

Amended by R.1993 d.270, effective June 7, 1993.  
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (b)2.

Amended by R.1995 d.12, effective January 3, 1995.  
See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

Amended by R.2006 d.104, effective March 20, 2006.  
See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In introductory paragraph (d), added “, but shall not include the local service competitive title of Police Assistant,” reference to N.J.A.C. 4A:3-3.7A and the last sentence.

Amended by R.2010 d.061, effective April 19, 2010.

See: 42 N.J.R. 9(a), 42 N.J.R. 775(a).

In (e)1, substituted “When a” for “A”, “is granted to” for “for” following “absence” and “one-year” for “one year”, inserted “, such leave”, and inserted the last sentence.

#### Case Notes

Extension of an employee’s working test period was not limited to instances involving voluntary furlough or furlough extensions; rather, an employee’s working test period could also be extended for periods of a leave of absence. A correction officer’s job performance was not evaluated for a full 12 months as of June 27, 2008, as he was out of work without pay for 12 days during his evaluation period; therefore, it was appropriate for the appointing authority to extend his working test period for a period of 12 days. In re Salva, OAL Dkt. No. CSV 941-09, 2010 N.J. CSC LEXIS 616, Final Decision (January 13, 2010).

There was no regulatory requirement that an employee be notified of an extension of a working test period due to a leave of absence, as contrasted to extensions of working test periods for employees where the purpose of the extension was to provide the unsatisfactory employee additional time to correct deficiencies in job performance. In re Salva, OAL Dkt. No. CSV 941-09, 2010 N.J. CSC LEXIS 616, Final Decision (January 13, 2010).

There was no basis to uphold correction officer recruit’s release at the end of his working test period where an injury from an automobile accident caused him to miss work during the working test period. The officer possessed medical documentation authorizing his absences on the dates in question and, notwithstanding that he sustained a relatively serious injury to his right foot and ankle, he did make a sustained attempt to report for duty as often as his injury permitted, missing work only when the pain and swelling in his foot became unbearable and would have prevented him from effectively performing his duties as a recruit. In re Salva, OAL Dkt. No. CSV 941-09, 2010 N.J. CSC LEXIS 616, Final Decision (January 13, 2010).

Appointing authority properly removed a correction officer for his failure to complete the requisite police academy training after three opportunities to do so; the authority was under no obligation to provide endless opportunities for training and the officer was on notice that he was charged with failing to complete the academy since that specification appeared on the Preliminary Notice of Disciplinary Action and was later sustained. In re Dickerson, OAL Dkt. No. CSV 11065-06, 2008 N.J. AGEN LEXIS 1084, Final Decision (September 10, 2008).

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which concluded that any slight delays in transmitting the request to extend an employee’s working test period were certainly not indicative of bad faith on the part of the appointing authority, where the employee was released at the end of the extended working test period. In re Villecca, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Employee with permanent title of Children’s Supervisor who accepted a position as a Human Services Specialist I with the county appointing authority when the county privatized its Children’s Shelter was never laid off; the county rescinded its planned layoff, as all affected employees had accepted alternate employment within the county, and the employee’s new position was a provisional appointment, pending promotional examination procedures. In re Garcia, OAL Dkt. No. CSV 11932-07, 2008 N.J. AGEN LEXIS 595, Merit System Board Decision (May 7, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 673) adopted, which concluded that assessments of a secretarial assistant’s work made before and after her working test period were of no consequence in determining whether the appointing authority acted in good faith when it returned her to her formerly held position; of critical importance was the assessment of her performance during the working test period by those individuals who were directly responsible for her supervision. In re Coleman, OAL Dkt. No. CSV 6637-06, 2007 N.J. AGEN LEXIS 1151, Final Decision (December 5, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 1035) adopted, which found that a conditional police officer recruit who had resigned from the Police Academy was subject to termination under the terms of his conditional employment, despite his testimony that he was not aware that he was resigning, because Academy staff testified that the proper forms had been submitted and that the recruit had understood what he was doing when he resigned. The recruit’s working test period had not begun because he had not completed his Academy training. In re Clark, OAL Dkt. No. CSV 09764-05, 2007 N.J. AGEN LEXIS 1072, Final Decision (February 28, 2007).

N.J.A.C. 4A:6-1.1 does not prohibit an appointing authority from granting a non-permanent employee a leave of absence for a period up to one year, and employees in their working test period can be granted leaves of absence. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

Correction officer, who was unreasonably denied a leave of absence when she was hospitalized during the one-year working test period, was not a permanent employee because she did not complete the one-year working test period; the officer could not accrue credit towards completing a working test period during a leave of absence, and a new working test period was required in order to provide the appointing authority the opportunity to fully assess the officer’s performance. In re Mortimer, OAL Dkt. No. CSV 6378-05, 2006 N.J. AGEN LEXIS 543, Merit System Board Decision (April 26, 2006).

New four-month working test period was granted in the title of Assistant District Parole Supervisor based on the totality of the circumstances, including the employee’s satisfactory performance during the majority of the working test period and the lack of opportunity to remedy performance deficiencies brought to the employee’s attention during the latter part of the working test period; the procedural irregularity caused by the fact that the working test period start date was not the same as the regular appointment date was not enough to justify granting permanent status to the employee under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Merit System Board directed the Division of Human Resource Information Services to reevaluate DOP practice of approving regular appointment dates that were not consistent with working test period start dates, resulting in uncertainties concerning the ending date of an employee’s working test period and the time within which notice must be served under N.J.A.C. 4A:2-4.1(c). In re Bellini, OAL Dkt. No. CSV 3584-02, 2006 N.J. AGEN LEXIS 209, Final Decision (January 25, 2006).

Family Services Supervisor was given new working test period despite angry behavior that was inappropriate for a supervisor. The employee had demonstrated a willingness to work long hours and her proficiency for her job. In re Williams-Kline, OAL Dkt. No. CSV 11386-03, 2006 N.J. AGEN LEXIS 203, Final Decision (January 6, 2006).

Release of police officer after his working test period was not justified. The officer had missed 95 working days during the last six months of his working test period, but his father, and then his mother, had died, and he had sustained an injury in the line of duty. A large portion of the officer’s absences were approved leaves of absence due to his unfortunate circumstances, which should have automatically extended his working test period under N.J.A.C. 4A:4-5.2(e). In re Robinson, OAL Dkt. No. CSV 11727-03, 2006 N.J. AGEN LEXIS 128, Final Decision (December 21, 2005).

Working test period extended 30 days to compensate for four weeks of approved leave and vacation. *Regrut v. Warren County*, 95 N.J.A.R.2d (CSV) 460.

Working test period for public employee was extended by approved leave of absence. *Wilczynski v. Water Pollution Control*, 95 N.J.A.R.2d (CSV) 378, reversed 96 N.J.A.R.2d (CSV) 300.

Food service worker on approved medical leave was entitled to additional working test period. *Singletary v. Bergen Pines County Hospital*, 95 N.J.A.R.2d (CSV) 370.

Supervisor was entitled to two-month extension of second working test period. *McClellan v. Department of Community Affairs*, 94 N.J.A.R.2d (CSV) 19.

#### 4A:4-5.3 Progress reports

(a) The appointing authority shall prepare a progress report on the employee at the end of two months and a final report at the conclusion of the working test period. If the Commissioner has extended the working test period in State service pursuant to N.J.A.C. 4A:4-5.2(b)2, the appointing authority shall also prepare a progress report at the end of five months and a final report at the conclusion of the extended working test period.

(b) For entry level law enforcement, correction officer and firefighter titles, the appointing authority shall prepare a progress report on the employee at the end of six months and a final report at the conclusion of the working test period.

(c) The appointing authority shall furnish the employee with a copy of all reports.

(d) In State service, the appointing authority shall:

1. Retain all reports for an employee in his or her individual personnel file;
2. When an employee is being separated or returned to his or her permanent title due to unsatisfactory performance, submit to the Department of Personnel, within five days following the last day of the working test period, copies of all progress reports and the final report and the written notice of separation or return to his or her permanent title;
3. Retain all progress reports and related material for the length of an employee's service and for six years following his or her separation from State service, if applicable; and
4. Retain for auditing any other records so identified by the Department of Personnel.

(e) In local service, the appointing authority shall furnish working test period progress reports to the Department of Personnel upon request.

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (c); added new (d) and (e).

#### Case Notes

Initial Decision (2009 N.J. AGEN LEXIS 554) adopted, which found that a Human Services Specialist-1 was properly dismissed at the end of her working test period; although she worked very hard and had a great deal of passion for the position, she was unable to demonstrate competency of the written materials or the important interpersonal and interview skills required to master the material. Other than her bare assertion that the trainers were deliberately confusing her and contradicting themselves, the specialist provided no substantiation of any claim that could have been construed as bad faith on the part of the County as her employer. In re *Ajewole*, OAL Dkt. No. CSV 01226-09, 2009 N.J. CSC LEXIS 1443, Final Decision (October 7, 2009).

Initial Decision (2008 N.J. AGEN LEXIS 316) adopted, which concluded that the absence of a justification letter along with the employee's fifth-month progress report did not constitute a showing of bad faith entitling the terminated employee to a new working test period; the employee was counseled numerous times about her deficiencies. In re *Villecca*, OAL Dkt. No. CSV 2978-06, 2008 N.J. AGEN LEXIS 710, Final Decision (June 25, 2008).

Social Service Aide was entitled to a new working test period because, in failing to provide the aide with timely written notification of his deficiencies through the progress reports required by N.J.A.C. 4A:4-5.3, the appointing authority denied him a fair evaluation of his work performance and the authority's release of the aide for deficiencies in job performance that were not adequately brought to his attention through the required progress reports evidenced a lack of good faith. In re *Maldonado*, OAL Dkt. No. CSV 07337-04, 2008 N.J. AGEN LEXIS 396, Initial Decision (June 6, 2008), adopted (Civil Service Comm'n July 30, 2008).

Initial Decision (2007 N.J. AGEN LEXIS 830) adopted, which concluded that a correction officer was legally entitled to only two evaluations during his working test period, even though a collective bargaining agreement provided for six evaluations; a negotiated collective bargaining agreement could not contravene or supersede a term or condition of employment that was set by statute. In re *Britton*, OAL Dkt. No. CSV 8350-06, 2008 N.J. AGEN LEXIS 520, Final Decision (January 30, 2008).

Procedural violations of N.J.A.C. 4A:4-5.1 et seq., including the non-receipt of progress reports, may create a presumption of bad faith; however, that presumption can be rebutted via evidence that the employee was otherwise aware of work performance and other deficiencies during the working test period. Thus, where a county correction officer was advised of his performance deficiencies, had been disciplined during the working test period, and had been warned regarding excessive usage of leave time, there was ample evidence that the officer's attendance and performance was less than satisfactory during the working test period; therefore, whether or not he actually received the progress reports, pursuant to N.J.A.C. 4A:4-5.3, would not change the conclusion that the officer's working test period was conducted in good faith and that his release was for legitimate, work-related reasons. In re *Matus*, OAL Dkt. No. CSV 5064-07, 2007 N.J. AGEN LEXIS 1029, Final Decision (December 5, 2007).

Evaluation of probationary police officer's performance during working test period was deficient. *Love v. Irvington Township Police Department*, 93 N.J.A.R.2d (CSV) 482.

Failure to give employee written progress report during working test period; bad faith. *Sokolowsky v. Township of Freehold Dept. of Code Enforcement*, 92 N.J.A.R.2d (CSV) 155.

Employee was entitled to new working test period. *Richardson v. Department of Corrections, New Jersey State Prison*, 92 N.J.A.R.2d (CSV) 63.