

CHAPTER 4 SELECTION AND APPOINTMENT

Authority

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

Source and Effective Date

R.1993 d.270, effective May 12, 1993.
See: 25 N.J.R. 1085(b), 25 N.J.R. 2509(a).

Executive Order No. 66(1978) Expiration Date

Chapter 4, Selection and Appointment, expires on May 12, 1998.

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 See, also, the Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 8 through 16; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 11, 13 and 14; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 6, 11, 13 and 14.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 was readopted as R.1993 d.270. See: Source and Effective Date. See, also, section, annotations for specific rulemaking activity.

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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 noncompetitive 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).

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).

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.

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.

(b) Any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by the Department and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Commissioner for good cause.

Case Notes

Department of Energy was not equitably estopped from returning employee to his permanent position as senior engineer when promotional examination was not given between date of his provisional appointment and date of demotion (citing former N.J.A.C. 4:1-14.1). *O'Malley v. Department of Energy*, 109 N.J. 309, 537 A.2d 647 (1987).

Failure to give timely civil service examination does not vest provisional appointee with right to retain provisional appointment (citing former N.J.A.C. 4:1-16.8). *O'Malley v. Department of Energy*, 109 N.J. 309, 537 A.2d 647 (1987).

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) 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).

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).

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.

(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.

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.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

4. A lateral title change pending examination shall not be permitted when either a special reemployment or complete promotional list exists or when the Department of Personnel has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit and the approval of the Department of Personnel except when the title change results from changes in the Department of Personnel Classification Plan, reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the Commissioner.

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), (c) and (d).

4A:4-7.7 Appeals

Transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

4A:4-7.8 Voluntary demotion

(a) A voluntary demotion is the voluntary movement of a permanent employee from his or her permanent title to a lower title in local service or, in State service, to another title with a lower class code, within the same organizational unit.

(b) Permanent status and seniority shall be retained when the demotion is to a lower related title. See N.J.A.C. 4A:8-2.1(b) for criteria on determining related titles.

1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title during or upon successful completion of the working test period in the lower title may request placement on a regular reemployment list.

2. An appointing authority may require an employee to execute a written waiver of layoff rights from the higher title during the working test period. If so waived, in the event of a layoff during the working test period, the employee's layoff rights shall be based only on the probationary title.

(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.

(e) With the Commissioner's approval, this section may also apply to employees with permanent status in titles in the non-competitive division who take a voluntary demotion to a title in the competitive division of the career service.

(f) When an employee is returned to his or her prior permanent title after a voluntary demotion, seniority in the prior permanent title shall be aggregated when:

1. The demotion was necessary due to the temporary loss of licensure required to perform the duties of the position;
2. The demotion was agreed to by both the employee and the appointing authority; and
3. The demotion was for a set period of time up to a maximum of one year.

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) and added (b)1; revised (c)1.
Amended by R.1994 d.74, effective February 7, 1994.
See: 25 N.J.R. 4823(b), 26 N.J.R. 795(a).
Amended by R.1996 d.259, effective June 3, 1996.
See: 28 N.J.R. 1334(a), 28 N.J.R. 2839(a).
Added (c)2.

Case Notes

Position and salary reduced; bad faith. *Morello v. Township of Belleville*, 94 N.J.A.R.2d (CSV) 606.

Demotion of personnel for reasons of economy was warranted. *Mihlebach v. New Jersey Department of Human Services*, 92 N.J.A.R.2d (CSV) 443.

Rescission of voluntary demotion after the demotion had been effectuated. *Loatman v. Cumberland County*, 92 N.J.A.R.2d (CSV) 262.

4A:4-7.9 Resignation/new appointment

(a) A permanent employee who is appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction shall be considered to have resigned from the previous permanent title.

1. Accumulated service for purposes of determining sick and vacation leave, and in State service, administrative leave, entitlements shall be retained.

2. See N.J.A.C. 4A:3-4.4(b) for salary placement in State service.

(b) The employee may request placement on the regular reemployment list for the previous title.

(c) The new appointing authority shall inform the employee of his or her effective resignation of permanent status prior to the employee's new appointment.

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

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

Added new (c).

4A:4-7.10 Regular reemployment

(a) A permanent employee who has resigned in good standing, retired or voluntarily demoted, may request consideration for reemployment by indicating availability to his or her appointing authority.

(b) Upon recommendation of the appointing authority that such reemployment is in the best interest of the service, the Department of Personnel shall place the employee's name on a reemployment list.

(c) Police and fire reemployment lists shall have unlimited durations. Regular reemployment lists for all other titles shall have durations of three years from the date of resignation, retirement or voluntary demotion, unless the list is extended pursuant to N.J.A.C. 4A:3.3(a)1.

1. Requests for reemployment must be submitted within the duration of the applicable list.

(d) Seniority commences as of the date of regular reemployment.

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

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

Deleted (b); redesignated existing (c) as (b) without changes.

Petition for Rulemaking.

See: 26 N.J.R. 2148(a).

Amended by R.1995 d. 418, effective August 7, 1995.

See: 27 N.J.R. 1839(a), 27 N.J.R. 2885(b).

Redesignated former (a) as (a) and (b), in (b) substituted the Department of Personnel for the employee as the party responsible for adding the employee's name to a reemployment list, added (c), and redesignated former (b) as (d).

Law Review and Journal Commentaries

Civil Service—Disability Retirement—Police Seniority. Judith Nal-
lin, 133 N.J.L.J. No. 13, 55 (1993).

Case Notes

Aggregation of seniority complies with legislative mandate that disabled employees return to former position upon cessation of disability. Matter of Allen, 262 N.J.Super. 438, 621 A.2d 87 (A.D.1993).

Police officer who accepted lower position but sought former position after he overcame disability did not waive rights and was not barred by estoppel or laches. Matter of Allen, 262 N.J.Super. 438, 621 A.2d 87 (A.D.1993).

4A:4-7.11 Transfer or combining of functions

(a) When any of the functions of a department, agency or unit of a political subdivision operating under Title 11A, New Jersey Statutes, are transferred, consolidated, unified, absorbed or combined with those of the State or of a separate political subdivision operating under Title 11A, New Jersey Statutes, the Department of Personnel upon request of both appointing authorities shall approve the transfer of some or all affected employees to the receiving unit.

(b) Any employee so transferred who holds permanent or probationary status in a title in the career service shall continue to hold such status in the receiving unit.

(c) Seniority calculations and leave entitlements for transferred permanent or probationary employees shall be calculated as if the entire period of service was in the receiving unit.

(d) If positions are abolished because they are made no longer necessary by the consolidation of functions, affected employees shall be accorded all layoff and special reemployment rights in N.J.A.C. 4A:8.

New Rule, R.1992 d.419, effective October 19, 1992.

See: 24 N.J.R. 2494(a), 24 N.J.R. 3718(a).

4A:4-7.12 Reinstatement following disability retirement

(a) A permanent employee who has been placed on disability retirement may be reinstated following a determination from the Division of Pensions that the retiree is no longer disabled.

(b) The employee's reinstatement shall have priority over appointment from any eligible list, except a special reemployment list.

(c) Seniority for an employee who is reinstated following a period of disability retirement shall be the aggregate of permanent service in the employee's permanent title prior to retirement and following reinstatement. Seniority shall not be granted for the period of retirement.

New Rule, R.1992 d.338, effective September 8, 1992.

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