrator shall notify the extended beneficiary at his last known address regarding extended coverage. The Administrator shall notify of the continuation rights within fourteen (14) days following notification from the employing entity of the employee's death, termination of employment, or reduction of hours. Notice to the employee's spouse other than employee termination or reduction of hours shall be deemed to be notification to all other beneficiaries of the contract. (12-20-88/01-19-89)

(6) The Administrator shall notify the extended beneficiary of his continuation rights at the address specified by the employee within fourteen (14) days following notification from

the employee of a divorce, legal separation, or the dependent child's coverage ineligibility as a dependent. (12-20-88/01-19-89)

(7) Extended Beneficiary's Election Period. The extended beneficiary may elect to continue coverage within a period of sixty (60) days following the Administrator's notification to the extended beneficiary or during the sixty (60) days following coverage termination under the appropriate provision. Coverage will be reinstated by payment of the premium retroactively to the coverage termination under the employee's contract. (12-20-88/01-19-89)

(8) Extended Beneficiary's Independent Election. Each beneficiary eligible for extended coverage shall be afforded the opportunity to make an independent election to continue coverage in the enrolled option, provided the beneficiary is not enrolled as an employee, spouse, or dependent. If a beneficiary, either the employee or spouse of a covered employee makes an election to provide coverage for the other extended beneficiary, the election shall be binding on that other beneficiary. An election on behalf of a minor child can be made by the child's parent or legal guardian. An election on behalf of an eligible beneficiary who is incapacitated can be made by the legal representative of the beneficiary. (12-20-88/01-19-89)

(9) Payment for Extended Beneficiary Coverages. The applicable premium for the dental option shall be 102% of the rate furnished by the Contractor and approved by the Council; the applicable contribution for the health care spending account shall be 102% of the employee's elected contribution. An advance monthly premium plus any premiums for retroactive periods of coverage will, however, be requested as a part of the application. Payment for any retroactive periods must be made no later than forty-five (45) days following election to continue coverage. Thereafter, premium payments must be made no later than thirty (30) days following the end of the month for which payments have been received for coverage by the Administrator. (03-27-97/04-09-97)

(10) Multiple Qualifying Events. If additional qualifying events occur which provide for a thirty-six (36) month maximum period during the period when an extended beneficiary is covered, the maximum period of coverage may be extended to a maximum of thirty-six (36) months for a spouse or dependent child, plus any additional months as a result of disability under Title II or Title XVI of the Social Security Act. The maximum period of extended coverage as a result of one or more qualifying events shall begin on the day following termination of coverage as a result of the first qualifying event. (03-27-97/04-09-97)

(11) Limitation for Individuals Added to Coverage of Extended Beneficiary. Individuals enrolled under an extended beneficiary's coverage shall not be eligible to become an extended beneficiary as a result of the enrollment. (12-20-88/01-19-89)

(12) If the Administrator fails to notify the extended beneficiary of the continuation rights within the required time limits as a result of failure of the employing entity to notify the

Administrator, any penalty payment required of the Administrator shall be billed to the employing entity who failed to notify the Administrator. (12-20-88/ 01-19-89)

(13) Recovery of Paid Benefits. The Administrator shall have the right to recover all benefit payments made on behalf of any ex- tended beneficiary as a result of eligibility termination. (12-30-88/ 01-19-89)

Note: Dates following each paragraph represent (approval/effective) dates.

Cite as Ga. Comp. R. & Regs. R. 478-2-.07
Authority: O.C.G.A. Secs. 45-18-52; 45-18-51(g).
History. Original Rule entitled "Termination of Coverage' was filed on September 25, 1986; having become effective on August 8, 1986, as specified by the Board.
Repealed: New Rule entitled "Extended Coverage" adopted. F. May 17, 1989; eff. January 19, 1989, as specified by the Board.
Amended: F. Jan. 29, 1991; eff. July 1, 1990, as specified by the Board.
Amended: Rule retitled "Extended Coverage (COBRA)." F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.

Rule 478-2-.08. Termination of Coverage.

(1) Termination from Employment. Termination from employment includes resignation, retirement, abandonment of job, release from job, forfeiture of job, and all other types of termination. Extension of a leave of leave of absence longer than twelve (12) months constitutes a termination of coverage for the purposes of the Plan. A period away from work for less than thirty (30) days will not be considered a termination. Insurance and health care spending account coverages will terminate at the end of the month following the month of the last reduction/deduction that was transmitted to the Administrator. This date will normally be the end of the month following the month in which separation or termination of employment occurred. Reasons and conditions for termination of health benefit coverage are outlined in the Regulations of the State Personnel Board for Health Benefits. (06-28-90/07-01-90)

(2) Reduction of Work Hours. A reduction in work hours beyond the minimum required may result in a loss of eligibility to continue coverages and options under the Flexible Benefits Program, except as defined in 478-2-.04(7). (03-27-97/04-09-97)

(a) If for any reason the number of worked hours is reduced for a covered state employee to less than thirty (30) hours per week, coverage shall terminate at the end of the month following the month in which the required premium was paid; (03-27-97/04-09-97)

(b) If for any reason the number of worked hours is reduced for a covered employee of a participating educational institution to less than half-time or a minimum of

eighteen (18) hours per week, coverage shall terminate at the end of the month following the month in which the required premium was paid;

(c) If for any reason the number of worked hours is reduced for a covered public school employee to less than sixty (60) percent of that required to perform the position duties, coverage shall terminate at the end of the month following the month in which the required premium was paid; however, the sixty (60) percent cannot be less than eighteen (18) hours if the employee is a participant in the Teachers Retirement System and less than eighteen (18) hours if the employee is a participant in the Public School Employees Retirement System.

(3) Failure to Return from an Approved Leave Without Pay. If an employee who is on an approved leave without pay fails to return to active employment or is absent more than twelve (12) months, coverage for the insurance options will terminate at the end of the month for which the premium(s) have been paid. Termination of the health benefit option coverage shall be in accordance with the State Personnel Board approved Regulations for Health Benefits. (07-30-86/08-08-86)

(4) Failure to Remit Insurance Option Premium. Failure to remit the applicable insurance option premium amounts while on leave of absence without pay will terminate coverage at the end of the month for which the premium has been paid, unless provisions of section 478-2-.05 apply. When premium amounts are not paid, benefits will not be allowed during the period, unless such is due as a contractual provision of total disability. (Authority O.C.G.A. 45-18-52) (06-28-90/07-01-90)

(5) Failure to Remit Health Benefit Option Premium. If an employee fails to remit the applicable health benefit option premium, regulations promulgated by the State Personnel Board shall dictate how benefits shall be applied and terminated. (Authority O.C.G.A. 45-18-52) (07-30-86/08-08-86)

(6) Termination of Retiree Dental Coverage. A retired employee may discontinue coverage at any time by advance notice to the Administrator, without any entitlement to re-enroll at a later date. Discontinuation of coverage will become effective one (1) calendar month following written notification to the Administrator. (03-27-97/ 04-09-97)

(7) Termination of Extended Coverage. Extended coverage for each extended beneficiary shall terminate on the earliest of the following dates: (12-20-88/01-19-89)

(a) Eighteen (18) months after the qualifying event if coverage is due to termination of employment, termination of retiree dental deductions, or reduction in hours; (03-27-97/04-09-97)

(b) Thirty-six (36) months after the qualifying event if the qualifying event were:

(1) the death of the covered employee;

(2) a divorce or legal separation from the employee; or

(3) a dependent child ceased to qualify as a dependent under the applicable option. (12-20-88/01-19-89)

(c) The date on which the Plan is discontinued for all employees in the same class as the covered employee; or (12-20-88/01-19-89)

(d) The date any required premium or contribution is not made within the period designated in these Regulations. (12-20-88/01-19-89)

Cite as Ga. Comp. R. & Regs. R. 478-2-.08
Authority: O.C.G.A. Secs. 45-18-52; 45-18-51(g).
History. Original Rule entitled "Plan Benefits" was filed on September 25, 1986; having become effective on August 8, 1986, as specified by the Board.
Repealed: New Rule entitled "Termination of Coverage" adopted. F. May 17, 1989; eff. January 19, 1989, as specified by the Board.
Amended: F. Jan. 29, 1991; eff. July 1, 1990, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.

Rule 478-2-.09. Plan Benefits.

(1) Benefit Plan Components. The Council is authorized to establish a flexible employee benefit plan. The plan may provide for deductions or salary reductions for group life insurance, disability insurance, supplemental health and accident insurance, other types of employee welfare benefits, or for salary reductions for health premiums under Georgia Law Article 1 of Chapter 18, Title 45. The Council is further authorized to establish plans in connection with any plans, not implemented for employees on January 1, 1986, and authorized by the United States Internal Revenue Code for the purpose of making efficient use of the tax code. (Authority O.C.G.A. 45-18-52) (07-30-86/08-08-86)

(2) Approval of Optional Plans. The Council is authorized to approve any new optional employee benefit plans or any contracting with new or additional insurers under existing plans that authorize the deduction or reduction of voluntary designated amounts, including insurance, from the salaries of full-time employees after January 1, 1986. Optional programs under the Flexible Benefits Program offered to members of the General Assembly and employees of the General Assembly or any new programs must be approved by and at the discretion of the Legislative Services Committee. (Authority O.C.G.A. 45-18-54) (07-30-86/08-08-86)

(3) Benefit Components. Benefit components may be designated as pre-tax or after-tax options. Pre-tax options are those options for which Flexible Dollars are allowed under the Flexible Benefit Plan Document as amended. After-tax options are those options for which Flexible Dollars are not allowed under IRC 125 or for which the Council

designates as a required or optional payroll deduction. After- tax options shall be governed by the enrollment, termination and change provisions of the Flexible Benefit Plan Document and the Regulations of the Employee Benefit Plan Council. (06-28-90/07-01-90)

(a) The pre-tax benefit components are approved as stated in the Flexible Benefit Plan Document as amended and restated to become effective on July 1, 1990. (06-28-90/07-01-90)

(b) The after-tax benefit components are dependent life insurance, short-term disability insurance, long-term care insurance, and legal insurance. Eligibile employees may choose to enroll for group term life insurance as a salary deduction. (03-27-97/04-09-97)

(4) Interpretation. The Administrator is authorized to interpret the benefit components for contract execution and administration. (07-30-86/08-08-86)

(5) The Employee Benefit Plan Council reserves the right to modify any benefits, coverages, and eligibility requirements of the Flexible Benefits Program at any time, subject only to reasonable advance notice to its participants. When such a change is made, it will apply as of the effective date of the modification to any and all claims incurred by participants from that date forward, unless otherwise specified by the Employee Benefit Plan Council. (03-27-97/04-09-97)

Note: Dates following each paragraph represent (approval/effective) dates.

Cite as Ga. Comp. R. & Regs. R. 478-2-.09
Authority: O.C.G.A. Secs. 45-18-52; 45-18-51(g).
History. Original Rule entitled "Request for Plan Component Additions or Modifications" was filed on September 25, 1986; having become effective on August 8, 1986, as specified by the Board.
Repealed: New Rule entitled "Plan Benefits" adopted. F. May 17, 1989; eff. January 19, 1989, as specified by the Board.
Amended: F. Jan. 29, 1991; eff. July 1, 1990, as specified by the Board.
Amended: F. Apr. 22, 1997; eff. Apr. 9, 1997, as specified by the Board.

Rule 478-2-.10. Request for Plan Component Additions or Modifications.

(1) Product Providers. Vendors, brokers, agents, or other product providers shall have an opportunity to file requests for plan component additions or modifications in accordance with these Regulations. The request(s) must be filed with the Administrator during the sixty (60) day period to begin on June 1 of each year. (07-30-86/ 08-08-86)

(a) The Administrator shall evaluate the requests for product inclusion and make a report to the Council during the month of October or November of each year. The

Commissioner shall seek the advice and counsel of the various departments in the evaluation. (07-30-86/08-08-86)

(2) Employees. Employees shall have an opportunity to file requests for plan component additions or modifications during the sixty (60) day period to begin on July 1 of each year. Such requests shall be in writing, outlining the reasons for the requests and any other pertinent information that the employee wishes to submit. (07-30-86/08-08-86)

(a) The Administrator shall acknowledge the request and make an evaluation for requested changes prior to December 15 of each year. The Administrator is authorized to combine the requests at his discretion. The Administrator shall seek the advice and counsel of the various departments in the evaluation. (07-30-86/08-08-86)

(3) Report to the Council. The Commissioner shall complete an evaluation report and present such to the Council no later than the Council meeting during the month of January. The Council shall make such disposition of the requests as it deems appropriate. (07-30-86/08-08-86)

Note: Dates following each paragraph represent (approval/effective) dates.

Cite as Ga. Comp. R. & Regs. R. 478-2-.10
Authority: O.C.G.A. Sec. 45-18-51(g).
History. Original Rule 478-2-.09 entitled "Request for Plan Component Additions or Modifications" was renumbered to 478-2-.10. F. May 17, 1989; eff. January 19, 1989, as specified by the Board.

Chapter 478-3. REPEALED.

Rule 478-3-.01. Repealed.

Cite as Ga. Comp. R. & Regs. R. 478-3-.01
Authority: O.C.G.A. Sec. 45-20-6.
History. Original Rule entitled "Purpose" was f. Nov. 8, 1989; eff. Oct. 16, 1989, as specified by the Board.
Repealed: F. Jun. 28, 1993; eff. Jun. 9, 1993, as specified by the Board.

Rule 478-3-.02. Repealed.

Cite as Ga. Comp. R. & Regs. R. 478-3-.02
Authority: O.C.G-A. Sec. 45-20-6.
History. Original Rule entitled "Definitions" was f. Nov. 8, 1989; eff. Oct. 16, 1989, as specified by the Board.
Repealed: F. Jun. 28, 1993; eff. Jun. 9, 1993, as specified by the Board.

Rule 478-3-.03. Repealed.

Cite as Ga. Comp. R. & Regs. R. 478-3-.03
Authority: O.C.G.A. Sec. 45-20-6.
History. Original Rule entitled "Classification on Positions" was f. Nov. 8, 1989; eff. Oct. 16, 1989, as specified by the Board.
Repealed: F. Jun. 28, 1993; eff. Jun. 9, 1993, as specified by the Board.

Rule 478-3-.04. Repealed.

Cite as Ga. Comp. R. & Regs. R. 478-3-.04
Authority: O.C.G.A. Sec. 45-20-6.
History. Original Rule entitled "Incumbents of Positions" was f. Nov. 8, 1989; eff. Oct. 16, 1989, as specified by the Board.
Repealed: . F. Jun. 28, 1993; eff. Jun. 9, 1993, as specified by the Board.

Rule 478-3-.05. Repealed.

Cite as Ga. Comp. R. & Regs. R. 478-3-.05
Authority: O.C.G.A. Sec. 45-20-6.
History. Original Rule entitled "Compensation of Employees" was f. Nov. 8, 1989; eff. Oct. 16, 1989, as specified by the Board.
Repealed: F. Jun. 28, 1993; eff. Jun. 9, 1993, as specified by the Board.

Rule 478-3-.06. Repealed.

Cite as Ga. Comp. R. & Regs. R. 478-3-.06
Authority: O.C.G.A. Sec. 45-20-6.
History. Original Rule entitled "Review of Positions" was f. Nov. 8, 1989; eff. Oct. 16, 1989, as specified by the Board.
Repealed: F. Jun. 28, 1993; eff. Jun. 9, 1993, as specified by the Board.

Chapter 478-4. MEDICAL AND PHYSICAL EXAMINATION PROGRAM: PROSPECTIVE STATE EMPLOYEES.

Rule 478-4-.01. Definitions.

(1) ***"Commissioner"*** **and "*Commissioner of Personnel Administration*"** are synonymous and mean the chief executive officer of the Department of Administrative Services. The term also includes any person properly designated by the Commissioner to perform any duty of the Commissioner under these rules.

(2) ***"Committee"*** **and** ***"Medical and Physical Standards Committee"*** are synonymous and mean the body appointed by the Commissioner to advise the Board relative to standards of medical and physical fitness.

(3) "***Department"***means any department or agency of the state.

(4) "***Prospective Employee"*** means any person, other than a department head, who has been offered employment by any state department, who will work at least 30 hours per week, and whose employment shall not be of short-term, temporary, contingent, intermittent, part-time, or student nature.

(5) "***Qualified medical practitioner"*** means any medically trained person who is licensed to assess the medical and physical condition of a Prospective Employee.

(6) "***State Personnel Board"*** **and** ***"Board"*** are synonymous and mean the body established by Article IV, Section III of the Constitution of the State of Georgia.

(7) "***State Physician"*** means any licensed physician who has been employed or contracted by a department or the Commissioner for the purpose of conducting Limited or Full Physical assessing the results of the examination for Prospective Employees, or determining if the Prospective Employee meets the standards of physical fitness for the specific position.

Cite as Ga. Comp. R. & Regs. R. 478-4-.01
Authority: Authority O.C.G.A. Secs. 45-2-40, 45-2-41, 45-2-42, 45-2-43, 45-2-44, 45-2-45.
History. Original Rule entitled "Definitions" adopted. F. Feb. 7, 1997; eff. Jan. 31, 1997, as specified by the Board.
Amended: F. Oct. 28, 2009; eff. Aug. 27, 2009, as specified by the Board.
Amended: F. Jan. 14, 2014; eff. Sept. 25, 2013, as specified by the Board.

Rule 478-4-.02. General Provisions.

(1) ***Applicability.*** No prospective employee who is otherwise qualified shall be employed on and after July 1, 1996, in any capacity by the state or any department or agency thereof, unless the person has completed certification or is certified by a qualified medical practitioner as meeting the standards of medical and physical fitness as established by the Board.

(1) ***Records.*** All medical information that is completed or collected in any form about a prospective employee under the Medical and Physical Examination Program shall be confidential and retained separately from other personnel records of the employee.

(2) ***Prospective Employee's Responsibility.*** A prospective employee may choose to use a medical practitioner other than a State Physician to complete the Limited or Full Physical Examination. Theprospective employee shall cause the physical examination report to be forwarded to a State Physician to determine if the appropriate standards of physical fitness have been met.

(3) ***Completion of the Physical Examination and Certification*.** The prospective employee shall complete the self-assessment or the Limited or Full Physical Examination prior to the effective date of employment. The employing department shall require the prospective employee who chooses to use a medical practitioner other than a State Physician to submit the Limited or Full Physical Examination assessment to the employing department prior to the date the employee reports to work. The employing department and the Commissioner shall provide for performance requirements that stipulate that a State Physician shall complete the assessment and decision no later than the fortieth day following receipt of the Physical Examination report or conducting the Limited or Full Physical Examination.

Cite as Ga. Comp. R. & Regs. R. 478-4-.02
Authority: Authority O.C.G.A. Secs. 45-2-40, 45-2-41, 45-2-42, 45-2-43, 45-2-44, 45-2-45.
History. Original Rule entitled "General Provisions" adopted. F. Feb. 7, 1997; eff. Jan. 31, 1997, as specified by the Board.
Amended: F. Jan. 14, 2014; eff. Sept. 25, 2013, as specified by the Board.

Rule 478-4-.03. Organization.

(1) Functions, Duties and Responsibilities of the State Personnel Board. The State Personnel Board shall prescribe the general policies by which the Medical and Physical Examination Program shall be administered. Specific functions of the Board are: (10-31-96/1-31-97)

(a) subject to the approval of the Governor, promulgate rules and regulations for the effective administration of the Medical and Physical Examination Program; (10-31-96/1-31-97)

(b) after providing interested parties an opportunity to review and comment, approve the standards of medical and physical fitness that are required by the duties of the specific positions in the state service; (10-31-96/1-31-97)

(c) establish a fee to be paid to consultants for services rendered in the development of standards of medical and physical fitness; however, persons in the employ of the state shall not receive compensation other than the regular salary paid by the employing department or agency. (10-31-96/1-31-97)

(2) Functions, Duties and Responsibilities of the Commissioner. The Commissioner shall administer the medical and physical examination and certification program. The Commissioner: (10-31-96/1-31-97)

(a) subject to the approval of the State Personnel Board, shall appoint a Medical and Physical Standards Committee consisting of up to five Georgia licensed doctors of medicine or other specialists to develop standards of medical and physical fitness; (10-31-96/1-31-97)

(b) shall develop all forms for administration of the medical and physical examination program, shall develop procedural processes for administration and shall publish the standards for medical and physical fitness; (10-31-96/1-31-97)

(c) may develop appropriate purchasing requests to select through a competitive process and enter into an agreement on behalf of the departments to conduct assessments for medical and physical fitness as required by the standards of medical and physical fitness; (10-31-96/1-31-97)

(d) provide technical assistance to employing departments for complying with the requirements of the Medical and Physical Examination Program. (10-31-96/1-31-97)

(3) Functions, Duties, and Responsibilities of the Employing Departments. The department head or his or her designee shall administer the medical and physical examination and certification within the respective department in compliance with the standards of medical and physical fitness. In addition, the department head or his or her designee: (10-31-96/1-31-97)

(a) shall develop policies and processes necessary for compliance with these rules within 120 calendar days of the effective date of these provisions; (10-31-96/1-31-97)

(b) shall advise the Commissioner and Committee on duties required for specific positions in the respective department; (10-31-96/ 1-31-97)

(c) may employ a licensed physician or contract for services of a licensed physician to be designated as a State Physician to perform the assessment and make a determination as to compliance with the standards of physical fitness for Prospective Employees of the respective department; (10-31-96/1-31-97)

(d) may utilize the statewide contract of State Physician(s) to conduct the Limited or Full Physical Examination and to determine if the Prospective Employee meets the appropriate standards for physical fitness for the specific position; (10-31-96/1-31-97)

(e) may pay the charge for contract services of the State Physician to conduct the Limited or Full Physical Examination for the specific position; (10-31-96/1-31-97)

(f) shall pay any charges for contract services for the State Physician to review Limited or Full Physical Examination reports and decide if the Prospective Employee's physical condition meets the standards of physical fitness for the specific position; (10-31-96/1-31-97)

(g) shall inform the Prospective Employee of the administrative requirements to comply with the Medical and Physical Examination Program and furnish the

Prospective Employee with the appropriate forms and standards of medical and physical fitness for the position for which the employment offer has been made. (10-31-96/1-31-97)

Cite as Ga. Comp. R. & Regs. R. 478-4-.03
Authority: O.C.G.A. Sec. 45-2-40.
History. Original Rule entitled "Organization" adopted. F. Feb. 7, 1997; eff. Jan. 31, 1997, as specified by the Board.

Rule 478-4-.04. Standards of Medical and Physical Fitness.

(1) The Commissioner shall determine the most appropriate method of collecting information about the duties required of specific positions and shall provide the Committee with departmental collected information that describes the essential functions of specific groups of positions. (10-31-96/1-31-97)

(2) Based upon the information about the essential job functions, comments from departmental representatives, and guidelines provided in state and federal laws, the committee shall formulate recommended standards for medical and physical fitness for specific positions. The standards for medical and physical fitness that are in effect on June 30, 1996, shall remain in effect until modified through these rules. (10-31-96/1-31-97)

(3) Upon approval by the Board of new or revised standards, Prospective Employees who are employed on and after the effective date of the new or revised standards of medical and physical fitness shall be assessed using the new or revised standards. The standards shall include the method of assessment and certification that is required for a decision as to the medical and physical fitness of the Prospective Employee. (10-31-96/1-31-97)

Cite as Ga. Comp. R. & Regs. R. 478-4-.04
Authority: O.C.G.A. Sec. 45-2-40.
History. Original Rule entitled "Standards of Medical and Physical Fitness" adopted. F. Feb. 7, 1997; eff. Jan. 31, 1997, as specified by the Board.

Rule 478-4-.05. Assessment and Certification.

(1) Self-Assessment. Positions that require general health conditions may be included in general standards of medical and physical fitness that provide for the Prospective Employee to assess oneself by completing a questionnaire or statement form. (10-31-96/1-31-97)

(2) Limited Physical Examination. Positions having essential functions that may involve moderate to heavy physical activity or exposure to conditions that normally place the employee or public in unhealthy risk situations may require a Limited Physical Examination for assessing if the Prospective Employee meets the appropriate standards of medical and physical fitness. The examination may be performed by a State Physican; however, the employee may choose to use any licensed medical practitioner other than a State Physician who is designated by the employing department. (10-31-96/1-31-97)

(3) Full Physical Examination. Prospective Employees for positions having essential functions that require strenuous physical activity or potentially life-threatening working conditions shall be assessed by a Full Physical Examination. The examination may be performed by a State Physician; however, the employee may choose to use any licensed medical practitioner other than a State Physician who is designated by the employing department. (10-31-96/1-31-97)

(4) Certification. Certification that the Prospective Employee meets the standards of medical and physical fitness may be completed by the Prospective Employee or a State Physician. (10-31-96/ 1-31-97)

(a) A department may accept the self-assessment as self-certification that the individual meets the general standards of medical and physical fitness to perform the essential functions of a position for which the general standards apply; however, the department may refer the form of self-assessment and the essential functions required of the Prospective Employee to a State Physician for assessment and certification that the Prospective Employee meets the standards of medical and physical fitness to perform the essential functions of the position. (10-31-96/1-31-97)

(b) A department may accept the results of the Limited Physical Examination or Full Physical Examination and statement of assessment by a State Physician that the Prospective Employee meets the standards of medical and physical fitness to perform the essential functions of the specific position. (10-31-96/1-31-97)

(c) A department may receive or designate a place for the receipt of the results of a Limited Physical Examination or Full Physical Examination report by a medical practitioner other than a State Physician. Based upon the report and any additional information required to make an assessment, a State Physician shall make an assessment of the results and determine if the Prospective Employee may be certified as meeting the standards of medical and physical fitness to perform the essential functions of the specific position. (10-31-96/1-31-97)

(5) Cost. A department may develop a written policy that establishes the conditions under which the department or the Prospective Employee must pay the cost of a Limited or Full Physical Examination. (10-31-96/1-31-97)

(a) Department Pay. The respective department may use appropriated funds for payment to pay a State Physician for performing the Limited or Full Physical Examination and certification. (10-31-96/1-31-97)

(b) Employee Pay. The respective employing department may develop or participate in a pricing arrangement by which the "State Physician" may charge the Prospective Employee for a Limited or Full Physical Examination and certification. (10-31-96/1-31-97)

(c) Employee Pay. When a Prospective Employee chooses to use a medical practitioner other than a "State Physician", the employee shall pay the charge made by the medical practitioner. (10-31-96/1-31-97)

(6) Reasonable Accommodations. A department shall provide reasonable accommodation to the extent required by the Americans with Disabilities Act, 42 U.S.C. Sect 12010 *et seq.* The department shall take into consideration the report from the examining medical practitioner that the Prospective Employee does not have any condition that would impair the fulfillment of the prescribed duties of the position and the certification statement of a State Physician when complying with the requirements of federal and state law. (10-31-96/ 1-31-97)

Cite as Ga. Comp. R. & Regs. R. 478-4-.05
Authority: O.C.G.A. Sec. 45-2-40.
History. Original Rule entitled "Assessment and Certification" adopted. F. Feb. 7, 1997; eff. Jan. 31, 1997, as specified by the Board.

Rule 478-4-.06. Appeal.

(1) Departmental Policy. Each department shall establish a written policy that provides the department with an informed opinion when Prospective Employees submit an appeal, regardless of the format under which presented, contesting any requirement of the Medical and Physical Examination Program. (10-31-96/1-31-97)

(2) Departmental Decision. Upon receipt of an appeal from a Prospective Employee, the employing department shall review the facts and circumstances, obtain an informed opinion, and issue a final administrative decision to dispose of the appeal. (10-31-96/1-31-97)

(3) Notice to Commissioner. A department shall provide to the Commissioner notification of any appeal or litigation filed in any court by a Prospective Employee that alleges a violation of these rules. When a decision regarding the issue is rendered by the appropriate departmental official or court, a copy of the decision shall also be made available to the Commissioner. (10-31-96/1-31-97)

Cite as Ga. Comp. R. & Regs. R. 478-4-.06
Authority: O.C.G.A. Sec. 45-2-40.
History. Original Rule entitled "Appeal" adopted. F. Feb. 7, 1997; eff. Jan. 31, 1997, as specified by the Board.