

**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 Executive Order No. 10(1982).

Source and Effective Date

R.2003 d.395, effective September 10, 2003.
See: 35 N.J.R. 2389(a), 35 N.J.R. 4711(c).

Chapter Expiration Date

Chapter 4A:4, Selection and Appointment, expires on September 10, 2008.

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 See, also, the Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 8 through 16; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 11, 13 and 14; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 6, 11, 13 and 14.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

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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.

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).

Township was justified in twice bypassing appointment of police lieutenant, who was on eligible list, to position of police captain. *Robert Oches v. Middletown Township*, 96 N.J.A.R.2d (CSV) 647.

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).

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.

Amended by R.1989 d.569, effective November 6, 1989.

See: 21 N.J.R. 1766(a), 21 N.J.R. 3448(b).

(a)1 clarified; added new (d).

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

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

Added (c)1.

Amended by R.1993 d.45, effective January 19, 1993.

See: 24 N.J.R. 3589(a), 25 N.J.R. 291(a).

Revised (c); redesignated existing (d) as (e); added new (d).

Amended by R.1993 d.270, effective June 7, 1993.

See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Deleted (a)2; revised (d); added new (e) and (f); redesignated existing (e) to (g); added new (h).

Amended by R.1995 d.12, effective January 3, 1995.

See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).

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

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

Inserted new (h); and recodified (h) as (i).

Amended by R.1998 d.291, effective June 1, 1998.

See: 30 N.J.R. 890(a), 30 N.J.R. 1975(a).

Added a new (b)3.

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

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

In (c), rewrote 1, and substituted "Commendable" for "Meets Standards" following "deemed" in 2.

Amended by R.2001 d.420, effective November 19, 2001.

See: 33 N.J.R. 2567(a), 33 N.J.R. 3895(b).

Rewrote the introductory paragraph of (d).

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In (g), added "as of the announced closing date" and increased highest possible score for examination performance from 90 percent to 100 percent; rewrote (h); added (i); recodified former (i) as (j).

Amended by R.2007 d.358, effective November 19, 2007.

See: 39 N.J.R. 2680(a), 39 N.J.R. 4923(b).

In (d), substituted "as provided in (e) below" for "in the case of an intergovernmental transfer of a police or a firefighter"; added new (e); and recodified former (e) through (j) as (f) through (k).

Case Notes

Validity of excluding performance evaluations (EPEIS) from the scoring of promotional examinations when evaluating supervisors and their subordinates are candidates for same position is proper (citing former N.J.A.C. 4:1-9.5). *Honachefsky v. N.J. Civil Service Comm'n*, 174 N.J.Super. 539, 417 A.2d 67 (App.Div.1980).

Evaluation of education and experience in excess of minimum requirements not violative of due process (citing former N.J.A.C. 4:1-9.14). *Brown v. State of New Jersey*, 115 N.J.Super. 348, 279 A.2d 872 (App.Div.1971) certification denied 59 N.J. 273, 281 A.2d 535.

4A:4-2.16 Retention and inspection of examination records

(a) The following examination records shall be retained until the expiration of the eligible list:

1. The public announcement;
2. All applications;
3. The examination papers and scoring keys;
4. A description of the examination, including the date held, rating system and minimum score required, if any;
5. The list of eligibles;
6. The failure roster; and
7. Any other pertinent information.

(b) All examination records listed in (a)1, 4 and 5 above shall be open to public inspection.

1. Examination records listed in (a)2 above shall not be open to public inspection but may be open to inspection by an appointing authority, on condition that the appointing authority not disclose the records to outside persons, where:

- i. An application was completed by an eligible;
- ii. The eligible's name has been certified to the appointing authority for appointment; and
- iii. The appointing authority requests inspection of the application due to a reasonable suspicion that the eligible has submitted inconsistent information regarding his or her qualifications for employment.

2. Examination records listed in (a)6 above shall not be open to public inspection but shall be open to inspection by the appointing authority to which the eligible list has been certified, upon request by the appointing authority and on condition that the appointing authority not disclose the records to outside persons.

3. Should an appointing authority, in violation of (b)1 or 2 above, disclose examination records with which it has been provided to outside persons, the appointing authority may be subject to sanctions in accordance with N.J.A.C. 4A:10-2.1.

4. The Commissioner shall determine which other records may be open to public inspection and the conditions for such inspection.

Amended by R.1992 d.41, effective January 21, 1992.

See: 23 N.J.R. 2906(b), 24 N.J.R. 229(b).

Revised (a)3 and 4.

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

Added (a)6, recodified former (a)6 as 7; rewrote (b).

4A:4-2.17 Application processing fees

(a) A \$15.00 processing fee shall be charged for each open competitive and promotional examination application, except as provided as follows:

1. The Commissioner shall establish a fee for each application for an open competitive or promotional examination for a law enforcement officer or firefighter title. The fee shall not exceed the cost of developing, procuring and administering the examination, including the processing of any appeals or reviews associated with the examination. Receipts derived from this application fee shall be appropriated to the Department for use in developing, procuring and administering law enforcement officer and firefighter examinations, including the processing of any appeals or reviews associated with those examinations.

2. When announcements for an examination list more than one title area (such as police, sheriff, and corrections),

a processing fee shall be charged for each title area selected by the applicant.

(b) The fee shall be paid by check or money order, made payable to NJDOP, which shall be submitted with the application.

(c) Applications received without a fee shall not be processed unless the applicant submits, within the time required by written notice from the Department of Personnel, the required fee or, for open competitive applications, proof of exemption as described in (d) below.

(d) An applicant for an open competitive examination will be granted a waiver of the fee if the applicant provides documentation showing that, as of the closing date, he or she is receiving General Assistance benefits, benefits under the Work First New Jersey Act, or Supplemental Security Income. Proof must consist of one of the following:

1. General Assistance—a copy of the applicant's benefits identification card (if one was issued) or a letter from the applicant's local municipal welfare director.
2. Work First New Jersey Act—a copy of the applicant's Families First card.
3. Supplemental Security Income—a copy of the applicant's latest annual award letter or proof of the applicant's Medicaid identification number for S.S.I. benefits.

(e) The fee is for processing purposes only and does not guarantee admittance to an examination or appointment to a position. The fee shall not be refunded for any reason except untimely filing of the application or cancellation of the examination.

1. The fee shall not be refunded when the cancellation is due to the lack of eligible applicants ("no admits") or when no eligible applicant appears for testing ("no show").
2. When an examination is cancelled at the request of the appointing authority, the appointing authority shall reimburse the Department of Personnel for fees refunded to applicants.

New Rule, R.1993 d.270, effective June 7, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).
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.
Amended by R.1999 d.128, effective April 19, 1999.

See: 31 N.J.R. 199(a), 31 N.J.R. 1061(a).

In (a), added ", except as provided as follows" at the end of the introductory paragraph, inserted a new introductory paragraph in 1, and recodified former 1 as i; and in (d), substituted "benefits under the Work First New Jersey Act" for "Aid to Families with Dependent Children" in the introductory paragraph, and rewrote 2.

Amended by R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

In introductory paragraph (a), increased processing fee from \$5.00 to \$15.00; recodified (a)1i as (a)2 and rewrote the paragraph.

SUBCHAPTER 3. ELIGIBLE LISTS

4A:4-3.1 Types of eligible lists

(a) The Commissioner may establish the following types of eligible lists:

1. Open competitive, which shall include all qualified eligibles following examination procedures.
2. Promotional, which shall include permanent employees who meet qualification requirements.
3. Regular reemployment, which shall include former permanent employees who resigned in good standing, retired, or were voluntarily demoted, who timely request reemployment and whose reemployment is certified by the appointing authority as being in the best interests of the service;
4. Police or fire reemployment, which shall include former permanent uniformed members of a police or fire department who resigned in good standing and whose reemployment is certified by the appointing authority as being in the best interests of the service; and
5. Special reemployment, which shall include former and current permanent employees who were laid off, laterally displaced or demoted in lieu of layoff.

4A:4-3.2 Order of names on eligible lists

(a) The order of names on an open competitive list shall be as follows:

1. When an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance.