

**CHAPTER 4
SELECTION AND APPOINTMENT**

Authority

N.J.S.A. 11A:2-6(d), 11A:4-1 et seq., 11A:7-13, 38:23A-2, 40A:9-1.3 through 1.10, 40A:14-9.9, 40A:14-10.1a, 40A:14-12, 40A:14-45, 40A:14-123.1a, 40A:14-127, 40A:14-127.1 and 40A:14-180; P.L. 1992, c.197 and P.L. 2008, c.29; and Executive Order No. 10 (1982).

Source and Effective Date

R.2009 d.95, effective February 20, 2009.
See: 40 N.J.R. 5891(a), 41 N.J.R. 1206(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 4, Selection and Appointment, expires on August 19, 2017. See: 49 N.J.R. 492(a).

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 See, also, the Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 8 through 16; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 11, 13 and 14; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 6, 11, 13 and 14.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, Selection and Appointment, was readopted as R.1993 d.270, effective May 12, 1993. See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Notice of Receipt of and Action on a Petition for Rulemaking. See: 29 N.J.R. 1568(a).

Pursuant to Executive Order No. 66(1978), Chapter 4, Selection and Appointment, was readopted as R.1998 d.291, effective May 8, 1998. See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Chapter 4, Selection and Appointment, was readopted as R.2003 d.395, effective September 10, 2003. See: 35 N.J.R. 2389(a), 35 N.J.R. 4711(c).

Chapter 4, Selection and Appointment, was readopted as R.2009 d.95, effective February 20, 2009. See: Source and Effective Date. See, also, section annotations.

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 4, Selection and Appointment, was scheduled to expire on February 20, 2016. See: 43 N.J.R. 1203(a).

In accordance with N.J.S.A. 52:14B-5.1.d, the expiration date of Chapter 4, Selection and Appointment, was extended by gubernatorial directive from February 20, 2016 to February 20, 2017. See: 48 N.J.R. 485(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).

Good grounds were shown for an order relaxing relevant regulations to allow the Department of Law and Public Safety (DLPS) to make a provisional appointment, pending promotional examination procedures, to the title of Administrative Analyst 2, Accounting. The proposed appointee was currently serving in the noncompetitive title of Investigator 4 but DLPS claimed that due to business necessity, the appointee had been assigned higher level duties of an accounting and auditing nature and that advancement in his present track was not an appropriate option as the appointee no longer performed investigative work and was currently performing out-of-title duties consistent with those of the proposed title. In granting relief, the Civil Service Commission noted that there was no dispute that the proposed appointee met the open competitive requirements for the title at issue, with the consideration of his out-of-title experience. Moreover, the facts showed that his duties had changed due to operational needs such that the primary focus of his position was now consistent with the Adminis-

trative Analyst 2, Accounting title. Additionally, it was appropriate to relax applicable regulations to announce a promotional examination for the title of Administrative Analyst 2, Accounting in the appointee's unit scope to incumbents serving in the unrelated noncompetitive title of Investigator 4, Law and Public Safety, who meet the open competitive requirements, as well as to any other title scope deemed appropriate by Selection Services. Finally, good cause also was established in accordance to accept the proposed appointee's out-of-title work to qualify him for the promotional examination. In re *Booktor*, Dep't of Law & Pub. Safety, CSC Docket No. 2014-1807, 2014 N.J. CSC LEXIS 246, Final Administrative Determination (April 26, 2014).

For equitable considerations, it was appropriate to relax the provisions of N.J.A.C. 4A:4-1.1(c) and N.J.A.C. 4A:4-2.5(d) and to authorize the provisional appointment of an employee to the competitive title of Senior Stock Clerk. The employee had been assigned out-of-title duties as a Senior Stock Clerk due to the needs of the appointing authority. Further, the Division of Classification and Personnel Management (CPM) issued a classification determination indicating that the proper classification of the employee's title was Senior Stock Clerk, and CPM was in support of the appointing authority's request. In re *Igor Milewski*, Dep't of Law and Public Safety, CSC Dkt. No. 2014-2243, 2014 N.J. CSC LEXIS 363, Final Decision (April 25, 2014).

There is no such designation as an "acting" appointment under Civil Service rules. N.J.S.A. 11A:4-13 and N.J.A.C. 4A:4-1 et seq. provide for regular, conditional, provisional, interim, temporary, and emergency appointments. In re *Mullan*, Dep't of Law & Pub. Safety, CSC Docket No. 2013-1602, 2013 N.J. CSC LEXIS 1199, Final Administrative Action (December 19, 2013).

After a classification review revealed that the position held by an employee was properly classified as Data Entry Operator 2, a title that was allocated to the competitive division and was not a related entry or related above-entry level title to that of Clerk, which was the title that the employee held on a permanent basis, the equities of the situation were such that the provisions of N.J.A.C. 4A:4-1.1(c) and N.J.A.C. 4A:4-2.4(c) were properly relaxed, as permitted by N.J.A.C. 4A:1-1.2(c), to allow the employee to be provisionally promoted from the non-competitive title of Clerk to the competitive title of Data Entry, Operator 2, which promotion would be pending promotional examination procedures. In re *Smalls*, Dep't of the Treasury, CSC Docket No. 2014-1312, 2013 N.J. CSC LEXIS 1160, Final Administrative Decision (December 4, 2013).

Incumbent in the title of Auditor 2, Taxation was not entitled to reclassification of the position, which was located in the Department of the Treasury, to Auditor 1, Taxation, for various reasons including that the fact that he was given the title of "acting Auditor 1" by a supervising special agent was not entitled to any weight in the determination because there was no such designation as an "acting" appointment under Civil Service rules. Rather, N.J.S.A. 11A:4-13 and N.J.A.C. 4A:4-1 et seq. provided for regular, conditional, provisional, interim, temporary, and emergency appointments. That being so, the Department of the Treasury was precluded from appointing an individual in an "acting" capacity where, as here, the individual's appointment can be recognized under any one of the above classifications. In re *Curry*, Dep't of the Treasury, CSC Docket No. 2013-2939, 2013 N.J. CSC LEXIS 1136, Final Administrative Action (December 4, 2013).

Civil Service Commission found it appropriate to relax the provisions of N.J.A.C. 4A:4-1.1(c)2 and N.J.A.C. 4A:4-2.4(c) and ordered that a promotional examination for Supervising Account Clerk in an employee's unit scope be announced. The employee obtained the necessary experience required for the title when she previously held a regular appointment in the subject title. In re *Kathleen Castaldo*, Mercer Cty., CSC Dkt. No. 2014-869, 2013 N.J. CSC LEXIS 686, Final Decision (October 16, 2013).

Provisions of N.J.A.C. 4A:4-1.1(c)2 were relaxed in order to allow a promotional examination for Social Worker to be announced open to employees in the competitive and noncompetitive division who met the open-competitive requirements and who had at least one year of continuous permanent service. None of the employees in the competitive division who would potentially apply for a Social Worker promotional