

(e) An employee interchange may be terminated by either the receiving or sending agency by giving 30 days written notice to the other agency, the employee and the Department of Personnel.

(f) The New Jersey Conflict of Interest Law (N.J.S.A. 52:13D-12 et seq.) shall be applicable to all participating State employees and to Federal, local or private sector employees serving with a State agency.

#### 4A:6-4.9 Internship programs: State service

(a) Internship programs include:

1. Programs limited to full time students of participating accredited institutions of higher education who are performing services for a State department or agency directly related to their course of study;
2. Fellowships in managerial assignments to selected individuals based on established educational and career achievements; and
3. Educational or apprenticeship programs for State employees intended for career change or advancement or due to job displacement.

(b) A proposed internship program must be submitted in writing to the Commissioner by the agency head and include a detailed description of the program, its benefits, program participants, program costs and relevant data. The Commissioner may request additional information and may approve, disapprove or modify the request.

#### 4A:6-4.10 Employee Advisory Service: State service

(a) The Department of Personnel shall establish an Employee Advisory Service (EAS) to assist State employees in achieving and maintaining the highest level of job performance of which they are capable. EAS shall provide access to counseling, rehabilitative and/or community services for a State employee who:

1. Has received an annual performance rating at the lowest level. See N.J.A.C. 4A:6-5.1 et seq.
2. Has received a performance rating which is below the mid-point on the multi-level scale and an improvement plan has not been effective;
3. Is experiencing personal problems which affect job performance; or
4. Has a family member who is experiencing personal problems which affect the employee's job performance.

(b) Employees may voluntarily contact EAS or may be referred to EAS by the appointing authority. If the employee consents, he or she may be referred by a union or association representative. An employee should be referred to EAS as soon as problems are manifested which may affect job performance.

(c) Except as conditioned below or where there is an overriding health or safety need, all EAS information regarding an employee is confidential.

1. An employee may authorize in writing the release of all or part of such information.
2. In appointing authority referrals, the appointing authority may be informed:
  - i. Whether an individual has been accepted for a program;
  - ii. Whether or not an employee has kept his or her appointments;
  - iii. The dates and times of future appointments with either EAS or an outside agency; and
  - iv. The estimated amount of time needed to complete the program if reasonably ascertainable.

(d) Appointments for appointing authority referred employees shall be scheduled through the personnel office.

1. An employee shall be given time off with pay for the intake and evaluation visits. For other situations and visits, arrangements shall be set by the employee and appointing authority, which may include use of available sick or other leave.

2. When an appointing authority referred employee fails to keep a scheduled appointment or does not accept a referral from EAS, the appointing authority shall be notified of the matter by EAS.

(e) EAS shall monitor the progress of all employees. To maintain active client status, an employee must follow the prescribed EAS program.

(f) An appointing authority that is informed that an employee is receiving services through EAS, shall consult with the supervisor of the EAS program prior to seeking removal of the employee.

(g) State health or other benefit programs may be utilized where applicable.

## SUBCHAPTER 5. PERFORMANCE EVALUATION

### 4A:6-5.1 General provisions

(a) In local service, an appointing authority may establish an employee performance evaluation program. A performance evaluation system must be reviewed and approved by the Department of Personnel in order to be used in promotions or layoff.

(b) In State service, a Performance Assessment Review (PAR) program shall apply to all employees in the career

service, and those in unclassified titles as designated by particular departments or agencies.

1. While not mandated, departments and agencies are encouraged to include all unclassified titles in the PAR program.

2. The PAR program shall use standardized forms and rating scales for different performance appraisal models to be designated by the Department of Personnel and a three-level rating scale to include the following ratings:

- i. Exceptional;
- ii. Commendable; and
- iii. Unsatisfactory.

3. Each agency shall establish standardized rating cycles with a duration of one year. Within a particular standardized rating cycle, employees shall be rated at the same time, twice a year, with the interim and final ratings being six months apart.

(c) Each appointing authority shall maintain an employee's PAR evaluations in his or her personnel records and shall submit reports to the Department of Personnel on all final PAR ratings of its employees in a form prescribed by the Department.

(d) The Commissioner may modify the PAR program based on specific employee or agency needs.

Amended by R.1993 d.47, effective January 19, 1993.  
See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Revised (b).

Amended by R.2000 d.11, effective January 3, 2000.  
See: 31 N.J.R. 2824(a), 32 N.J.R. 35(a).

In (b), rewrote 2, and added 3.

#### Case Notes

Criteria for employee evaluations; managerial prerogative. *State v. State Supervisory Employees Association*, 78 N.J. 54, 393 A.2d 233 (1978).

Employee failed to prove any act of discrimination. *Chaudhry v. DEPE*, 93 N.J.A.R.2d (CSV) 635.

#### 4A:6-5.2 PAR procedure: State service

(a) An employee and his or her supervisor shall jointly develop a job performance plan consisting of work assignments together with measurable performance standards. The employee shall be provided with a copy of the performance plan once established. If an employee disagrees with the established performance plan, he or she may note such disagreement.

(b) At the end of six months and at the end of one year, the employee and the supervisor shall review the employee's performance. The supervisor shall designate an interim performance rating at the end of six months and a final rating at the end of one year.

1. When there is a change either in job assignment or supervisor during the evaluation period, the old performance plan shall be closed out. The employee's performance during the portion of the rating period under the old performance plan shall be rated and a new performance plan shall be prepared. The final rating shall be a proration of all ratings received during the review period.

2. When there is a change in job title during the evaluation period, the former supervisor shall assign a final rating for the former performance plan and title. A performance plan for the new title shall be developed.

3. When appropriate, performance improvement plans shall be set at each review.

4. The employee shall be entitled to a copy of the rating.

(c) When a rating below the Commendable level is received, a performance conference shall be conducted after three months or such shorter period of time as determined by the supervisor.

(d) A performance plan for each rating period shall be established within a reasonable time after completion of the previous rating period. New employees shall receive a performance plan within a reasonable time after appointment.

1. The supervisor shall prepare a job performance plan prior to the commencement of the working test period which shall identify the job assignment, include the essential criteria for successful job performance, and emphasize training and development.

(e) A supervisor's own PAR shall provide that the supervisor shall complete the PAR of his or her subordinates. A supervisor who fails to timely complete the final ratings of his or her subordinates, or who is responsible for another employee's failure to timely complete a final PAR rating, shall receive a rating of Unsatisfactory, and may be subject to discipline.

(f) The Department of Personnel may require additional reports, information or audits of an agency's PAR program.

(g) A complaint that an entire agency or unit is in violation of this subchapter shall be presented to the PAR coordinator within the personnel office for the subject department. The PAR coordinator shall, within 30 days, investigate the complaint, respond in writing to the individual(s) presenting the complaint and implement remedial action as appropriate. If the individual(s) is (are) dissatisfied with the response of the PAR coordinator, or if no action has been taken within 30 days of the complaint, the individual(s) may appeal the matter to the PAR Program Coordinator, Department of Personnel.

(h) Complaints concerning an individual's final PAR rating or performance standards shall be addressed through procedures set forth in N.J.A.C. 4A:6-5.3(b) through (d).

Amended by R.1993 d.47, effective January 19, 1993.

See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Revised (b)-(e); redesignated (e) as (f); added new (g).

Amended by R.2000 d.11, effective January 3, 2000.

See: 31 N.J.R. 2824(a), 32 N.J.R. 35(a).

Rewrote the section.

#### 4A:6-5.3 PAR use and review: State service

(a) An employee receiving an annual PAR rating below the Commendable level shall be denied an anniversary date increment.

1. An appointing authority may request an anniversary date increment for an employee who was denied an increment because of receiving an Unsatisfactory rating but whose performance has subsequently improved. If approved by the Department of Personnel, such increment shall not be effective until a pay period beginning at least 90 days after the employee's anniversary date.

2. An employee who receives an annual rating below the Commendable level should be referred by the appointing authority to the Employee Advisory Service. See N.J.A.C. 4A:6-4.10.

(b) Employees who are not represented by a collective negotiations unit may appeal performance standards or a final PAR rating of Unsatisfactory or Commendable through noncontractual grievance procedures. See N.J.A.C. 4A:2-3.1. In addition to the grievance procedure requirements, all appeals shall be accompanied by a copy of the PAR evaluation.

(c) Employees who are represented by a collective negotiations unit may appeal performance standards or a final PAR rating of Unsatisfactory or Commendable as a noncontractual grievance in accordance with the following procedures:

1. Step One grievance procedures shall be conducted as set forth in N.J.A.C. 4A:2-3.4.

2. A grievant may appeal a Step One grievance decision to the PAR Joint Union Management Panel within 10 calendar days of receipt of the written decision at Step One, or a lack of timely response by the appointing authority. The appeal shall be accompanied by material presented at Step One and any written records or decisions from Step One.

i. The Joint Union Management Panel shall consist of one individual selected by the appointing authority, one individual selected by the affected negotiations representative and one neutral individual jointly selected by the appointing authority and the affected negotiations representative.

ii. The panel shall meet, provided there are at least four Second Step appeals to be heard. The panel shall meet one additional day each month for every four additional appeals to be heard. When in any month there is no meeting because there are fewer than four

appeals to be heard, there shall be a meeting the following month, so long as there are any cases to be heard.

iii. The appointing authority and union panel members shall discuss each appeal on the agenda and, with the assistance of the neutral panel member, attempt to jointly resolve the appeal.

iv. If the appointing authority and union cannot come to a joint resolution, the appeal shall be heard by the full panel. At any Second Step appeal hearing, the employee may be represented by a union steward, local union officer and/or local union staff representative.

v. The parties may call witnesses and present evidence at the Second Step appeal hearing. However, each hearing shall conclude within approximately four hours. The neutral panel member shall control the admission of testimony and evidence to ensure adherence to this time frame.

vi. The panel shall issue a written decision within 10 days of the hearing. Each panel member shall have one vote.

3. Appeals from decisions of the Joint Union Management Panel may be made to the Department of Personnel in accordance with N.J.A.C. 4A:2-3.7(b).

(d) An employee may appeal the final departmental decision to the Merit System Board within 20 days of receipt of the decision.

1. The appeal shall be in writing and include a copy of the written departmental decision and the basis for the appeal.

2. The employee shall have the burden of proof to establish that the actions of the supervisor in assigning the rating were arbitrary, unreasonable or induced by improper motives.

3. The Board shall render a final administrative decision upon the written record or such other proceeding as it deems appropriate. See N.J.A.C. 4A:2-1.1.

(e) A rating of Unsatisfactory shall constitute evidence of incompetency, inefficiency or failure to perform duties. In a disciplinary action, an employee may challenge the basis of any rating that is an issue in the proceeding.

(f) Performance ratings may be used as a factor in promotion (see N.J.A.C. 4A:4-2.15) and layoff (N.J.A.C. 4A:8-2.4(h)).

Administrative change to (g).

See: 23 N.J.R. 1410(a).

Amended by R.1993 d.47, effective January 19, 1993.

See: 24 N.J.R. 3590(a), 25 N.J.R. 293(a).

Revised text.

Amended by R.2000 d.11, effective January 3, 2000.

See: 31 N.J.R. 2824(a), 32 N.J.R. 35(a).

Rewrote the section.

Amended by R.2003 d.261, effective July 7, 2003.

See: 35 N.J.R. 339(a), 35 N.J.R. 2861(b).

In (f), amended the N.J.A.C. reference following "layoff".

#### Case Notes

Statute providing for salary of judges of compensation controlled over regulation of salary adjustment committee. Matter of Boyan, 246 N.J.Super. 300, 587 A.2d 640 (A.D.1991), certification granted 126 N.J. 342, 598 A.2d 898, reversed 127 N.J. 266, 604 A.2d 98.

## SUBCHAPTER 6. AWARDS PROGRAM

### 4A:6-6.1 General provisions

(a) In local service, appointing authorities may establish and administer awards programs.

(b) In State service, the following types of award programs are established:

1. Awards for Commendation;
2. Awards for Suggestions;
3. Service Recognition;
4. Other awards programs as the New Jersey Employee Awards Committee may establish; and
5. Department or agency awards programs approved by the New Jersey Employee Awards Committee.

(c) The awards program applies to all employees in the executive branch of State government, whether in the career, senior executive or unclassified service, including autonomous agencies within executive departments; applicable employees in the Judiciary; and all employees in the Office of Legislative Services.

Amended by R.1998 d.58, effective January 20, 1998.

See: 29 N.J.R. 4590(a), 30 N.J.R. 384(b).

### 4A:6-6.2 New Jersey Employee Awards Committee: State service

(a) The New Jersey Employee Awards Committee (Committee) shall be established in the Department of Personnel under the supervision of the Commissioner. The Committee shall consist of seven persons, each of whom shall be employed in a different department in the Executive Branch.

1. Committee members shall be appointed by the Governor upon nomination by the Commissioner, for staggered terms of three years or until a successor is appointed. If a vacancy on the Committee occurs by reason other than expiration of term, the vacancy shall be filled for the unexpired term. No member shall serve more than two consecutive full terms.

2. Members of the Committee shall serve without compensation but shall be reimbursed for their actual and necessary expenses.

3. The Committee shall meet and organize as soon as practicable after the annual appointment of new members and select a Chairperson from among its members. The Committee shall hold a regular meeting at least once each month unless there is no business to conduct or the Executive Secretary (Secretary) determines that agenda items are so routine that they may be held over to the next meeting. Special meetings may be held at the call of the Chairperson.

4. The Secretary shall submit monthly reports to the Commissioner concerning operations of the Awards Program, which shall include data on activity level, processing time, and program benefits to the State. This data will also be furnished to each agency's chief executive officer. The Secretary shall submit an annual report of the Committee's activities to the Governor through the Commissioner.

5. The administrative work of the Committee shall be performed by the Secretary and other necessary staff designated by the Commissioner.

(b) Departmental committees shall be established in each agency operating under the Awards Program, under the supervision and direction of the Committee. Divisional and institutional award subcommittees may be established within agencies, but the responsibility for the agencies' activities will remain with the departmental committees.

1. The departmental committees shall include at least three members appointed by the agency's chief executive officer for a term of one year, effective each May 18. Departmental committee members shall be employees who are responsible for evaluation and analysis of the agency's programs. The chairperson of the departmental committee shall be an individual who has direct access to the chief executive officer. When necessary, the services of a departmental committee member or other departmental employee with expertise in cost-benefit analyses shall be made available to the departmental committee.

2. Departmental committees shall meet at least monthly unless there is no business to conduct and shall establish procedures for the processing of awards within their agencies, in accordance with the rules in this subchapter and with the approval of the Committee.

3. Departmental committees shall be responsible for objectively and impartially investigating and evaluating each proposed suggestion or award nomination furnished to them by the Committee and returning a timely and documented recommendation to the staff of the Committee.

4. Departmental committees shall be responsible for suitable ceremonies for the presentation of awards to their employees and shall use available means, as the Committee may propose, to promote employee participation in the awards program.

5. Departmental committees shall report their activities to the Committee through their chairpersons.

Amended by R.1998 d.58, effective January 20, 1998.  
See: 29 N.J.R. 4590(a), 30 N.J.R. 384(b).

#### 4A:6-6.3 Records: State service

(a) The Committee shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which are public information.

2. Copies of all suggestions, as defined in N.J.A.C. 4A:6-6.5, received by the Committee, along with supporting documents and recommendations from departmental committees.

(b) The departmental committees shall maintain the following records:

1. Official copies of the minutes of all meetings and all other official actions which are public information.

2. Copies of each suggestion, as defined in N.J.A.C. 4A:6-6.5, which is referred by the Committee, with sup-

porting documentation and the recommendation of the departmental committee.

3. Records of all transactions and supportive documentation for Option No. 2 suggestions as defined in N.J.A.C. 4A:6-6.6.

(c) Records shall be retained after the final action by the Committee in accordance with each department's record retention schedule. See N.J.A.C. 15:3-2.1 et seq.

#### 4A:6-6.4 Commendation awards: State service

(a) Commendation Awards shall be established in, but not limited to, the following four categories:

1. Heroism Awards may be made to employees who perform acts of bravery or personal sacrifice of a life threatening nature above and beyond the duties and responsibilities of the employee's position and which reflect credit upon the State of New Jersey, whether or not the act was performed during working hours.

2. Exceptional Service Awards may be made to employees for outstanding acts of public service above and beyond the duties and responsibilities of the employee's position which shall include, but not be limited to, appropriate responses to a crisis or emergency situation and which reflect credit upon the State of New Jersey, whether or not the act was performed during working hours.