

## CHAPTER 4

## SELECTION AND APPOINTMENT

## Authority

N.J.S.A. 11A:2-6(d), 11A:4-1 et seq., 11A:7-13, 40A:9-1.3 through 1.10, 40A:14-10.1a, 40A:14-12, 40A:14-45, 40A:14-123.1a, 40A:14-127, 40A:14-127.1, 38:23A-2, L.1992 c.197, and Executive Order No. 10(1982).

## Source and Effective Date

R.1993 d.270, effective May 12, 1993.  
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

## Executive Order No. 66(1978) Expiration Date

Chapter 4, Selection and Appointment, expires on May 12, 1998.

## Chapter Historical Note

Chapter 4, Selection and Appointment, was adopted as R.1988 d.259, effective June 6, 1988. See: 20 N.J.R. 327(a), 20 N.J.R. 1183(b). See, also, the Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 8 through 16; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 11, 13 and 14; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 6, 11, 13 and 14.

Pursuant to Executive Order No. 66(1978), Chapter 4 was readopted as R.1993 d.270. See: Source and Effective Date. See, also, section, annotations for specific rulemaking activity. Notice of Receipt of and Action on a Petition for Rulemaking. See: 29 N.J.R. 1568(a).

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## SUBCHAPTER 1. TYPES OF APPOINTMENTS

## 4A:4-1.1 Career service appointments

(a) Regular appointments to titles allocated to the competitive division of the career service shall be subject to an

examination process and successful completion of a working test period.

(b) The Commissioner may authorize an appointing authority to make a regular appointment of a qualified person to a title in the noncompetitive division of the career service without an examination. Preference shall be given to disabled veterans and then veterans. See N.J.A.C. 4A:5 on veterans preference.

(c) The Commissioner may authorize the promotion, through promotional examination procedures, from the non-competitive division, of permanent employees who meet the open competitive requirements, to:

1. A related entry level title in the competitive division; or
2. In appropriate situations, to a related above-entry level title in the competitive division.

#### Case Notes

Physician/director of county medical services in unclassified service; definition of "institution" used in statute. *Morris Cty. v. Civil Service Dept.*, 177 N.J.Super. 25, 424 A.2d 852 (1980).

Validity of appointment to positions for which a vacancy had not been certified. *Adams v. Goldner* 156 N.J.Super. 299, 383 A.2d 1149 (App.Div.1977) affirmed 79 N.J. 78, 397 A.2d 1088 (1979).

Local service employer may only make intra-class transfers on a temporary basis (citing former N.J.A.C. 4:1). In the Matter of Lemko, 151 N.J.Super. 242, 376 A.2d 971 (App.Div.1977).

#### 4A:4-1.2 Senior executive service appointments: State service

(a) A senior executive service appointment may be made to any position allocated to the senior executive service by the Board.

(b) Permanent career service employees and qualified persons without permanent status are eligible for senior executive service appointments. See N.J.A.C. 4A:3-2.

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).

#### 4A:4-1.3 Unclassified appointments

(a) An unclassified appointment may be made to any title or position allocated to the unclassified service by statute or the Board.

(b) The permanent appointment rights of Title 11A, New Jersey Statutes, are not applicable to unclassified appointments. See N.J.A.C. 4A:3.

#### Case Notes

Promotion of officer with lesser seniority, municipality not governed by civil service. *Gaskill v. Mayor & Comm'rs. of Bor. of Avalon*, 143 N.J.Super. 391, 363 A.2d 359 (Law Div.1976, affirmed 149 N.J.Super. 364, 373 A.2d 1019 (App.Div.1977)).

Basis for promotion in unclassified service. *State Troopers Fraternal Ass'n State*, 115 N.J.Super. 503, 280 A.2d 235 (Ch.Div.), affirmed 119 N.J.Super. 375, 291 A.2d 840 (App.Div.1972), affirmed 62 N.J. 302, 301 A.2d 141 (1973).

#### 4A:4-1.4 Conditional regular appointments

(a) A conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranking eligibles may affect the final appointments. The names of conditional appointees shall remain on the eligible list for consideration for other employment.

(b) If the rights of a higher ranked eligible are upheld, the conditional regular appointment shall end.

(c) If the final determination of appointment rights causes no change in the selection process, the conditional appointment will be changed to a regular appointment. The original date of appointment will be retained.

(d) The appointing authority shall advise conditional appointees of their status and rights, including any change in appointment status.

#### 4A:4-1.5 Provisional appointments

(a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:

1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;
2. The appointee meets the minimum qualifications for the title at the time of the appointment; and
3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.

(b) Any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by the Department and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Commissioner for good cause.

#### Case Notes

Department of Energy was not equitably estopped from returning employee to his permanent position as senior engineer when promotional examination was not given between date of his provisional appointment and date of demotion (citing former N.J.A.C. 4:1-14.1). *O'Malley v. Department of Energy*, 109 N.J. 309, 537 A.2d 647 (1987).

Failure to give timely civil service examination does not vest provisional appointee with right to retain provisional appointment (citing former N.J.A.C. 4:1-16.8). *O'Malley v. Department of Energy*, 109 N.J. 309, 537 A.2d 647 (1987).