

“Open competitive examination” means a test open to members of the public who meet the prescribed requirements for admission.

“Part time employee” means an employee whose regular hours of duty are less than the regular and normal workweek for that job title or agency.

“Permanent employee” means an employee in the career service who has acquired the tenure and rights resulting from regular appointment and successful completion of the working test period.

“Position” means the assignment of specific duties and responsibilities requiring the employment of one person.

“Promotion” means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title.

“Promotional examination” means a test open to permanent employees who meet the prescribed requirements for admission.

“Provisional appointment” (PA) means employment in the competitive division of the career service pending the appointment of a person from an eligible list.

“Regular appointment” (RA) means the employment of a person to fill a position in the competitive division of the career service upon examination and certification, or the employment of a person to a position in the noncompetitive division of the career service.

“Removal” means termination of a permanent employee from employment for disciplinary reasons.

“Senior executive service” means positions in State service designated by the Board as having substantial managerial, policy influencing or policy executing responsibilities not included in the career or unclassified services.

“Spouse” means a husband, a wife, or a party to a civil union, in accordance with N.J.S.A. 37:1-1 and P.L. 2006, c. 103.

“State service” means employment for the State of New Jersey.

“Suspension” means temporary separation from employment for disciplinary reasons.

“Suspension on the record” means a suspension for disciplinary reasons imposed for record purposes only, without loss of pay, benefits or seniority.

“Title” means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications.

“Title scope” means a defined group of job titles used as a factor in determining eligibility for promotional examina-

tions. Title scope may also include educational, experience and other specific requirements.

“Title series” means titles involving the same kind of work and ranked according to level of difficulty and responsibility.

“Unclassified service” means those positions and job titles outside of the senior executive service, not subject to the tenure provisions of Title 11A, New Jersey Statutes or these rules unless otherwise specified.

“Unit scope” means a defined part of a governmental agency used as a factor in determining eligibility for promotional examinations.

“Working test period” means a part of the examination process after regular appointment, during which time the work performance and conduct of the employee is evaluated to determine if permanent status is merited.

Amended by R.1988 d.258, effective June 6, 1988.

See: 20 N.J.R. 326(a), 20 N.J.R. 1183(a).

Added definitions “Closing date for examination”, “Filing date for examination”, “Title scope” and “Unit scope”.

Amended by R.1988 d.415, effective September 6, 1988.

See: 20 N.J.R. 845(b), 20 N.J.R. 2255(a).

Added the definition “Department”.

Amended by R.1992 d.416, effective October 19, 1992.

See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).

Revised definition “demotion”.

Amended by R.2005 d.65, effective February 22, 2005.

See: 36 N.J.R. 4566(a), 37 N.J.R. 586(a).

In “immediate family”, inserted “domestic partner” following “employee’s spouse”.

Petition for Rulemaking: Notice of Receipt; General Rules and Department Organization Appeals, Discipline and Separations Suspensions on the Record.

See: 38 N.J.R. 1085(a).

Amended by R.2006 d.386, effective November 6, 2006.

See: 38 N.J.R. 2773(a), 38 N.J.R. 4690(a).

Added definition “Suspension on the record”.

Amended by R.2007 d.244, effective August 20, 2007.

See: 39 N.J.R. 1340(a), 39 N.J.R. 3499(a).

Added definition “Spouse”.

Amended by R.2008 d.214, effective August 4, 2008.

See: 40 N.J.R. 1400(a), 40 N.J.R. 4519(b).

In definition “Class code”, inserted “and local”.

Law Review and Journal Commentaries

Civil Service—Administrative Procedure—Counties—Municipalities. Judith Nallin, 134 N.J.L.J. No. 17, 50 (1993).

Case Notes

Former city police officer’s claim that the city and two officials violated the officer’s procedural due process rights in disciplining the officer survived summary judgment in part given fact issues as to whether the final disciplinary decision was made by the person authorized to do so for purposes of N.J.A.C. 4A:2-2.5 and 4A:2-2.6; it was unclear whether the decision was made by the “appointing authority” under N.J.A.C. 4A:1-1.3. *Reilly v. City of Atl. City*, 427 F. Supp. 2d 507, 2006 U.S. Dist. LEXIS 17208 (D.N.J. 2006).

Open competitive examination to residents for position of police chief violated the Civil Service Act, the Board’s own regulations, and the rule-making provisions of the Administrative Procedure Act. *Matter of Police Chief (M2010P) South Orange Village*, 266 N.J.Super. 101, 628 A.2d 809 (A.D.1993).

"Local government service" includes employees of county prosecutor and sheriff's office (citing former rule N.J.A.C. 4:1-2.1). *Gudgeon v. County of Ocean*, 135 N.J. Super. 13, 342 A.2d 553 (App.Div.1975) certification granted 70 N.J. 138, 358 A.2d 185.

When an employee paid a fine in lieu of suspension, the employee was not separated from employment; a fine in lieu of suspension under N.J.A.C. 4A:2-2.4 was recorded in the employee's personnel record as "x number of days' pay fined in lieu of x number of days suspended." Consequently, the number of days' pay fined was the number to be considered for progressive disciplinary purposes since that was the actual disciplinary penalty imposed (adopting in part and rejecting in part 2005 N.J. AGEN LEXIS 406). In re *Sims*, OAL Dkt. No. CSV 4103-04, 2005 N.J. AGEN LEXIS 1258, Final Decision (September 7, 2005), aff'd per curiam, Docket No. A-4396-05T3, 2007 N.J. Super. Unpub. LEXIS 1514 (App.Div. November 27, 2007).

Enrollment in retirement system is neither immediate nor automatic (citing former N.J.A.C. 4:1-2.1). *Frew v. Bd. of Trustees Public Employees' Retirement System*, 8 N.J.A.R. 16 (1984).

4A:1-1.4 Petition for promulgating, amending or repealing rules

(a) Any interested person may file a petition with the Commissioner to promulgate, amend or repeal a rule.

(b) A petition must include the reasons for the request.

(c) A petition for a new rule must include the substance or nature of the request, the proposed text of the new rule and the statutory authority under which the requested action may be taken.

(d) A petition for an amended rule must indicate any existing text to be deleted and include any new text to be added.

(e) The Commissioner shall, in writing, either deny the petition or approve the petition for processing.

(f) Notice of the petition and the Commissioner's decision shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:30-3.6.

SUBCHAPTER 2. RECORDS

4A:1-2.1 Department of Personnel access to appointing authority records and information

Appointing authorities shall provide Department of Personnel representatives free access to their premises and to requested records and information.

4A:1-2.2 Public records

(a) The following Department of Personnel records shall be public:

1. An individual's name, title, salary, compensation, dates of government service and reason for separation;
2. Information on specific educational or medical qualifications required for employment;

3. Final orders of the Commissioner or Board; and

4. Other records which are required by law to be made, maintained or kept on file.

(b) Individual personnel records, except as specified in (a)1 through 3 above, are not public records and shall not be released other than to the subject employee, an authorized representative of the employee, or governmental representatives in connection with their official duties.

(c) In addition to records designated as confidential pursuant to the provisions of N.J.S.A. 47:1A-1 et seq., as amended and supplemented, any other statute, rule promulgated under the authority of any statute or Executive Order of the Governor, resolution of both houses of the Legislature, Rule of court, or any Federal law, Federal regulation or Federal order, the following records shall not be considered government records subject to public access pursuant to N.J.S.A. 47:1A-1 et seq., as amended and supplemented:

1. Appeal files in Merit System Board, Commissioner of Personnel and Division of Equal Employment Opportunity and Affirmative Action matters, including written submissions of the parties and all other related documentation used to make an administrative determination in these matters. However, final decisions of the Board and the Commissioner, including the bases for these decisions, shall be considered public records.

(d) See N.J.A.C. 4A:4-2.16 concerning examination records.

Amended by R.1992 d.416, effective October 19, 1992.

See: 24 N.J.R. 2490(a), 24 N.J.R. 3715(a).

Revised (b); added new (c).

Amended by R.2008 d.214, effective August 4, 2008.

See: 40 N.J.R. 1400(a), 40 N.J.R. 4519(b).

Added new (c); and recodified former (c) as (d).

SUBCHAPTER 3. ORGANIZATION

4A:1-3.1 General provisions

(a) The Department of Personnel is constituted as a principal State Department consisting of the:

1. Commissioner of Personnel;
2. Merit System Board; and
3. Such subdivisions as the Commissioner may deem necessary.

4A:1-3.2 Commissioner of Personnel

(a) The Commissioner of Personnel shall:

1. Serve as chairperson of the Merit System Board;
2. Serve as principal executive and request officer of the Department;