

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 See, also, the Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 8 through 16; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 11, 13 and 14; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 6, 11, 13 and 14.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.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. TYPES OF APPOINTMENTS

- 4A:4-1.1 Career service appointments
- 4A:4-1.2 Senior executive service appointments: State service
- 4A:4-1.3 Unclassified appointments
- 4A:4-1.4 Conditional regular appointments
- 4A:4-1.5 Provisional appointments
- 4A:4-1.6 Interim appointments
- 4A:4-1.7 Temporary appointments
- 4A:4-1.8 Emergency appointments
- 4A:4-1.9 Return of employees to their permanent titles
- 4A:4-1.10 Approval of appointments by Department of Personnel
- 4A:4-1.11 (Reserved)

APPENDIX. EXECUTIVE ORDER NO. 10

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

- 4A:4-2.1 Announcements and applications
- 4A:4-2.2 Types of examinations
- 4A:4-2.3 Open competitive examinations
- 4A:4-2.4 Promotional title scope: local service
- 4A:4-2.5 Promotional title scope: State service
- 4A:4-2.6 Eligibility for promotional examination
- 4A:4-2.7 Promotion upon waiver of competitive examination
- 4A:4-2.8 Scheduling of examinations
- 4A:4-2.9 Make-up examinations
- 4A:4-2.10 Conduct and security of examinations
- 4A:4-2.11 Residence standards
- 4A:4-2.12 Professional qualifications substitution program
- 4A:4-2.13 College Level Examination Program (CLEP)
- 4A:4-2.14 Accommodation and waiver of examinations for persons with disabilities
- 4A:4-2.15 Rating of examinations
- 4A:4-2.16 Retention and inspection of examination records
- 4A:4-2.17 Application processing fees

SUBCHAPTER 3. ELIGIBLE LISTS

- 4A:4-3.1 Types of eligible lists
- 4A:4-3.2 Order of names on eligible lists
- 4A:4-3.3 Duration and cancellation of eligible lists
- 4A:4-3.4 Revival of eligible lists
- 4A:4-3.5 Consolidation of eligible lists
- 4A:4-3.6 Additions to eligible lists
- 4A:4-3.7 Priority of eligible lists
- 4A:4-3.8 Correction of errors
- 4A:4-3.9 Reemployment program for certain law enforcement officers and firefighters
- 4A:4-3.10 Procedures for reemployment program for certain law enforcement officers and firefighters

SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS

- 4A:4-4.1 Need for certification
- 4A:4-4.2 Issuance of certification
- 4A:4-4.3 Certification from appropriate lists
- 4A:4-4.4 Limitation on number of times eligible is certified
- 4A:4-4.5 Certifications limited to persons of a particular sex, religion or national origin
- 4A:4-4.6 Eligibles on military leave
- 4A:4-4.7 Removal of names
- 4A:4-4.8 Disposition of a certification
- 4A:4-4.9 Date of appointment
- 4A:4-4.10 Certification of additional eligibles

SUBCHAPTER 5. WORKING TEST PERIOD

- 4A:4-5.1 General provisions
- 4A:4-5.2 Duration
- 4A:4-5.3 Progress reports
- 4A:4-5.4 Working test period appeals
- 4A:4-5.5 Restoration to eligible list or former title

SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

- 4A:4-6.1 Examination and selection disqualification
- 4A:4-6.2 Actions against disqualified persons
- 4A:4-6.3 Examination and selection appeals
- 4A:4-6.4 Review of examination items, scoring and administration
- 4A:4-6.5 Medical and/or psychological disqualification appeals
- 4A:4-6.6 Disqualification appeals

SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

- 4A:4-7.1 Transfers
- 4A:4-7.2 Reassignments
- 4A:4-7.3 Relocation assistance: State service
- 4A:4-7.4 Retention of rights
- 4A:4-7.5 Transfer during a working test period
- 4A:4-7.6 Lateral title change
- 4A:4-7.7 Appeals
- 4A:4-7.8 Voluntary demotion
- 4A:4-7.9 Resignation/new appointment
- 4A:4-7.10 Regular reemployment
- 4A:4-7.11 Transfer or combining of functions
- 4A:4-7.12 Reinstatement following disability retirement

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).

4A:4-2.5 Promotional title scope: State service

(a) For the purpose of announcing promotional examinations, all titles will be divided into one of the following categories:

1. Professional, which requires a Bachelor's or higher level degree, with or without a clause to substitute experience for education;
2. Para-professional, which requires at least 60 general college credits or 12 or more specific college credits (but less than a full degree), with or without a clause to substitute experience for education; or
3. Non-professional, which requires less than 60 general college credits or less than 12 specific college credits.

(b) When a promotion is within the same category as listed in (a) above, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to permanent competitive division employees serving in one of the following:

1. The next lower or next two lower in-series titles. See N.J.A.C. 4A:1-1.3 for definition of title series.
2. The next lower in-series title, if one exists, and all other competitive division titles at specified class code levels below the promotional title. See N.J.A.C. 4A:1-1.3 for definition of class code.
3. The next lower in-series title, if one exists, and all other permanent competitive division employees who meet the complete open competitive requirements.
4. To related titles, pursuant to an established plan approved by the Commissioner.
5. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(c) When a promotion is between categories as listed in (a) above, the examination shall be open to permanent competitive division employees currently serving in the announced unit scope and who meet one of the following criteria:

1. All applicants who meet the complete open competitive requirements;
2. All applicants who are permanent in a bridge title or titles approved by the Commissioner and who meet the complete open competitive requirements. A bridge title is one which is recognized by the Department of Personnel as related to a higher category title in terms of work performed and knowledge, skills and abilities required;
3. All titles that are in the same category as the announced title and that are in specified class codes below the announced title, including the next lower in-series title if one exists, with or without all or part of the open competitive requirements, as appropriate, and all applicants as described in (c)2 above; or

4. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(d) When a promotion is to be made from the noncompetitive division to a related title in the competitive division, the examination shall be open to all permanent employees who meet one of the following:

1. Serving in the next lower or next two lower in-series noncompetitive titles and possessing the complete open competitive requirements;
2. Serving in all related noncompetitive titles and possessing the complete open competitive requirements;
3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open competitive requirements, and all titles as described in (d)1 or 2 above;
4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or
5. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(e) The movement of a permanent employee in the noncompetitive division to a related title in the same category and with the same class code in the competitive division shall be considered a promotion for purposes of this subchapter. The title scope of the examination shall be established as set forth in (d) above.

Correction: Subsection (c) cross-reference should be (a) instead of (b).
Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).
Revised text.

4A:4-2.6 Eligibility for promotional examination

(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1. Have one year of continuous permanent service for an aggregate of one year immediately preceding the closing date in a title or titles to which the examination is open. Aggregate service shall be calculated in the same manner as seniority as set forth in N.J.A.C. 4A:4-2.15.
2. Be currently serving in the announced unit scope in a title to which the examination is open and meet all other requirements contained in the announcement. If an examination announcement is amended, all requirements must be met by the announced closing date whether or not the application filing date is changed;
3. Have not received a Performance Assessment Review (PAR) final rating of a Four, Marginally Below Standards, or Five, Significantly Below Standards (or equivalent in an approved local service evaluation program) in each of the two rating periods immediately preceding the announced closing date; and

4. File an application on or before the application filing date.

(b) In local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law.

(c) Except when permitted by the Merit System Board for good cause, such as a documented affirmative action basis, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process. The Department of Personnel may recommend to the Board good cause situations where out-of-title work should be accepted.

(d) Employees who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (a)1 above, include continuous permanent service in any higher related or comparable title.

(e) An employee who has established eligibility for a promotional examination with a closing date earlier than the effective date of a layoff shall be permitted to take such examination.

(f) Employees who are separated or displaced as a result of layoff and who subsequently return to a title and unit scope to which a promotional examination is open between the filing deadline and the examination date, shall be allowed to file for the examination.

(g) The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;
2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or
3. Other valid reasons as determined by the Commissioner.

Amended by R.1993 d.45, effective January 19, 1993.
See: 24 N.J.R. 3589(a), 25 N.J.R. 291(a).

Redesignated existing (a)3 as (a)4; added new (a)3.
Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Revised (a)1 and 2; revised (f).
Petition for Rulemaking: Notice of Receipt of a Petition for Rulemaking.
See: 29 N.J.R. 810(a).

Case Notes

Consideration of prior service in determining continuous service requirements for examination. *Makowitz v. Civil Service Dep't*, 177 N.J.Super. 61, 424 A.2d 1190 (App.Div.1980) certification denied 87 N.J. 326, 434 A.2d 76.

Preemptive rights to new position based on special reemployment list (citing former N.J.A.C. 4:1-12.4). *Cunningham v. Dep't of Civil Service*, 69 N.J. 13, 350 A.2d 58 (1975).

4A:4-2.7 Promotion upon waiver of competitive examination

(a) The Commissioner may authorize the promotion of a qualified permanent employee in the competitive division of the career service by regular appointment without competitive examination if:

1. The employee has been successfully tested in the basic skills required for the promotional title;
2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion;
3. The number of interested eligibles does not exceed the number of promotional appointments by more than two; and
4. Veterans preference rights are not a factor.

Amended by R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).
Revised (a)4.

Case Notes

Remedy for unlawful discrimination—employee should be promoted to positions earlier denied them as such positions become available (citing former N.J.A.C. 4:1-8.5). *Pilot v. Dep't of Health*, 7 N.J.A.R. 150 (1982) affirmed A-5858-81 (App.Div.1983).

4A:4-2.8 Scheduling of examinations

(a) Examinations may be scheduled for one or more sessions on a Statewide, regional or local basis.

(b) Candidates will be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancellation.

(c) Candidates shall be at the examination site at the designated time. Candidates arriving late shall only be admitted as follows:

1. Unless the examination notice states otherwise, candidates for written examinations or examinations containing written and performance parts shall be admitted to the examination if they arrive at the test room within 15 minutes after the designated time.