

Frequently Asked Questions Regarding Change to Section 63.1 of the Civil Service Law, Effective September 7, 2023

1. When does the legislative change take effect?

This legislation took effect on September 7, 2023 and must be considered for all permanent appointments occurring on or after that date, which were immediately preceded by provisional service in the same title at the same agency.

2. Does the provisional service have to start on or after September 7, 2023, in order for the provisional service to count towards the completion of probation?

No, all provisional service immediately prior to a qualifying permanent appointment must be counted. It is the permanent appointment that must be on or after September 7, 2023.

3. Does this mean employees now become permanent on the date of the provisional appointment?

No, the employee must first receive a permanent appointment, regardless of the date of the provisional appointment, in order to be considered a permanent employee. The date of the permanent appointment will be the earliest date that an individual can complete probation; the exact date of probation completion will be dependent upon the prior continuous provisional service in the same title, taking into account absences and other factors. The date of provisional appointment is only used to calculate the time served to credit toward completion of probation.

4. Does this affect employees serving provisionally but who were permanently appointed prior to 9/7/23?

No, this law does not apply to individuals who served provisionally and were permanently appointed before September 7, 2023.

5. Does this have any effect on temporary appointments?

No, this statute applies only to provisional employees appointed in accordance with section 65 of the Civil Service Law (CSL) and does not apply to employees appointed on a temporary basis in accordance with section 64 of CSL.

6. Does this change apply to provisional promotion appointment?

Yes, it applies to positions that would be filled through open-competitive, transition, and promotion examinations.

- 7. If there is a break in service between the provisional appointment and the permanent appointment, does the provisional service count toward the probationary term?**

No, for the provisional service to count towards completion of probation, the permanent appointment must be immediately prior to the provisional service.

- 8. Does an appointing authority have to credit provisional time from another department? For example, if an employee served as a provisional Human Resources Specialist 2 in the Department of Labor for a year and is subsequently permanently appointed to a position with the same title in the State Education Department, does the State Education Department have to count the provisional time served at DOL?**

No, only provisional time served in the same title at the same appointing authority may be counted towards completion of probation. In this example, because the provisional service was at a different agency, the employee would start day one of probation at State Education on the date of permanent appointment.

- 9. If an employee is appointed provisionally to Office Assistant 1 (Spanish Language) and then without a break in service is immediately permanently appointed to Office Assistant 1, does the provisional time count toward the completion of the probationary term?**

No, the statute provides that the provisional service is counted toward the completion of probation in the same title. It does not apply to employees who are permanently appointed to a non-parenthetical or parenthetical of the title.

- 10. Does provisional service count toward the probationary term if the provisional employee fails their exam and as a result is removed from the position?**

No, a candidate serving provisionally who fails the civil service examination does not have their provisional time counted towards probation since they are not eligible for permanent appointment to the position immediately following provisional service.

- 11. We have many provisional appointments that far exceed the maximum probation duration due to the frequency at which exams are held. Are these employees automatically permanent when they become reachable on the list?**

All inquiries as to the length of a specific individual's probationary period should be directed to your Staffing Representative. If the employee has an amount of provisional service that meets or exceeds the maximum probationary term, and all

criteria are met for successful completion of probation, they will be made permanent/non-probationary at the time of permanent appointment.

12. What if there is a certain requirement that must be completed during a probationary term that is shortened by provisional service?

Additional requirements, such as credentials, trainings, licensures, or any other requirement beyond time in title are not eliminated by the change to section 63. Candidates will still need to acquire these within the time period specified on the examination announcement and will not complete probation until they have done so.

13. What happens to employees serving provisionally followed by permanent appointments to a position in the non-competitive class?

Section 63 is silent on the jurisdictional classification of the permanent position, consequently provisional service immediately followed by permanent appointment to the same title at the same appointing authority in the non-competitive class is also covered by this change.

14. Does the amount of time a provisional employee has served in the position impact whether the employee may be terminated if they are still provisional and have not been permanently appointed?

No, a provisional is still considered an at will employee and has no tenure rights in their position.

15. Should appointing authorities conduct performance reviews for provisional employees?

It is strongly recommended that appointing authorities evaluate and document the performance of provisional employees. Performance issues should be addressed in a timely manner and corrective action taken as necessary. While not technically serving probation while in provisional status, agencies should evaluate provisional employee performance in the same manner and with the same standards that would be used to evaluate the performance of a probationer. However, appointing authorities may terminate a provisional employee at any time without complying with the probationary termination requirements and procedures in Rule 4.5.

16. Should appointing authorities be tracking absences of provisional employees for the purpose of extending the probationary term in accordance with our probationary term rule?

Yes, absences beyond the excused limits defined in the probationary term rule should be tracked so that the probationary term may be extended if necessary. Any extensions should be discussed with the Staffing Representative.