

2. Within each sub-list as provided in (a)1 above, the order of names shall be:

- i. Eligibles entitled to disabled veterans preference in order of their scores;
- ii. Eligibles entitled to veterans preference in order of their scores; and
- iii. Non-veteran eligibles in order of their scores.

3. Eligibles who receive the same score shall have the same rank. See N.J.A.C. 4A:4-4.2(c).

4. See N.J.A.C. 4A:5-21 for examples on use of open competitive list.

(b) Eligibles on a promotional list shall appear in the order of their scores.

1. When scores are tied, veterans shall be listed first within each rank. See N.J.A.C. 4A:4-4.2(c).

2. See N.J.A.C. 4A:5-2.2 for examples on use of a promotional list.

(c) Eligibles on special reemployment lists shall be ranked in descending order of the class code or class level of the title from which the eligible was displaced. Within each class code or class level, eligibles shall be ranked in accordance with N.J.A.C. 4A:8-2.3(c)1.

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).

Amended by R.2000 d.12, effective January 3, 2000.

See: 31 N.J.R. 2827(a), 32 N.J.R. 39(a).

In (c), substituted "accordance with N.J.A.C. 4A:8-2.3(c)1" for "order of seniority. See N.J.A.C. 4A:8-2.4" at the end.

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) An eligible list shall be considered issued on the date on which it is available for review by candidates, appointing authorities and members of the public. The list shall be considered promulgated on the date on which it is available to be certified to an appointing authority and from which appointments may be made.

(b) Open competitive and promotional lists shall be promulgated for three years from the date of their establishment, 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 (b)1 above.

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

(c) 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.

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

(e) When a promotional list for a law enforcement or firefighter title is extended until a new promotional list is available for certification and appointments, the extended list shall

expire when the new promotional list is issued, provided however, that certifications of and appointments from the new list shall not be made until the promulgation date of the new 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".

Petition for Rulemaking.

See: 41 N.J.R. 4833(a).

Amended by R.2010 d.123, effective June 21, 2010.

See: 41 N.J.R. 4586(a), 42 N.J.R. 1164(a).

Added new (a); recodified former (a) through (c) as (b) through (d); in (b)2, substituted "(b)1" for "(a)1"; and added (e).

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).

Police officers who were appointed to their positions and took their oaths of office after the eligible list expired were not validly appointed, pursuant to former N.J.S.A. 11:22-32 (see now N.J.S.A. 11A:4-6, 11A:4-7) and former N.J.A.C. 4:1-12.16 (see now N.J.A.C. 4A:4-3.3); the Civil Service Commission was not estopped from denying them their positions. *Saletta v. Civil Service Comm'n*, 148 N.J. Super. 451, 372 A.2d 1140, 1977 N.J. Super. LEXIS 811 (App.Div. 1977).

Initial Decision (2009 N.J. AGEN LEXIS 21) adopted, which found that although a corrections officer was PRFS eligible based upon his age at the time of the closing date of his first examination in 1996, the list promulgated as a result of that examination had expired and, thus, was no longer in effect. The officer's prior PRFS participation terminated when petitioner withdrew his accumulated pension contributions in May 2006; thereafter, he was re-hired from the regular re-employment list for the same position and, because he was 38 years old, he did not meet the age limit to enroll in the PFRS, absent eligibility for age reduction. In re *Ottaviano*, OAL Dkt. No. TYP 742-08, 2009 N.J. AGEN LEXIS 945, Final Decision (February 10, 2009).

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).

(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.

Petition for Rulemaking.
See: 32 N.J.R. 4016(b).
Petition for Rulemaking.
See: 33 N.J.R. 588(b).

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 affirma-

tive 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. Regular 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;
- (2) The circumstances under which the crime occurred;
- (3) The date of the crime and age of the eligible when the crime was committed;
- (4) Whether the crime was an isolated event; and
- (5) Evidence of rehabilitation.

ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer or firefighter titles and other titles as the Commissioner may determine.

5. Notice by the postal authorities that they are unable to locate or deliver mail to the eligible;

6. Non-compliance with the instructions listed on the notice of certification;

7. Discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residency is required;

8. Discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited, except when the eligible has accepted a temporary or interim appointment in another unit scope. An employee who subsequently returns to the unit scope within current continuous service may request, in writing to the Department of Personnel, that his or her name be restored to the promotional list;

9. Employees who are involuntarily transferred shall be retained on a promotional list until they have had an

opportunity to take a promotional examination in the new promotional unit scope or have been appointed from the list;

10. Failure to maintain interest in a geographical area or choice; and

11. Other valid reasons as determined by the Commissioner.

(b) An appointing authority that requests removal of an eligible's name from a list shall submit to the Department, no later than the date for disposition of the certification, all documents and arguments upon which it bases its request.

1. Upon request of the eligible or upon the eligible's appeal, the appointing authority shall provide the eligible with copies of all materials sent to the Department.

2. If the appointing authority fails to provide either the Department or the eligible with copies of materials, the request for removal may be denied.

(c) The Department of Personnel shall determine if there are sufficient grounds for removal, notify the appointing authority and the eligible of its decision, and advise the eligible of his or her appeal rights.

(d) An eligible may appeal his or her removal from an eligible list utilizing the procedures in N.J.A.C. 4A:4-6.3.

(e) The removal of names from an eligible list will advance the rank order of all names below it. The Department may supplement a certification to provide the appointing authority with the number of names necessary for a complete certification.

(f) Acceptance or refusal of a temporary or interim appointment shall not be cause for removal from an eligible list.

(g) 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), an eligible whose name has been removed from the pool of eligibles for one jurisdiction or title area for cause shall be removed from the pool of eligibles for any other jurisdiction or title area.

(h) When an eligible has received a regular appointment from a certification of a pool of eligibles, the eligible shall be removed from the pool of eligibles for that title area only.

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)8; added new (f).

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

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

Added (g) and (h).

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

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

Rewrote (b)1.

Petition for Rulemaking.

See: 37 N.J.R. 675(a), 1540(a).

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

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

In (a)2, substituted "Regular" for "Permanent"; in (g), deleted "law enforcement"; in (h), substituted "received a regular appointment" for "been permanently appointed."