

TITLE 4A
CIVIL SERVICE

Title Historical Note

Pursuant to L. 1986, c.112, effective September 25, 1986, the former Department of Civil Service was replaced by the Department of Personnel. The rules contained in Title 4 of the New Jersey Administrative Code, Department of Civil Service, were repealed pursuant to several rulemakings from 1987 to 1990 and new rules of the Department of Personnel were adopted and codified in Title 4A. For the historical text of rules of the former Title 4, Department of Civil Service, contact the Office of Administrative Law.

CHAPTER 1
GENERAL RULES AND DEPARTMENT ORGANIZATION

Authority

N.J.S.A. 11A:1-2, 11A:2-1, 11A:2-3, 11A:2-6, 11A:2-7, 11A:2-11, 11A:2-12, 11A:3-1, 11A:3-6, 11A:4-13, 11A:10-1, 11A:10-3, 11A:10-4, 11A:11-2, 52:14B-3(1) and (3), and 52:14B-4(f); N.J.A.C. 1:30; P.L. 2001, c. 5, P.L. 2001, c. 404, P.L. 2003, c. 246 and P.L. 2006, c. 103; 42 U.S.C. §§12101 et seq.; and 28 CFR Part 35.107.

Source and Effective Date

R.2008 d.214, effective July 1, 2008.
See: 40 N.J.R. 1400(a), 40 N.J.R. 4519(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 1, General Rules and Department Organization, expires on July 1, 2015. See: 43 N.J.R. 1203(a).

Subchapter 5, Disability Discrimination Grievance Procedure, is exempt under 28 C.F.R. Part 35.

Chapter Historical Note

Chapter 1, General Rules and Department Organization, was adopted as R.1987 d.406, effective October 5, 1987. See: 19 N.J.R. 1011(a), 19 N.J.R. 1827(a). See, also, Title Historical Note prior to this Chapter.

Pursuant to Executive Order No. 66(1978), Chapter 1, General Rules and Department Organization, was readopted as R.1992 d.416, effective September 22, 1992. See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a). Subchapter 5, Disability Discrimination Grievance Procedure, was adopted as R.1993 d.614, effective December 6, 1993. See: 25 N.J.R. 1314(c), 25 N.J.R. 5464(a).

Pursuant to Executive Order No. 66(1978), Chapter 1, General Rules and Department Organization, was readopted as R.1997 d.434, effective September 22, 1997. See: 29 N.J.R. 3101(a), 29 N.J.R. 4455(a).

Chapter 1, General Rules and Department Organization, was readopted as R.2003 d.111, effective February 13, 2003. See: 34 N.J.R. 3569(a), 35 N.J.R. 1407(a).

Chapter 1, General Rules and Department Organization, was readopted as R.2008 d.214, effective July 1, 2008. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. PURPOSE, SCOPE AND DEFINITIONS

4A:1-1.1 Purpose

The purpose of these rules is to establish a personnel system that provides a fair balance between managerial needs and employee protections for the effective delivery of public services consistent with Title 11A, New Jersey Statutes. See N.J.S.A. 11A:1-2.

Case Notes

The Civil Service Act and its accompanying regulations did not require that preliminary notices of disciplinary action be signed by both police director and IAD Commander because the Act and its regulations did not require two signatures for the filing of a complaint. *Grill v. City of Newark*, 709 A.2d 333, 311 N.J.Super. 149 (N.J.Super.L. 1997).

Validity. *Gloucester Cty. Welfare Bd. v. N.J.Civ.Serv.Comm'n*, 93 N.J. 384, 461 A.2d 575 (1983).

4A:1-1.2 Scope, applicability and invalidation

(a) All appointing authorities and employees subject to Title 11A, New Jersey Statutes, shall comply with these rules.

(b) These rules shall apply only to the career service unless otherwise specified.

(c) These rules shall be considered the means by which the statutory purposes of the merit employment system are carried out. The Commissioner or the Board may relax these

rules for good cause in a particular situation, on notice to affected parties, in order to effectuate the purposes of Title 11A, New Jersey Statutes.

(d) If a rule or part of a rule is declared invalid for any reason, the remainder of the rules shall not be affected by such determination.

Amended by R.2008 d.214, effective August 4, 2008.
See: 40 N.J.R. 1400(a), 40 N.J.R. 4519(b).

In (c), substituted "purposes" for "purpose".

Law Review and Journal Commentaries

Civil Service — Disability Retirement — Police Seniority. Judith Nallin, 133 N.J.L.J. No. 13, 55 (1993).

Case Notes

In a fire captain's suit against a city challenging the failure to appoint him to deputy fire chief, a civil service appointing authority violated the Rule of Three, set forth in N.J.S.A. 11A:4-8, in guaranteeing a promotional candidate that he would receive the appointment of deputy fire chief if he attained the highest score on the examination, particularly because that individual guarantee was not contemporaneously disclosed to the other applicants who sat for the examination. In re Martinez, 403 N.J. Super. 58, 956 A.2d 386, 2008 N.J. Super. LEXIS 206, 28 I.E.R. Cas. (BNA) 760 (App.Div. 2008).

Merit System Board has right to relax rules of timeliness of appeal for good cause. Matter of Allen, 262 N.J. Super. 438, 621 A.2d 87 (A.D.1993).

Appellate Division improperly reviewed action of Civil Service Commissioner in deciding educational qualifications (citing former rule N.J.A.C. 4:1-1.4). Gloucester Cty. Welfare Bd. vs. N.J. Dep't of Civil Service, 93 N.J. 384, 461 A.2d 575 (App.Div.1983).

Jurisdiction: Civil Service v. PERC. City of Hackensack v. Winner, 162 N.J. Super. 1, 392 A.2d 187 (App.Div.1978) modified and affirmed, 82 N.J. 1, 410 A.2d 1146 (1980).

Public employer authority to bend Civil Service Commission by collective bargaining agreement. State v. State Supervisory Employees Association, 78 N.J. 54, 393 A.2d 233 (1978).

Transfer of case of provisional employee who was discharged during county reorganization and was entitled to retroactive consideration of her qualifications for permanent civil service employee status to Department of Personnel was proper, where department had special expertise and competence in area. Melani v. County of Passaic, 345 A.2d 579.

Authority of Commission to use appeals panels in regard to salary disputes. Abramson v. Farrell, 122 N.J. Super. 30, 298 A.2d 705 (1972).

County College Law pertains: nonprofessional and non-instructional employees of county community colleges are not subject to Civil Service. Atlantic Comm. College v. Civil Service Commission, 59 N.J. 102, 279 A.2d 820 (1971).

4A:1-1.3 Definitions

The following words and terms, when used in these rules, shall have the following meanings unless the context clearly indicates otherwise:

"Appointing authority" means a person or group of persons having power of appointment or removal.

"Appointment" means the offer, acceptance and commencement of employment.

"Base salary" means an employee's rate of pay exclusive of any additional payments or allowances.

"Board" means the Merit System Board.

"Career Service" means those positions and job titles subject to the tenure provisions of Title 11A, New Jersey Statutes.

"Certification" means a list of names presented to an appointing authority for regular appointment.

"Class code" means a designation assigned to job titles in State and local Service with ranking based upon an evaluation of job content.

"Closing date for examination" means the date by which an applicant for an examination must meet all of the requirements contained in the examination announcement.

"Commissioner" means the Commissioner of Personnel.

"Days" means calendar days unless otherwise specified.

"Demotion" means, in local service, a reduction in title or scale of compensation, and in State service, a reduction in class code.

"Department" in local service, where not otherwise defined by statute, means the largest type of organizational unit established by ordinance or resolution, as appropriate, that is not a sub-unit of any other organizational unit for the purpose of administering the political subdivision. In State service, "department" means a principal executive department of State government.

"Disposition" means the written report of actions taken by an appointing authority regarding a certification.

"Eligible list" means a roster compiled or approved by the Department of Personnel of persons who are qualified for employment or reemployment.

"Filing date for examination" means the date by which an application for an examination must be received in the office designated in the announcement. When mailed, the filing date is the date by which a properly addressed application must be postmarked.

"Fine" means a disciplinary penalty which requires the payment of money or the performance of service without pay or at reduced pay.

"Immediate family" means an employee's spouse, domestic partner (see section 4 of P.L. 2003, c.246), child, legal ward, grandchild, foster child, father, mother, legal guardian, grandfather, grandmother, brother, sister, father-in-law, mother-in-law, and other relatives residing in the employee's household.

"Layoff" means the separation of a permanent employee from employment for reasons of economy or efficiency or other related reasons and not for disciplinary reasons.

"Local service" means employment in any political subdivision operating under Title 11A, New Jersey statutes.

“Open competitive examination” means a test open to members of the public who meet the prescribed requirements for admission.

“Part time employee” means an employee whose regular hours of duty are less than the regular and normal workweek for that job title or agency.

“Permanent employee” means an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period.

“Position” means the assignment of specific duties and responsibilities requiring the employment of one person.

“Promotion” means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title.

“Promotional examination” means a test open to permanent employees who meet the prescribed requirements for admission.

“Provisional appointment” (PA) means employment in the competitive division of the career service pending the appointment of a person from an eligible list.

“Regular appointment” (RA) means the employment of a person to fill a position in the competitive division of the career service upon examination and certification, or the employment of a person to a position in the noncompetitive division of the career service.

“Removal” means termination of a permanent employee from employment for disciplinary reasons.

“Senior executive service” means positions in State service designated by the Board as having substantial managerial, policy influencing or policy executing responsibilities not included in the career or unclassified services.

“Spouse” means a husband, a wife, or a party to a civil union, in accordance with N.J.S.A. 37:1-1 and P.L. 2006, c. 103.

“State service” means employment for the State of New Jersey.

“Suspension” means temporary separation from employment for disciplinary reasons.

“Suspension on the record” means a suspension for disciplinary reasons imposed for record purposes only, without loss of pay, benefits or seniority.

“Title” means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications.

“Title scope” means a defined group of job titles used as a factor in determining eligibility for promotional examinations. Title scope may also include educational, experience and other specific requirements.

“Title series” means titles involving the same kind of work and ranked according to level of difficulty and responsibility.

“Unclassified service” means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.

“Unit scope” means a defined part of a governmental agency used as a factor in determining eligibility for promotional examinations.

“Working test period” means a part of the examination process after regular appointment, during which time the work performance and conduct of the employee is evaluated to determine if permanent status is merited.

Amended by R.1988 d.258, effective June 6, 1988.
See: 20 N.J.R. 326(a), 20 N.J.R. 1183(a).

Added definitions “Closing date for examination”, “Filing date for examination”, “Title scope” and “Unit scope”.

Amended by R.1988 d.415, effective September 6, 1988.
See: 20 N.J.R. 845(b), 20 N.J.R. 2255(a).

Added the definition “Department”.

Amended by R.1992 d.416, effective October 19, 1992.
See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).

Revised definition “demotion”.

Amended by R.2005 d.65, effective February 22, 2005.
See: 36 N.J.R. 4566(a), 37 N.J.R. 586(a).

In “immediate family”, inserted “domestic partner” following “employee’s spouse”.

Petition for Rulemaking: Notice of Receipt; General Rules and Department Organization Appeals, Discipline and Separations Suspensions on the Record.

See: 38 N.J.R. 1085(a).

Amended by R.2006 d.386, effective November 6, 2006.
See: 38 N.J.R. 2773(a), 38 N.J.R. 4690(a).

Added definition “Suspension on the record”.

Amended by R.2007 d.244, effective August 20, 2007.
See: 39 N.J.R. 1340(a), 39 N.J.R. 3499(a).

Added definition “Spouse”.

Amended by R.2008 d.214, effective August 4, 2008.
See: 40 N.J.R. 1400(a), 40 N.J.R. 4519(b).

In definition “Class code”, inserted “and local”.

Law Review and Journal Commentaries

Civil Service—Administrative Procedure—Counties—Municipalities.
Judith Nallin, 134 N.J.L.J. No. 17, 50 (1993).

Case Notes

Former city police officer’s claim that the city and two officials violated the officer’s procedural due process rights in disciplining the officer survived summary judgment in part given fact issues as to whether the final disciplinary decision was made by the person authorized to do so for purposes of N.J.A.C. 4A:2-2.5 and 4A:2-2.6; it was unclear whether the decision was made by the “appointing authority” under N.J.A.C. 4A:1-1.3. *Reilly v. City of Atl. City*, 427 F. Supp. 2d 507, 2006 U.S. Dist. LEXIS 17208 (D.N.J. 2006).

Open competitive examination to residents for position of police chief violated the Civil Service Act, the Board’s own regulations, and the rule-making provisions of the Administrative Procedure Act. *Matter of Police Chief (M2010P) South Orange Village*, 266 N.J.Super. 101, 628 A.2d 809 (A.D.1993).

“Local government service” includes employees of county prosecutor and sheriff’s office (citing former rule N.J.A.C. 4:1-2.1). *Gudgeon v. County of Ocean*, 135 N.J.Super. 13, 342 A.2d 553 (App.Div.1975) certification granted 70 N.J. 138, 358 A.2d 185.

When an employee paid a fine in lieu of suspension, the employee was not separated from employment; a fine in lieu of suspension under N.J.A.C. 4A:2-2.4 was recorded in the employee's personnel record as "x number of days' pay fined in lieu of x number of days suspended." Consequently, the number of days' pay fined was the number to be considered for progressive disciplinary purposes since that was the actual disciplinary penalty imposed (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 406). In re Sims, OAL Dkt. No. CSV 4103-04, 2005 N.J. AGEN LEXIS 1258, Final Decision (September 7, 2005), aff'd per curiam, Docket No. A-4396-05T3, 2007 N.J. Super. Unpub. LEXIS 1514 (App.Div. November 27, 2007).

In the absence of permanent status in a career service title, the Board lacks jurisdiction to entertain major discipline appeals and there is no right to a hearing. In re Gooden, OAL Dkt. No. CSV 6905-05, 2006 N.J. AGEN LEXIS 630, Final Decision (May 24, 2006).

Enrollment in retirement system is neither immediate nor automatic (citing former N.J.A.C. 4:1-2.1). *Frew v. Bd. of Trustees Public Employees' Retirement System*, 8 N.J.A.R. 16 (1984).

4A:1-1.4 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Commissioner to promulgate, amend or repeal a rule.

(b) A petition must include the reasons for the request.

(c) A petition for a new rule must include the substance or nature of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(d) A petition for an amended rule must indicate any existing text to be deleted and include any new text to be added.

(e) The Commissioner shall, in writing, either deny the petition or approve the petition for processing.

(f) Notice of the petition and the Commissioner's decision shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:30-3.6.

SUBCHAPTER 2. RECORDS

4A:1-2.1 Department of Personnel access to appointing authority records and information

Appointing authorities shall provide Department of Personnel representatives free access to their premises and to requested records and information.

4A:1-2.2 Public records

(a) The following Department of Personnel records shall be public:

1. An individual's name, title, salary, compensation, dates of government service and reason for separation;
2. Information on specific educational or medical qualifications required for employment;

3. Final orders of the Commissioner or Board; and

4. Other records which are required by law to be made, maintained or kept on file.

(b) Individual personnel records, except as specified in (a) 1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

(c) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other statute, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Rule of court, or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:

1. Appeal files in Merit System Board, Commissioner of Personnel and Division of Equal Employment Opportunity and Affirmative Action matters, including written submissions of the parties and all other related documentation used to make an administrative determination in these matters. However, final decisions of the Board and the Commissioner, including the bases for these decisions, shall be considered public records.

(d) See N.J.A.C. 4A:4-2.16 concerning examination records.

Amended by R.1992 d.416, effective October 19, 1992.
See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).

Revised (b); added new (c).

Amended by R.2008 d.214, effective August 4, 2008.
See: 40 N.J.R. 1400(a), 40 N.J.R. 4519(b).

Added new (c); and recodified former (c) as (d).

SUBCHAPTER 3. ORGANIZATION

4A:1-3.1 General provisions

(a) The Department of Personnel is constituted as a principal State Department consisting of the:

1. Commissioner of Personnel;
2. Merit System Board; and
3. Such subdivisions as the Commissioner may deem necessary.

4A:1-3.2 Commissioner of Personnel

(a) The Commissioner of Personnel shall:

1. Serve as chairperson of the Merit System Board;
2. Serve as principal executive and request officer of the Department;

3. Maintain a management information system to implement Title 11A, New Jersey Statutes;
4. Establish necessary programs and policies for the State and local service;
5. Assist the Governor in personnel and labor relations;
6. Render final administrative decisions on appeals of classification, salary, layoff rights and State noncontractual grievances;
7. Establish and consult with advisory board representing political subdivisions, personnel officers, labor organizations and other appropriate groups;
8. Make required reports to the Governor and Legislature;
9. Approve appointments in the State and local service; and
10. Perform such other duties as prescribed by law and these rules.

Case Notes

Powers and duties; approval of classification plans. Gloucester Cty. Welfare Bd. v. N.J. Civ. Serv. Comm'n., 93 N.J. 384, 461 A.2d 575 (1983) and (dissenting opinions).

4A:1-3.3 Merit System Board

(a) The Merit System Board shall:

1. Hold a public meeting at least once each month, except August, at which three members shall constitute a quorum;
2. Render final administrative decisions on appeals and on other matters referred by the Commissioner, except for those matters listed in N.J.A.C. 4A:1-3.2(a)6 or delegated to the Commissioner;

3. Adopt rules for implementing Title 11A, New Jersey Statutes after public hearing, except that a public hearing shall not be required for the adoption of emergency rules. See N.J.A.C. 1:30-4.5 for Office of Administrative Law emergency rule adoption procedures;

4. Interpret the application of Title 11A, New Jersey Statutes, to any public body or entity; and

5. Perform such other duties as prescribed by law and these rules.

Amended by R.1992 d.416, effective October 19, 1992.

See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).

Revised (a)2.

Case Notes

Police officer hired after completing the required police training course under the alternate route authorized by a 1998 amendment to the Police Training Act, N.J.S.A. 52:17B-66 through 52:17B-77.6, may be subject to a one-year probationary period prescribed by a municipal ordinance, during which the officer can be terminated without cause. Azzara v. Township of Waterford, 392 N.J. Super. 322, 920 A.2d 725, 2007 N.J. Super. LEXIS 120 (App.Div. 2007).

Autonomous political subdivisions; relationship of Civil Service Act to firemen. Oughton v. Board of Fire Comm'rs, etc., 168 N.J. Super. 434, 403 A.2d 69 (Law Div.1979) on reconsideration 178 N.J. Super. 633, 429 A.2d 1096 (Law Div.1980) affirmed in part, reversed in part 178 N.J. Super. 565, 429 A.2d 1059, certification denied 87 N.J. 367, 434 A.2d 1055.

Discretion of Civil Service Commission to hold open competitive exams. State v. State Supervisory Employees Association, 78 N.J. 54, 393 A.2d 233 (1978).

Jurisdiction. City of Hackensack v. Winner, 162 N.J. Super. 1, 392 A.2d 187 (App.Div.1978) mod. on other ground 82 N.J. 1, 410 A.2d 1146 (1980).

Power of local service employer to effect out of class temporary transfer. In re Appeal of Lembo, 151 N.J. Super. 242, 376 A.2d 971 (App.Div.1977).