

EXAMPLE: Emily is a State employee, and was displaced in the layoff process from her permanent title of Administrative Analyst 1, which has a class code of 29. She has a total of 10 years of seniority. George is also a State employee, and was displaced in the layoff process from his permanent title of Administrative Analyst 2, which has a class code of 26. He has a total of 15 years of seniority. The names of both Emily and George are placed on the special reemployment list for the title of Administrative Analyst 3, since it is a lower, related title. Emily's name will be listed first, because the class code of the title from which she was displaced is higher than the class code of the title from which George was displaced.

EXAMPLE: Robert, a municipal employee, was displaced in the layoff process from his permanent title of Supervising Maintenance Repairer, the highest class level title in his title series. He has 15 years of service with the municipality. Angela, who was permanent in the title of Assistant Supervising Maintenance Repairer when she was displaced in the layoff process, has 16 and one-half years of service with the municipality. The names of both Robert and Angela will be placed at the head of special reemployment lists for Senior Maintenance Repairer and Maintenance Repairer. On both of these lists, Robert's name will appear first and Angela's second, since Robert was displaced from a higher class level title.

(d) Eligibles on regular or police and fire reemployment lists shall be ranked in the order of seniority in the permanent title from which they resigned, retired or were voluntarily demoted, with the name of the person with the greatest seniority appearing first on the list.

(e) It shall be the responsibility of an eligible to keep a current address on file with the Department of Personnel.

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).

Amended by R.1997 d.71, effective February 18, 1997.

See: 28 N.J.R. 4979(a), 29 N.J.R. 549(b).

Substantially amended (c).

Case Notes

Credit towards service in other governmental entity. *Kloss v. Parsippany-Troy Hills*, 170 N.J.Super. 153, 406 A.2d 170 (App.Div.1979).

Order of appointment. *State v. State Supervisory Employees Association*, 78 N.J. 54, 393 A.2d 233 (1978).

4A:4-3.3 Duration and cancellation of eligible lists

(a) Open competitive and promotional lists shall be prologated for three years from the date of their establish-

ment, unless the Commissioner determines that, under the circumstances, a shorter time period is appropriate.

1. An eligible list may, for good cause, be extended by the Commissioner prior to its expiration date, except that no list shall have a duration of more than four years.

2. The name of any employee shall not remain on a regular reemployment list for more than three years from the date of resignation, except as provided in (a)1 above.

3. Special reemployment, police reemployment and fire reemployment lists shall have unlimited durations.

(b) The Commissioner may, in cases of fraud, illegality, test invalidity, error by the Department or other good cause, cancel an eligible list prior to its expiration date by issuing an order, which shall provide a means for the notification of eligibles. The Commissioner shall also provide a copy of this order to affected appointing authorities.

(c) See N.J.A.C. 4A:4-4.9 for appointments after the expiration date of the eligible list.

Amended by R.1996 d.98, effective February 20, 1996.

See: 27 N.J.R. 4049(a), 28 N.J.R. 1201(b).

Added (c).

Amended by R.1997 d.410, effective October 6, 1997.

See: 29 N.J.R. 2732(a), 29 N.J.R. 4279(a).

In (b), substituted "an order, which . . . affected appointing authorities" for "a public notice and entering such notice in the minutes of the Merit System Board".

Case Notes

Employment applicants who were tested and appointed to hiring eligibility list for position of municipal fire fighter did not have protected property interest in their ranking. *Newark Branch, N.A.A.C.P. v. Town of Harrison, N.J.*, C.A.3 (N.J.)1991, 940 F.2d 792.

Power of Commission to extend local eligibility list. *Malone v. Fender*, 158 N.J.Super. 190, 385 A.2d 929 (App.Div.1978) supplemented 160 N.J.Super. 221, 389 A.2d 504, reversed 80 N.J. 129, 402 A.2d 240 (1979).

Statutory 3 year limit upheld (local service). *Imbriacco v. State Civil Service Commission*, 150 N.J.Super. 105, 374 A.2d 1251 (App.Div.1977).

Life of promotion list could not be extended beyond three-year limit (citing former N.J.A.C. 4:1-11.6). In the Matter of Newark Police Sergeant and Lieutenant List for Dep't of Civil Service, 149 N.J.Super. 121, 373 A.2d 422 (App.Div.1977).

4A:4-3.4 Revival of eligible lists

(a) The Commissioner may revive an expired eligible list under the following circumstances:

1. To implement a court order, in a suit filed prior to the expiration of the list;

2. To implement an order of the Commissioner or Board in an appeal or proceeding instituted during the life of the list;

3. To correct an administrative error;

4. To effect the appointment of an eligible whose working test period was terminated by a layoff; or

5. For other good cause.

Amended by R.1989 d.570, effective November 6, 1989.

See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

In (a): deleted "or" between 3 and 4. Added new 4 and relettered old 4 as new 5.

4A:4-3.5 Consolidation of eligible lists

(a) The Commissioner may consolidate successive eligible lists for a given title which result from successive open competitive or promotional examinations by one or more of the following methods:

1. Placing the first name on the later list after the last name of the prior list;

2. Supplementing an incomplete list with an eligible list for an appropriate title; or

3. Combining of names of eligibles by scores.

(b) When eligible lists are consolidated, the part of the eligible list which was promulgated first shall not continue beyond its expiration date.

4A:4-3.6 Additions to eligible lists

(a) The Commissioner may add names to an eligible list at any time during the life of the list under the following circumstances:

1. A make-up examination has been given and a candidate has received a passing score;

2. To correct an error by the Department of Personnel;

3. To implement an appeal decision; or

4. Where a third party, such as a college or the Veterans Administration, has submitted documents to correct an administrative error.

(b) When the name of an eligible is added to an existing list to correct an error made by the Department of Personnel, the Department shall determine the retroactive certification and/or appointment rights. When the name of an eligible is added to an existing list for any other reason, the Commissioner shall determine the effect of the action on certifications and prior permanent appointments. See also N.J.A.C. 4A:4-1.4 for conditional regular appointments.

Case Notes

Improper deletion of applicant's name from list of persons eligible for resident's preference for appointment to city police department

applicant would not warrant award of mandated appointment and back pay. *Nunan v. New Jersey Dept. of Personnel*, 244 N.J.Super. 494, 582 A.2d 1266 (A.D.1990).

4A:4-3.7 Priority of eligible lists

(a) When there is more than one current eligible list for a title, the priority of the lists shall be as follows:

1. Special reemployment, when the available position/title is in the department or autonomous agency from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;

2. Promotional;

3. Special reemployment, when the available position/title is located in a department or autonomous agency other than that from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;

4. Regular reemployment, police or fire reemployment; and

5. Open competitive.

(b) Reinstatement of a permanent employee following disability retirement shall have priority over appointment from any eligible list, except a special reemployment list. See N.J.A.C. 4A:4-7.12.

(c) Reemployment of certain law enforcement officers and firefighters pursuant to the provisions of N.J.A.C. 4A:4-3.9 and 4A:4-3.10 shall have priority over appointment from any eligible list, except a special reemployment list.

(d) For purposes of this section, an autonomous agency in local service is one which, by statute, is a body corporate and has the powers of an appointing authority. In State service, an autonomous agency is one which, by law, is in but not under the supervision of a principal department.

Amended by R.1992 d.338, effective September 8, 1992.

See: 24 N.J.R. 2107(a), 24 N.J.R. 3091(b).

Added (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 (a)1 and 3; added new (c).

Amended by R.1996 d.471, effective October 7, 1996.

See: 28 N.J.R. 3208(a), 28 N.J.R. 4423(a).

Gave reemployment under 4A:4-3.9 and 3.10 priority over any eligible lists except special reemployment lists.

4A:4-3.8 Correction of errors

(a) The Department may correct an error at any time during the life of an eligible list.

(b) The Commissioner shall determine whether such correction shall affect any prior appointments or certifications.

(c) Corrections of errors may result in a change in ranking. See N.J.A.C. 4A:4-3.6.

Case Notes

Improper deletion of applicant's name from list of persons eligible for resident's preference for appointment to city police department applicant would not warrant award of mandated appointment and back pay. *Nunan v. New Jersey Dept. of Personnel*, 244 N.J.Super. 494, 582 A.2d 1266 (A.D.1990).

4A:4-3.9 Reemployment program for certain law enforcement officers and firefighters

(a) A municipality or a county which has established a police department as described in N.J.S.A. 40A:14-180 may appoint any person to an entry level title in the police department who has:

1. Served as a law enforcement officer, other than a special law enforcement officer or seasonal law enforcement officer, in good standing in any State, county or municipal law enforcement department or agency;

2. In the case of service with the State, or a county or municipality operating under Title 11A, New Jersey Statutes, satisfactorily completed a working test period in a law enforcement title;

3. In the case of service with a county or municipality not operating under Title 11A, New Jersey Statutes, satisfactorily completed a comparable, documented probationary period in law enforcement title; and

4. For reasons of economy, efficiency or other related reasons, was laid off, or demoted from a law enforcement title to a non law enforcement title, within 60 months prior to the appointment permitted in (a) above.

(b) A municipality which has established a fire department as described in N.J.S.A. 40A:14-9.9, or a fire district established in accordance with N.J.S.A. 40A:14-70 may appoint any person to an entry level firefighter title who has:

1. Served as an officer or member, other than a temporary or seasonal officer or member, in good standing, in any fire department or fire district;

2. In the case of service with a fire department in a municipality or a fire district operating under Title 11A, New Jersey Statutes, satisfactorily completed a working test period;

3. In the case of service with a fire department in a municipality or a fire district not operating under Title 11A, New Jersey Statutes, satisfactorily completed a comparable, documented probationary period; and

4. For reasons of economy, efficiency or other related reasons, was laid off, or demoted from a firefighter title to a non firefighter title, within 36 months prior to the appointment permitted in (b) above.

New Rule, R.1996 d.471, effective October 7, 1996.
See: 28 N.J.R. 3208(a), 28 N.J.R. 4423(a).

4A:4-3.10 Procedures for reemployment program for certain law enforcement officers and firefighters

(a) A municipality, county or fire district interested in making an appointment pursuant to N.J.A.C. 4A:4-3.9 (hereafter "program") may contact the Department of Personnel for a list of persons laid off or demoted as provided in the program.

(b) A person who would like to be placed on a list of persons laid off or demoted as provided in the program may contact the Department of Personnel to apply for inclusion on a list.

(c) In selecting a person from the list, the municipality, county or fire district shall verify and certify to the Department of Personnel the eligibility of the person for appointment pursuant to this program.

1. A municipality or fire district interested in making an appointment under this program shall give first preference in making an appointment to residents of the municipality and second preference to residents of the county not residing in the municipality.

2. A county interested in making an appointment under N.J.A.C. 4A:4-3.9(a) shall give first preference in making an appointment to residents of the county.

(d) An appointment made under this program:

1. Shall be reported to the Department of Personnel;

2. Shall have priority over open competitive and promotional eligible lists and regular reemployment lists, but no such appointment shall be made if a special reemployment list exists for the title in the municipality, county or fire district interested in making the appointment;

3. Shall be made without regard to seniority, age, veteran's status or the municipality, county or fire district from which a person was laid off or demoted;

4. Shall not be subject to a working test period; and

5. Shall not be made to a title other than an entry level title without Department of Personnel approval.

(e) A person appointed under this program:

1. May not be appointed a second time under this program unless the person is again laid off or demoted for reasons of economy, efficiency or other related reasons;

2. Shall begin to accrue seniority as of the effective date of the new appointment;

3. Shall not retain any superior rank held in the municipality, county or fire district from which the person was laid off or demoted; and

4. Shall not be removed from the special reemployment list for the jurisdiction from which the person was laid off.

New Rule, R.1996 d.471, effective October 7, 1996.
See: 28 N.J.R. 3208(a), 28 N.J.R. 4423(a).

SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS

4A:4-4.1 Need for certification

(a) When a vacancy is to be filled in the competitive division of the career service from an eligible list, the appointing authority shall request a certification of names for regular appointment. Such request shall be submitted in advance under procedures set by the Department of Personnel to enable the Department to issue or authorize the necessary certification or advise that there is no appropriate eligible list.

(b) When a permanent competitive position has been filled on a nonpermanent basis, the Department of Personnel shall determine whether there is a need to issue a certification.

4A:4-4.2 Issuance of certification

(a) Upon determining that there is a need for a certification as provided in N.J.A.C. 4A:4-4.1, the Department of Personnel shall issue or authorize the issuance of a certification to the appointing authority containing the names and addresses of the eligibles with the highest rankings on the appropriate list.

1. When the Department of Personnel has accepted a single application for one or more title areas, pursuant to N.J.A.C. 4A:4-2.3(c), the certification shall be drawn from the pool of eligibles based on their title area and county preference and their residency.

(b) When a certification is issued, the Department shall notify or authorize the notification of the eligibles whose names appear on the list, at the last known address. See N.J.A.C. 4A:4-3.2(e) for address change notification.

(c) An appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means:

1. From special, regular and police and fire reemployment lists, the name of one interested eligible for each permanent appointment; or

2. From promotional and open competitive lists, the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment. Eligibles who receive the same score shall have the same rank. If three or more eligibles can be certified as a result of this ranking without resorting to all three highest scores on the list, then only those eligibles will be certified.

i. When fewer than three interested eligibles are certified, the appointing authority may either: make a permanent appointment; make a provisional appointment from the list; make a provisional appointment of another qualified person if no eligible on the list is interested; or vacate the position/title.

ii. When a certification is comprised of multiple lists and an eligible's name appears more than once, the eligible will only be counted once for purposes of making a complete certification.

(d) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

Amended by R.1997 d.482, effective November 17, 1997.

See: 29 N.J.R. 3385(a), 29 N.J.R. 4864(b).

Inserted (a)1.

4A:4-4.3 Certification from appropriate lists

(a) When an eligible list for a title is either unavailable or incomplete, the Department may authorize a certification from an eligible list for an appropriate title of the same or higher level, in the same or related series under the following conditions:

1. The education and experience requirements for both titles are substantially similar;

2. The necessary knowledge, skills and abilities were evaluated in the examination process;

3. The geographic scope of eligibility to which the announcement was limited is the same as or includes the geographic location of the original title; and

4. The appropriate eligible list may be used to supplement any existing list in order to establish a complete certification.

(b) The Department of Personnel may also authorize a certification from a common or similar State or local service eligible list under the following circumstances:

1. The appointing authority has requested the use of such list in writing;

2. The examination requirements of the titles for which the eligible lists may be certified shall be appropriate for the title in the requesting jurisdiction;

3. The State or local lists will be used to supplement the existing list in order to create a complete certification; and

4. Only those persons on the eligible list who have expressed an interest in working in the jurisdiction shall be certified.

(c) In local service, regular reemployment lists may be used to certify against vacancies in the same or comparable titles in all appointing authorities in the respective jurisdiction, except school districts.

(d) See N.J.A.C. 4A:8-2.3 for uses of special reemployment lists in State and local service.

4A:4-4.4 Limitation on number of times eligible is certified

(a) A non-veteran eligible who has been certified to the same appointing authority from an open competitive list on three occasions and who has been passed over in favor of a lower ranked eligible on each occasion, shall have his or her name withheld from future certification to the same appointing authority. The appointing authority may request that such eligible be recertified, in which case only that eligible and any higher or equal ranking veteran eligible shall be certified.

(b) All eligibles on a promotional list shall be certified, in order of rank, as long as they remain on the list.

4A:4-4.5 Certifications limited to persons of a particular sex, religion or national origin

(a) A certification may be issued limited to persons of a particular sex, religion or national origin of the eligibles, where such factors are bona fide occupational qualifications (BFOQ) that are essential to successful job performance and the normal operation of the appointing authority.

(b) The appointing authority shall determine those positions in State service and those specific titles in local service for which BFOQ designations are essential.

(c) A request for a BFOQ designation shall be signed by the agency or department head, or designee, and the affirmative action officer, and submitted by the appointing authority to the Department of Personnel, Division of Equal Employment Opportunity and Affirmative Action (EEO/AA) and shall include:

1. The purpose of the BFOQ being requested;
2. An accurate description of the employment for which the BFOQ is sought, including:
 - i. The position number in State service and the specific title in local service;
 - ii. The duties of the position and percentage of time required to perform those duties;
 - iii. The post location; and
 - iv. The shift designation.
3. A statement why a person without the specific BFOQ cannot perform the position's duties;
4. What accommodations were considered to permit persons without the BFOQ to perform the duties and why the accommodations were not adopted; and
5. Such other information as requested by the Division.

(d) The appointing authority shall have the burden of proof that a BFOQ designation is necessary.

(e) The Director, Division of EEO/AA shall review the request and advise the appointing authority in writing of his or her decision to either accept the BFOQ request or not accept the request based on insufficient justification.

(f) The Division of EEO/AA will audit BFOQ positions to eliminate artificial barriers that may exist to equal employment opportunity and particular BFOQ designations may be reconsidered or eliminated.

(g) Any person who has been denied an employment opportunity as a result of a BFOQ designation may contest the designation as a discrimination appeal in State service (N.J.A.C. 4A:7-3.2 et seq.) or a general appeal in local service (N.J.A.C. 4A:2-1.1).

4A:4-4.6 Eligibles on military leave

(a) Interested eligibles on military leave shall continue to be certified. The appointing authority may consider such eligibles immediately available for appointment even though reporting for work may be delayed.

(b) On return from military duty, an appointed eligible shall, after successful completion of the working test period, have the same rights, privileges and obligations as if the eligible had served continuously in the title from the original effective date of appointment.

4A:4-4.7 Removal of names

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:

1. The causes for disqualification listed in N.J.A.C. 4A:4-6.1;
2. Permanent appointment through certification to the title for which the list was promulgated or made appropriate, except that the appointment to a lower title will not be cause for removal;
3. Inability, unavailability or refusal of eligible to accept appointment. An eligible who has declined appointment may, upon written request, have his or her name withheld from future certifications until available for appointment. The Department of Personnel must be notified when the eligible wishes to be considered for certification;
4. The eligible has a criminal record which adversely relates to the employment sought.
 - i. The following factors may be considered in determining whether a criminal record adversely relates to employment:
 - (1) The nature and seriousness of the crime;