

**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

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 4A, Selection and Appointment, expires on March 9, 2009. See: 40 N.J.R. 5891(a).

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 See, also, the Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 8 through 16; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 11, 13 and 14; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapters 6, 11, 13 and 14.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

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. TYPES OF APPOINTMENTS

- 4A:4-1.1 Career service appointments
- 4A:4-1.2 Senior executive service appointments: State service
- 4A:4-1.3 Unclassified appointments
- 4A:4-1.4 Conditional regular appointments
- 4A:4-1.5 Provisional appointments
- 4A:4-1.6 Interim appointments
- 4A:4-1.7 Temporary appointments
- 4A:4-1.8 Emergency appointments
- 4A:4-1.9 Return of employees to their permanent titles
- 4A:4-1.10 Approval of appointments by Department of Personnel
- 4A:4-1.11 (Reserved)

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

- 4A:4-2.1 Announcements and applications
- 4A:4-2.2 Types of examinations
- 4A:4-2.3 Open competitive examinations
- 4A:4-2.4 Promotional title scope: local service
- 4A:4-2.5 Promotional title scope: State service
- 4A:4-2.6 Eligibility for promotional examination
- 4A:4-2.7 Promotion upon waiver of competitive examination
- 4A:4-2.8 Scheduling of examinations
- 4A:4-2.9 Make-up examinations
- 4A:4-2.10 Conduct and security of examinations

- 4A:4-2.11 Residence standards
- 4A:4-2.12 Professional qualifications substitution program
- 4A:4-2.13 College Level Examination Program (CLEP)
- 4A:4-2.14 Accommodation and waiver of examinations for persons with disabilities
- 4A:4-2.15 Rating of examinations
- 4A:4-2.16 Retention and inspection of examination records
- 4A:4-2.17 Application processing fees

SUBCHAPTER 3. ELIGIBLE LISTS

- 4A:4-3.1 Types of eligible lists
- 4A:4-3.2 Order of names on eligible lists
- 4A:4-3.3 Duration and cancellation of eligible lists
- 4A:4-3.4 Revival of eligible lists
- 4A:4-3.5 Consolidation of eligible lists
- 4A:4-3.6 Additions to eligible lists
- 4A:4-3.7 Priority of eligible lists
- 4A:4-3.8 Correction of errors
- 4A:4-3.9 Reemployment program for certain law enforcement officers and firefighters
- 4A:4-3.10 Procedures for reemployment program for certain law enforcement officers and firefighters

SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS

- 4A:4-4.1 Need for certification
- 4A:4-4.2 Issuance of certification
- 4A:4-4.3 Certification from appropriate lists
- 4A:4-4.4 Limitation on number of times eligible is certified
- 4A:4-4.5 Certifications limited to persons of a particular sex, religion or national origin
- 4A:4-4.6 Eligibles on military leave
- 4A:4-4.7 Removal of names
- 4A:4-4.8 Disposition of a certification
- 4A:4-4.9 Date of appointment
- 4A:4-4.10 Certification of additional eligibles

SUBCHAPTER 5. WORKING TEST PERIOD

- 4A:4-5.1 General provisions
- 4A:4-5.2 Duration
- 4A:4-5.3 Progress reports
- 4A:4-5.4 Working test period appeals
- 4A:4-5.5 Restoration to eligible list or former title

SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

- 4A:4-6.1 Examination and selection disqualification
- 4A:4-6.2 Actions against disqualified persons
- 4A:4-6.3 Examination and selection appeals
- 4A:4-6.4 Review of examination items, scoring and administration
- 4A:4-6.5 Medical and/or psychological disqualification appeals
- 4A:4-6.6 Disqualification appeals

SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

- 4A:4-7.1 Transfers within the same governmental jurisdiction
- 4A:4-7.1A Intergovernmental transfers
- 4A:4-7.2 Reassignments
- 4A:4-7.3 Relocation assistance: State service
- 4A:4-7.4 Retention of rights
- 4A:4-7.5 Transfer during a working test period
- 4A:4-7.6 Lateral title change
- 4A:4-7.7 Appeals
- 4A:4-7.8 Voluntary demotion
- 4A:4-7.9 Resignation/new appointment
- 4A:4-7.10 Regular reemployment
- 4A:4-7.11 Transfer or combining of functions
- 4A:4-7.12 Reinstatement following disability retirement

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).

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.

2. Examination announcements shall contain, when appropriate, general information on the eligibility requirements and use of this program.

3. Appointing authorities shall conspicuously post information about this program.

(b) The Department shall make the determination whether prior work experience may be substituted for specified education requirements.

Case Notes

Substitution of degrees to meet educational qualifications for testing. Gloucester Cty. Welfare v. N.J. Civ. Serv. Comm'n, 93 N.J. 384, 461 A.2d 575 (1983) (see dissenting opinion).

4A:4-2.13 College Level Examination Program (CLEP)

(a) College Level Examination Program (CLEP) scores are acceptable as a substitution for college credits required for open competitive or promotional examinations. Acceptable scores are those consistent with scores accepted for credit by Thomas A. Edison College as published annually in its catalog.

(b) The following standards shall be considered:

1. Applicants may be considered eligible to take open competitive and promotional examinations by substituting a combination of education, appropriate work experience and acceptable CLEP scores;

2. Acceptable scores on the CLEP General Examination and Subject Examinations will be considered the same as college undergraduate credits;

3. Acceptable scores on the five-part CLEP General Examination may be substituted for up to 30 undergraduate college credits;

4. Where specific course work and/or a major field of study are required in the job specification or examination announcement:

i. An acceptable score on an appropriate CLEP Subject Examination may be substituted for college credit hours;

ii. An acceptable subscore on an appropriate subsection of the CLEP General Examination may be substituted for undergraduate college credit hours for the course work requirement;

5. Acceptable scores achieved on any of the CLEP Subject Examinations shall be viewed to correspond to those credits normally earned during the final two years of a four-year college curriculum;

6. Acceptable scaled scores or subscores on the CLEP General Examination shall be viewed to correspond to those credits normally earned during the first two years of a four-year college curriculum.

(c) Information about testing site locations and application procedures may be obtained from the CLEP Educational Testing Service (ETS), Princeton, New Jersey and Thomas A. Edison College, Trenton, New Jersey.

(d) Examination announcements shall contain general information on eligibility requirements and utilization of CLEP.

(e) Appointing authorities shall conspicuously post information about CLEP.

4A:4-2.14 Accommodation and waiver of examinations for persons with disabilities

(a) Otherwise qualified applicants with disabilities may request an accommodation in taking an examination by indicating their request for accommodation on the examination application.

1. Upon receipt of the request for accommodation, the Department shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

(b) The Commissioner may waive an examination for an otherwise qualified candidate or provisional with a physical, mental or emotional affliction, injury, dysfunction, impairment or disability which makes it physically or psychologically not practicable to undergo the testing procedure for a particular title, but does not prevent satisfactory performance of the title's responsibilities under conditions of actual service.

1. A request for waiver shall be in writing, filed with the Department and contain:

i. The examination's title and symbol number, or in the case of a provisional, his or her title and employer;

ii. A statement from an appointing authority utilizing the title that the individual can satisfactorily perform the duties of that title under actual conditions of service;

iii. A physician's statement with supporting medical documentation;

iv. Whether the individual has previously filed for or taken an examination for that title, the results, if any, and whether an accommodation has previously been made; and

v. Agreement to undergo any additional physical or psychological examinations that the Department deems appropriate.

(c) If reasonable accommodation can be made, the waiver request will be denied and arrangements made for such accommodation.

(d) If reasonable accommodation is not possible, the Commissioner will decide whether to grant a waiver, and if

granted, whether the candidate will be employed or placed on an eligible list and in appropriate cases, granted seniority.

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

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

Revised heading and revised (a).

Amended by R.1994 d.72, effective February 7, 1994.

See: 25 N.J.R. 4821(b), 26 N.J.R. 794(b).

4A:4-2.15 Rating of examinations

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, they shall be graded through the use of scales prepared by the Department of Personnel.

(b) Examinations consisting of more than one part may be rated independently.

1. Candidates failing to meet minimum standards on one part of the examination shall be ineligible for the remaining parts.

2. Candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination.

3. Candidates who fail an entire examination shall not receive Performance Assessment Review (PAR) credit or credit for seniority. See (c) and (d) below.

(c) Candidates for State service promotional examination shall receive credit for the final PAR rating on file in the candidate's personnel office as of the announced closing date for the rating period immediately preceding the announced closing date.

1. Credit shall be awarded as follows:

- i. Three points for Exceptional; or
- ii. One point for Commendable.

2. When there is no final rating on file for a candidate as of the announced closing date, the rating for that period shall be deemed Commendable and credit shall be given for that rating.

3. Performance ratings shall not be used as a scoring factor in promotions when the supervisor who completes a performance rating for a subordinate or acts as a reviewer for a subordinate's rating competes in the same promotional examination as the subordinate.

(d) In calculating seniority for promotional examinations, continuous permanent service accumulated prior to an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A (except as provided in (e) below), voluntary furloughs and the following types of leave shall not be deducted from seniority.

1. All leaves with pay including sick leave injury (SLI);

2. Military, educational, gubernatorial appointment, personal sick, disability, family, furlough extension and voluntary alternative to layoff leaves of absence without pay; and

3. In local service, leave without pay to fill elective office.

(e) In calculating seniority for promotional examinations, continuous permanent service accumulated prior to an intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A shall be deducted from seniority for all firefighters, and for those law enforcement officers, including sheriff's officers and county correction officers, who have waived all accumulated seniority rights in agreeing to an intergovernmental transfer.

(f) Suspensions, other leaves of absence without pay not identified in (d) above, and any period an employee is laid off shall be deducted when calculating seniority.

1. In local service police and fire examinations, credit for record of service will be reduced by disciplinary suspensions received during the five year period immediately preceding the announced closing date.

(g) Employees reappointed from a special reemployment list shall be considered as having continuous service for seniority purposes. However, the elapsed time between the layoff or demotion in lieu of layoff and reappointment shall be deducted from the employee's seniority.

(h) When a municipality has a volunteer fire company and paid positions are created, any volunteer firefighter who has actively served for at least two years as of the announced closing date is entitled to service credits in addition to his or her earned examination score. The highest possible score for examination performance shall be 100 percent, to which the service credit shall be added. Service credits shall be not less than three nor more than 10, and shall be added only to a passing score. The service credit shall be calculated by adding one point to the number of years of service: for example, add three points for two years of service, four points for three years of service, and so on. Any service time in excess of nine years shall be awarded the 10-point maximum.

(i) The score earned by a candidate on an examination announced for more than one title area at a time shall be used for all examinations in those title areas for which the candidate files and is found eligible.

(j) A candidate for an examination may be permitted to use an examination score for a period of time, or for more than one title or more than one test, as determined by the Department of Personnel.

(k) Ties in final earned ratings shall not be broken.

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

Subchapter Historical Note

Petition for Rulemaking. See: 40 N.J.R. 6232(b).

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.

(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 effected. *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. A regular reemployment list shall be subject to certification to all appointing authorities in a jurisdiction.

(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:4-3.3(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).

Amended by R.1997 d.195, effective May 19, 1997.

See: 28 N.J.R. 4980(a), 29 N.J.R. 2266(b).

In (b), added the last sentence.

Administrative correction.

See: 34 N.J.R. 2781(b).

Law Review and Journal Commentaries

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

Case Notes

Police sergeant's right to cancel his retirement under pension regulations does not entitle him to immediate reemployment, which, instead, is controlled by priorities promulgated by civil service laws and regulations. Therefore, a trial court erred in granting the sergeant partial summary judgment in his suit asserting damages for a city's refusal to rehire him after he cancelled his retirement and sought reemployment in his former position, which had already been filled by the city. *Klawitter v. City of Trenton*, 395 N.J. Super. 302, 928 A.2d 900, 2007 N.J. Super. LEXIS 280 (App.Div. 2007).

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).

Cross References

Priority of eligible lists, see N.J.A.C. 4A:4-3.7.