

CHAPTER 10
VIOLATIONS AND PENALTIES

Authority

N.J.S.A. 11A:2-6, 11A:2-11(e), 11A:2-23, 11A:4-5, 11A:10-1 through 10-5, and 11A:11-2.

Source and Effective Date

R.1997 d.439, effective September 22, 1997.
See: 29 N.J.R. 3105(b), 29 N.J.R. 4458(b).

Executive Order No. 66(1978) Expiration Date

Chapter 10, Violations and Penalties, expires on September 22, 2002.

Chapter Historical Note

Chapter 10, Violations and Penalties, was adopted as R.1987 d.435, effective November 2, 1987. See: 19 N.J.R. 1366(a), 19 N.J.R. 1987(b). See, also, Title Historical Note prior to N.J.A.C. 4A:1.

Pursuant to Executive Order No. 66(1978), Chapter 10 was readopted as R.1992 d.417, effective September 22, 1992. See: 24 N.J.R. 2499(a), 24 N.J.R. 3723(a).

Pursuant to Executive Order No. 66(1978), Chapter 10 was readopted as R.1997 d.439, effective September 22, 1997. See: Source and Effective Date.

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SUBCHAPTER 1. VIOLATIONS

4A:10-1.1 General provisions

(a) No person or appointing authority shall violate the provisions of Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C.

(b) No person or appointing authority shall fail to comply with an order of the Commissioner or Board.

(c) No person or appointing authority shall obstruct a person's lawful opportunity to participate in the selection and appointment process or a person's lawful pursuit of any

remedy or appeal under Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(d) No person shall make any false statement or perform any fraudulent act in connection with any examination, certification, appointment or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(e) No person shall pay, offer, solicit or accept any compensation, service or other consideration to affect any appointment or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

1. No person shall pay or offer any compensation, service or other consideration to induce the retirement or resignation of an employee in order to gain a promotion or the opportunity for a promotion.

2. No person shall solicit or accept any compensation, service or other consideration as an inducement to retire or resign in order to allow an employee to gain a promotion or the opportunity for a promotion.

(f) Appointing authorities shall timely supply all information, documents and other materials requested by the Department of Personnel for the purpose of efficiently and accurately administering the merit system.

Amended by R.1989 d.570, effective November 6, 1989.
See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

Added new (f).

Amended by R.2000 d.505, effective December 18, 2000.
See: 32 N.J.R. 3362(a), 32 N.J.R. 4437(a).

In (e), added 1 and 2.

4A:10-1.2 Political activity

(a) No employee in the career or senior executive service shall directly or indirectly use or seek to use his or her position to control or affect the political action of another person or engage in political activity during working hours. See N.J.S.A. 11A:2-23.

(b) No employee in the career, senior executive or unclassified services whose principal employment is in connection with a program financed in whole or in part by Federal funds or loans, shall engage in any of the following prohibited activities under the Hatch Act (5 U.S.C. 1501 et seq.):

1. Be a candidate for public office in a partisan election. This provision does not apply to the Governor, the mayor of a city, the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs;

2. Use official authority or influence that interferes with or affects the results of an election or a nomination for office; or

3. Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(c) The office of the Special Counsel of the United States Merit System Protection Board has responsibility for the investigation of Hatch Act matters.

Case Notes

Political activity in Co. Prosecutor's office; local regulations. *Fitzgerald v. Mathesius*, 136 N.J.Super. 93, 344 A.2d 348 (Law Div.1975).

SUBCHAPTER 2. ENFORCEMENT

4A:10-2.1 General provisions

(a) Where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C., the Department of Personnel, Commissioner or Board shall conduct an investigatory hearing or other review, as appropriate. If a violation or noncompliance is found, the Commissioner or Board may:

1. Issue an order of compliance;
2. Assess costs, charges and fines not to exceed \$10,000;
3. Order the appointment of an eligible from an outstanding list;
4. In State service, consolidate personnel functions;
5. Initiate a civil action in the Superior Court;
6. Recommend criminal prosecution; or
7. Take other appropriate action pursuant to law or rule.

(b) See N.J.A.C. 4A:10-3.1 and 3.2 for salary disapproval procedures.

4A:10-2.2 Failure to appoint from complete certification

(a) When the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall make an appointment from a resulting complete certification.

1. When an appointing authority has notified the Department of Personnel either by the date of the examination or within 30 days after the initial date of the examination announcement, whichever date is earlier, that it has vacated the position and terminated the provisional appointee, the Commissioner may cancel the examination, permit the appointing authority not to make a permanent appointment, or take other appropriate action.

2. Following the period set forth in (a)1 above, an appointing authority may, for valid reasons such as fiscal constraints, petition the Commissioner for permission not to make a permanent appointment. The Commissioner may grant such petition, but may order the appointing authority to reimburse the Department for the costs of the selection process, provided, however, that when the jurisdiction in which the appointing authority is situated has agreed to the intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A of an employee into a title for which an open competitive or promotional list exists, the appointing authority may petition the Commissioner for a waiver of the costs of the selection process. The Commissioner shall notify the appointing authority of the amount of the reimbursement and provide an opportunity to respond to the assessment within 20 days of such notice.

(b) In addition to the actions which the Commissioner may take in (a) above, the Commissioner or Board may take any action set forth in N.J.A.C. 4A:10-2.1. Prior to any such action being taken, the appointing authority shall be given notice and an opportunity to respond.

Petition for Rulemaking: Amendment requested; request denied. See: 21 N.J.R. 2043(a).

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

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

In (a)1: added language, "either by ... examination or ..." and specified notification within 30 days after the "initial date" of the examination.

Petition for Rulemaking: Amendment request denied concerning failure to appoint from complete certification list.

See: 21 N.J.R. 3557(a).

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

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

In (a)2, rewrote the second sentence and inserted "provide" preceding "an opportunity" in the third sentence.

Case Notes

The "rule of three," which requires that an appointing authority make an appointment from the eligible list if there are three or more interested and eligible candidates, and appoint one of the top three interested eligibles, is intended to guarantee the appointing authority an opportunity to exercise minimal discretion in the selection of particular employees. In *Re Code Enforcement Officer*, 349 N.J.Super. 426, 793 A.2d 839.

4A:10-2.3 Enforcement action

The Commissioner, the Board, or any resident or other party in interest may bring an action in the Superior Court for the enforcement of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the Commissioner or the Board. The Commissioner may join in any pending action.

4A:10-2.4 Criminal violation

It is a crime of the fourth degree for any person to purposefully or knowingly violate or conspire to violate any provision of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the Commissioner or Board.

SUBCHAPTER 3. SALARY DISAPPROVAL

4A:10-3.1 General provisions

(a) The Commissioner, the Board or an authorized representative of the Department of Personnel may disapprove and order the payment stopped of the salaries of any person employed in violation of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the Commissioner or Board, the individual with employment authority over such person and the person who authorizes payment of a disapproved salary.

(b) A notice of salary disapproval shall be given to the appointing authority, the affected employee and other persons whose salaries are to be disapproved.

1. The notice shall state the nature of the violation and provide the appointing authority, the affected employee and other affected persons 10 days to respond to the notice of salary disapproval.

2. A review conference may also be held at a time and location specified by the Department of Personnel.

(c) If the issue which required the notice of salary disapproval has not been resolved, a salary disapproval order shall be issued.

1. The order shall state the nature of the violation and require payment stopped to the affected employee.

2. The order may also require payment stopped to the individual with employment authority over such employee and the person who authorized payment of the disapproved salary.

3. The order shall be mailed to the appointing authority, the affected employee, the persons whose salaries

have been disapproved and in State service, the Department of the Treasury.

4. The appointing authority, the affected employee and other persons whose salaries have been disapproved may appeal the order to the Merit System Board within 20 days of receipt of the order. See N.J.A.C. 4A:2-1.1 et seq., for appeal procedures.

5. If the violation has not been corrected and no appeal has been timely filed, the matter shall be referred to the Board for review and any appropriate action pursuant to law or rule.

4A:10-3.2 Penalties and remedies

(a) In salary disapproval matters, the Commissioner or the Board may:

1. Disapprove the payment of salary to an employee hired in violation of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.;

2. Disapprove the payment of salary to persons who have approved or continued the payment of a disapproved salary or persons who have employment authority over an employee whose salary has been disapproved;

3. Order the appointment of an eligible from an outstanding certification;

4. Revoke an employment list;

5. Assess costs, charges or fines pursuant to N.J.S.A. 11A:10-3;

6. Initiate a civil action in the Superior Court; and

7. Take other appropriate actions pursuant to law or rule.