

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
1800 Appointments**

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NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #18-02

1400 Eligible Lists / 1800 Appointments

May 16, 2018

TO: Department and Agency Directors, Human Resources and Affirmative Action Officers

FROM: Scott DeFruscio, Director of Staffing Services

SUBJECT: Justification Requirements for Selective Certification Examinations

The purpose of this memorandum is to highlight and provide additional information on requirements recently established by the Department of Civil Service (Department) for Selective Certification Examinations. As noted in the updated “New York State Agencies Guide to Using the Selective Certification System” available at <https://www.cs.ny.gov/extdocs/sc/NYS%20Agencies%20Guide%20to%20Using%20the%20Selective%20Certification%20System.pdf>, agencies are required to provide a justification for each educational and experiential qualification (Property) selected within a Selective Certification Profile. A “Property” refers to the selected Category, Group, Item and Level. For some examinations, Sub-items and/or Tasks are also included within a Property.

Selective Certification is offered as an option to agencies when the Department has determined that additional education and experience may be required for specific positions within a job class. Selective Certification components of examinations are designed to provide agencies with list certifications of eligible candidates who have essential knowledge, skills and abilities needed to successfully perform the duties of the position. When completing Selective Certification Profiles, agencies must supply sufficiently detailed information in the justification column so that Department representatives reviewing the Selective Certification requests may determine that the Property selected is required to perform a specific aspect of the duties of the position. Below is an example of a portion of a properly completed Selective Certification Profile.

CATEGORY	GROUP	ITEM	SUB ITEM	LEVEL	JUSTIFICATION
Licensure 1.1.1	Licensure	4 - NYS Professional Engineer License with current registration		Yes - Has the License/Current Registration	PE license required with Current Registration.
Experience 2.1.10.1	Experience	35 - Design	Type	2 - Between Grade 23 and Grade 26	Manage, supervise, train and lead assigned units and staff, such as the highway design, consultant management and survey teams. Prior highway design experience at a supervisory level required
Experience 2.1.10.2	Experience	36 - Design	Highest Level Time	3 - 5 years or more	Prior highway design experience at a supervisory level required due to the technical nature of this position.

The Justification field is required for each Property selected and it is expected that both the Program Official and the Director of Human Resources approving the forms have reviewed and approved each of the justifications provided, prior to signing and submitting the Selective Certification Profile.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL

Advisory Memorandum #13-01

1000 Recruitment and 1800 Appointments

April 23, 2013

T0: Department and Agency Personnel, Human Resources, and Affirmative
Action Offices
FROM: Marc Hannibal, Special Counsel
SUBJECT: Employment Eligibility Verification Form (Form I-9)

This Advisory Memorandum updates State Personnel Management Manual Advisory Memorandum #09-01, dated March 13, 2009, located in Sections 1000 and 1800. Note on both copies of the 2005 Memo that this Advisory Memorandum should be consulted.

United States Citizenship and Immigration Services (USCIS) has published a revised Employment Eligibility Verification Form I-9 for use. Improvements to Form I-9 include new fields, reformatting to reduce errors, and clearer instructions for both employees and employers.

Effective March 8, 2013:

- Employers should begin using the newly revised Form I-9 (Rev. 03/08/13)N for all new hires and reverifications.
- Employers may continue to use previously accepted revisions (Rev.02/02/09)N and (Rev. 08/07/09) Y until May 7, 2013.
- After May 7, 2013, employers must only use Form I-9 (Rev. 03/08/13)N.

The revision date of the Form I-9 is printed on the lower left corner of the form. Employers should not complete a new Form I-9 for current employees if a properly completed Form I-9 is already on file.

Copies of the March 8, 2013 version of Form I-9 (including instructions) are available for download on the USCIS Web site at www.uscis.gov. **Print copies of the March 8, 2013 version of Form I-9 for your agency's use and destroy all blank copies of previous versions of Form I-9 in your possession.** Check the USCIS Web site regularly for the latest official information and guidance.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL**

Advisory Memorandum #09-01

1000 Recruitment and 1800 Appointments

March 13, 2009

T0: Department and Agency Personnel, Human Resources, and Affirmative
Action Offices

FROM: Judith I. Ratner, Counsel

SUBJECT: Employment Eligibility Verification Form (Form I-9)

This Advisory Memorandum updates State Personnel Management Manual Advisory Memorandum #07-03, dated November 30, 2007, located in Sections 1000 and 1800. Note on both copies of the 2005 Memo that this Advisory Memorandum should be consulted.

The United States Department of Citizenship and Immigration Services (USCIS) has delayed implementation of the newest version of Employment Eligibility Verification Form I-9 until April 3, 2009. Appointing authorities are prohibited from using the new Form I-9 before that date. Use of the new Form I-9 before this date could expose an employer to monetary penalties. Employers should continue to use the current version of Form I-9 (with revision date of 6/5/07) until April 3, 2009.

Starting April 3, 2009, employers are required to use the new Form I-9 and can no longer use any prior versions of Form I-9. In addition to other changes listed on the new Form I-9, employers will no longer be able to accept expired documents to verify employment authorization on the form.

Current employees will not have to re-verify their employment eligibility using new Form I-9 unless their current work authorization expires on or after April 3, 2009.

The USCIS may continue to update and revise the new Form I-9 implementation timetable and guidelines. Copies of the current and post-April 3, 2009 versions of Form I-9 (including instructions) are available for download on the USCIS Web site at www.uscis.gov. Check this Web site regularly for the latest official information and guidance.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

Advisory Memorandum #07-03

1000 Recruitment and 1800 Appointments

November 30, 2007

TO: Department and Agency Personnel, Human Resources, and Affirmative Action Offices

FROM: Judith I. Ratner, Counsel

SUBJECT: Employment Eligibility Verification Form (Form I-9)

This Advisory Memorandum updates State Personnel Management Manual Advisory Memorandum #05-03, dated August 5, 2005, located in Sections 1000 and 1800. Note on both copies of the 2005 Memo that this Advisory Memorandum should be consulted.

The U.S. Citizenship and Immigration Services (USCIS) of the Department of Homeland Security has updated the Employment Eligibility Verification Form I-9.

Please note the following changes to the Form I-9 process:

- Five documents have been removed from List A of the List of Acceptable Documents:
 - Certificate of U.S. Citizenship (Form N-560 or N-561);
 - Certificate of Naturalization (Form N-550 or N-570)
 - Alien Registration Receipt Card (I-151);
 - Unexpired Reentry Permit (Form I-327);
 - Unexpired Refugee Travel Document (Form I-571).
- One document was added to List A of the List of Acceptable Documents:
 - Unexpired Employment Authorization Document (I-766).
- All Employment Authorization Documents with photographs have been consolidated as one item on List A:
 - I-688, I-688A, I-688B, I-766.
- Instructions regarding Section 1 of the Form I-9 now indicate that the employee is not obliged to provide his or her Social Security number in Section 1 of the Form I-9, unless he or she is employed by an employer who participates in E-Verify.
- Employers may now sign and retain Forms I-9 electronically. See instructions on page 2 of the Form I-9.

A copy of the current Form I-9 (with a revision date of 06/05/07) is attached. The Form and information regarding the Form I-9 employment eligibility verification process is available for download from the USCIS website at the following URL:
<http://www.uscis.gov/i-9> .

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

Advisory Memorandum #07-03

1000 Recruitment and 1800 Appointments

November 30, 2007

As of November 2007, appointing authorities should use the new Form I-9 for all future hires and for all current employees who are required to re-verify or complete a new Form I-9. Current employees who are not required by law to re-verify or complete a new Form I-9 do not need to complete this Form.

Personnel offices should destroy all previous blank versions of Form I-9 in their possession.

attachment

Instructions

Please read all instructions carefully before completing this form.

Anti-Discrimination Notice. It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents presented have a future expiration date may also constitute illegal discrimination.

What Is the Purpose of This Form?

The purpose of this form is to document that each new employee (both citizen and non-citizen) hired after November 6, 1986 is authorized to work in the United States.

When Should the Form I-9 Be Used?

All employees, citizens and noncitizens, hired after November 6, 1986 and working in the United States must complete a Form I-9.

Filling Out the Form I-9

Section 1, Employee: This part of the form must be completed at the time of hire, which is the actual beginning of employment. Providing the Social Security number is voluntary, except for employees hired by employers participating in the USCIS Electronic Employment Eligibility Verification Program (E-Verify). **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

Preparer/Translator Certification. The Preparer/Translator Certification must be completed if **Section 1** is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete **Section 1** on his/her own. However, the employee must still sign **Section 1** personally.

Section 2, Employer: For the purpose of completing this form, the term "employer" means all employers including those recruiters and referrers for a fee who are agricultural associations, agricultural employers or farm labor contractors. Employers must complete **Section 2** by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required

document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, **Section 2** must be completed at the time employment begins. **Employers must record:**

- 1. Document title;
- 2. Issuing authority;
- 3. Document number;
- 4. Expiration date, if any; and
- 5. The date employment begins.

Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the Form I-9. **However, employers are still responsible for completing and retaining the Form I-9.**

Section 3, Updating and Reverification: Employers must complete **Section 3** when updating and/or reverifying the Form I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in **Section 1**. Employers **CANNOT** specify which document(s) they will accept from an employee.

- A. If an employee's name has changed at the time this form is being updated/reverified, complete Block A.
- B. If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.
- C. If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired or if a current employee's work authorization is about to expire (reverification), complete Block B and:
 - 1. Examine any document that reflects that the employee is authorized to work in the U.S. (see List A or C);
 - 2. Record the document title, document number and expiration date (if any) in Block C, and
 - 3. Complete the signature block.

What Is the Filing Fee?

There is no associated filing fee for completing the Form I-9. This form is not filed with USCIS or any government agency. The Form I-9 must be retained by the employer and made available for inspection by U.S. Government officials as specified in the Privacy Act Notice below.

USCIS Forms and Information

To order USCIS forms, call our toll-free number at **1-800-870-3676**. Individuals can also get USCIS forms and information on immigration laws, regulations and procedures by telephoning our National Customer Service Center at **1-800-375-5283** or visiting our internet website at www.uscis.gov.

Photocopying and Retaining the Form I-9

A blank Form I-9 may be reproduced, provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed Forms I-9 for three (3) years after the date of hire or one (1) year after the date employment ends, whichever is later.

The Form I-9 may be signed and retained electronically, as authorized in Department of Homeland Security regulations at 8 CFR § 274a.2.

Privacy Act Notice

The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 USC 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of U.S. Immigration and Customs Enforcement, Department of Labor and Office of Special Counsel for Immigration Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed, since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

Paperwork Reduction Act

We try to create forms and instructions that are accurate, can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: **1)** learning about this form, and completing the form, 9 minutes; **2)** assembling and filing (recordkeeping) the form, 3 minutes, for an average of 12 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to: U.S. Citizenship and Immigration Services, Regulatory Management Division, 111 Massachusetts Avenue, N.W., 3rd Floor, Suite 3008, Washington, DC 20529. OMB No. 1615-0047.

Department of Homeland Security
U.S. Citizenship and Immigration Services

**Form I-9, Employment
Eligibility Verification**

Please read instructions carefully before completing this form. The instructions must be available during completion of this form.

ANTI-DISCRIMINATION NOTICE: It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because the documents have a future expiration date may also constitute illegal discrimination.

Section 1. Employee Information and Verification. To be completed and signed by employee at the time employment begins.

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.	I attest, under penalty of perjury, that I am (check one of the following): <input type="checkbox"/> A citizen or national of the United States <input type="checkbox"/> A lawful permanent resident (Alien #) A _____ <input type="checkbox"/> An alien authorized to work until _____ (Alien # or Admission #) _____
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Employee's Signature	Date (month/day/year)
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Preparer and/or Translator Certification. (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	Date (month/day/year)

Section 2. Employer Review and Verification. To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): _____		_____		_____

CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) _____ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name and Address (Street Name and Number, City, State, Zip Code)		Date (month/day/year)

Section 3. Updating and Reverification. To be completed and signed by employer.

A. New Name (if applicable)	B. Date of Rehire (month/day/year) (if applicable)
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C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.

Document Title: _____	Document #: _____	Expiration Date (if any): _____
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I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative	Date (month/day/year)
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LISTS OF ACCEPTABLE DOCUMENTS

LIST A Documents that Establish Both Identity and Employment Eligibility	LIST B Documents that Establish Identity	LIST C Documents that Establish Employment Eligibility
	OR	AND
1. U.S. Passport (unexpired or expired)	1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address	1. U.S. Social Security card issued by the Social Security Administration <i>(other than a card stating it is not valid for employment)</i>
2. Permanent Resident Card or Alien Registration Receipt Card (Form I-551)	2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color and address	2. Certification of Birth Abroad issued by the Department of State <i>(Form FS-545 or Form DS-1350)</i>
3. An unexpired foreign passport with a temporary I-551 stamp	3. School ID card with a photograph	3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. An unexpired Employment Authorization Document that contains a photograph <i>(Form I-766, I-688, I-688A, I-688B)</i>	4. Voter's registration card	4. Native American tribal document
5. An unexpired foreign passport with an unexpired Arrival-Departure Record, Form I-94, bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, if that status authorizes the alien to work for the employer	5. U.S. Military card or draft record	5. U.S. Citizen ID Card <i>(Form I-197)</i>
	6. Military dependent's ID card	6. ID Card for use of Resident Citizen in the United States <i>(Form I-179)</i>
	7. U.S. Coast Guard Merchant Mariner Card	7. Unexpired employment authorization document issued by DHS <i>(other than those listed under List A)</i>
	8. Native American tribal document	
	9. Driver's license issued by a Canadian government authority	
	For persons under age 18 who are unable to present a document listed above:	
	10. School record or report card	
	11. Clinic, doctor or hospital record	
	12. Day-care or nursery school record	

Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL

Advisory Memorandum #05-03

1000 Recruitment and 1800 Appointments

August 5, 2005

T0: Department and Agency Personnel, Human Resources, and Affirmative
Action Offices

FROM: Brian S. Reichenbach, Counsel

SUBJECT: Employment Eligibility Verification Form (Form I-9)

This updates State Personnel Management Manual Advisory Memorandum #97-07, dated December 12, 1997, located in Sections 1000 and 1800. Note on both copies of the 1997 Memo that this Advisory Memorandum should be consulted.

The U.S. Citizenship and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement (ICE) have updated the Employment Eligibility Verification Form (Form I-9) to eliminate outdated references to the former Immigration and Naturalization Service and its parent agency, the Department of Justice (DOJ). The USCIS is now an entity within the Department of Homeland Security (DHS). Aside from replacing outdated references to the DOJ and the former INS, the current edition of Form I-9 is the same as the 11/21/91 edition. A substantively revised Form I-9 may be issued in the future.

The edition of the rebranded Form I-9 reads "(Rev. 05/31/05)Y." Employers may meet their employment verification requirements by completing a Form I-9 that has an edition date of either "(Rev. 05/31/05)Y," or "(Rev. 05/31/05)N," or "(Rev. 11/21/91)N" in the lower right corner of the Form. Properly completed older versions of Form I-9 remain valid.

The USCIS has removed several documents from the list of acceptable identity and work authorization documents ("List A" documents) listed on the 11/91 version of Form I-9 and I-9 Instructions, and in the INS "Handbook for Employers" (Document M-274, 1991 edition). Documents that can no longer be used in the I-9 verification process include:

- Certificate of US Citizenship (INS form N-560 or N-561; see List A #2);
- Certificate of Naturalization (INS Form N-550 or N-570; see List A #3);
- Alien Registration Receipt Card (INS Form I-151; see List A #5);
- Unexpired Reentry Permit (INS Form I-327; see List A #8);
- Unexpired Refugee Travel Document (INS Form I-571; see List A #9).

The acceptability of an unexpired foreign passport with Form I-94 indicating unexpired work authorization (List A #4) was made more limiting. Such combination of documents is now only acceptable where an individual is employment authorized incident to status for a specific employer (such as a particular NYS agency).

Another document has been added to List A to establish identity and employment eligibility:

- Employment Authorization Document (INS Form I-766).

Also, the rule explaining when receipts may be used in place of original documents in the I-9 verification process (the "Receipt Rule") has been modified.

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Advisory Memorandum #05-03

1000 Recruitment and 1800 Appointments

August 5, 2005

Employers are strongly encouraged to consult the Web site of the Office of Business Liaison (OBL) of U.S. Citizenship and Immigration Services at <http://www.bcis.gov> for the latest information regarding Form I-9. The site has downloadable forms and guides for employers, answers to frequently asked questions (FAQs), and provides a toll-free telephone number for personal assistance. This Web site should be checked periodically, as rules regarding the I-9 verification process and Form I-9 are subject to change by the federal government.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
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Advisory Memorandum #99-03

1800 Appointments

July 15, 1999

T0: Department and Agency Personnel, Human Resource and Affirmative Action Offices

FROM: James W. Sever, Director of Staffing Services

SUBJECT: Upward Movement of Employees: Promotions and Transfers

Over time, cases have raised questions about the relationship between promotion by examination and upward transfer. This memo addresses some of those questions. It does not reiterate definitions and policy relating to promotion and transfer found in Sections 1205 and 1840 of this Manual and elsewhere.

New York's merit system makes explicit distinctions between promotion and transfer. By definition (Rule 1.2), transfer may involve a change of title and level. Permitting upward transfer has been a long-standing practice of the Department. It has judicial approval (Council 82 v. Civil Service), and the conditions necessary to permit it are laid out in policy. Promotion is an entirely separate process with its own statutory basis (Section 52), terms, and conditions. While the clear technical distinction is often blurred because common usage considers any upward change of title a "promotion," the two distinct processes should not be confused or combined into one.

It is possible to fill a given title by transfer, promotion, or both; neither process necessarily bars the other. When moving people between titles within two grades, resource considerations often make transfer the method of choice, though examinations are held in some circumstances. Even where there are promotion examinations, however, transfer is possible from any other appropriate title. As an example, the "administrative" titles (Section 52.6(a)) are commonly filled – at agency discretion – by transfer (lateral or upward), or list appointment. Conversely, there may be some exceptional cases where titles in a series are two grades apart but transfer is not appropriate.

A separate issue is whether a promotion field can include, as qualifying titles, only titles filled by transfer. It can. How a promotion field came to be has no bearing on whether or not it is one. Promotion fields may consist, partly or entirely, of positions filled by examination, transfer, title structure change, cover-in, displacement, reemployment or any other legitimate means of permanent appointment. This, too, has judicial approval, (OMCE v. Lawton).

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

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Advisory Memorandum #98-03

1800 Appointments

June 30, 1998

TO: Department and Agency Personnel, Human Resource and Affirmative
Action Offices

FROM:  James W. Sever, Director of Staffing Services

SUBJECT: Appointment Letters and Personnel Transaction Notification Letters

It is important that employees are aware of their rights, and the limitations of their rights, that may or may not accrue to them as a result of any appointment or personnel transaction. Most agencies send appointment letters to their new employees upon initial hire, and/or notification letters to their current employees when they are promoted, reassigned or some other transaction affects them. Labor management agreements may also require these kinds of written notices. The purpose of this memorandum is to provide some guidelines on the content and use of these very significant documents.

Appointment Letter Basics:

Every appointment letter should include the following:

1. The type of appointment--permanent, contingent permanent, provisional, temporary.
2. The type of position when it is other than permanent (temporary, seasonal, part-time) with expected duration if the appointment is temporary or seasonal and with percent of time if less than full-time.
3. The jurisdictional class of the position.
4. The bargaining unit of the position.
5. Whether or not the employee will be on probation, the length of the probationary period, and whether or not the employee will be tenured once probation is completed successfully. (See the Discussion on page 2.)
6. The salary range for the position.
7. The title and location of any hold item from which the employee has been placed on leave, when that leave will expire, and the circumstances under which the employee may return to that item. (See the Discussion on page 2.)
8. Whom to contact with questions.

Other Notifications:

Eligibles being offered an appointment should be told in writing to bring with them:

1. The documents required by federal regulations to verify their right to work in the US (See the Advisory Memoranda in 1000 or 1800 of this manual on the topic of the *Naturalization and Immigration Act.*)
2. The documents, if any, necessary to verify required credentials (See 1630 and 1860 in this manual), and to verify status as a veteran or disabled veteran (See memoranda on this topic in 1200, 2300, or 2800 of this manual.)

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
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Advisory Memorandum #98-03

1800 Appointments

June 30, 1998

New employees must also often be given information about their work location, name of supervisor, working hours, shift, and "house-keeping" essentials such as parking, building security, safety and health information. It is suggested that agencies develop handouts as appropriate.

DISCUSSION

The personnel field has become increasingly complex, and some of the terms we use in appointment letters or our discussions with employees are likely to be misunderstood if not explained. Several such areas are discussed below. We suggest agencies develop a series of handouts or form letters about these topics which can be attached to appointment and notification letters to provide appropriate information.

Tenure: Provisional and temporary employees should be told they have no tenure in the positions to which they've been appointed. Provisional employees should be told they are expected to take the next examination for their title, and, where known, when this examination is expected to be held. Employees appointed permanently to exempt class positions or non-competitive class positions designated policy influencing or confidential should be advised that pursuant to section 75 of the Civil Service law employees in such positions do not gain tenure protection, except if they are an exempt volunteer firefighter or an honorably discharged veteran of the armed forces, provided, however they do not hold the position of private secretary, cashier or deputy of any official or department.

Hold Items and Leaves of Absence: When employees are promoted or transferred, and, in some cases, appointed from an open-competitive or reemployment list, they must be given a leave of absence for usually the duration of any required probationary period. Any leaves beyond these mandatory leaves are discretionary. Employees who are being given a leave must be notified in writing as to the kind of leave they've been given, its expected duration and the procedures for requesting return to a hold item. (See appropriate memoranda in this section and 2200 of this manual.)

Probationary Periods: (See also section 2010 in this manual) Employees serving probation must be told their minimum and maximum periods and the schedule for their evaluations. If probation is being waived (e.g., for transfers) they must be told this at the time of appointment. If they were a probationer at the time of appointment to another, higher level position, they must be told whether or not their service will also count toward the completion of probation in their former, lower-level position.

Traineeships: Employees appointed to traineeships must be told the title and level of their journey title, the length of their traineeship, and any requirements they are expected to meet (e.g., training courses, performance levels, etc.) in order to successfully complete their traineeships.

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Advisory Memorandum #98-03

1800 Appointments

June 30, 1998

Contingent Permanent Employees: Contingent permanent employees must be told that they can be displaced by the return of a prior permanent incumbent, and that, if appropriate, they have been granted a leave from any hold item for as long as he or she remains in contingent permanent status. They should also be informed that they will be given a permanent position when one becomes available (See 1810 in this manual), and, that once they have completed any required probationary period, they may return to this hold item ONLY if displaced by the prior permanent incumbent.

Some agencies use form letters for the different types of appointments and transactions, (e.g., transferees, new hires, promotions, appointments to positions in a different jurisdictional class, reassignments, etc.) because each requires different, although relatively standard, information. Some agencies use a standard personnel status change form with check boxes to indicate these changes. However it is done, as long as it is done, is up to the agency. However, these letters and forms should be reexamined periodically, but especially whenever changes in Civil Service law, rules, regulations or policies occur. Your Staffing Services Representative can help you review these letters, forms and handouts to ensure that all the information is included and correct.

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Advisory Memorandum #97-07

1000 Recruitment and 1800 Appointments

December 12, 1997

TO: Department and Agency Personnel, Human Resource and Affirmative Action
Offices

FROM: Daniel E. Wall, Counsel

SUBJECT: The Immigration and Nationality Act: Verifying Employment Eligibility

URGENT

THIS UPDATES STATE PERSONNEL MANAGEMENT MANUAL ADVISORY MEMORANDUM #94-06,
DATED OCTOBER 11, 1994, "THE IMMIGRATION AND NATIONALITY ACT" LOCATED IN SECTIONS
1000 AND 1800.

NOTE ON BOTH COPIES OF THE 1994 MEMO THAT THIS MEMO MUST ALSO BE SEEN.

As stated in Advisory Memorandum #94-06, the Act requires employers to verify the employment eligibility and identity of all new hires. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996, (IIRIRA) Pub L. 104-208, amended the Immigration and Nationality Act by removing certain documents from the list of documents acceptable for verifying employment eligibility on the Employment Eligibility Verification Form (Form I-9). The Immigration and Naturalization Service (INS) issued an interim rule, effective September 30, 1997, (62 FR 51001), to implement the amendments. However, the INS exercised its discretion under the Act to designate specific documents as acceptable, to retain some of the documents eliminated by IIRIRA.

The rule deletes the following documents from "List A" on the I-9. *These documents are no longer acceptable for verifying identity and employment eligibility:*

- Certificate of US Citizenship, INS Form N-560 or N-561, and
- Certificate of Naturalization, INS Form N-550 or N-570.

Under the amended regulations, the following documents, so long as they appear to relate to the individual presenting the document, are acceptable as "List A" documents to evidence both identity and employment eligibility:

- A United States passport (unexpired or expired);
- An Alien Registration Receipt Card or Permanent Resident Card (Form I-551);
- A foreign passport with a Temporary I-551 stamp;
- An Employment Authorization Document (EAD) issued by INS which contains a photograph (Form I-766, Form I-688, or Form I-688B; and, in the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with an Arrival-Departure Record (Form I-94) bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the Form I-94.

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There is no change with respect to either the "List B" documents or "List C" documents at this time. INS has advised that additional changes will be made within the next six months as a result of a document reduction initiative. Recognizing that these changes are being implemented with little advance public notice, and without any changes to the existing Form I-9 and the Handbook for Employers (Form M-274). INS has advised that it will not seek monetary civil penalties against employers who accept the documents removed by the interim rule.

Since a revised Form I-9 has not yet been promulgated, employers are to use the current version of the Form I-9 (edition 11/21/91), to complete the verification process. You may, however, want to note on the Form which of the documents are no longer acceptable.

Receipts

The rule also amends the regulations governing the use of receipts, (8 C.F.R. section 274a.2(b)(1)(vi)). The current regulations permit individuals to present a receipt showing that they have applied for a replacement document if the individual is unable to provide a required document(s) at the time of hire. The individual must then present the required document(s) within 90 days of the hire.

The interim rule provides that an employer must accept a receipt that appears to be genuine on its face and relate to the individual presenting it in lieu of the required document, unless the employer has actual or constructive knowledge that the individual is not authorized to work. A receipt is **not** acceptable for initial work authorization or an extension of expiring work authorization. Receipts are acceptable in the following three instances:

1. When an individual presents a receipt for the application for a replacement document because the original document was lost, stolen or damaged. The individual must present the replacement document within 90 days of hire or the date employment authorization expires.
2. When an individual presents the arrival portion of the Form I-94 that INS has marked with a temporary I-551 stamp and has affixed with the alien's picture, which is designated as a receipt for Form I-551 for 180 days;
3. When an individual presents the departure portion of Form I-94 containing a refugee admission stamp. The refugee is permitted to present either an unrestricted Social Security card or a Form I-766 EAD at the end of the 90-day receipt period. If the refugee presents a Social Security card, the refugee will also need to present a "List B" document. If the refugee presents a Form I-766 EAD, he or she need not present another document.

Receipts are not acceptable where the individual is hired for less than three business days.

If you have any questions concerning this information, you may contact the Office of Counsel of the Department of Civil Service at (518) 457-6207.

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Advisory Memorandum #94-11

1800 Appointments, 2200 Separations & Leaves

November 29, 1994

TO: Department and Agency Affirmative Action and Personnel Officers
FROM: Commissioner, Virginia M. Apuzzo
SUBJECT: An Overview: Tenure, Leaves of Absence, and Reinstatements

The purpose of this memorandum is to provide information and advice on issues that are of concern to agencies and employees during this period of transition to a new administration. This memorandum is not intended to be the definitive document for the subjects discussed; it is an overview. As usual, specific questions should be directed to your Staffing Services Representative.

TENURE

Many employees are "tenured;" that is, they generally cannot be removed from their positions except for misconduct or incompetence, and they must be provided with the due processes guaranteed by law, rule or negotiated agreement. Employees who are without tenure in their positions do not have these rights.

Employees who are tenured:

- Competitive class employees who have been appointed on a permanent basis, including those appointed "contingent permanent" pursuant to Rule 4.11, and who have satisfactorily completed their probationary periods;
- Non-competitive class employees who have been appointed on a permanent basis, including those non-competitive employees appointed "contingent permanent" pursuant to Rule 4.12, who are not in positions designated by the Civil Service Commission "... as confidential or requiring the performance of functions influencing policy...", who have satisfactorily completed their probationary periods and who have the necessary continuous service to provide tenure protection pursuant to §75.1(c) and/or negotiated agreements; and
- Labor class employees who have been appointed on a permanent basis, who have satisfactorily completed their probationary periods and who have the necessary continuous service to provide tenure protection pursuant to negotiated agreements.

Employees who are without tenure:*

- Provisional and temporary employees;
- Probationers;
- Employees in exempt and unclassified service positions; and

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- Non-competitive and labor class employees who do not have tenure protection pursuant to §75.1(c) of the Civil Service Law and/or negotiated agreements.

*NOTE, however, there are two important exceptions:

1. Some employees in reclassified positions may have tenure protection, which accrues to them as individuals, if they had such rights prior to their reclassification; and
2. Permanent employees in the classified service, regardless of jurisdictional class, who have completed probation and who meet the criteria of §75 (1) (b) (i.e., who are wartime veterans (see §85) or who are exempt volunteer firefighters (see the General Municipal Law)) have the tenure protection afforded by that section unless they hold the position of "private secretary, cashier or deputy of any official or department." Although relevant, the title assigned to a position is not controlling in determining whether a person is a "deputy" within the meaning of this section. Generally a person is a deputy if statute confers upon him or her authority to perform duties expressly vested in the principal officer, or if a statute authorizes the principal officer to delegate to him or her duties which are substantial and important, and not merely clerical or ministerial.

LEAVES OF ABSENCE

The duration of leaves of absence is governed primarily by Rule 5.2. Non-discretionary leaves, and their conditions, are covered by other rules and by negotiated agreements. In addition, many employees are granted discretionary leaves for a variety of reasons, including, for example, to serve in an exempt class position or to serve in a position in another agency after the probationary period. Generally, the terms of leaves can be modified only by mutual agreement, with four major exceptions:

1. Probationers who request restoration prior to the end of their leave must be restored (Rule 4.5);
2. Employees who have been temporarily or provisionally appointed to another position in their agency must be restored upon request (Rule 4.10);
3. Contingent permanent employees who are affected by return of an incumbent must be offered restoration (Rules 4.11 and 4.12); and
4. Employees on discretionary leave to serve in another position in the State service must be restored upon request.

Employees who have a right to be restored and employees who are requesting restoration must give the appropriate personnel office adequate notice (usually two weeks). Employees do not have rights to be restored to a **specific item**. Rather, they

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have rights to their former title and appointment status. The appointing authority designates to which item the employee will return. Where the hold item has been moved to another geographic location (i.e., county) and the returning employee refuses to relocate, his or her name will be placed on a reemployment list provided they are otherwise eligible.

Extensions of leaves of absence may be granted by the Civil Service Commission for discretionary leaves beyond two years. Such extensions must be requested at the time of the expiration of the leave. Where a discretionary leave of absence has lapsed but the employee has continued in state service, "hold" rights may be re-established either by reinstating the employee and simultaneously granting a new leave to the position in which they have been serving, or, where the lapse is six months or less, by requesting approval for a retroactive extension of the original lapsed leave of absence.

CONTINGENT PERMANENT EMPLOYEES AFFECTED BY RETURN OF INCUMBENTS

Policy Bulletin #88-05, 1810 Contingent Permanent, issued Dec. 30, 1988, in this Manual contains detailed information on the procedures for effecting returns of incumbents.

Only one permanent incumbent may be appointed to a vacant position. All others who are appointed must be appointed "contingent" permanent pursuant to either Rule 4.11 or 4.12. The rule permits such "contingent" permanent employees themselves to be given a leave of absence. Whenever any such "contingent" permanent employee requests return to a hold item his or her seniority date must be compared with the seniority date of any other "contingent" permanent employee who also wishes to return at the same time, if any, and the seniority date of the current "contingent" permanent incumbent. Only the most senior employee can be restored, or retain his or her incumbency.

Seniority is determined pursuant to the process in §80 or §80-a, as appropriate, but because this is not a reduction in force, employees who are not able to be restored, or able to retain their incumbency have no rights to vertically "bump" or retreat. However their names will be placed on the appropriate reemployment lists.

REINSTATEMENTS

Generally, former competitive class employees may be reinstated to positions in titles they held permanently or were eligible to transfer to. Reinstatements must meet the basic criteria:

1. the reinstatement will benefit the agency;
2. the service in the former position was satisfactory; and

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3. there is no reemployment list for the position.

Where a leave of absence has lapsed, but the employee has continued in state service, hold rights may be reestablished by reinstatement and/or by retroactive extension of the leave, depending on the circumstances (See *Leaves of Absence*, above).

The reinstatement rule does not guarantee placement; it only provides eligibility. Individuals may be reinstated without examination upon nomination by the agency. They are **required** to serve a probationary period.

People seeking reinstatement must contact agencies in those locations where they are willing to work to determine whether there are positions available and whether the agency is interested in reinstating them.

An information sheet on reinstatements and a list of addresses of agency personnel offices is also available by calling (518) 457-5596 or (518) 474- 8865 , or by visiting one of our Career Information Centers.

Section 1830 (A) in this Manual provides more detailed information on reinstatements pursuant to Rule 5.4.

REDUCTIONS IN FORCE

Terminations of employees who are not tenured, and contingent permanent employees being affected by return of incumbents are not "*layoffs.*" or reductions in force. Positions must be abolished before §80 or §80-a become applicable.

If positions are to be abolished, the "*Guidelines for the Administration of Reductions in Force*" is your primary resource.

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Advisory Memorandum #94-09

~~0100~~ Recruitment - 1800 Appointments

October 19, 1994

TO: Department and Agency Personnel and Affirmative Action Officers
FROM: Marie D. Dukes, Deputy Commissioner and General Counsel
SUBJECT: The Immigration and Nationality Act

The Immigration and Naturalization Service has extended the period for replacement of I-151 green cards issued prior to 1979 from September 20, 1994 until March 20, 1995.

Employers must continue to accept the old I-151 as proof of identity and work authorization until March 20, 1995 for new hires and current employees.

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Advisory Memorandum #94-06

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0100 Recruitment - 1800 Appointments

October 11, 1994

TO: Department and Agency Personnel and Affirmative Action Officers
FROM: Marie D. Dukes, ^{mdd} Deputy Commissioner and General Counsel
SUBJECT: The Immigration and Nationality Act

THIS ADVISORY MEMORANDUM REVISES THE INFORMATION IN ADVISORY MEMORANDUM #88-07, ISSUED JUNE 27, 1988, AND ADVISORY MEMORANDUM #87-02, ISSUED MAY 29, 1987 WHICH SHOULD BOTH BE REMOVED FROM BOTH PLACES IN YOUR SPMM AND DESTROYED.

The Immigration and Nationality Act of 1986 makes it unlawful for an employer, including public employers, to employ aliens who are not authorized to work in the United States. The Act establishes an employment verification system and makes it unlawful for an employer to hire any person without verifying their identity and employment eligibility.

In accordance with the Act, each department or agency must complete, for any person hired after November 6, 1986, the effective date of the Act, Immigration and Naturalization (INS) Form I-9, verifying that the person is a United States citizen or an alien lawfully authorized to work in the United States. A copy of the current Form I-9 is attached. You may photocopy or reprint Form I-9 for use by your department or agency. Remember to print or copy both sides of the Form.

The regulations of the INS implementing the employment verification requirements of the Act, provide that an employer will not be deemed to have "hired" an individual if the individual is continuing in his or her employment and as a reasonable expectation of employment at all times. An individual is considered *continuing in their employment*:

1. during any period of approved paid or unpaid leave;
2. if he or she is promoted;
3. if he or she is reinstated after disciplinary suspension for wrongful termination, found unjustified by any court, arbitrator, or administrative body, or otherwise resolved through reinstatement or settlement;
4. if he or she is reassigned to another location, or
5. if he or she is engaged in seasonal employment and has a reasonable expectation of being recalled.

All new employees must complete section 1 of the Form "Employee Information and Verification," and produce documentation establishing their identity and eligibility to be employed in the United States. Employers, within three days of hire, must complete section 2 of the Form "Employer Review and Verification," after physically examining the documentation presented by the employee and ensuring that it appears to be

SEE ALSO: AMM MEMO 97-07 IN THIS SECTION

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the documentation presented by the employee and ensuring that it appears to be genuine. If an individual, with the exception of an alien who indicates that he/she is not authorized to work, is unable to produce the required documentation within three days of hire, he/she must present a receipt indicating that he/she has applied for a replacement document within three days of hire and actually produce the documents within 90 days of hire. If a person is to be employed for less than three days, the Form must be completed at the time of hire.

Prospective employees should be notified regarding the documentation requirements of the Act as early as possible in the appointment process. If you determine that an eligible on a list is unable to produce the required documentation, or a receipt indicating he/she has applied for a replacement document, please so advise the Employment Records Section of this department in writing. Such eligible's name will be restricted from certification on all lists on which his or her name appears, until such time as he or she requests restoration and provides the necessary documentation. This department will advise eligibles of the eligible lists from which they are restricted from appointment. Additionally, in cases where an eligible's name is on a decentralized list, we will notify the agency responsible for managing the list of our action.

Employees who are unable or unwilling to present acceptable documentation, or a receipt indicating he/she has applied for a replacement document, are to be terminated. The Payroll and Personnel Transaction Form reporting such termination should indicate that the employee was unable to provide documentation establishing identity and/or employment eligibility as required by the Immigration law.

DOCUMENTATION

On the pages following is a current listing of the acceptable documentation for establishing identity and employment eligibility. An individual may present one document from Group A to establish both identity and employment eligibility, or may present one document from Group B to establish identity and one document from Group C to establish employment eligibility. The identification number and expiration date (if any) must be noted in the appropriate space on the Form. **Only original documents are acceptable.** Copies of the documents presented should be made and attached to the Form, and should be retained in the employee's personnel file.

GROUP A

The following documents may be used to establish both identity and employment eligibility:

1. United States passport (expired or unexpired);

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2. Certificate of United States Citizenship (INS Form N-560 or N-561);
3. Certificate of Naturalization (INS Form N-55- or N-570),
4. Unexpired foreign passport with:
 - (a) unexpired I-551 stamp, or
 - (b) I-94 Form attached with unexpired employment authorization stamp, as long as proposed employment is not in conflict with any limitations or restrictions noted on Form;
5. Alien Registration Receipt Card, INS Form 151, or Resident Alien INS Form I-551, with photograph, (Effective September 20, 1994, Form I-551 will be the exclusive registration card for lawful permanent resident aliens. Form I-551 will replace the old Alien Registration Card, Form I-151, due to high incidence of fraud connected with Form I-551.)
6. Unexpired Temporary Resident Card (INS Form 688);
7. Unexpired Employment Authorization Card (INS Form I-688A);
8. Unexpired re-entry permit (INS Form I-327);
9. Unexpired Refugee Travel document (INS Form I-571);
10. Unexpired employment authorization document issued by INS containing a photograph (INS Form I-688B);

GROUP B

The following documents may be used to establish identity only for individuals 16 years of age or older:

1. Driver's license or identification card issued by a state or by the District of Columbia, Puerto Rico, Guam, the US Virgin Islands, American Samoa or the Swains Islands, containing identifying information such as: name, date of birth, sex, height, eye color and address;
2. Military dependent's identification card;
3. School identification card with a photograph;
4. Voter's registration card;
5. US Military card or draft record;
6. Identification card issued by federal, state or local government entity containing photograph or identifying information, as noted in (1) above;
7. Canadian driver's license;

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8. Native American Tribal Document,
9. United States Coast Guard Merchant Mariner Card.

The following documents may be used by individuals under 18 years of age or to establish identity only, if they are unable to produce one of the "identity" documents noted above:

1. School record or report card;
2. Clinic doctor or hospital record;
3. Daycare or nursery school record.

*Minors under 18 years of age who are unable to produce any of the identity documents, are exempt if their parent or legal guardian completes the "Employee Information and Verification" section on the I-9 and writes "minor under age 18" in the signature section, completes the "Preparer/Translator section and the employer indicates "minor under age 18" in "Document Identification #".

Persons with disabilities who are being placed into employment by a nonprofit organization, association or as part of a rehabilitation program may also produce one of these three optional forms of identification to establish identity or may follow the procedures for establishing identity for minors under 18 years of age, substituting the term "special placement" for "minor under age 18", where appropriate. Further, in addition to a parent or legal guardian, a representative from the nonprofit organization or association or rehabilitation program placing the individual, may fill out and sign the I-9 form.

GROUP C

The following documents may be used to establish employment eligibility only;

1. A Social Security number card, provided it does not state "*not valid for employment purposes,*"
2. A Certificate of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350);
3. An original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;
4. Native American Tribal Document;
5. United States Citizen Identification Card (INS Form I-197),
6. Resident Citizen Identification card (INS Form I-179),

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7. An unexpired employment authorization document issued by INS.

The Form must be retained by an employer for three years from the date of hire or one year after the termination of the individual's employment, whichever is longer. The Form, with documentation, should be kept with the individual's personnel records and should not be used for any other purpose. I-9 Forms may be placed on microfilm or microfiche within articulated standards. Departments and agencies should also keep a record of any employees whose employment authorization documents contain an expiration date. The Act requires employers to reverify employment eligibility by noting the identification number and expiration date of the document showing continuing employment eligibility or a new work authorization prior to the expiration of the original authorization if they are to continue to employ such person.

The Act also prohibits employment discrimination, making it an unfair immigration-related employment practice to discriminate against a person in hiring, recruitment or discharge, because of such person's national origin or citizenship status.

Further, it is an unfair immigration-related employment practice for an employer to refuse to accept the documents presented by an employee or to ask for additional or different documents, if the documents presented by the employee appear to be genuine and to relate to the employee.

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Advisory Memorandum #94-02

1800Appointments

March 1, 1994

To: Department and Agency Personnel and Affirmative Action Officers
From: James W. Sever, Director of Staffing Services
W. Barry Lorch, Director of Classification and Compensation
Subject: Security Guard Legislation

BACKGROUND

Effective July 12, 1993, Chapter 336 of the Laws of 1992 established requirements that individuals in public and private sector employment, whose principal responsibility is to perform security guard duties, must register with the NYS Department of State and complete certain training requirements including an eight hour pre-assignment training program. The Department of State is charged with responsibilities to develop rules, regulations and guidelines necessary to implement this legislation. The eight hour pre-assignment training program is administered through the Division of Criminal Justice Services. For more information on the additional training requirements, including on-the-job training and annual in service training requirements as well as firearm training requirements for armed security guards, you should consult your Counsel's Office.

A security guard is defined as any individual who performs security guard duties more than 50 percent of the time or any person who carries a weapon or wears a guard uniform in the performance of any security guard duties, regardless of the percentage of time.

Security guard duties are defined as:

1. Protection of individuals and/or property from harm, theft or other unlawful activity;
2. Deterrence, observation, detection and/or reporting of incidents in order to prevent any unlawful or unauthorized activity including but not limited to unlawful or unauthorized intrusion, or entry, larceny, vandalism, abuse, arson or trespass on property;
3. Street patrol service;
4. Response to, but not installation or service of, a security system alarm installed and/or used to prevent or detect unauthorized intrusion, robbery, burglary, theft, pilferage, and other losses and/or to maintain security of a protected premises.

NOTE: PEACE OFFICERS AND POLICE OFFICERS (designated as such under Section 2.10 and Section 1.20 of the Criminal Procedure Law respectively) **ARE EXEMPT** if acting in their official capacity for their primary employer.

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All positions in the following classes, and their parentheses, are considered to fall within the definition of Security guard as set out in this law:

- **Security Services Aide:**
- **Security Services Assistant 1, 2, and 3;**
- **Security Officer;**
- **Senior Security Officer**

It is possible that some positions in other classes may meet the definition of "security guard". Where this occurs, it is the responsibility of the hiring agency to identify these positions and see to it that all requirements under this law are carried out.

The Department of State advises that "*Security guards*" do not include doormen, superintendents, handymen, porters, elevator operators, private investigators, proprietary investigators, telephone operators, lifeguards, school crossing guards, receptionists, clerks, resident advisors or assistants, parking lot attendants or assistants, fire safety directors or fire inspectors, fireguards, environmental safety persons, or any other titles which do not require such persons to perform any or all of the security guard duties more than 50% of the persons' regularly scheduled work hours.

Anyone hired to perform security guard duties after December 31, 1993, will have to register and complete pre-assignment training prior to performing the duties of the position. There are no provisions in the legislation to "grandfather" or "cover in" current employees, employed prior to December 31, 1993, who are performing security guard functions. Current employees will be required to meet the registration and training mandated in the legislation. Security guards in your employ on December 31, 1993 may continue employment pending registration on the following schedule: those hired in an even year must be registered during 1994 by their anniversary date of hire; those hired in an odd year must be registered during 1995 by their anniversary date of hire.

PROCEDURES

Agencies must notify all eligibles on the current lists for Security Services Assistant 1,2,&3, Security Officer and Senior Security Officer of the changes concerning the requirements for security guards by including the following statement with all canvass letters for these lists:

"If appointed, you will be required to register as a Security Guard with the Department of State and complete an eight hour pre-assignment training program administered through the Division of Criminal Justice Services prior to performing the duties of the position. If you are not registered and wish to do so on your own,

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you may contact the Department of State (518-474-4429). You may contact the Division of Criminal Justice Services (518-457-4135) for further information concerning the pre-assignment training requirement."

The Governor's Office of Employee Relations informs us that consistent with the licensing/registration and qualifications maintenance requirements in other titles in State service, employees are responsible for maintaining their own registration and training. This includes all initial and renewal requirements, and any fees incurred.

The Department of Civil Service will not place blanket restrictions on current or future eligible lists pursuant to this law.

All appointments, temporary and provisional as well as permanent, must meet the requirements as set forth in this law.

List eligibles cannot be by-passed because they have not successfully completed these requirements. List eligibles should be appointed on a permanent basis even though they may not have completed the requirements at the time of appointment.

Security guards who transfer to another state agency must be viewed as new employees and the Personnel Office must insure that they meet the requirements as set forth in this Law.

Examination announcements for titles where all incumbents are required to adhere to the Security Guard Act should include a statement of that fact, and the fees involved.

It is the responsibility of each appointing authority to ensure compliance with the Security Guard Act.

QUESTIONS

Any questions regarding security guard registration should be directed to Barbara Dunigan at the Department of State (518-473-2728).

Questions regarding the pre-assignment training may be directed to the Security Guard Training Program at the Division of Criminal Justice Services (518-457-4135).

Questions regarding the classification of positions may be directed to your Classification and Compensation Analyst.

Questions regarding the processing of security guard appointments may be directed to your Staffing Services Representative.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #94-01**

1800Appointments

January 27, 1994

TO: Department and Agency Personnel and Affirmative Action Officers
From: James W. Sever, Director of Staffing Services
Subject: Age Limitation for Police Officer Candidates

Section 58 of the Civil Service Law was amended effective July 21, 1993 making the age limitation for police officer candidates applicable **as of the establishment date of the eligible list, rather than the date of appointment.** Therefore, a candidate whose name is placed on the eligible list prior to his or her twenty-ninth birthday will retain eligibility for the life of the list except as provided for below.

Although Section 58 provides for a military age reduction of up to six years, Section 243(10) of the Military Law continues to provide that the actual age at appointment of police officers subject to Section 58 shall not exceed thirty-five years. Therefore, any candidate who is on a police officer list with a military age deduction must be restricted from appointment upon reaching his or her thirty-fifth birthday.

Agencies must review any decentralized eligible lists for police titles (as defined in Section 58, e.g., Capital Police Officer and Park Patrol Officer) to determine if they contain the names of persons who were previously restricted and who are now eligible for appointment. Where this occurs, the appointing authority must remove their restrictions and notify them of this action in writing. The Department of Civil Service will not notify any candidates of this change.

**This does not affect the validity of any appointments made prior to July 21, 1993,
but only appointments since that date.**

The following statement will appear on examination announcements for titles that adhere to Section 58 of the Civil Service Law:

In order to be considered for appointment, you must have reached your 20th birthday, but you must not have passed your 29th birthday by the date of the establishment of the list. Military service time can extend the maximum age limit up to six years as provided by and defined in Section 58 of the Civil Service Law; the maximum possible age is 35. Age will be verified at the time of appointment by the appointing authority.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #92-06**

1800 Appointments - 2000 Probation

November 30, 1992

TO: Department and Agency Personnel and Affirmative Action Officers
FROM: James W. Sever, Director of Staffing Services
SUBJECT: Repeal of Subdivision (f) of Part 4 of the Rules for the Classified Service
(4 NYCRR)

Effective September 2, 1992, subdivision (f) of Rule 4.11 (Permanent appointments to encumbered positions) was repealed. That paragraph read:

Appointees pursuant to this section who voluntarily terminate during their probationary periods and return to their prior positions shall not be deemed to have served pursuant to this section.

Unlike permanent probationers appointed under other sections of the law or rules, contingent permanent probationers (permanent probationers appointed to encumbered positions) who voluntarily relinquished their appointments lost any rights or benefits of their contingent permanent service, including eligibility for reinstatement under Rule 5.4. Repeal of paragraph (f) of Rule 4.11 removes this disparity.

Note: State Personnel Management Manual section 1830(A), subsection .225 is no longer valid: a copy of replacement pages 1 & 2 of that section is enclosed.

Note also: This advisory memorandum should be filed in both sections 1800 and 2000 in your SPMM.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #90-10**

1800 Appointments

September 14, 1990

TO: Department and Agency Personnel and Affirmative Action Officers
FROM: Robert Parrish, Director of Staffing Services Division *RP*
SUBJECT: Constitutional Oath upon Appointment

Section 62 of the Civil Service law, and Section 3002 of the Education law have both been amended in a bill signed by the Governor on June 2, 1990, to allow American Indians to comply with the constitutional oath requirements of these sections by either signing the standard pledge or, alternatively, an oath consisting of the following language:

"I do solemnly affirm that I will faithfully discharge the duties of the position of _____ according to the best of my ability, and perform my duties in a manner consistent with the constitution of the United States and the constitution of the state of New York."

The individuals who are entitled to use this alternative language are enrolled members of an Indian nation or an Indian individual having an affiliation with an Indian nation recognized by the United States or the State of New York.

The Department of State currently provides agencies with form PCS 11493 containing the standard pledge which must be signed by new employees. Later in the year a new form will be made available to agencies for use by American Indians wishing to sign the alternative constitutional oath. In the meantime you can have these individuals sign a statement containing the same information as is on the current PCS 11493 but using the alternative language above.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Advisory Memorandum #90-06

1800 Appointments

March 12, 1990

TO: Department and Agency Personnel and Affirmative Action Offices
FROM: Robert Parrish, Director Division of Staffing Services 
SUBJECT: Reconstructed Seniority Dates
DATE: 3/12/90

This is a reminder that you should be notifying us whenever a former permanent employee reenters State Service and a reconstructed seniority date is necessary.

General Information Bulletin No. 85-08, issued October 15, 1985, provided agency personnel offices with procedures for, and examples of, reconstructed seniority date situations.

Briefly, the Bulletin stated that all employees with previous permanent status in the classified service who are being permanently reappointed in the State service shall have their seniority dates reconstructed. To accomplish this, form S-202, "Request for Reconstructed Seniority Date" must be completed by the appropriate agency personnel office. This applies to such former employees who are...

- appointed from open-competitive eligible lists, or
- reinstated to positions in the competitive class, or
- appointed to positions in the non-competitive class,

...on a permanent or a contingent permanent basis.

For all such appointments (this is a change from the 1985 procedures) of former permanent employees send the form S-202, with Part I completed, to the Employment Records Section of this Department at the same time you send in the PR-75. The form will be returned to you with Part II filled out once the PR-75 has been approved.

You should write [or call (518) 457-4496] our Mail & Supply Unit for a supply of form S-202.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE

STATE PERSONNEL MANAGEMENT MANUAL
ADVISORY MEMORANDUM NO. 87-01

1000 Recruitment -- 1800 Appointments April 14, 1987 Page 1

TO: State Departments and Agencies

FROM: Kathy A. Bennett, Deputy Commissioner
and General Counsel

SUBJECT: The Immigration and Nationality Act

Public Law 99-603, the Immigration Reform and Control Act of 1986, imposes a number of requirements on employers, including public employers. The Act, which requires employers to verify employees' citizenship and legal ability to work, became effective on November 6, 1986. Although each State department and agency is responsible for establishing procedures in compliance with this measure, in an effort to assist you during the initial stages of implementation, this Department will disseminate information obtained from Washington.

Enforcement of this Act is scheduled to begin on June 1, 1987 with only citations to be issued to those not complying until May 31, 1988, after which time fines will be levied.

The task of establishing proper procedures and controls for the verification process has been made somewhat difficult as the federal government has not yet promulgated final regulations to implement this Act. Further, the "compliance form" (INS I-9, see draft copy attached) to be used in this verification process is still under review.

Under the Act, all persons hired or appointed after November 6, 1986 will have to produce evidence of citizenship or naturalization or, if a resident alien, evidence of their right to be employed in this country.

To comply, the employee must submit to the personnel office of the appointing authority documents which establish employment authorization and identity.

Both employment authorization and identity may be established through production of one of the following documents:

- (1) United States passport; or
 - (2) certificate of United States citizenship; or
 - (3) certificate of naturalization; or
 - (4) unexpired foreign passport, if the passport has an
-

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appropriate, unexpired endorsement of the Attorney General authorizing the individual's employment in the United States; or

- (5) resident alien card or other alien registration card, if the card --
 - (a) contains a photograph of the individual or such other personal identifying information relating to the individual as the Attorney General finds, by regulation, sufficient for purposes of this subsection,
and
 - (b) is evidence of authorization of employment in the United States.

A prospective employee who does not possess one of the above documents must produce a document to establish employment authorization and a second document to establish identity.

In order to establish employment authorization the employee may use either:

- (1) social security account number card (unless such card specifies on the face that its issuance does not authorize employment in the United States);
or
- (2) certificate of birth in the United States or establishing United States nationality at birth, which certificate the Attorney General finds, by regulation, to be acceptable for purposes of this section.

Identity may be established by producing a driver's license or similar document issued for the purpose of identification by a State, if it contains a photograph of the individual or personal identifying information relating to the individual.

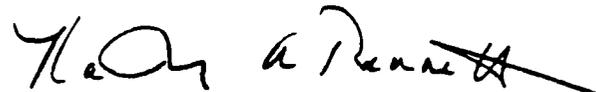
We understand that the federal regulations to be issued may prescribe additional acceptable documentation.

In order to comply with federal law, each State agency must obtain the information necessary to complete the "Employer's Certification" (Part F on the draft of form I-9) from each person newly appointed to the agency as well as each person appointed on or after November 6, 1986 to date. Photocopies of the documents presented by such persons should be made and must be retained with the form as part of your personnel records for three years

after the initial date of employment or for one year following the date the employee separates from service, whichever is later. [The Act specifically authorizes copying such documentation for this purpose regardless of other provisions of law prohibiting the reproduction of such materials.]

In addition, there will be a need to bring personnel files up-to-date for all individuals hired since November 6, 1986. We recommend that, while we are waiting for the INS to produce the final version of the form I-9, you begin to identify all such persons and inform them that they will soon be required to produce the necessary documents to prove their eligibility to work lawfully in this country. If you have any data needs in connection with identifying such persons, please contact Susan Whitfield of this Department at 518-457-7355.

We will provide additional information as soon as the final regulations are promulgated. In the interim, please direct questions to the INS at (518) 472-2434.



Deputy Commissioner and
General Counsel

Attachment

Notice: This form will be made available for inspection by United States Immigration and Naturalization Service or Department of Labor Officers. Authority for collecting the information on this form is in Title 8, United States Code, Section 1324A. It will be used to verify the individual's eligibility for employment in the United States. Failure to provide all of the requested information may result in a determination that the applicant is ineligible for employment in the United States.

A. Identifying information

(All individuals must complete this section.)

1. Name (Last Name in CAPS)

First Name Middle Name

2. Home Address (Street Name and Number)

(City, State and ZIP Code)

3. Country of Citizenship

4. Country of Birth

5. Date of Birth (Month/Day/Year)

B. Information about alien employment authorization

(Individuals who are aliens must complete this section.)

1. Date you entered the U.S. (Month/Day/Year) 2. Place of entry

3. Type of employment authorization 4. Expiration date

5. Immigration status

6. Alien Registration or Admission Number

C. Individual's Certification

(All individuals must complete this section.)

I certify, under penalty of perjury that I am a citizen or national of the United States, or an alien lawfully admitted for permanent residence or an alien who is authorized by the Attorney General for employment in the United States and that the documents that I have presented for evidence of identity and employment authorization are genuine and relate to me. I am aware that various Federal Criminal Statutes provide for imprisonment and/or a fine for any false statement or presentation of a false document in connection with this certification. For purposes of employment only, the employer may verify the validity of the document(s) presented with the Immigration and Naturalization Service or the authority issuing the document.

1. Your Signature

2. Date Signed (Month/Day/Year)

3. Place Signed

D. Preparer's Certification (If other than individual named in Section A.)
I declare that I prepared this document at the request of the person named in Section A above and that all the information is true and correct to the best of my knowledge.

1. Name 2. Relationship

3. Address (Street Name and Number)

(City, State and ZIP Code)

4. Signature

5. Date Signed (Month/Day/Year)

E. Employer's must complete this section.

(Copies of the documents examined may be made and attached to this form.)

Enter on this line the document of both identity and employment eligibility you examined (see list A)

Enter on this line the document of identity you examined (see list B)

Enter on this line the document of employment eligibility you examined (see list C)

Type of Document	Date Issued	Issued By	Identification Number	Expiration Date (if any)

F. Employer's Certification: I certify, under penalty of perjury, that I have examined the above described documents which were presented to me by the individual named in Section A, that the documents appear to be genuine, that they appear to relate to the individual named, and that the individual is a United States citizen, a legal Permanent Resident, or a nonimmigrant alien with authorization to work.

Name of verifying official (print or type)

Name of company or State agency

Title of verifying official

Address of company or State agency

Signature of verifying official

Date signed

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STATE PERSONNEL MANAGEMENT MANUAL

POLICY BULLETIN NO. 85-03

1800 Appointments - - 2300 Reductions in Force September 19, 1985 Page 1

File this material in the section of the manual referenced above.

TO: Department and Agency Personnel Officers

SUBJECT: Seniority for Layoff Purposes

Governor Cuomo has signed into law this Department's legislative proposal changing the way seniority for layoff purposes is calculated pursuant to Sections 80 and 80-a of the Civil Service Law (Chapter 360 of the Laws of 1985).

Under this new act, an individual who has resigned, and who is permanently reinstated or reappointed within three years, will retain full seniority credit for the period of service rendered prior to leaving State employment. If the individual returns after three years, there will be a pro-rata reduction from seniority credit for any time out of the service exceeding three years (example: 7 years previous service, 4- $\frac{1}{2}$ years absence, 5- $\frac{1}{2}$ years seniority credit upon return).

Only persons who had permanent status in the classified service before separation will be eligible for such a reconstructed seniority date.

Therefore, at the time of appointment, agencies must determine whether or not the appointee previously held permanent status in the classified service and the dates of that previous employment. Agencies should confirm the appointee's surname at the time of previous employment, in the event it has changed.

We will shortly provide you with a form on which to collect this information. Once completed, it is to be forwarded to the Employment Records Section of this Department. After we verify the information, we will reconstruct the appointee's continuous service date. The appointee's personnel and history records (maintained in APPS) will then be posted with that reconstructed date and agencies will be notified of it so that they may conform agency records and inform the employee.

This measure will apply to every individual reinstated or reappointed in the competitive or non-competitive classes on or after October 17, 1985. Until then, those returning after a break in service of one year or more will continue to lose all seniority credit for layoff purposes.

The statute does not affect current Attendance Rules provisions on the crediting of prior service nor our present practices on the crediting of seniority for examinations.

(sn) Karen S. Burstein

Karen S. Burstein
President, Civil Service Commission

cc: Affirmative Action Officers

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STATE PERSONNEL MANAGEMENT MANUAL

1800 Appointments

1805(A) Permanent/Competitive

Page 1

File this material in the section of the manual referenced above.

.2 POLICY

.210 Legal Requirements

.211 Permanent appointments are normally allowed only to unencumbered competitive-class positions. Permanent appointments may be made as a result of:

- A. The appointment of the top acceptor on a preferred list appropriate for the title (S81 CSL)
- B. The appointment of anyone on a placement roster appropriate for the title (R5-8 Rules of the Classified Service)
- C. The appointment of one of the top three acceptors on the appropriate eligible list (S61.1 CSL)
- D. The transfer of a qualified permanent employee (52.6, 70.1, 70.4 CSL)
- E. The reinstatement of a former permanent employee (Rule 5.4 Rules of Classified Service)
- F. The appointment of a successful candidate from a non-competitive promotion exam (52.7 CSL)

.220 Civil Service Requirements

- .221 If there is a preferred list for a position and there is an individual on it willing to accept appointment, the appointment must be made from the preferred list or the position left vacant.
- .222 If there is no preferred list but there is a placement roster, an appointment must be made from among any of the acceptors on the placement roster or the position left vacant.
- .223 If there is neither a preferred list nor a placement roster, a permanent appointment may be made from among the top three acceptors on the appropriate eligible list. All eligibles with scores equal to that of the third highest scoring acceptor may be considered for appointment.
- .224 Transfer under 52.6 may not normally be made if there is a preferred list or placement roster but can be made in face of a departmental or interdepartmental eligible lists.
- .225 Transfer under Section 70.1 or 70.4 may not normally be made if there is a preferred list or placement roster. In addition, a transfer under these sections of CSL will not be allowed if there

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File this material in the section of the manual referenced above.

are three acceptors on the Departmental eligible list but will be allowed in the face of an interdepartmental eligible list (Rule 5.1 RCS).

.226 A permanent employee who has resigned from his or her position may be reinstated pursuant to Rule 5.4 Rules of the Classified Service to any position they held or were eligible for transfer to at the time of resignation.

.4 PROCEDURE

.410 Exceptions and Releases

.411 In instances where the agency has been placed under a budget freeze or the item has been earmarked, the agency must obtain the necessary budget exception or earmark release before the appointment will be allowed.

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File this material in the section of the manual referenced above.

.2 POLICY

.210 Civil Service Requirements

- .211 Permanent appointments are normally allowed only to unencumbered non-competitive class positions and are made from either a preferred list established pursuant to Section 80A of the CSL or by appointment of an individual meeting the minimum qualifications and if required, achieving a passing score on any additional qualifying test(s).
- .212 If a preferred list for the non-competitive position exists, it must be used or the position left vacant.

.4 PROCEDURE

.410 Exception and Releases

- .411 In instances where the agency has been placed under a budget freeze or the item has been earmarked, the agency must obtain the necessary budget exception or earmark release before the appointment will be allowed. In addition in order to fill certain non-competitive class positions, the approval of the Director of the Budget is necessary.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Policy Bulletin #18-02**

1805(B) Permanent/Non-Competitive

October, 2018

TO: All Appointing Authorities, Personnel Directors, and Affirmative Action Officers

FROM: Scott DeFruscio
Director, Division of Staffing Services

SUBJECT: Program Guidelines and Procedures for Appointments Pursuant to Section 55-c of the Civil Service Law

THIS BULLETIN REVISES AND REPLACES POLICY BULLETIN #17-01, ISSUED MARCH, 2017, ON THE SAME TOPIC. PLEASE DESTROY THAT VERSION.

Attached for your information and incorporation into the State Personnel Management Manual are updated Guidelines and Procedures for the appointment of Veterans with disabilities pursuant to section 55-c of the Civil Service Law.

Information regarding the Civil Service Law section 55-b Program to hire persons with disabilities is provided in a companion Policy Bulletin 18-01.

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Policy Bulletin #18-02**

1805(B) Permanent/Non-Competitive

October, 2018

PROGRAM GUIDELINES AND PROCEDURES FOR APPOINTMENTS PURSUANT
TO SECTION 55-c OF THE CIVIL SERVICE LAW

These Guidelines and Procedures set forth the eligibility criteria and the application and appointment processes for the Civil Service Law (CSL) section 55-c Program.

Administration of the 55-c Program is governed by Part 58 of the Regulations of the State Civil Service Commission (Commission's Regulations). These Guidelines and Procedures are intended to clarify for applicants, employees, and appointing authorities the standards for appointment for the CSL section 55-c Program. These Guidelines do not supersede or impair any rights which an individual may possess under any law or rule. For specific questions not addressed in these Guidelines and Procedures, please contact the Department of Civil Service (DCS) 55-b/c Unit at 518-233-3118 or toll-free at 1-866-297-4356 or by e-mail at ssdrecruitservices@cs.ny.gov.

I. PROGRAM BACKGROUND AND OTHER METHODS OF APPOINTING VETERANS WITH DISABILITIES

CSL section 55-c, commonly referred to as the "55-c Program," authorizes the Civil Service Commission (CSC) to determine up to 500 positions to be filled by wartime veterans with a physical or mental disability who are found otherwise qualified to perform satisfactorily the duties of any such positions. Upon such determination by the CSC, the positions are placed in the non-competitive class and may be filled by a person who has been certified by DCS as being 55-c "eligible."

CSL section 55-c is not the only avenue for hiring wartime veterans with disabilities into the State civil service. This section provides agencies with significant flexibility for hiring, but is limited by statute to 500 positions.

Wartime veterans with disabilities remain eligible for appointment to any non-competitive (positions not designated 55-b/c), exempt and labor class positions for which they are qualified.

II. ELIGIBILITY DETERMINATION

A. Application for Program Eligibility

Individuals interested in being considered for appointment under the 55-c Program must submit a formal application, including medical documentation and employment history. Wartime veterans must include their discharge papers (or equivalent), showing periods and character of service, and documentation from

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the U.S. Department of Veterans Affairs (VA) [formerly U.S. Veterans Administration] as described below. The applications are submitted to and reviewed by DCS.

A **Veteran** with a disability rating of 10% or more from the VA, will not be required to complete the Physician's Questionnaire, if they can supply a copy of their **VA Entitlement Letter**.

B. Certification of Eligibility

1. Criteria for 55-c Eligibility

Pursuant to section 55-c, an applicant will be eligible for the 55-c Program if she/he is a documented wartime veteran as defined in Civil Service Law section 85 and meets at least one the following criteria:

- a. has proof of a disability rating from the VA of **10 percent or more**, as set forth in Civil Service Law section 85(2), or;
- b. records establishing a pending claim for certain "presumptive" illnesses, diagnosable chronic disability patterns and diseases identified by the VA where documented (e.g., Gulf War Syndrome, Post Traumatic Stress Disorder [PTSD] or Agent Orange-related illness [Hodgkin's Disease, Diabetes Type 2, Disfiguring Chloracne, Melanoma]), or;
- c. has received the award of a Purple Heart where the wound received may be presumptively associated in contributing to the degree of impairment, or;
- d. has successfully completed a U.S. VA drug/alcohol treatment and rehabilitation program.

A wartime veteran who is not eligible for participation in the 55-c Program based upon one of these factors may still be considered for participation in the 55-c Program if he or she meets the additional eligibility criteria described in section B(2) below.

2. Additional Eligibility Criteria

- a. Is legally blind (central visual acuity of 20/200 or less in the better eye with corrective lenses or visual field restriction to 20 degrees diameter or less in the better eye);
- b. Is deaf (has a profound hearing loss and relies on visual communication such as sign language, writing, lip reading and

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- gestures) or has a severe hearing impairment (best corrected average loss of > 70 db in the better ear at 500, 1000 and 2000 Hz);
- c. Has a musculoskeletal condition (e.g., amputation) or neuromuscular condition (e.g., Multiple Sclerosis) which severely limits ambulation;
 - d. Has a cardiovascular condition (e.g., Class IV CHF) or pulmonary condition (e.g. COPD) which severely limits ambulation and/or requires constant oxygen administration;
 - e. Has a developmental disability attributable to Cerebral Palsy, Epilepsy, Neurological Impairment, Familial Dysautonomia, Autism or any other condition closely related in terms of severe impairment of intellectual functioning, adaptive behavior or requiring similar treatment and services;
 - f. Has a mental illness, disease, or condition manifested by a disorder or disturbance in behavior, feeling, thinking or judgment which severely disrupts his or her ability to relate to others and daily functioning;
 - g. Has other physical or mental conditions which substantially limits one or more major life activities, including, but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include major bodily functions such as immune system functions, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, and endocrine functions.

Qualifying conditions will be assessed based upon the applicant's current functional status, taking into account measures which the individual has taken to ameliorate functional limitations, including, but not limited to prostheses, medications, eyeglasses/contact lenses or hearing aids.

All DCS determinations are made on an individual basis upon review of the application.

A former military service member who does not qualify for eligibility in the 55-c Program based upon a lack of qualifying military service may continue to be considered for eligibility in the 55-b Program (see 55-b Program Guidelines).

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C. Letters of Eligibility

Applicants determined to be eligible to participate in the 55-c Program will receive a letter of eligibility. Once enrolled in the program, participants will be asked to renew their interest every three years through responding to an e-mail inquiry from DCS. Upon renewal, participants will receive an updated letter of eligibility, which they must supply to agencies when applying for positions under the 55-c Program. Agencies should contact the Department of Civil Service to verify eligibility in cases when a candidate's letter is older than 3 years.

D. Appeals

As provided by section 58.3 of the Commission's Regulations, a person found not eligible for participation in the 55-c Program may appeal that determination to the CSC. Such appeal shall be in writing and shall state the reasons why the individual believes that the determination is incorrect. An appeal must be received by the CSC within 30 days of the date of the written notice of the determination by DCS. The CSC shall consider such reasons, together with all supporting documents, in making its determination. The CSC may designate a physician, other than the physician who first examined the person, to conduct a secondary examination. The determination of the CSC as to whether the applicant is eligible for appointment under the 55-c Program shall be a final determination within the meaning of article 78 of the Civil Practice Law and Rules.

III. APPOINTMENTS

A. Titles Appropriate for 55-c Classification

Entry-level titles are defined as any title for which an open-competitive examination is held and the promotion list, if one exists, has been exhausted.

1. The CSC will generally approve any competitive class position, normally filled through open-competitive and/or transition examination, for non-competitive classification pursuant to section 55-c, upon agency request. This includes positions for which there are formal traineeships.
2. In cases where positions are filled via both promotion and open-competitive examinations, 55-c candidates can be considered for positions once the promotion list has been exhausted.
3. The CSC will not approve the placement of positions in the non-competitive class pursuant to section 55-c when a reemployment list(s)

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exists as the result of layoffs. The request may be reconsidered when the re-employment list(s) no longer exists.

B. Qualification Requirements for Appointees to 55-c Positions

1. Candidates must possess the minimum qualifications for the selected title as established by the Staffing Services Division of the DCS. Ordinarily, the minimum qualifications described in the last examination announcement for the title are controlling.
2. Candidates must meet the applicable minimal mental and/or physical requirements for the job with a reasonable accommodation, if necessary.

C. Considerations for a 55-c Appointment

1. Candidates who can be Considered for Appointment

In addition to having an eligibility letter and meeting the qualifications described in III B above, candidates in the following circumstances can be considered for a 55-c appointment:

- a. A person who has never worked for the state.
- b. A 55-c certified, current or former State employee.
- c. A current state employee in a 55-c position who meets the technical requirements for a 70.1, 70.4 or 52.6 transfer (see *Lateral Mobility and Subsequent Appointments* below).
- d. A person previously employed in a 55-c position who resigned from that position may be considered for reinstatement to a 55-c position pursuant to Rule 5.4 of the Rules for the Classified Service.

2. Candidates who should not be Considered for Appointment

- a. Individuals certified eligible for the 55-c program may not be considered for a 55-c appointment to a title they previously held on a permanent, competitive basis. In such cases, agencies interested in appointing such individuals should do so as a reinstatement to a permanent, competitive class position.
- b. The CSC may consider agency requests for waivers of these requirements in extraordinary circumstances for good cause shown and where the interests of government would be served.

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D. Promotion

By statute, 55-c employees enjoy the same promotion opportunities as afforded competitive class incumbents. Consequently, 55-c employees may compete in promotional examinations; they may be provisionally appointed to competitive class promotion level titles; and they may be considered for a non-competitive promotion when such requirements are met.

E. Lateral Mobility and Subsequent Appointments

55-c eligible employees are intended to have the same career mobility as their competitive class colleagues in the same title. A permanent 55-c employee may be given a new appointment to a different 55-c position when the proposed transaction meets the technical requirements for transfer determined by the Department of Civil Service pursuant to Civil Service Law sections 70.1, 70.4, 52.6 and Civil Service Rule 5.1.

F. Reinstatement to a 55-c Position

55-c employees separated from their positions may be reinstated to a non-competitive 55-c position pursuant to Rule 5.4 of the Classified Service.

G. Probationary Service

1. All 55-c Program appointees are subject to a probationary period in accordance with Classified Service Rule 4.5. During the period of probationary service, an appointee must demonstrate ability to perform the duties and responsibilities of the position to the satisfaction of the appointing authority.
2. In instances where permanent 55-c appointees are given subsequent appointments to different positions, such employees are deemed to be on leave of absence from their 55-c positions until they have satisfactorily completed probationary service in the new 55-c position.

H. Temporarily Vacant 55-c Positions

When a 55-c position is permanently vacated it automatically reverts to the competitive class. A 55-c position will also automatically revert to the competitive class when it has been vacant for three months or more. If, thereafter, the permanent 55-c incumbent returns, the position is re-designated non-competitive.

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IV. AGENCY APPOINTMENT PROCESS

Prior to offering an appointment to a 55-c candidate, agencies who are considering a 55-c appointment must take the following steps:

- Identify an appropriate title
- Identify an item number*
- Review the candidate's qualifications
- Verify that the candidate is currently 55-c eligible
- Check list clearance codes
- Contact the 55-b/c Unit to verify appointment is appropriate, that positions are available, and the candidate can perform the essential duties of the position, with or without reasonable accommodation, based upon the medical opinion from EHS.
- Submit the S90, 55-b/c Program Appointment Request Form to the 55-b/c Unit by email at ssdrecruitservices@cs.ny.gov.

If everything is in order, the 55-b/c Unit will advise agencies to complete the on-line appointment request form. When the agency has been notified that they may proceed with the appointment request process, the intended incumbent may be appointed "temporary pending commission action" to 55-c. It is not necessary for the CSC to approve the agency request prior to such temporary appointment.

*Note: Agencies can make 55-c appointments to encumbered items, with the understanding that the applicant is informed of his or her contingent status at the time of hire.

V. CSC AND DCS ACTION

Division of Staffing Services

Upon receipt of the appointment request form seeking jurisdictional reclassification, the 55-b/c Unit will review the form for completeness and send the requesting agency an e-mail acknowledging the request.

As appropriate, Staffing Services Representatives will review the request to confirm that the individual meets the minimum qualifications of the position sought.

Office of Civil Service Commission Operations (CommOps)

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Once the review of the appointment request form is complete, the 55-b/c Unit will forward the form to CommOps for placement on the Commission Calendar.

By law and rule, the CSC retains discretion to reject any agency appointment request made through the 55-c Program. If the appointment is approved, CommOps will note the disposition on the Calendar which is posted on the DCS website. This is the only notification agencies will receive.

If the jurisdictional reclassification request is denied, CommOps will advise the 55-b/c Unit to notify the agency.

Upon CSC approval, CommOps will change the jurisdictional classification of the item/position and set the effective date of the jurisdictional classification change to the date of Commission approval. Once the item number has been changed to non-competitive, the agency must submit a NYSTEP transaction making the employee permanent.

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October, 2018

TO: All Appointing Authorities, Personnel Directors, and Affirmative Action Officers

FROM: Scott DeFruscio
Director, Division of Staffing Services

SUBJECT: Program Guidelines and Procedures for Appointments Pursuant to Section 55-b of the Civil Service Law

THIS BULLETIN REVISES AND REPLACES POLICY BULLETIN #17-01, ISSUED MARCH, 2017, ON THE SAME TOPIC. PLEASE DESTROY THAT VERSION.

Attached for your information and incorporation into the State Personnel Management Manual are Guidelines and Procedures for the appointment of persons with disabilities pursuant to section 55-b of the Civil Service Law.

Information regarding the Civil Service Law section 55-c Program to hire veterans with disabilities is provided in a companion Policy Bulletin 18-02.

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PROGRAM GUIDELINES AND PROCEDURES FOR APPOINTMENTS PURSUANT
TO SECTION 55-b OF THE CIVIL SERVICE LAW

These Guidelines and Procedures set forth the eligibility criteria and the application and appointment processes for the Civil Service Law (CSL) section 55-b Program.

Administration of the 55-b Program is governed by Part 58 of the Regulations of the State Civil Service Commission (Commission's Regulations). These Guidelines and Procedures are intended to clarify for applicants, employees, and appointing authorities the standards for appointment for the CSL section 55-b Program. These Guidelines do not supersede or impair any rights which an individual may possess under any law or rule. For specific questions not addressed in these Guidelines and Procedures, please contact the Department of Civil Service (DCS) 55-b/c Unit at 518-233-3118 or toll-free at 1-866-297-4356 or by e-mail at ssdrecruitservices@cs.ny.gov.

I. PROGRAM BACKGROUND AND OTHER METHODS OF APPOINTING INDIVIDUALS WITH DISABILITIES

CSL section 55-b, commonly referred to as the "55-b Program," authorizes the Civil Service Commission (CSC) to determine up to 1,200 positions to be filled by persons with a physical or mental disability who are found otherwise qualified to perform satisfactorily the duties of any such positions. Upon such determination by the CSC, the positions are placed in the non-competitive class and may be filled by a person who has been certified by DCS as being 55-b "eligible."

CSL section 55-b is not the only avenue for hiring individuals with disabilities into the State civil service. This section provides agencies with significant flexibility for hiring, but is limited by statute to 1,200 positions.

Candidates with disabilities remain eligible for appointment to any non-competitive (positions not designated 55-b/c), exempt and labor class positions for which they are qualified.

II. ELIGIBILITY DETERMINATION

A. Application for Program Eligibility

Individuals interested in being considered for appointment pursuant to the 55-b Program must submit a formal application, including medical documentation and employment history. The applications are submitted to, and reviewed by, DCS.

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B. Certification of Eligibility

1. Criteria for Eligibility

55-b Program applicants will ordinarily be found eligible to participate in the Program provided she/he adequately documents a permanent disability which meets at least one of the following criteria:

- a. Is legally blind (central visual acuity of 20/200 or less in the better eye with corrective lenses or visual field restriction to 20 degrees diameter or less in the better eye);
- b. Is deaf (has a profound hearing loss and relies on visual communication such as sign language, writing, lip reading and gestures) or has a severe hearing impairment (best corrected average loss of > 70 db in the better ear at 500, 1000 and 2000 Hz);
- c. Has a musculoskeletal condition (e.g., amputation) or neuromuscular condition (e.g., Multiple Sclerosis) which severely limits ambulation;
- d. Has a cardiovascular condition (e.g., Class IV CHF) or pulmonary condition (e.g. COPD) which severely limits ambulation and/or requires constant oxygen administration;
- e. Has a developmental disability attributable to Cerebral Palsy, Epilepsy, Neurological Impairment, Familial Dysautonomia, Autism or any other condition closely related in terms of severe impairment of intellectual functioning, adaptive behavior or requiring similar treatment and services;
- f. Has a mental illness, disease, or condition manifested by a disorder or disturbance in behavior, feeling, thinking or judgment which severely disrupts his or her ability to relate to others and daily functioning;
- g. Has other physical or mental conditions which substantially limits one or more major life activities, including, but not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include major bodily functions such as immune system functions, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, and endocrine functions.

Qualifying conditions will be assessed based upon the applicant's current functional status, taking into account measures which the individual has taken to

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ameliorate functional limitations, including, but not limited to prostheses, medications, eyeglasses/contact lenses or hearing aids.

All DCS determinations are made on an individual basis upon review of the application.

C. Letter of Eligibility

Applicants determined to be eligible to participate in the 55-b Program will receive a letter of eligibility. Once enrolled in the program, participants will be asked to renew their interest every three years through responding to an e-mail inquiry from DCS. Upon renewal, participants will receive an updated letter of eligibility, which they must supply to agencies when applying for positions under the 55-b Program. Agencies should contact the Department of Civil Service to verify eligibility in cases when a candidate's letter is older than 3 years.

D. Appeals

As provided by section 58.3 of the Commission's Regulations, a person found not eligible for participation in the 55-b Program may appeal that determination to the CSC. Such appeal shall be in writing and shall state the reasons why the individual believes that the determination is incorrect. An appeal must be received by the CSC within 30 days of the date of the written notice of the determination by DCS. The CSC shall consider such reasons, together with all supporting documents, in making its determination. The CSC may designate a physician, other than the physician who first examined the person, to conduct a secondary examination. The determination of the CSC as to whether the applicant is eligible for appointment under the 55-b Program shall be a final determination within the meaning of article 78 of the Civil Practice Law and Rules.

III. APPOINTMENTS

A. Titles Appropriate for 55-b Classification

Entry-level titles are defined as any title for which an open-competitive examination is held and the promotion list, if one exists, has been exhausted.

1. The CSC will generally approve any competitive class position, normally filled through open-competitive and/or transition examination, for non-

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competitive classification pursuant to section 55-b, upon agency request. This includes positions for which there are formal traineeships.

2. In cases where positions are filled via both promotion and open-competitive examinations, 55-b candidates can be considered for positions once the promotion list has been exhausted.
3. The CSC will not approve the placement of positions in the non-competitive class pursuant to section 55-b when a reemployment list(s) exists as the result of layoffs. The request may be reconsidered when the re-employment list(s) no longer exists.

B. Qualification Requirements for Appointees to 55-b Positions

1. Candidates must possess the minimum qualifications for the selected title as established by the Staffing Services Division of the DCS. Ordinarily, the minimum qualifications described in the last examination announcement for the title are controlling.
2. Candidates must meet the applicable minimal mental and/or physical requirements for the job with a reasonable accommodation, if necessary.

C. Considerations for a 55-b Appointment

1. Candidates who can be Considered for Appointment

In addition to having an eligibility letter and meeting the qualifications described in III B above, candidates in the following circumstances can be considered for a 55-b appointment:

- a. A person who has never worked for the state.
 - b. A 55-b certified, current or former State employee.
 - c. A current state employee in a 55-b position who meets the technical requirements for a 70.1, 70.4 or 52.6 transfer (see *Lateral Mobility and Subsequent Appointments* below).
 - d. A person previously employed in a 55-b position who resigned from that position may be considered for reinstatement to a 55-b position pursuant to Rule 5.4 of the Rules for the Classified Service.
2. Candidates who should not be Considered for Appointment
 - a. Individuals certified eligible for the 55-b program may not be considered for a 55-b appointment to a title they previously held on a permanent, competitive basis. In such cases, agencies interested in appointing such individuals should do so as a reinstatement to a permanent, competitive class position.

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- b. The CSC may consider agency requests for waivers of these requirements in extraordinary circumstances for good cause shown and where the interests of government would be served.

D. Promotion

By statute, 55-b employees enjoy the same promotion opportunities as afforded competitive class incumbents. Consequently, 55-b employees may compete in promotional examinations; they may be provisionally appointed to competitive class promotion level titles; and they may be considered for a non-competitive promotion when such requirements are met.

E. Lateral Mobility and Subsequent Appointments

55-b eligible employees are intended to have the same career mobility as their competitive class colleagues in the same title. A permanent 55-b employee may be given a new appointment to a different 55-b position when the proposed transaction meets the technical requirements for transfer determined by the Department of Civil Service pursuant to Civil Service Law sections 70.1, 70.4, 52.6 and Civil Service Rule 5.1.

F. Reinstatement to a 55-b Position

55-b employees separated from their positions may be reinstated to a non-competitive 55-b position pursuant to Rule 5.4 of the Classified Service.

G. Probationary Service

1. All 55-b Program appointees are subject to a probationary period in accordance with Classified Service Rule 4.5. During the period of probationary service, an appointee must demonstrate ability to perform the duties and responsibilities of the position to the satisfaction of the appointing authority.
2. In instances where permanent 55-b appointees are given subsequent appointments to different positions, such employees are deemed to be on leave of absence from their 55-b positions until they have satisfactorily completed probationary service in the new 55-b position.

H. Temporarily Vacant 55-b Positions

When a 55-b position is permanently vacated it automatically reverts to the competitive class. A 55-b position will also automatically revert to the competitive class when it has been vacant for three months or more. If, thereafter, the

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permanent 55-b incumbent returns, the position is re-designated non-competitive.

IV. AGENCY APPOINTMENT PROCESS

Prior to offering an appointment to a 55-b candidate, agencies who are considering a 55-b appointment must take the following steps:

- Identify an appropriate title
- Identify an item number*
- Review the candidate's qualifications
- Verify that the candidate is currently 55-b eligible
- Check list clearance codes
- Contact the 55-b/c Unit to verify appointment is appropriate, that positions are available, and the candidate can perform the essential duties of the position, with or without reasonable accommodation, based upon the medical opinion from EHS.
- Submit the S90, 55-b/c Program Appointment Request Form to the 55-b/c Unit by email at ssdrecruitservices@cs.ny.gov.

If everything is in order, the 55-b/c Unit will advise agencies to complete the on-line appointment request form. When the agency has been notified that they may proceed with the appointment request process, the intended incumbent may be appointed "temporary pending commission action" to 55-b. It is not necessary for the CSC to approve the agency request prior to such temporary appointment.

*Note: Agencies can make 55-b appointments to encumbered items, with the understanding that the applicant is informed of his or her contingent status at the time of hire.

V. CSC AND DCS ACTION

Division of Staffing Services

Upon receipt of the appointment request form seeking jurisdictional reclassification, the 55-b/c Unit will review the form for completeness and send the requesting agency an e-mail acknowledging the request.

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As appropriate, Staffing Services Representatives will review the request to confirm that the individual meets the minimum qualifications of the position sought.

Office of Civil Service Commission Operations (CommOps)

Once the review of the appointment request form is complete, the 55-b/c Unit will forward the form to CommOps for placement on the Commission Calendar.

By law and rule, the CSC retains discretion to reject any agency appointment request made through the 55-b Program. If the appointment is approved, CommOps will note the disposition on the Calendar which is posted on the DCS website. This is the only notification agencies will receive.

If the jurisdictional reclassification request is denied, CommOps will advise the 55-b/c Unit to notify the agency.

Upon CSC approval, CommOps will change the jurisdictional classification of the item/position and set the effective date of the jurisdictional classification change to the date of Commission approval. Once the item number has been changed to non-competitive, the agency must submit a NYSTEP transaction making the employee permanent.

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Policy Bulletin #91-05

**1450 Preferred Lists, and
1805(B) Permanent/Non-competitive**

October 8, 1991

TO: Department and Agency Personnel and Affirmative Action Officers
FROM: Candice T. Carter, Executive Deputy Commissioner
SUBJECT: Reemployment of Laid Off 55b and 55c Eligibles

Due to the recent layoff of 55b and 55c employees, we have established policies for assisting these employees in reemployment.

Reemployment Lists

Effective immediately, whenever we certify a competitive class reemployment list (i.e., preferred list, reemployment roster, or placement roster), we will also certify any existing reemployment list containing the names of laid off 55b and 55c individuals who are eligible to fill positions in the same title. If agencies wish to make an appointment, they may use the competitive class reemployment list, or reclassify the position and use the 55b/c list. If no competitive class reemployment lists exist, the 55b/c lists are mandatory.

Requests to Reclassify Competitive Class positions to 55b/c Positions

When a 55b/c reemployment list exists, we do not permit the reclassification of a competitive class position to a 55b/c position, unless the agency uses the reemployment list.

If there is no 55b/c reemployment list, we will no longer permit the reclassification of a competitive class position if a competitive class *preferred list* exists. However, the existence of a competitive class *reemployment roster or placement roster* will **not** block the classification of a new 55b/c position.

Questions on the above should be addressed to the Workers with Disabilities Program (55-b and 55-c programs) at (518) 457-4296, or the Reemployment Services Section at (518) 485-1989.

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1805(C) Exempt Class

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File this material in the section of the manual referenced above.

.2 **POLICY**

.210 **Civil Service Requirements**

- .211 Agencies have wide latitude in making permanent appointments to exempt class positions. Because of the nature of exempt positions, no minimum qualifications are established for them nor are appointees required to pass any test.
- .212 Exempt class employees do not have any layoff or preferred list rights. The only impediment to filling an exempt class position is the existence of a budget freeze. It should be remembered, however, that the filling of any exempt class position requires the approval of the Director of the Budget.

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1810 Contingent Permanent Appointments

.1 Legal Basis and Background

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- .110 While the term "contingent permanent" does not appear in statute or in some previous versions of the Rules, it has been reintroduced in the new Rule 4.11. The previous Rule 4.11 and 4.12 have been repealed.
- .120 Contingent permanent appointments are those made to temporarily vacant (i.e., encumbered) positions as distinguished from appointments made to permanently vacant (i.e., unencumbered) positions pursuant to other sections of Law and Rules.
- .130 While Rule 4.11 provides the authority for contingent permanent appointments, appointees must be otherwise eligible for appointment the same as permanent employees to positions in the competitive, non-competitive and labor classes.
- .140 The policies and procedures below apply to all contingent permanent appointments in the competitive, non-competitive and labor jurisdictional classes.
- .150 There is no provision in Law or Rule for contingent permanent appointment to positions in the exempt class, and such appointments may not be made to positions in this jurisdictional class.

.2 Policy

- .210 Contingent permanent appointments generally.
- .211 Contingent permanent appointments **may** be made:
- to temporarily vacant positions, i.e., positions encumbered by a permanent employee on leave of absence.
 - to positions in which temporary or provisional employees are serving if the contingent permanent appointee is granted an immediate leave of absence, provided such positions are already encumbered by a permanent employee on leave of absence.
- .212 Contingent permanent appointments **may not** be made
- to vacant positions, i.e., positions unencumbered by a permanent employee on leave of absence.
 - to positions in which permanent or contingent employees are currently serving.
- .213 Generally employees may **not** be appointed simultaneously permanent and contingent permanent to two positions *in the same title*. [Exceptions: Certain appointments to positions in other locations may be permitted if approved by the Staffing Services Representative. See .214 below.]
- .214 **Reassignments** to temporarily vacant (i.e., encumbered) positions:
BACKGROUND: Rule 4.11 provides for a contingent permanent appointment "...through transfer, reinstatement, reassignment or appointment from an appropriate eligible or reemployment list." In all cases, except for certain

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reassignments, these contingent permanent appointments are voluntary and employees may choose to either accept the appointment and the concomitant risk of the return of the prior permanent incumbent, or decline. Therefore, in accordance with 4.11 (f):

- A. Permanent employees may **not be involuntarily reassigned** to encumbered positions and have their status changed to contingent permanent. (Exception: in layoff situations permanent employees may be *horizontally reassigned* as part of the layoff process to encumbered positions -- See the *Guidelines for Administration of Reductions in Force*).
- B. Whenever agencies reassign permanent employees and there are no vacant positions available, the agency either must move the permanent employee's position along with the employee, or reassign the encumbrances, or the employee may **voluntarily** accept the reassignment provided he/she fully understands the consequences of such a contingent permanent appointment and agrees **in writing** to accept such reassignment. [*Exception:* With the prior approval of the Staffing Services Representative, the employee may be given a leave from his/her permanent position.]

.215 Multiple contingent permanent appointments:

While Rule 4.11 (e) (3) provides that contingent permanent employees may be given a leave, nowhere in the rule are subsequent contingent permanent appointments to that same position addressed. This department recommends that such personnel transactions be kept to a minimum since they may require special procedures when incumbents return. (See .242 below).

.220 Hold items upon contingent permanent appointment:

The purpose of the hold items required by Rule 4.11 is to provide positions to which such employees may be restored in the event of the return of prior permanent incumbents. The employees **may not** return to these hold items for any other reason, except if they are *also* probationers and return during their probationary periods, (See .230 below).

.221 Contingent permanent appointment of individuals who are not currently permanent state employees (e.g., appointed from open-competitive lists, or reinstated) do not require a hold item be identified at the time of appointment. Agencies may, however, at their discretion, designate a vacant position as a hold item, either at the time of appointment or later, provided the employee is qualified to fill such position in the event of the return of the permanent incumbent.

.222 Contingent permanent appointments of current permanent or contingent permanent employees to positions **within an appointing authority** require leaves be granted from their current positions and continued for as long as

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the employees remain contingent permanent. (NOTE: A *reassignment* has special requirements. See .214 above.)

- .223. Contingent permanent appointments of currently permanent or contingent permanent employees to a position in **another appointing** authority.
- A. May be made **only** if the new appointing authority provides a permanent hold on a position in the employees' former permanent title, or agrees **in writing at the time of appointment** to provide such a position to which such employees shall be appointed permanently and given a leave as soon as it becomes available.
 - B. Where a permanent hold has been provided, this does not relieve the **former appointing authority** of its legal obligation for maintaining a hold item for the employee pursuant to Rule 4.5, Rule 4.10 or negotiated agreements. (See .230 below)
- .230 **Probationary periods** for contingent permanent employees.
- .231 Contingent permanent employees serve probationary periods in the same manner as permanent employees. (Rule 4.5) (See also 2010 Probation in this manual.)
- .232 Contingent permanent employees may be granted a discretionary leave of absence from their positions (Rule 4.11 (e)), and must be granted a leave pursuant to Rule 4.5, 4.10 and negotiated agreements if they receive an appointment covered by those Rules or agreements. (See Policy Bulletins 98-02 and 99-01 in 2200 of this manual.)
- .233 As probationers, contingent permanent employees may return to their hold items at any time during their probationary period unless:
- A. the prior permanent incumbent has returned and is serving in the position, or
 - B. another contingent permanent employee with greater seniority has either returned or been subsequently appointed and is serving in the position. (See .242 below)
- .240 **Return of incumbent:** Rights of contingent permanent employees to retain a position if affected by return of incumbent.
- .241 **BACKGROUND:** Rule 4.11 (b) provides that contingent permanent employees may not be separated if non-permanent employees and/or other contingent permanent employees with a later appointment date are also serving in the title in the same work location. The following definition of "work location" and the steps enumerated below must be applied where such situations exist:
- Work location** is defined, for the purposes of the following procedures as that organizational unit of an agency which is located in a specific county, provided, however, that:

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- for the Office of Mental Health and the Office of Mental Retardation and Developmental Disabilities, each facility and all the units of that facility in the same county are considered to be one work location.
- for all other agencies, where there are two or more geographically distinct organizational units in the same county, each is a separate work location.

Procedural Steps:

1. If there are **vacant positions** in the work location, contingent permanent employees must be reassigned to such positions and appointed on a permanent basis. Such situations should rarely occur. Rule 4.11 (c) requires that contingent permanent employees be converted to permanent as vacant positions become available. (See .250 below)
 2. If there are **temporarily vacant positions** in the work location, contingent permanent employees may, at the discretion of the agency, be reassigned to such positions. OR
 3. If there are **provisional and/or temporary employees** serving in the same title in the same work location in positions which can be filled on a permanent or contingent permanent basis, contingent permanent employees affected by the return of incumbent **may not** be separated, but must be reassigned to such positions.
 4. Where there are **no vacancies or non-permanent employees** in the title at the work location, and the agency chooses not to offer reassignment to any temporary vacancies, the contingent permanent employees at the work location must be ranked among themselves according to their dates of contingent permanent appointment to the title. The **most recently appointed** contingent permanent employee is separated and placed on the appropriate reemployment list. Where two or more such contingent permanent employees have the same appointment date, the agency should use a reasonable and consistent method to determine which employee is separated. Information on separated employees must be supplied to this department for placement on the appropriate reemployment list.
- .242 **Multitple contingent permanent appointments** - Identification of which contingent permanent employee may retain a position when multiple contingent permanent appointments have been made to the same position and an incumbent requests to be restored:

BACKGROUND: Rule 4.11 provides for only **two** permanent appointments to a position; one permanent and one contingent permanent. It is this department's policy therefore, that the rule is concerned with the

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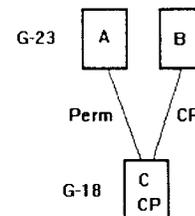
rights of the **one** employee who is appointed on a permanent basis to a vacancy and subsequently given a leave of absence, and when that employee can return, and to which position, and with the rights of the **one** contingent permanent employee appointed to a temporary vacancy and given a subsequent leave of absence, and when that employee can return, and to which position. The policy in .240 above should be applied in these cases. However, where agencies have made subsequent contingent permanent appointments to the same position, a practice which this department does **not** recommend, the following policies and procedures will apply:

1. The **one prior permanent incumbent must be restored** regardless of the appointment dates or seniority dates of any contingent permanent appointees.
2. The contingent permanent employee **having the greater seniority** shall either be restored, or be allowed to retain his/her position. For the purposes of this determination, the earliest date of original permanent appointment in the classified service and continuous service since that date shall be used to determine seniority, and "continuous service" will be as defined by CSL §80.2. See the two examples which follow.

EXAMPLE 1: In the situation shown at the right, employee A is appointed permanently to the vacant G-18 position and given a leave to serve at the G-23 level. Employee B is then subsequently appointed CP pursuant to Rule 4.11 to the same position (now a temporary vacancy) and given a leave to serve as a G-23. Employee C is then appointed CP to the G-18 position.

Rules 4.5, 4.10, and 4.11 determine A's rights, who has the right to return pursuant to, and subject to the limitations of, these rules.

However if B has to return, he/she has no greater right according to these rules to the G-18 position than C. Therefore their seniority dates must be compared and the more senior employee retains the position.



Example 2 on next page

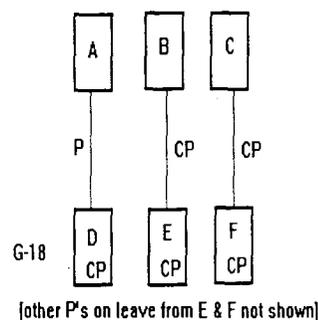
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EXAMPLE 2: Now assume there are a number of positions filled CP at the G-18 level. Assume A, originally appointed permanent, is now serving provisionally at the higher level, and must return. Rule 4.11 and the procedures in .240 above are used to determine to which specific item he/she returns; i.e., that held by the most recently appointed CP, either D, E, or F who is serving in the G-18 title in the work location. [Please remember that just because NYSTEP must show a leave from an item number, that does not necessarily mean that A has a right to that specific item.]

However if B (who was appointed CP and granted a leave pursuant to Rule 4.11) must return, then four CPs [B, D, E, & F] must have their seniority dates compared to determine which three employees will be retained. If B and C must return simultaneously, all five would be compared. (These examples assume that there are no provisionals or temps serving in the title and location, since such non-permanents must be impacted first.) CPs who are not able to retain a position are in turn returned to their hold items, if any, and have their names placed on reemployment lists.



IT IS IMPORTANT TO NOTE THAT THE POLICIES AND PROCEDURES ABOVE ALSO APPLY WHEN CONTINGENT PERMANENT EMPLOYEES ARE PROVIDED WITH A MANDATORY LEAVE PURSUANT TO RULE 4.5, *PROBATION*, OR RULE 4.10, *TEMPORARY, PROVISIONAL, OR TRAINEE APPOINTMENT OR PROMOTION OF PERMANENT EMPLOYEE*. IF MULTIPLE CONTINGENT PERMANENT APPOINTMENTS HAVE BEEN MADE ANY CONTINGENT PERMANENT EMPLOYEE'S RIGHT TO RETURN DEPENDS ON HAVING **MORE SENIORITY** THAN ANY CONTINGENT PERMANENT EMPLOYEE WHO MAY BE CURRENTLY SERVING IN A POSITION IN THAT TITLE IN THE WORK LOCATION, OR THAN ANY OTHER CONTINGENT PERMANENT EMPLOYEE WHO WISHES TO RETURN AT THE SAME TIME.

.250 Conversion of contingent permanent employees to permanent status:

BACKGROUND: Since contingent permanent employees are in jeopardy of removal as a result of the return of the prior permanent incumbents, it is appropriate that they be removed from that jeopardy as soon as it is feasible to do so.

- .251** Whenever a position becomes available to be filled on a permanent basis the contingent permanent employee who was **first appointed** to a position in that title in that work location **whether he/she is currently serving or has been placed on leave**, must be converted to permanent.

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- .252 Agencies may designate the organizational units or geographic areas within which such conversions occur. However, agencies must establish consistent policies for eligibility for such conversions and keep track of the titles and positions in which contingent permanent employees are serving, and from which contingent permanent employees are on leave. This is particularly important since a seniority based comparison is required where multiple contingent permanent appointments have been made to the same position and when a former contingent permanent employee must return.
- .260 **Layoff rights** of contingent permanent employees:
The rights of contingent permanent employees in layoff situations are the same as the rights of permanent employees. If affected by layoffs, contingent permanent employees may **not** return to positions which are being held for them solely for the purposes of return of incumbent. For a more complete discussion see the *Guidelines for Administration of Reductions in Force*, especially the topic *Contingent Permanent Employees* in Appendix A.
- .270 **Reemployment list rights** of contingent permanent employees:
A. affected by **layoff** are the same as permanent employees.
B. affected by **return of incumbent** are determined by whether or not they have been provided with an item to which they can return. Those with a hold item are generally restricted to their former title and current agency. Those with no hold item are not so restricted.
- .280 **Restoration rights** of contingent permanent employees:
Contingent permanent employees affected by return of incumbent should be restored to any eligible list or reemployment list, if still in existence, from which they received their contingent permanent appointments.
- .290 Pursuant to 4.11 (g) parts of the above may not apply.

[The text of the new Rule 4.11 begins on the next page]

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Section 4.11. Contingent permanent appointments to encumbered positions

(a) A position in the competitive, non-competitive or labor class which is temporarily vacant by reason of the leave of absence of the permanent incumbent, may be filled on a contingent permanent basis through transfer, reinstatement, reassignment or appointment from an appropriate eligible or reemployment list.

(b) An employee appointed on a contingent permanent basis shall have all the rights and benefits of a permanent appointment, provided, however, that, in the event of the return from leave of absence of the permanent incumbent, such contingent permanent employee shall displace; first, any temporary or provisional employee serving in the same title and work location under the jurisdiction of the same appointing authority; and second, the contingent permanent employee with the most recent contingent permanent appointment date serving in the same title and work location under the jurisdiction of the same appointing authority. Where there are no opportunities for displacement as provided herein, such contingent permanent employee may return to the position from which he or she is on leave, if any, and shall have his or her name entered on the appropriate reemployment lists for the title held on a contingent permanent basis. Additionally, such employee may request to have his or her name restored to the eligible list or reemployment list, if any, from which the contingent permanent appointment was made, if such list is still in existence.

(c) Upon a vacancy in an unencumbered position, which is in the same title and work location and under the jurisdiction of the same appointing authority, the contingent permanent employee with the earliest date of contingent permanent appointment shall be permanently appointed to such position.

(d) The appointing authority shall, at the time of appointment, advise an employee appointed to a position on a contingent permanent basis, in writing, that their continuous service in such position is contingent upon the continuing leave of absence of the prior permanent incumbent. Further, permanent contingent appointees must be advised of their right to a leave of absence, if any, and to permanent appointment, as provided in (c) above.

(e) Leaves of Absence.

(1) A permanent employee who receives a contingent permanent appointment to a position under the jurisdiction of the same appointing authority shall be entitled to a leave of absence from his or her permanent position for the duration of such contingent permanent appointment, provided, however, that upon successful completion of the probationary period in the contingent permanent position, he or she may return to such permanent position only upon the return of the permanent incumbent, and there are no displacement opportunities as provided for in subdivision (b), above.

(2) A permanent employee who receives a contingent permanent appointment to a position under the jurisdiction of a different appointing authority shall be entitled to a permanent appointment to a position in his or her former title under the jurisdiction of such appointing authority, upon successful completion of the probationary period, if available at that time or at any time during the contingent appointment, from which he or she shall be provided with a leave of absence for the duration of their contingent permanent appointment; provided, however, he or she may return to such permanent position only upon the return of the

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permanent incumbent, and there are no displacement opportunities as provided for in subdivision (b) above.

(3) A contingent permanent employee may be given a leave of absence from his or her position. If the permanent incumbent returns to the position during the leave of absence of the contingent permanent employee, the right of the contingent permanent employee to return to such position is extinguished and such employee shall have the displacement and reemployment rights provided for in subdivision (b), above.

(f) A permanent employee may not be reassigned to an encumbered position unless the employee agrees, in writing, to accept a contingent permanent appointment to such position.

(g) This rule shall not apply to reassignments made pursuant to a reassignment list program approved by the Department of Civil Service.

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This memorandum provides information for agencies on policies and procedures applicable to the protections provided pursuant to Classified Service Rule 4.2(d), (e) and Civil Service Law §121.4.

Permanent competitive class employees who are serving in positions which have been reclassified and who are now serving provisionally in these positions have limited protections from displacement by promotion lists (Rule 4.2(d)), open-competitive lists (Rule 4.2(e)), and preferred lists (C.S.L. §121.4) being certified against them. The Department of Civil Service has extended this protection to include transition lists and reemployment rosters.

Discussion and Background

Permanent status provides state employees with a number of rights and protections. Rules 4.2(d) and 4.2(e) and §121.4 define the permanent status protections of permanent competitive class employees who have had their positions reclassified and are now serving provisionally in their reclassified positions.

The intent of the rules and law is that eligible lists and preferred lists shall not force the layoff or reassignment of these employees, and (in Rule 4.2) that a reasonable opportunity be provided for such provisional employees to attain permanent status in their reclassified positions.

The rules and law are not intended to perpetuate provisional appointments, to limit or eliminate the competitive examination process, to circumvent the rule of three, or to prevent eligible employees from being permanently appointed. It is within this context that the following policies and procedures are applicable.

In the discussion of these policies and procedures it is important that certain terms be clearly understood:

1. Vacant position - a vacant position in a provisional's former title is considered to be available for the provisional to return to when the provisional can be appointed on a permanent basis in the same location.
2. Same location - Rule 4.2(d) and (e) specify that the use of a list shall not force the reassignment of a permanent employee to a different geographical location. For purposes of this rule, as well as for other references in law or rule to geographic location, we have always defined geographic location as county.
3. Agency - For purposes of the location of available vacancies to which a provisional may be returned, the position must be within the same appointing authority.

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Your staffing services representatives will assist you with the procedural aspects of these policies.

Civil Service Policies Applicable to the Administration of Rules 4.2(d), (e) and §121.4

Who is Covered

1. Rules 4.2(d) and (e) and §121.4 apply only to those provisionals who are permanent competitive class employees, and whose positions have been reclassified.
2. Rule 4.2 is applicable only when an eligible list exists at the time of the reclassification, or when an eligible list is established and such a provisional is serving in a title for which the list would be certified.
3. §121.4 is applicable only when a preferred list or reemployment roster exists at the time of reclassification, or when one of these lists is established and such a provisional is serving in a title for which one of these lists would be certified.
4. Reclassifications need not necessarily have been to a higher salary grade title for Rule 4.2(d) and (e), and §121.4 to apply.

Who is Not Covered

1. Provisionals are not afforded the protection of Rule 4.2 if:
 - a. vacant positions in the provisionals' former title exist in the agency in the same location, or
 - b. the provisionals have twice failed to qualify for permanent appointment to the reclassified position, or
 - c. the provisionals are eligible for permanent appointment to the reclassified position on the list which would be certified, or
 - d. the provisionals are otherwise eligible for permanent appointment to the reclassified position (e.g., via transfer, reinstatement, etc.), or
 - e. the eligible list contains the names of at least 3 acceptors and an appointment from the list will create a vacancy in the provisionals' former title in the agency in the same location.
2. Provisionals are not afforded the protection of §121.4 if vacant positions in the provisionals' former title exist in the agency in

the same location, or if an appointment from the preferred list or reemployment roster will create a vacancy in the provisionals' former title in the agency in the same location.

Policies Applicable at the Time of Reclassification of a Permanent Competitive Class Employee's Position

1. If employees are eligible for permanent appointment to the reclassified position, either from a list or through transfer or reinstatement, they must either be appointed permanently, or be reassigned to a position in the former title in the same location. Rule 4.2(d), or (e) or §121.4 are not applicable. Such employees may not be appointed provisionally.
2. If employees are not eligible for permanent appointment to the reclassified position and
 - a. there are vacant positions in the former title to which they can return, and
 1. no eligible list, preferred list or reemployment roster exists, then the employees may be appointed provisionally, and must be given leave from the vacant positions; or the employees must be reassigned to the vacant positions.
 2. an eligible list exists but with less than 3 acceptors, then employees may be appointed provisionally and must be given leave from the vacant positions, or must be reassigned to the vacant positions, or the agency may use the list and reassign such employees to the vacant positions.
 3. an eligible list exists with 3 or more acceptors or a preferred list or reemployment roster exists, then the employees may not be appointed provisionally and must be reassigned to the vacant positions; the agency may use the list.
 - b. there is not a vacant position to which the employees can return, and
 1. no eligible list, preferred list or reemployment roster exists, then the employees must be appointed provisionally but must be provided with preferred list status for the former title (see procedures below)
 2. an eligible list exists but with less than 3 acceptors, then Rule 4.2(d) or (e) is applicable and the employees must be appointed provisionally and must be provided with preferred

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list status. However, the agency may use the list and return the employees to vacant positions which are thus created, if they wish.

3. an eligible list exists with 3 or more acceptors, then Rule 4.2(d) or (e) is applicable and the employees must be appointed provisionally and must be provided with preferred list status. However, if an appointment from the eligible list would create a vacant position in the former title, Rule 4.2(d) or (e) is not applicable and a provisional appointment may not be made.
4. a preferred list or reemployment roster exists, then §121.4 is applicable and the employees must be appointed provisionally, and must be provided with preferred list status. However, if an appointment from the preferred list or reemployment roster would create a vacant position, §121.4 is not applicable and a provisional appointment may not be made.

Policies Applicable After Provisional Appointments have occurred

1. As soon as vacancies in the former title occur in the location, agencies must provide a hold item for provisionals serving in a reclassified position to return to in the event that a list is established and the provisional is not eligible for permanent appointment.
2. Permanent employees now serving provisionally in reclassified positions who become eligible for permanent appointment may be appointed despite the existence of preferred lists or reemployment rosters if they are protected by §121.4.
3. If permanent employees now serving provisionally in positions have been reclassified are not eligible for permanent appointment and not protected by Rule 4.2(d), or (e), or §121.4 and no vacant positions are available in the agency and location, then agencies must request that the position be reclassified back to the provisionals former title and the provisionals permanently reappointed.

Procedures

1. Preferred List Status for Provisionals

When permanent employees whose positions have been reclassified are appointed provisionally and no vacant position in the former title and location are available from which they can be given a leave, the agency must prepare and forward preferred list/reemployment roster

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eligible cards (S-295.5) for the employees for the former titles. The only county which may be checked on the S-295.5 is the county in which the former title/position exists. Agencies must write "reclassification" on the card under "PL/RR status due to:". The employee will be placed on preferred lists only for their former title, agency and location. Agencies must notify the employees of their preferred list rights and limitations. The employees are placed on the preferred list effective the date of the reclassification and provisional appointment.

2. PR-75's

- a. When submitting PR-75's appointing a permanent employee provisionally to a reclassified position and either or both Rule 4.2(d) or (e) and/or §121.4 are applicable, agencies must indicate the appropriate Rule or Section of the law in the remarks section of the PR-75s. Agencies must also note in "remarks" that forms S-295.5 (Preferred List/Reemployment Roster eligible cards) have been sent.
- b. When submitting PR-75's appointing permanent employees provisionally to reclassified positions and neither Rule 4.2(d), (e), nor 121.4 are applicable since vacant positions in the former titles and same locations are available, agencies must indicate that the employees are being placed on leave from the vacant positions. "C.S. info" should appear in one of the miscellaneous boxes and a statement that the employees are being given a leave should appear in "remarks" with the item numbers.
- c. When vacant positions become available in provisionals' former titles, and employees' names have been previously placed on preferred lists, agencies must submit PR-75s permanently reinstating the employees from the preferred list. The employees may be simultaneously provided with a leave to continue serving provisionally (See 2a).

3. Employee eligibility for permanent appointment

- a. At the time of reclassification agencies must determine if employees are eligible for permanent appointment to the reclassified positions either by list appointment, transfer or reinstatement.
- b. When eligible lists, preferred lists or reemployment rosters are established all provisionals will be revoked. Agencies must notify their staffing services section that provisionals are eligible for continuing protection under Rule 4.2(d) or (e) or §121.4 and resubmit PR-75's.

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.1 Legal Basis and Definition

Provisional appointments are authorized by §65 of the Civil Service Law. A provisional appointment is a non-permanent appointment pending examination and permanent appointment to a competitive class position. A provisional appointment generally will be allowed in the absence of an eligible list with the names of three or more candidates willing to accept appointment to a position.

.2 Policy

.210 General Conditions and Limitations of Provisional Service

- .211 A provisional employee will not serve a probationary term, nor will a provisional appointment bestow any property right or right of tenure to a position.
- .212 A permanent competitive class employee appointed provisional to a position within the same department or agency will be given a leave of absence from the permanent position for the duration of the provisional appointment. (4NYCRR §4.10)
- .213 Provisional service in a position will not be credited toward meeting the minimum qualifications for a promotion examination unless such service is in the same or a related occupational field as the title being examined for and the provisional employee is on leave from a qualifying position. (CSL §52.10)
- .214 Provisional service in a position will not be credited toward meeting the minimum qualifications for an open-competitive examination unless similar, qualifying experience may be gained outside State service.
- .215 Provisional service in a position will not be credited toward any test that is an evaluation of training and experience unless similar training and experience of equivalent value for the test may be gained outside State service.
- .216 A provisional employee will not be eligible for transfer or reinstatement based upon provisional service.
- .217 A period of provisional service immediately preceded and followed by permanent service will not constitute a break in service for purposes of determining a seniority date. (CSL §80.2)
- .218 A provisional employee who becomes eligible for permanent appointment from an eligible list appropriate to fill the position must be appointed from that list or terminated by the appointing authority. If the appointing authority takes no action, the provisional employee "shall be afforded permanent appointment" by operation of Civil Service Law. (CSL §65.4)

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+ .219 A provisional employee serving in a classified traineeship program will be permitted to advance in that traineeship upon successful completion of each step of the traineeship. A probationary period of 26 to 52 weeks, or the remainder of the traineeship, whichever is longer, will be served upon the employee's permanent appointment. If the provisional employee is advanced to the journey level and subsequently receives permanent appointment, the employee will serve a probationary period pursuant to §4.5 (4NYCRR).

.220 Conditions under which a Provisional Appointment may be Made

+ .221 An original provisional appointment may be permitted to a vacant position in the competitive class provided:

1. the appointing authority certifies that the nominee is qualified for appointment based on an evaluation of training, experience, or credentials (see: .410 below), and
2. there are no reemployment lists for the position, and
3. there are fewer than three list eligibles willing to accept appointment to the position, and
4. the position is not normally filled from a continuous recruitment eligible list, and
5. the nominee is not eligible for permanent appointment to the position via any alternative mechanism, i.e., transfer, reinstatement, non-competitive examination, etc.

*.222 Recertification of a provisional appointment may be permitted under the same conditions as in .221.

+ .223 A permanent incumbent of a competitive class position which is reclassified to another competitive class position for which the incumbent is not immediately eligible for permanent appointment must be appointed TEMP POST RECLASS to the reclassified position if there is no vacant position in the same location in the incumbent's former title. (Note: prior to the creation of the TEMP POST RECLASS transaction code such appointments were coded as PROVISIONAL.) An S-295.5 (Blue Card) must be filed with the Department of Civil Service on behalf of the employee who is appointed Temp Post Reclass.

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.230 General Conditions under which a Provisional Appointment may be Revoked

.231 A provisional appointment may be terminated at any time by the appointing authority.

.232 A provisional appointment may be revoked at any time by the Department of Civil Service and generally will be revoked in the following cases:

1. Upon the establishment of a viable eligible list appropriate to fill the position.
2. Where a provisional no longer meets the conditions in .221 above.
3. Upon the establishment of a reemployment list, or when a reemployment list is declared appropriate to fill the position subsequent to the provisional appointment.
4. Where subsequent to the provisional appointment an alternative mechanism for permanent appointment (i.e., transfer, reinstatement, non-competitive examination, etc.) has become available, and nine months have elapsed.

.240 General Conditions under which a Provisional Appointment will NOT be Revoked

+ .241 A provisional appointment generally will not be revoked:

1. Where no eligible on a reemployment list, or fewer than three eligibles on an eligible list were willing to accept appointment to the position at the time the original provisional appointment was made, and candidates now willing to accept appointment are eligible because they reactivated their names on the eligible list or requested eligibility for the location of the position subsequent to the provisional appointment. (4NYCRR §5.7)
2. Where an eligible list has been declared appropriate to fill the position subsequent to the provisional appointment.

.3 Interpretation

.310 Qualifications for Provisional Appointment

.311 An individual nominated for provisional appointment must meet the announced minimum qualifications for the most recent, or where appropriate, the next promotion, open-competitive, or transition examination for the position, including any necessary licenses, certifications or other credential, as appropriate.

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- + .312 As necessary, the Staffing Services Division may require an agency or a nominee to demonstrate that the nominee meets the minimum qualifications for appointment.
- .313 Where an examination has never been held, the Staffing Services Division may approve the provisional appointment of a nominee who meets the minimum qualifications established by the Department of Civil Service.
- .314 The Staffing Services Division may approve the provisional appointment of a nominee who does not currently meet the qualifications if it is expected the employee will meet the qualifications before the next examination, provided, however, that the agency demonstrates that no qualified candidate is available for appointment.
- *.315 After an examination, if no viable eligible list is established, or when the eligible list eventually results in fewer than three candidates willing to except a position, an agency may re-nominate for provisional appointment an employee whose provisional appointment was revoked upon establishing the eligible list. In considering such nomination, the Division of Staffing Services will review the nominee's examination history and qualifications, the agency's recruitment efforts, and agency program needs. (see .222)

.4 Procedures

.410 Certification by the Appointing Authority

- + .411 By submitting a transaction through the NYSTEP System, the agency attests that the background and credentials that qualify the individual for appointment have been verified and documented.

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Advisory Memorandum #90-09

1820 Temporary Appointments

July 26, 1990

TO: Department and Agency Personnel and Affirmative Action Offices
FROM: Division of Staffing Services, Policy & Program Analysis
SUBJECT: Guidelines for Temporary Appointments Pursuant to Civil Service Law,
Sections 64.1 and 64.2

In January 1981 the Department issued a memorandum to all agency personnel offices which set guidelines for temporary appointments. These guidelines, still valid today, are as follows:

1. Appointments made under Sections 64.1 and 64.2 will be allowed only to temporary service or temporarily vacant items.
2. Successive 64.1 appointments totalling in excess of three months for an individual will not be allowed, nor will successive 64.1 appointments totalling in excess of three months to a position be allowed.
3. Temporary appointments pending canvass will not be allowed after three months of appointment under Section 64.1. If an agency expects to appoint to a position for longer than three months, they should request a certification and canvass sometime during the three months.
4. For decentralized lists, the agency will be required to appoint from that list after the three month 64.1 appointment, if they wish to continue the position on a filled basis.
5. An original 64.2 appointment will be allowed up to six months. However, it will not be allowed for more than three months if preceded by a 64.1 appointment of three months. This holds for both the individual and the position.
6. Successive 64.2 appointments for an individual from the same list will not be allowed, nor will successive 64.2 appointments to a position be allowed.

In addition to the guidelines above, agencies should be aware that:

- a. Section 64 of the Civil Service Law is not intended to be a means of "extending" provisionals who are being revoked as the result of the establishment of an eligible list. Where agencies need additional time to replace a significant number of provisionals (Section 65), agencies should discuss with their Staffing Services Representative appropriate time periods for "temporary pending canvass" appointments.
- b. No combination of temporary non-list appointments, including appointments under Rule 4.8 and "TEMP CANVASS" appointments, shall exceed a total of six months.

These guidelines are not in any way intended to affect appointments to temporary service or temporarily vacant items for individuals who are reachable for appointment (i.e., among the top three acceptors on an appropriate eligible list).

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Policy Bulletin #98-01**

1825 Reassignments / 1840 Voluntary Transfers in the State Service

September 25, 1998

This Policy Bulletin replaces Policy Bulletin #94-01, issued July 28, 1994 which should be removed from BOTH places in your SPMM and destroyed.

General Policies on Transfers in the Face of Reemployment Lists:

- Agencies may laterally transfer a permanent employee (who is eligible for transfer pursuant to Section 70.1, 70.4 or 52.6) to a position **within the agency** (e.g., within the Office of Mental Health, Department of Correctional Services, Office of Parks and Recreation, etc.) in the face of any **reemployment roster** or **placement roster**.
- Transfers are not permitted in the face of **redeployment lists**, **agency reduction transfer lists** or **preferred lists**.
- Transfers **between agencies** are not permitted in the face of **any** reemployment list.
- "Upward transfers" (one to two salary grades, or one M-grade) are not permitted in the face of **any** reemployment list.

General Policies on Reassignments in the Face of Reemployment Lists.

Agencies may reassign a permanent employee to a position in any location in the face of any reemployment list

Exceptions To These General Policies

However, Rule 5.8, as amended July 28, 1993, permits this department to approve certain exceptions to the above policies when agencies must redeploy staff to avoid impending or anticipated layoffs. The chart below summarizes the policies above and notes the cases in which exceptions may be made. On pages two ~~and three~~ are detailed explanations of when these exceptions may be made and the procedure for requesting them.

SUMMARY OF CURRENT GENERAL POLICIES WITH EXCEPTIONS INDICATED

...permitted in the face of a...	Redeployment list (§79)	Agency reduction transfer list (§78)	Preferred list (§81)	Reemployment roster (§81-a)	Placement roster (§81.6)
Lateral transfer <i>between</i> agencies	NO	NO	NO	NO	NO
Lateral transfer <i>within</i> agency	NO*	NO*	NO*	YES	YES
Reassignments	YES	YES	YES	YES	YES

NO* = exceptions permitted pursuant to Rule 5.8. See next page.

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Policy Bulletin #98-01

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September 25, 1998

Criteria for Permitting Exceptional Transfers in the Face of Reemployment Lists for Employees Being Affected by Layoffs (Pursuant to Rule 5.8)

- Employees must be permanent in titles that have been specifically identified as likely to be affected by a planned layoff, and
- transfers can only be made to other positions **within the department or agency**, which means that they **may** occur between multiple layoff units and appointing authorities for those agencies that are so organized (such as OMRDD or SUNY), and
- while transfers pursuant to §§70.1, 70.4 and 52.6 may be made to higher graded positions (within two salary grades or one M-grade), generally these are to be avoided where other options are available, and
- as with all transfers, they require the consent of the employee.

Although not specifically indicated in the language of Rule 5.8, our policy is to permit several additional types of appointments in the face of reemployment lists, as long as they are layoff related, i.e., they do not add employees to the agency, and are appointments made to save employees who have been specifically identified as likely to be affected by a planned layoff.

These appointments are:

- appointments to non-competitive and labor class positions
- reinstatements
- appointments from OC, Promotion, and Transition lists.

These transactions will be permitted on a **case-by-case** basis where they reasonably meet the same criteria as is being applied for transfers. They must be cleared through your Staffing Services Representative first.

Procedures

Agencies must first supply their Staffing Services Representatives with a written layoff plan which includes time-frames, a list of the titles expected to be affected, the names and social security numbers of all of the employees in those titles, and the date of layoff or relocation.

If possible, the employees who will be transferred or reassigned or appointed under the provisions of the rule and the policies established by this memorandum should be indicated to document the necessity for these transactions.

The plan and the transactions must be approved prior to submitting any transactions to transfer, reassign or appoint staff in the face of mandatory lists.

Payroll Processing

After approval, when the transaction is submitted the "Rule 5.8" checkbox must be checked. Agencies should not call Employment Records for a clearance control number for these transactions.

Employees who are not so transferred, reassigned or appointed, or who have been transferred or permanently appointed to another non-competitive or labor class position and provided a hold as required by rule or contract, must have electronic or paper "green cards" transmitted **at least 20 days** prior to the date of layoff (pursuant to §81-a), and even earlier to have their names placed on placement rosters or transfer lists for certification to other agencies prior to the layoff or relocation.

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ADVISORY MEMORANDUM # 97-01**

1830 Reinstatements

March 5, 1997

To: Department and Agency Personnel, Human Resource and Affirmative
Action Offices
FROM: James W. Sever, Director of Staffing Services
SUBJECT: Commission Reinstatement Requests Pursuant to Rule 5.4

The Civil Service Commission has restated its policy in regard to the reinstatement of former state employees pursuant to Classified Service Rule 5.4. Pursuant to the Rule such reinstatement may be approved in exceptional cases, for good cause shown, and where the interest of government would be served. In order to properly review requests for reinstatement, the Commission needs certain information.

First, the Commission needs a statement from the appointing authority why it is in the best interest of the state to reinstate a former employee rather than making an appointment from an appropriate eligible list. The simple statement that such an appointment is in the best interest of state government is not sufficient. Second, when the request is for reinstatement where several years have passed since the former employee's qualifying service/or where the qualifying service was in a different title, the request should detail the employment experience during the break in service if it is pertinent.

The Staffing Services Division will not process reinstatement requests to the Commission where mandatory reemployment lists exist for the title. Where there are no mandatory lists, you should inform the Commission of promotion and/or open-competitive eligible lists that are appropriate.

General Information Bulletin No. 91-06 announced Commission approval of temporary reinstatements pending clearance of existing, or anticipated, mandatory reemployment lists. The Commission will no longer approve such temporary reinstatements.

All appointments pending Commission action must meet law, rule and policy appropriate to the type of appointment.

We also have produced a new form, S-46. You should use this form in place of the letter of request. It is now available to agencies through the Department of Civil Service Mail and Supply Room (518) 457-4495 or you may duplicate this form from the attached master copy.

All other criteria for reinstatement pursuant to Rule 5.4 remains the same.

Questions about this policy should be directed to your Staffing Services Representative.

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.1 BACKGROUND

.110 Legal Basis

- .111 Section 5.4 of the Rules for the Classified Service (4 NYCRR) provides that permanent employees of New York State who have resigned their positions may be reinstated to their former positions, or to positions to which they were eligible for transfer or reassignment, without further examination.

.2 POLICY

.210 General

- .211 Employees separated from their positions may be reinstated within one year of the date of their separation.
- .212 Employees separated from their positions who have also been separated from state service for more than one year may be reinstated upon approval by the state civil service commission.

.220 Limitations and Requirements

- .221 The policy of the state is to permit reinstatement following any separation other than dismissal resulting from a disciplinary proceeding under Section 75 of the Civil Service Law or under one of the collective bargaining agreements. Former permanent probationers may be reinstated.
- .222 Reinstatement may not be made to a position for which there is a reemployment list containing the names of eligibles willing to accept appointment.
- *.223 In calculating the one year period within which a person may be reinstated, any time spent in active service in the military and/or any time served in another position in the state service (regardless of classification or status) will not be counted. If an employee resigns from state service while on leave of absence, the resignation is deemed effective as of the date of commencement of such leave. (The effective date of separation for employees terminated for an ordinary disability under §73 CSL is the actual date of termination.) The effective date of separation for employees suspended pursuant to §80 or §80-a is the date on which their four years of preferred list eligibility expired.
- .224 A reinstatement requiring Civil Service Commission approval will become effective on the date of such approval.

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- .225 An employee may be reinstated when it is in the interest of the government and for good cause; the recapture of an employee's benefits or accruals lost upon separation is not generally sufficient justification for reinstatement. The Civil Service Commission generally will not approve reinstatement in situations where the sole intent is the restoration of employee benefits lost upon separation.
- .226 Reinstatement pursuant to Rule 5.4 may be used to effect a voluntary demotion (see SPMM 1845).
- .227 Employees reinstated under Rule 5.4 must serve a probationary term which may not be waived regardless of the transaction accompanying the reinstatement.(see SPMM 1830.4, below, and SPMM 2010).

.3 INTERPRETATIONS

.310 The following examples illustrate correct applications of the rule.

1. A permanent employee in title A resigns and leaves State service. Ten months later the former employee is appointed to title B from an open competitive list. Three months later, the agency wishes to reinstate the employee to title A.
Commission approval is not required. Although the employee had been separated from Title A for more than one year, the separation from state service was for only ten months.
2. A permanent employee in title C resigns and leaves State service. Six months later the former employee accepts a temporary appointment in title D in the same governmental jurisdiction. Seven months later the agency wishes to reinstate the employee to title C.
Commission approval is not required for the same reasons as in example 1. Note that temporary service is not considered as "time separated" when calculating the one-year break in service.
3. A permanent employee in title E resigns and leaves State service. More than a year later, the former employee is appointed to title E from the open competitive list. The agency subsequently wishes to reinstate the employee to title E.
Commission approval would be required if reinstatement is sought. However, since the reinstatement would be for "benefits only," (the

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employee has already regained permanent status in title E through a list appointment) the Commission is not likely to approve the reinstatement.

4. A permanent employee in title F resigns and leaves State service. More than one year later the former employee is appointed to title G from the open competitive list. The agency subsequently wishes to reinstate the employee to title F.

Commission approval is required. The employee has been separated from both the title F position and state service for more than one year. Although the reinstatement will result in the restoration of the employee's benefits, the reinstatement is to a position not currently held by the employee, in contrast to the situation outlined in example 3 above.

5. A permanent employee in title H resigns and leaves State service. More than one year later the former employee is reinstated with the Commission's approval to title I, a lower level title the employee formerly held. Subsequently the agency wishes to reinstate the employee to title H.

Commission approval is required. Similar to example 4, above, the employee has been out of both the title H position and state service for more than one year. A subsequent appointment to a position in a different title, whether permanent or temporary, does not negate the one year break in service.

6. A permanent employee in title J receives a leave of absence for six months and subsequently resigns. Seven months later the employee is appointed from an open competitive list to title K. The agency later wishes to reinstate the employee to title J.

Commission approval is required. The effective date of resignation is the date the employee went on leave, and therefore the employee has been out of service for more than one year.

.4 PROCEDURES

.410 Reinstatement not requiring Civil Service Commission action.

.411 These appointments may be effected through the normal payroll process, following appropriate budgetary, classification, and appointment procedures. The conditions listed in .220 must be met before submitting payroll transaction forms. Other issues that must be considered:

- is transfer appropriate between the former title and the title to which reinstatement is planned?
- does the employee qualify for that transfer?

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- does the reinstatement involve recalculation of salary/ seniority/ leave accruals/ etc? (Military and/or leave status may affect this item.)
- Agency personnel staff should consult with appropriate staff in the Department of Civil Service and the Office of the State Comptroller to ensure that payroll forms are accurate and complete: the employee must gain all entitled benefits.

.420 Reinstatements requiring Civil Service Commission approval.

.421 Requests for these actions should be submitted to the appropriate staffing services section for analysis and preparation for Commission review. Requests must demonstrate good cause and that the reinstatement will be in the interests of the government. Requests also must provide relevant employment history for the employee and a description of the mechanism to be employed for the appointment (i.e. if a transfer, under which of the provisions for transfer, and how the employee qualifies). Issues raised in .411 (above) should be addressed.

.430 Payroll forms to effect reinstatements.

.431 Use transaction code REIN RES to transact reinstatements under Rule 5.4 which do NOT require Civil Service Commission approval. Include appropriate notations in the "Remarks" section (transfer type, etc.)

.432 Use transaction code REIN COMM to transact Civil Service Commission-approved reinstatements pursuant to Rule 5.4. The effective date of this transaction will be the date of Commission approval unless otherwise specified by the Civil Service Commission. In all cases, notice of Civil Service Commission approval must accompany the transaction form. Include appropriate notations in the "Remarks" section.

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.1 BACKGROUND

.110 Legal Basis

.111 Section 45 of the Civil Service Law provides a mechanism by which employees of a private institution or enterprise acquired by the State may be given permanent status in the Classified Service. A determination to acquire a private institution or enterprise can be a result of either legislative or executive action. This section of the law enables the acquiring State agency to continue the employment of all officers and employees deemed necessary who were in the employment of the private institution or enterprise for at least one year prior to acquisition. The positions of such employees shall be in the non-competitive class pending classification or reclassification as deemed necessary. The Civil Service Commission shall determine for which positions or class of positions competitive examinations are practicable and shall adopt rules classifying and reclassifying the various positions. The incumbents of such positions, who were in those positions for one year prior to acquisitions shall hold their positions without further examination and shall have the rights and privileges of the jurisdictional class to which the positions are allocated. New positions and existing positions that become vacant shall be filled by routine Civil Service procedures.

.2 POLICY

.210 Civil Service Requirements and Responsibilities

.211 All Section 45 cover-ins must be reviewed and approved by the State Civil Service Commission before incumbents may acquire permanent status within the Civil Service System. It is the Commission's responsibility to determine the following:

- A. nature of the agency to be acquired. Is it truly a private institution or enterprise?
- B. scope and duties of existing positions. Can incumbents be covered into existing titles or must new titles be classified?
- C. status of incumbents. Do they meet the Section 45 requirement of one year service prior to acquisition both in the agency and position?

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.4 PROCEDURES

.410 Acquiring Agency Responsibilities

.411 Information on the Agency to be Acquired - If the agency to be acquired is a quasi-public authority, research foundation or corporation and this is the initial request for a cover-in from that enterprise, the acquiring agency must submit the following information to the Bureau of Staffing Services:

- A. the authority establishing the institution, enterprise, foundation or corporation, including copies of the legislation or agreement effecting the takeover;
- B. a brief explanation of its charter and purpose;
- C. where its funds come from and who administers the foundation/corporation and its funds;
- D. who appoints board members;
- E. whether any board members are State employees;
- F. whether the institution, enterprise, foundation or corporation is a legal entity separate and distinct from the State;
- G. who the appointing authority for the foundation/corporation is;
- H. whether the staff is separately housed or located on the grounds of a State agency;
- I. how closely foundation/corporation employees in this function have been working with State employees.

.412 Information on Existing Positions - In order to have the newly acquired positions established within the Classified Service, the acquiring agency must provide standard classification documentation for each position to the Division of Classification (with a copy to the Bureau of Staffing Services). This package should include the following:

- A. organizational structure of newly acquired entity, including the titles, salary and number of positions being acquired;
- B. a complete explanation of the function(s) of the unit(s) being acquired and the reasons for the takeover;
- C. a complete and accurate CC-3 and XD-10 for each employee.

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.413 Information on Incumbents - In order for the Commission to determine eligibility for cover-in, the acquiring agency must also submit the following information on each incumbent to the Bureau of Staffing Services:

- A. Full name, Social Security number, current title in private institution, current dollar salary, and initial appointment date as a private institution employee;
- B. if any of these individuals are current or former State employees, provide the following information where appropriate:
 1. hold item, current status, title and agency;
 2. accurate information on any prior permanent State employment, last position held and status;
- C. If appropriate, complete history of State examinations taken by each employee involved.

.420 Summary

.421 If all the above conditions are met satisfactorily, the cover-in will be allowed by the Civil Service Commission. It should be noted that Section 45 is not intended to provide for non-competitive promotion in the fact of an eligible list and when employees of the agency being acquired are on leave from state positions, the requested cover-in will be closely reviewed. It should also be noted that the reference to excluding non-citizens in Section 45 is non-enforceable and should be ignored. The courts have determined that citizenship cannot be a requirement for employment in the State service with the exception of peace officers (C.P.L. 2.10.32) who according to the public officers law must be U.S. citizens and New York State residents.

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
DIVISION OF EXAMINATIONS AND STAFFING SERVICES

ADVISORY MEMO NO. 86-02

1840 (Transfers)

August 22, 1986

TO: Department and Agency Personnel Offices
FROM: Robert Parrish
SUBJECT: Leaves for Transferees

You were advised in Policy Bulletin No. 83-01 that the Governor has signed amendments to the transfer Rule, 5.1, to foster increased career mobility for State employees. Section 2 of that bulletin served to notify you that under the new rule, the losing agency must allow the transfer and grant the permanent or permanent contingent (including probationary employees) a leave of absence for the duration of the probationary period, as required by Rule 4.5(d).

It has come to our attention that losing agencies frequently submit transactions indicating that the employee has resigned, while gaining agencies show the move as a transfer.

Effective immediately, the gaining agency will be responsible for the following actions:

1. Notifying the transferee that the agency from which the employee is leaving must allow the transfer and is responsible for granting a leave of absence from his/her permanent or permanent contingent title for the duration of the probationary period.
2. Notifying the losing agency in writing of the intent to transfer the employee and providing the losing agency with the effective date of the transfer.

Civil Service will continue to monitor transfers through the payroll transaction process. Where the gaining agency indicates transfer and the losing agency indicates resignation, the group 2 transaction will be changed to probationary leave and a hold will be placed on the employee's permanent or permanent contingent item in the losing agency to coincide with his/her probationary period. Any exception to this practice must be cleared in advance of payroll submission with your Staffing Services Representative. A notation about the clearance and the name of the Staffing Representative granting it must be included in the remarks section of the PR-75.



Deputy Director for the Bureau
of Staffing Services

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Policy Bulletin #98-01

1825 Reassignments / 1840 Voluntary Transfers in the State Service

September 25, 1998

This Policy Bulletin replaces Policy Bulletin #94-01, issued July 28, 1994 which should be removed from BOTH places in your SPMM and destroyed.

General Policies on Transfers in the Face of Reemployment Lists:

- Agencies may laterally transfer a permanent employee (who is eligible for transfer pursuant to Section 70.1, 70.4 or 52.6) to a position **within the agency** (e.g., within the Office of Mental Health, Department of Correctional Services, Office of Parks and Recreation, etc.) in the face of any **reemployment roster** or **placement roster**.
- Transfers are not permitted in the face of **redeployment lists**, **agency reduction transfer lists** or **preferred lists**.
- Transfers **between agencies** are not permitted in the face of **any** reemployment list.
- "Upward transfers" (one to two salary grades, or one M-grade) are not permitted in the face of **any** reemployment list.

General Policies on Reassignments in the Face of Reemployment Lists.

Agencies may reassign a permanent employee to a position in any location in the face of any reemployment list

Exceptions To These General Policies

However, Rule 5.8, as amended July 28, 1993, permits this department to approve certain exceptions to the above policies when agencies must redeploy staff to avoid impending or anticipated layoffs. The chart below summarizes the policies above and notes the cases in which exceptions may be made. On pages two and three are detailed explanations of when these exceptions may be made and the procedure for requesting them.

SUMMARY OF CURRENT GENERAL POLICIES WITH EXCEPTIONS INDICATED

↓ ...permitted in the face of a... →	Redeployment list (§79)	Agency reduction transfer list (§78)	Preferred list (§81)	Reemployment roster (§81-a)	Placement roster (§81.6)
Lateral transfer <i>between</i> agencies	NO	NO	NO	NO	NO
Lateral transfer <i>within</i> agency	NO*	NO*	NO*	YES	YES
Reassignments	YES	YES	YES	YES	YES

NO* = exceptions permitted pursuant to Rule 5.8. See next page.

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Policy Bulletin #98-01**

1825 Reassignments / 1840 Voluntary Transfers in the State Service

September 25, 1998

Criteria for Permitting Exceptional Transfers in the Face of Reemployment Lists for Employees Being Affected by Layoffs (Pursuant to Rule 5.8)

- Employees must be permanent in titles that have been specifically identified as likely to be affected by a planned layoff, and
- transfers can only be made to other positions **within the department or agency**, which means that they **may** occur between multiple layoff units and appointing authorities for those agencies that are so organized (such as OMRDD or SUNY), and
- while transfers pursuant to §§70.1, 70.4 and 52.6 may be made to higher graded positions (within two salary grades or one M-grade), generally these are to be avoided where other options are available, and
- as with all transfers, they require the consent of the employee.

Although not specifically indicated in the language of Rule 5.8, our policy is to permit several additional types of appointments in the face of reemployment lists, as long as they are layoff related, i.e., they do not add employees to the agency, and are appointments made to save employees who have been specifically identified as likely to be affected by a planned layoff.

These appointments are:

- appointments to non-competitive and labor class positions
- reinstatements
- appointments from OC, Promotion, and Transition lists.

These transactions will be permitted on a **case-by-case** basis where they reasonably meet the same criteria as is being applied for transfers. They must be cleared through your Staffing Services Representative first.

Procedures

Agencies must first supply their Staffing Services Representatives with a written layoff plan which includes time-frames, a list of the titles expected to be affected, the names and social security numbers of all of the employees in those titles, and the date of layoff or relocation.

If possible, the employees who will be transferred or reassigned or appointed under the provisions of the rule and the policies established by this memorandum should be indicated to document the necessity for these transactions.

The plan and the transactions must be approved prior to submitting any transactions to transfer, reassign or appoint staff in the face of mandatory lists.

Payroll Processing

After approval, when the transaction is submitted the "Rule 5.8" checkbox must be checked. Agencies should not call Employment Records for a clearance control number for these transactions.

Employees who are not so transferred, reassigned or appointed, or who have been transferred or permanently appointed to another non-competitive or labor class position and provided a hold as required by rule or contract, must have electronic or paper "green cards" transmitted **at least 20 days** prior to the date of layoff (pursuant to §81-a), and even earlier to have their names placed on placement rosters or transfer lists for certification to other agencies prior to the layoff or relocation.

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POLICY BULLETIN NO. 83-01

1840 (Transfers)

January 25, 1983

Page 1

File this material in the section of the manual referenced above.

TO: All Personnel Officers

SUBJECT: Revision of Rule 5.1 Transfer to Foster Increased Career Mobility

The Governor recently signed Resolutions 206 and 207 amending Rule 5.1 Transfers that will foster increased career mobility for State employees. Attached are copies of the signed Resolutions for your reference.

Specifically, Rule 5.1 Transfers was amended to:

- 1) Allow a transfer to be effected under Section 70.1 in the face of a departmental or an interdepartmental promotion eligible list. However, a transfer under Section 70.4 will be allowed only if appointment from an open-competitive eligible list would be in order. In those cases where both an open-competitive and a promotion examination were held, the presence of three or more acceptors on the promotion eligible list will prevent a transfer under Section 70.4.
- 2) Remove the requirement that the losing agency must approve the transfer. Previously, an agency could prevent a transfer of an employee to another agency by disapproving the requested transfer. The employee was placed in the position of remaining with his or her current agency or resigning and subsequently be reinstated to the new agency. Under the new rule, the losing agency must allow the transfer, which in effect requires that the losing agency grant a leave of absence for the duration of the probationary period as specified by Rule 4.5(d).
- 3) Remove the existence of a field for promotion as impediment to the reassignment of an employee to a different promotion unit. Agencies using proper management discretion can reassign an employee to a position in the same title in a different promotion unit within the agency.

(NOT ATTACHED)

A copy of the revised transfer checklist has been attached to assist your staff in processing transfers under the revised rules. Any questions on the general policy or specific situations should be directed to your Staffing Services Representative.


Ralph J. Vecchio
Executive Deputy Commissioner

Attachments



STATE OF NEW YORK
CIVIL SERVICE COMMISSION
THE STATE CAMPUS
ALBANY, NEW YORK 12239

JOSEPH A. F. VALENTI, PRESIDENT
JOSEPHINE L. GAMBINO
JAMES T. MCFARLAND

At a meeting of the State Civil Service Commission held September 28, 1982, the following resolution was adopted pursuant to Sections 6 and 70 of the Civil Service Law:

RESOLVED, That subject to the approval of the Governor, Paragraph (4) of Subdivision (a) of Section 5.1 of the Rules for the Classified Service, be and hereby is amended to read as follows:

(4) Every transfer shall require the consent, in writing, of the transferee and of the [respective] appointing [authorities] authority having jurisdiction over the position[s] to which [and from which] transfer is sought, and the approval of the Civil Service Department.

AND BE IT FURTHER RESOLVED, That subject to the approval of the Governor, that Subparagraphs (1) of Paragraphs (4) and (5), respectively, of Subdivision (a) of Section 4.5 of the Rules for the Classified Service, be and hereby are amended to read as follows:

(4) (1) Every transfer, as defined in section 1.2 of this Chapter, and every interinstitutional transfer as hereinafter defined, made at the request or with the consent of the employee, to a position in grade 13 and below shall be subject to a probationary term of not less than 8 weeks nor more than 26 weeks; every such transfer to a position in grade 14 and above shall be subject to a probationary term of not less than 12 weeks nor more than 52 weeks; provided, however, that the appointing authority having jurisdiction over a position to which transfer is sought may, at its option, elect to waive the probationary term required for such position.

(5) (1) An appointment, promotion or transfer shall become permanent upon the retention of the probationer after his or her completion of the maximum period of service or upon earlier written notice following completion of the minimum period that his or her probationary term is successfully completed or in the case of a transferee upon written notice that the appointing authority has elected to waive the serving of the probationary term.

ATTEST:

/S/ Joseph A. F. Valenti

President

APPROVED:

DATE: DEC 22 1982

HUGH L. CAREY

Governor

RECEIVED & FILED
WITH THE OFFICE OF STATE

DEC 22 1982



STATE OF NEW YORK
CIVIL SERVICE COMMISSION
THE STATE CAMPUS
ALBANY, NEW YORK 12239

JOSEPH A. F. VALENTI, PRESIDENT
JOSEPHINE L. GAMBINO
JAMES T. MCFARLAND

At a meeting of the State Civil Service Commission held September 28, 1982, the following resolution was adopted pursuant to Sections 6 and 70 of the Civil Service Law:

RESOLVED, That subject to the approval of the Governor, Section 5.1 of the Rules for the Classified Service, be and hereby is amended to read as follows:

FIRST: Paragraph (1) of subdivision (a) be and hereby is DELETED.

SECOND: Paragraphs (2) (3) and (4) of subdivision (a), be and hereby are renumbered to be paragraphs (1), (2), and (3) Respectively.

THIRD: Subdivision (c) be and hereby is DELETED.

ATTEST:

/S/ Joseph A. F. Valenti
President

APPROVED:

DATE: DEC 22 1982
HUGH L. CARY

Governor

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OFFICE OF STATE

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1840 Voluntary Transfers in the State Service

.1 BACKGROUND

.110 Legal Basis

Voluntary transfers are “...*the change, without further examination, of a permanent employee from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority or to a position in a different title in the same or a higher salary grade under the jurisdiction of the same appointing authority.*” (Rule 1.2 (b)(1))

The several types of voluntary transfers are authorized by Sections 52.6, 70.1, and 70.4 of the Civil Service Law. Other types of transfers, commonly referred to as “involuntary”, and governed by Sections 70.2, 76.3, and 78 of the Civil Service Law and Section 5.8 of the Rules for the Classified Service, are not discussed here.

.111 Voluntary transfers between administrative titles in the same or related or collateral specialties which have substantially equivalent tests or qualifications are permitted by Section 52.6 (c). Positions considered administrative as defined by Section 52.6 (a) are those in the occupational categories of law, personnel, budgeting, methods and procedures, management, records analysis, and administrative research.

.112 Voluntary transfers within a title between appointing authorities, or between titles for which there is not required an examination involving essential tests or qualifications different from or higher than those for the title held by the employee are permitted by Section 70.1.

.113 Voluntary transfers between titles where the employee has passed an appropriate examination for the title to which transfer is sought are permitted by Section 70.4.

.114 There is no provision in the law or rules for voluntary transfers for other than competitive class employees, or for competitive class employees to other jurisdictional classes, or for transfers on other than a permanent basis.

.2 POLICY

.210 General

.211 Voluntary transfers are an alternative to the use of eligible lists for filling competitive class positions.

.212 It is the policy of the Department of Civil Service to encourage voluntary transfers of eligible employees to promote career mobility, where such transfers are in the best interests of the State.

.220 Limitations and requirements

.221 Each voluntary transfer requires:

- a. the consent of the employee, and
- b. the nomination of the agency having jurisdiction over the position to which transfer is sought, and
- c. that the employee serve a probationary period unless waived by the agency at the time of transfer, and

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1840 Voluntary Transfers in the State Service

- d. the approval of the Department of Civil Service.
- .222 In addition to meeting the specific criteria required by the relevant law and rules, all voluntary transfers are governed by the following:
- * a. Transferees must be permanent in a competitive class position and have had one year of permanent service at their current salary grade. NOTE: Permanent service in a traineeship leading to the source title may be counted toward the one year requirement. Employees who have not completed probation may transfer if otherwise eligible.
 - b. The transfer may not be to a position more than two salary grades or one M-grade higher than the position from which transfer is made.
 - c. Consecutive voluntary transfers for the same employee will not be approved if they result in a net increase of more than two S-grades or one M-grade without intervening examination.
 - d. Voluntary transfers will not be approved if a reemployment list exists for the position to which transfer is sought except:
 - 1. if the highest ranking acceptor on the ranked reemployment list is simultaneously appointed to the position left vacant by the transfer, or
 - 2. if any acceptor is so appointed from an unranked reemployment list.
 - e. Certain voluntary transfers to redeploy employees who may be affected by layoffs may be permitted in the face of some reemployment lists. See Policy Bulletin 98-01 in this section.

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1840 (A) Transfers Between Administrative Titles

.1 BACKGROUND

.110 Definition of **Administrative Titles**

Administrative titles are those covered by Section 52.6 of the Civil Service Law. Transfers without further examination shall generally be approved between administrative titles provided they meet the policies for voluntary transfer as stated in 1840, and:

- A. the titles have been determined by the Staffing Services Division to be in one of the following categories: law, personnel, budgeting, methods and procedures, management, records analysis, or administrative research, and,
- B. the title to which transfer is sought does not require special qualifications (e.g. licensure, certification, registration, specific credentials), or the employee seeking transfer possesses those qualifications.

.2 POLICY

.210 Definition of **Management titles**

For the purposes of an administrative transfer, a management title shall generally be a title:

- A. allocated to salary grades M-1 through M-8, or
- B. in which the duties performed by the incumbents are primarily direction of a major program of an agency or institution, or in which the duties performed by the incumbents are primarily:
 - 1. direction of a major program of an agency or institution, or
 - 2. management of a district office or a local office, or
 - 3. direct assistance in formulating and interpreting agency-wide policy as a special assistant or as an executive assistant to an agency head.

- .211 Titles in which positions are allocated to both M- and S- grades, which do not meet another criterion for administrative titles, will be reviewed by the Director of Classification and Compensation and the Director of Staffing Services to determine whether the duties typical of the title in question fall within the meaning of "management".

.4 PROCEDURES

- .411 The agency having the position to be filled must receive approval from their Staffing Services Representative before submitting the transaction.
- .412 Upon the written request of an agency the Staffing Services Representative will determine whether a title falls within the definitions in 1840 (A) .110 and .210 above. The Staffing Services Representative will consult with staff of the Divisions of Classification and Compensation, Diversity Planning and Management, and Testing Services, as appropriate.

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1840 (A) Transfers Between Administrative Titles

- .413 If transfer from one title to another is appropriate (or if no change in title is involved) the Staffing Services Representative will confirm that the nomination is in order, i.e., that the proposed transfer meets the requirements of Section 1840.
- .414 When the Staffing Services Representative notifies the agency that the transfer is in order, the agency Personnel Office will notify the nominee, confirm that there are no reemployment lists which block the transfer, and initiate submission of the transaction.
- .415 The Division of Staffing Services will maintain a list of administrative title determinations which will provide a precedent file for future transfers and denials of transfers.

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1840(B) Transfer Between Similar Titles

October 2019

TO: Department and Agency Directors of Human Resources, Personnel and Affirmative Action Officers, Equal Opportunity Specialists, Diversity and Inclusion Specialists

FROM: Jessica Rowe
Director, Division of Staffing Services

SUBJECT: Section 70.1 Transfer Determinations Between Clerical, Keyboarding and Office Assistant titles, Grade 6-15

THIS REPLACES POLICY BULLETIN #96-08, AND PROVIDES AN UPDATED LISTING OF CLERICAL, KEYBOARDING AND OFFICE ASSISTANT TITLES BETWEEN WHICH 70.1 TRANSFER HAS BEEN APPROVED.

The Department is pleased to announce this updated listing of Section 70.1 transfer opportunities between clerical, keyboarding and office assistant titles, grade 6 through grade 15. These determinations are intended to address the recent clerical title consolidations, implementation of the Administrative Assistant traineeship, the need for greater flexibility in deployment and redeployment of the workforce, and to provide additional career mobility opportunities.

A comprehensive review of qualifications, duties and tests for all these titles have determined that transfer pursuant to Civil Service Law Section 70.1 is appropriate between most of the titles grade 6-15 listed here: Clerical, Keyboarding and Office Assistant Transfer Determinations

Transfers are subject to the usual transfer criteria:

- Nominees must have served permanently in an appropriate title or titles for one year**, and
- The titles must be within two salary grades, and
- Nominees must possess any required special credentials, and
- Consecutive transfers cannot result in more than a two-salary grade advancement.

**Service in two or more qualifying titles may be combined to meet the one-year requirement.

The list provided through the link above includes all of the titles covered by these transfer determinations. This title listing may be updated periodically when new transfer appropriateness determinations are made.

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Titles needing special requirements in addition to time in title are indicated by * on the attached list of titles. The special requirements for those titles are provided at the bottom of the list. Titles with language parenthetics also require the demonstration of proficiency in the specific language at a level required for the position. The submission of the NYSTEP transaction serves as the agency's attestation that the nominee meets the special requirements for transfer.

If you have any questions regarding this transfer package, you may call the Division of Staffing Services at (518) 473-6437.

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1840 (B) Transfers Between Similar Titles

.1 BACKGROUND

- .110 Section 70.1 of the Civil Service Law establishes the general provisions for transfer to the same title or to another title provided the essential tests and qualifications for the titles are not dissimilar.

.2 POLICY

.210 Requirements and limitations

- .211 Transfers without further examination to the same title under the jurisdiction of another appointing authority shall generally be approved provided they meet the policies for voluntary transfer as stated in Section 1840.
- .212. Transfers without further examination to a different title shall generally be approved provided they meet the policies for voluntary transfer as stated in Section 1840, and the titles have been determined to be similar by the Division of Staffing Services.
- .213 Titles shall be considered similar for the purposes of voluntary transfer where it has been determined that the successful performance of the typical duties and responsibilities for both titles require similar essential knowledges, skills and abilities based upon:
- a. a comparison of the types and contents of selection plans used to fill the titles, or
 - b. a comparison of the duties and responsibilities typical of the titles, or
 - c. a comparison to determine whether the titles are in the same occupational field (see .412 (b) below).
- .214 Titles in the same occupational field shall generally be considered to require similar essential knowledges, skills, and abilities provided:
- a. the Division of Staffing Services has approved the inclusion of both titles within the occupational field, and
 - b. that special credential(s) are not required to successfully perform the essential duties of the title to which transfer is sought, or the nominee possesses the required credential(s).
- .215 Interdepartmental titles existing within an agency are not generally included in the same occupational field as an agency's program titles.
- .216 Titles which have no minimum qualifications, and/or where the critical knowledges, skills and abilities which must be possessed by the incumbents are of a basic and general nature such that most individuals are likely to possess such knowledges, skills and abilities shall generally be considered as similar for the purposes of voluntary transfer.

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1840 (B) Transfers Between Similar Titles

.4 PROCEDURES

- .411 The agency having the position to be filled must receive prior approval for the transfer from their Staffing Services Representative before submitting the transaction.
- .412 Upon an agency's written request to nominate an employee for transfer to a similar title the Division of Staffing Services will determine if the transfer is appropriate. This may include:
 - a. consulting with the Divisions of Classification and Compensation, Diversity Planning and Management, and Testing Services, as appropriate, to determine whether the titles are similar as stated in .210 above.
 - b. requesting from the agency a plan as to the occupational field(s) existing within that agency for the purposes of determining whether titles are similar as stated in .211 above.
 - c. requesting from the agency a description of the essential knowledges, skills and abilities required for successful performance of the typical duties and responsibilities of the titles in order to compare titles with different selection plans or titles in different occupational fields.
- .413 If transfer from one title to another is appropriate, the Staffing Services Representative will determine if the proposed transfer meets the requirements of Section 1840.
- .414 When the Staffing Services Representative notifies the agency that the transfer is in order, the agency Personnel Office will notify the nominee, confirm that there are no reemployment lists which block the transfer, and initiate submission of the transaction.
- .415 The Staffing Services Division will maintain a list of similar title determinations which will provide a precedent file for future transfers and denials of transfers.

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1840 (C) Transfers Between Titles Which are not Similar

.1 BACKGROUND

- * Section 70.4 of the Civil Service Law provides for transfer to another title at a similar salary grade after a noncompetitive examination. It has been the long standing practice and policy of the Department to consider this type of transfer as a device to allow current employees to change career fields, and to limit these transfers to positions which are (or would be) filled by examinations open to the public.

.2 POLICY

.211 Requirements and limitations:

Section 70.4 transfers shall generally be approved if they meet the requirements of Section 1840, and

- a. the employee seeking transfer meets the minimum qualifications and requirements of either the most recent or the next, anticipated open competitive examination, and
- b. the employee seeking transfer has not failed the most recent examination, either open-competitive or promotion, for the title to which transfer is sought, and
- c. there is not a departmental or interdepartmental promotion list containing the names of three eligibles willing to accept the position (Transition lists do not block this type of transfer), and
- * d. the employee achieves (or has achieved) a passing score on an appropriate examination as determined by the Staffing Services Division.

.4 PROCEDURES

- .411 The Personnel Office for the agency in which the position will be filled inquires of their Staffing Services Representative about the appropriateness of a Section 70.4 transfer for a potential nominee.
- .412 The Staffing Services Representative determines whether a nomination is in order, i.e., the requirements of Section 1840 are met. If so, the Staffing Services Representative advises the agency that a formal nomination may be submitted.
- * .413 Upon written nomination from the agency, including a completed open competitive examination application (NYS-APP) demonstrating that the employee is qualified, the Staffing Services Representative will arrange to administer any required tests.
- .414 Upon completing the transfer nomination, including any necessary tests, the Staffing Services Representative will send form S-121, *Action on Nomination for Permanent Appointment* to the agency. This form indicates the disposition of the nomination, and the effective date of the action.
- .415 Where the Section 70.4 transfer is approved, the agency Personnel Office will notify the nominee, confirm that no reemployment list or promotion list blocks the transfer and initiate the submission of the transaction.

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1840 (D) Voluntary Transfer Checklist

This is a summary of the major factors which must be considered in approving voluntary transfers. It is not intended to supplant the complete and detailed information in the State Personnel Management Manual, or the Civil Service Law, rules and regulations.

The • in the column indicates the factor at the left must be taken into consideration.

The **Notes** below provide additional information relative to the numbers in the factors/questions.

FACTORS/QUESTIONS FOR CONSIDERATION	TYPE OF TRANSFER		
	§52.6	§70.1	§70.4
Are there reemployment lists (see note 1 below)?	•	•	•
Titles are within two S-grades or one M-grade and nominee has served permanently for one year (see note 2 below) in the title from which transfer is being made.	•	•	•
Nominee possesses any required special credentials or licenses	•	•	•
This will not be a second, consecutive transfer for the nominee resulting in an advancement of more than two S-grades or one M-grade (see note 4 below).	•	•	
Both titles are administrative (See 1840 (A))	•		
Transfer is appropriate between titles (See 1840 (B))		•	
Nominee meets the current or anticipated open competitive minimum qualifications, did not fail the last promotion or OC examination for the title, and has passed an examination appropriate for the title.			•
There are no departmental or interdepartmental promotion lists with three eligibles willing to accept the position to which transfer is sought (see note 3 below).			•

Notes:

1. Generally Redeployment lists, Agency Reduction Transfer lists, and Preferred Lists block voluntary transfers, although certain exceptions may be made. Reemployment rosters and Placement rosters do not. See Policy Bulletin #98-01 in 1825 or in this section for details.
2. * The one year requirement may be waived by the Director, Division of Staffing Services. The Director's approval is not required to waive the one year if the nominee is reachable on the eligible list for the target title and location. (A nominee's score is considered to be reachable if the list has expired or the year of eligibility on a CR list has expired.) Permanent service in a traineeship leading to the source title may be counted toward the one year requirement. For §52.6 transfers the year of service must be in any §52.6 title or titles within two salary grades of the target title.
3. Transition lists do not block these transfers.
4. [An NCP, 70.4, or the successful completion of a traineeship fulfills the requirement for an "intervening examination" for this purpose. If the employee has been **reinstated** to a position to which they could have transferred via 70.1 or 52.6, and that position is two grades higher than their former position, the employee **cannot** be again transferred to another two S-grade, or one M –grade, higher position.]

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**THIS POLICY BULLETIN REPLACES POLICY BULLETIN #91-01,
ORIGINALLY ISSUED ON MARCH 20, 1991 AND REISSUED ON APRIL 14, 2000
IN THIS SECTION. THE PREVIOUS POLICY BULLETINS SHOULD BE REMOVED.**

**Transfers of Function: Transfer of Employees Pursuant to Civil Service Law
Section 70 (2)**

This bulletin provides guidelines, policies and procedures for the transfer of employees pursuant to Civil Service Law section 70(2) upon a transfer of function between departments or agencies of the State. Section 70(2) provides for the transfer of necessary employees who are substantially engaged in the performance of the function to be transferred. The text of section 70(2), in pertinent part, is included at the end of this bulletin. There are unique aspects to any transfer of function and for this reason; any potential transfer of function should be discussed with your Staffing Services Representative as soon as it becomes apparent that such an action is being considered.

Determining that a Transfer of Function is Occurring

The transfer of employees pursuant to section 70(2) is triggered by the transfer of a function directed by law, rule, executive order or other action. Therefore, a determination must first be made that there is a legal basis for effectuating the transfer of function and whether there is language which directs whether and how employees will be moved with the function. If no other mechanism is specified in the law or other action directing the transfer, or if the law or action specifically so provides, employees will be transferred in accordance with the provisions of section 70(2).

The Transfer Process

**1. Determining who is Substantially Engaged in the Performance of the
Function to be Transferred**

The agency losing the function, in consultation with the agency gaining the function, determines the employees and the titles in which they serve that are substantially engaged in the performance of the function to be transferred. In making these determinations, the agencies' management may consider the following, along with other factors unique to the particular transfer of function:

- Employees in a specific and discrete organizational entity or a specific and discrete program entity such as a facility, institution, a division or a bureau may be considered to be substantially engaged when the entire function performed by that organizational or program entity is being transferred.

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- Employees serving in specialized titles which are specific to the function being transferred may be considered to be substantially engaged in the function.
- Employees serving in interdepartmental titles, such as clerical and secretarial titles, who are performing activities specific to the function being transferred may be considered to be substantially engaged in the function being transferred.

The determination as to whether an employee is substantially engaged in the function to be transferred is within the discretion of the losing and gaining agencies. The Department of Civil Service can provide necessary advice and assistance.

2. Determining Which Employees will be Offered Transfer

After the agencies have identified those employees who are substantially engaged, the gaining agency, in consultation with the losing agency, determines from among those identified employees and their titles, the number of employees in each of the titles who are necessary for continued performance of the function. section 70(2) provides that those necessary employees will be offered a transfer to the gaining agency.

Where not all of the employees identified as substantially engaged will be transferred, those permanent competitive class employees identified as substantially engaged must be ranked within title by seniority, and transfer must be offered to those employees having greater seniority. Seniority for purposes of section 70(2) is to be determined in the same manner as seniority for purposes of layoff.

For example: If 10 employees within a title are identified as substantially engaged in the function to be transferred, but the gaining agency has determined only five employees are necessary to be transferred; the five most senior competitive class employees shall be offered transfer. Offers are made in seniority order until five employees accept transfer. The result of this process may be offers of transfer to the least senior employees. Because five positions will be transferred to the gaining agency, refusal on the part of least senior employees to accept the transfer can have a significant effect on the employees' employment rights (see page 5 - **Rights of Employees who Refuse Transfer or Fail to Respond to the Offer**).

Employees who are serving probation in the title shall be offered transfer only after employees in the same title who have completed their probation. After probationers, other non-tenured employees, such as provisionals, may be selected in any order.

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Employees serving in non-competitive, labor or exempt class positions may be included in the transfer, but they need not be ranked by seniority. It is within the discretion of the gaining agency, in consultation with the losing agency, to determine which employees will be offered transfer.

3. Important Deadlines for the Transfer of Function

The following represents the minimum amount of time necessary to comply with the requirements of section 70(2). All minimum time periods must be calculated from the effective date of the transfer of function. Once that date is established, the following time frames, which work backward from the effective date of the transfer of function, must, at a minimum, be followed. Based upon the unique circumstances of the transfer, including the number of employees to be transferred, the likelihood of protest, and the number of agencies involved, it may be necessary to build in additional time to allow for the posting and notice requirements of section 70(2) to be effectively carried out. More detail is provided below on what is required at each of these steps.

- A. Effective Date of Transfer (EDT) - employees and positions moved to gaining agency.
- B. Close of business day before the EDT- last day for employees to protest inclusion or exclusion from substantially engaged list. All protests must be determined within 10 days of receipt.
- C. As soon as practical, but at least 20 calendar days prior to the EDT, posting of the names and titles of those employees identified as substantially engaged and a copy of Civil Service Law, section 70(2).

Note: In instances where the transfer of function will result in the abolition of positions, agencies should plan accordingly to provide for sufficient layoff notice. (Please refer to Workforce Reduction Limitation applicable to Fiscal Years 2011-12 and 2012-13 for certain negotiated agreements.)

The Posting and Notification Requirements

After consultation with the gaining agency, the losing agency must conspicuously post the list of employees who have been identified as being substantially engaged in the performance of the function being transferred for a minimum of 20 calendar days prior to the effective date of the transfer of function.

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This listing must include the following:

- Employee name
- Title
- Jurisdictional Class
- Appointment Status
- Seniority Date
- Probationary Status
- Indication as to which employees will be offered transfer (if such determinations have been made)

When a transfer of function must be accomplished quickly, employees who are substantially engaged and who will be offered transfer should be individually notified of the offer simultaneously with the posting. Regardless of when the offer is made, each employee must be individually notified by e-mail, memorandum, letter, or in person where date and time of receipt can be documented. It is recommended that the notification include a method for the employee to indicate their acceptance or refusal of the offer and a description of the consequences of acceptance, refusal, or failure to respond to the offer. Employees should be advised to sign the offer, make a copy for their records and return the original within ten calendar days of receipt of the offer. An employee who fails to respond within 10 days of receipt of such offer or who refuses the offer of transfer shall be deemed to have waived entitlement to such transfer and will lose all rights to their position if it is transferred to the gaining agency.

Protesting Inclusion or Exclusion from the Transfer

Employees of the losing agency may protest their inclusion in or exclusion from the list of substantially engaged employees to be offered transfer at any time prior to the close of business the day before the effective date of the transfer. The protest must be made in writing to the heads of both agencies and must state the specific reason(s) for the protest. Employees who do not protest shall be considered to have consented to being included in or excluded from the list.

After consultation with the losing agency, the head of the gaining agency must notify any protesting employee of the disposition of the protest within 10 days of receipt of the protest. This is a final determination and is not subject to further administrative review or appeal.

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Rights of Employees who Refuse Transfer or Fail to Respond to the Offer

Transfers pursuant to Civil Service Law section 70(2) are involuntary transfers of employees following the transfer of their position to the gaining agency. Employees who fail to respond are considered the same as those employees who refuse the offer of transfer. An employee may refuse or fail to respond to the offer of transfer, but his/her position may still be transferred to the gaining agency. Employees who refuse transfer or who fail to respond to the offer of transfer, and whose position is being moved and not abolished, have no displacement rights pursuant to Civil Service Law sections 80 or 80-a. Where there are no opportunities for reassignment or appointment to other titles in the losing agency, an employee who refuses the transfer or who fails to respond to the offer of transfer will lose all rights to their position, will be removed from the payroll and will not be entitled to reemployment rights. However, if the transfer would result in a change in employees' geographic work location from one county to another, the names of tenured employees will be placed on appropriate reemployment lists effective the date of transfer.

Rights of Employees Identified as Substantially Engaged who are not Offered Transfer

Employees who are substantially engaged and are not offered transfer and whose positions will remain in the losing agency; if their positions are subsequently or simultaneously abolished, employees who meet the requirements of section 80 or 80(a) shall have their rights determined in accordance with those sections. Since the abolitions will occur in the losing agency, the layoff rights of the employees must be in the losing agency.

Note: certain negotiated agreements regarding the Workforce Reduction Limitation applicable to Fiscal Years 2011-12 and 2012-13 provide for additional notification beyond the customary 20 day notice. Please consult the appropriate negotiated agreements to provide for sufficient layoff notice.

Rights of Employees Who Are Transferred

Employees who are transferred shall maintain their seniority dates for the purposes of layoff in their new agency; retain their same title, salary grade, appointment status, and probationary status. A new probationary period may not be imposed as a result of the transfer of function.

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Leaves and Hold Items for Employees Transferred

Where the hold item of a permanent probationary employee is not transferred, their former agency must maintain their leave until the employee completes probation in the gaining agency. If he or she reverts to his/her hold item voluntarily or as a result of probationary termination, he or she shall return to the former agency.

Where the hold item of a permanent probationary employee is transferred, the employee's leave will be maintained by the gaining agency until the employee completes probation in the gaining agency. In the event a permanent probationary employee is not being transferred, but his or her hold item is being transferred, the losing agency should make every effort to reassign the probationer's hold item to an item not being transferred. If the losing agency is unable to reassign the probationer's hold item, the hold will be maintained by the gaining agency for the period of probation.

Where a contingent permanent probationary employee is being transferred, but his or her permanent hold item is not being transferred, his or her leave must be maintained by the former agency until the employee completes probation. Upon successful completion of the probationary period, the gaining agency must provide a permanent hold item in accordance with Rule 4.11.

Where a contingent permanent probationary employee is being transferred, as well as his or her hold item, the gaining agency must maintain a leave for the duration of the contingent appointment. Where a contingent permanent non-probationary employee is being transferred, the former agency is no longer obligated to maintain the leave on his or her former position. The gaining agency must provide a hold item to the employee's former title and maintain the leave for the duration of the contingent appointment.

Where a temporary or provisional employee accepts the transfer; the former agency is no longer obligated to maintain a leave for that employee. The gaining agency should make every effort to provide a hold item in the employee's former title and maintain the leave for the duration of the temporary or provisional appointment. The former agency may grant a discretionary leave in accordance with Rule 5.2.

If the losing agency has granted a discretionary leave to an employee transferred as part of the transfer of function, the losing agency is not required to maintain the discretionary leave. The losing agency may, in its discretion, maintain the leave.

The following chart is provided as a guide to the narrative above. The effect of leaves of absence on employees' rights during a transfer of function can be complicated, especially when multiple leaves are involved. Agency personnel staff should discuss specific cases with their Staffing Service Representative.

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Appointment Status	On Probation?	Incumbered Item being Transferred?	Hold Item being Transferred?	Agency Responsible for Leave
Permanent	Yes	Yes	No	Losing Agency
Permanent	Yes	Yes	Yes	Gaining Agency
Permanent	Yes	No	Yes	Gaining Agency
Contingent Permanent	Yes	Yes	No	Losing Agency for the remainder of probation; then Gaining Agency
Contingent Permanent	Yes	Yes	Yes	Gaining Agency
Contingent Permanent	No	Yes	No	Gaining Agency
Contingent Permanent	No	Yes	Yes	Gaining Agency
Temporary/ Provisional	No	Yes	Yes	Gaining Agency
Temporary/ Provisional	No	Yes	No	Gaining Agency*

*The gaining agency should make every effort to provide a hold item in the employee's former title and maintain the leave for the duration of the temporary and provisional appointment. The former agency may grant a discretionary leave in accordance with Rule 5.2.

Status on Eligible Lists

For interdepartmental promotion eligible lists, permanent non-probationary employees' names will be added to the gaining agency's department portion of the list in score order and removed from their former agency's department portion of the list. No action is required on the part of the employee to initiate this list change. An employee's status on the interdepartmental eligible list will remain unchanged.

Where the transferred employee is a permanent probationer with a mandatory leave from their former agency, the employee's name will remain on their former agency's department portion of the interdepartmental list until completion of the probationary period. Upon completion of the probationary period, the employee's name will be

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removed from the former agency's departmental portion of the interdepartmental list and, upon the employee's request, his/her name will be added to the gaining agency's department portion of the interdepartmental list.

For agency-specific title department promotion lists, the employee's name will be removed from the former agency's department promotion list effective the date of transfer unless that employee has a leave from a position in his/her former agency. If so, the employee's name will remain on the former agency's list for the duration of such leave.

The transfer of function has no impact on eligibility from open-competitive eligible lists.

Processing the Transfer of Function in NYSTEP

Since each section 70(2) is unique due to scope, size, timeframe, or complexities, it is important that a preliminary meeting be held to discuss the processing of the transfer of function. This meeting should be held as early in the process as possible and is generally initiated by the gaining agency. Representatives from the following agencies should attend this meeting:

- Gaining agency
- Losing agency
- Division of Budget
- Office of State Comptroller
- Department of Civil Service (including representatives from the Division of Staffing Services, Employment Records Section, Division of Classification and Compensation, and the Division of Information Resource Management—including representatives from the NYSTEP, REPORTING, NYSBEAS and ARS systems)

Submitting the Transfer of Function in NYSTEP

The losing agency initiates the Transfer of Function in NYSTEP via the TPM Mass Change Process (following this path in NYSTEP: **NY Title and Position Mgmt, TPM Mass Change, Use, Initiate Transfer of Function**). Upon initiating the Transfer of Function, the losing agency's roster will appear on their work list the next business day. Using the roster, the losing agency marks those items to be transferred to the Receiving Agency (gaining agency) and, when completed, approves the roster. The roster then appears on the receiving agency's work list. The receiving agency enters the effective date of the Transfer of Function and "works the roster" making any necessary changes to item number, location and funding information. When all information is correct, they approve the roster. The roster then appears on DOB's work list for review and

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approval. Upon approval of DOB, the NYSTEP database is updated the next business day. The items and employees are now in the receiving agency and no NYSTEP transactions are required.

Detailed instructions on submitting the Transfer of Function in NYSTEP can be found in the NYSTEP/TPM User's Manual, Chapter 11-Mass Change-Transfer of Function http://www.cs.ny.gov/businesssuite/docs/manuals/nystepman/ch11_agy_mass_change.pdf

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Following are samples of the posting notice and an individual offer of transfer both of which can be customized to an agency's particular circumstances in a transfer of function. Consistent with your agency's hiring practices, a follow-up appointment letter should be provided to transferred employees.

**SAMPLE – POSTING NOTICE
NOTICE OF TRANSFER PURSUANT TO
NEW YORK STATE CIVIL SERVICE LAW SECTION 70(2)**

Effective (date), the (describe function) of the (losing agency name) will be transferred to the (gaining agency name). In accordance with section 70(2) of the Civil Service Law, necessary employees of (losing agency name) who are substantially engaged in the function to be transferred will be offered a transfer to (gaining agency name). A copy of section 70(2) of the Civil Service Law is attached to this notice. Also attached is a list of names and titles of those employees who have been identified as substantially engaged in the function(s). Those employees who are being offered transfer will be individually notified and will have 10 days from receipt of the offer to accept or refuse the offer.

Employees who are transferred shall maintain their current titles, salary grades, civil service status and seniority dates. The transfer requires no further examination, qualification or additional probationary period. Employees on probation at the time of transfer will complete their probationary period at (gaining agency name). Prior to the close of business (the date prior to the effective date of transfer), any individual employee may protest his/her inclusion or exclusion from this transfer. Such protests must be addressed, in writing, to (name and address of the head of the losing agency), and must include reasons for the protest. A copy of the letter of protest must also be sent to (name and address of the head of the gaining agency). Failure to protest this transfer shall constitute consent to being included in this transfer. An employee who protests his/her inclusion or exclusion from this transfer will be advised of the determination of their protest within 10 days of its receipt. This determination is a final administrative determination which may not be appealed.

Depending on the circumstances of the particular transfer of function, agencies should select from the following options:

Option 1:

To be used when there are no opportunities for employees to be reassigned in their title or appointed to other titles within the losing agency

Employees who refuse transfer or who fail to respond to the offer of transfer will be determined to have waived entitlement to such transfer and will lose all rights to the transferred position, will be removed from the payroll, and will not be entitled to

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reemployment rights. Such employees, if tenured, will be placed on the appropriate reemployment lists effective the date of the transfer of function, if the transfer would result in a change in the employee's geographic work location from one county to another.

Option 2:

To be used when there are opportunities for employees to be reassigned in their title or appointed to other titles within the losing agency

Employees who refuse transfer or who fail to respond to the offer of transfer will be determined to have waived entitlement to such transfer and will lose all rights to the transferred position. Such employees will remain in (name of losing agency) employed in their current title or appointed to another title.

If you have any questions concerning this transfer or posting, including your status or rights, please contact (name of Personnel Office contact, Personnel Department, name of losing agency).

Attachments

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**SAMPLE – INDIVIDUAL OFFER OF TRANSFER PURSUANT TO
NEW YORK STATE CIVIL SERVICE LAW SECTION 70(2)**

Date

Employee Name
Address

Dear Employee:

You are hereby being offered a transfer pursuant to Civil Service Law section 70(2) effective (date) to (gaining agency name). The (describe function) of the (losing agency name) and those employees substantially engaged in the performance of this function are being transferred to (gaining agency name). If you accept this transfer, you will maintain your current title, salary grade, civil service status and classified seniority date within (gaining agency name). The transfer requires no further examination, qualification or additional probationary period. If you are on probation at the time of transfer, you will be required to complete your probationary period at (gaining agency name).

Depending on the circumstances of the particular transfer of function, agencies should select from the following options and include in this individual offer of transfer:

Option 1:

To be used when there are no opportunities for employees to be reassigned in their title or appointed to other titles within the losing agency:

If you refuse this transfer, or fail to respond to this offer of transfer, you will have waived entitlement to such transfer and will lose all rights to your position, you will be removed from the payroll, and you will not be entitled to reemployment rights. Your name will only be placed on an appropriate reemployment list effective the date of transfer if you are tenured, and the transfer would have resulted in a change of your geographic work location from one county to another. **Can omit this last sentence if there is no change in work location.**

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Option 2:

To be used when opportunities exist for employees to be reassigned in their title or appointed to other titles within the losing agency:

If you refuse this transfer, or fail to respond to this offer of transfer to, and an opportunity has been identified for you to be reassigned in your title or appointed to another title, you will remain employed in the (losing agency name). However, you waive all opportunities to transfer as part of this transfer of function.

If you have any questions concerning this transfer, please contact (Personnel Office contact, Personnel Department, name of losing agency).

Sincerely,

Attachment

Acceptance/Declination Form

Please check the statement that applies and return this letter to (gaining agency contact name and address).

This letter confirms my **acceptance** to transfer under section 70(2) of the Civil Service Law. I understand that I will be transferred in my current title.

Option 1:

This letter confirms my **refusal** to transfer under section 70(2) of the Civil Service Law. I understand that in refusing his transfer, I am waiving entitlement to such transfer and will lose all rights to my position, that I will be removed from the payroll and will not be entitled to reemployment rights.

Option 2:

This letter confirms my **refusal** to transfer under section 70(2) of the Civil Service Law. I understand that in refusing this transfer, I am waiving entitlement to such transfer.

NOTE: If you intend to protest your inclusion on the list of employees substantially engaged in the function to be transferred, you should accept this offer pending a

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determination on the protest. Failure to do so may result in waiving your rights to this transfer.

Agencies may wish to include additional information specific to the transfer of function occurring.

YOU MUST RESPOND TO THIS OFFER OF TRANSFER WITHIN 10 DAYS OF RECEIPT OF THIS OFFER.

Signature

Home Address

Name-Please Print

Home Address

Social Security Number: xxx-xx-_____ [last four digits only]

Home Phone Number:

Current Work Number:

Work Location:

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Transfer of Function Pursuant to Civil Service Law Section 70(2)

Civil Service Law section 70(2) provides, in pertinent part, as follows:

Transfer of personnel upon transfer of functions. Upon the transfer of a function (a) from one department or agency of the state to another department or agency of the state,... provision shall be made for the transfer of necessary officers and employees who are substantially engaged in the performance of the function to be transferred. As soon as practicable after the adoption of a law, rule, order or other action directing such a transfer of function, but not less than twenty days prior to the effective date of such transfer, the head of the department or agency from which such function is to be transferred shall certify to the head of the department or agency to which such function is to be transferred a list of the names and titles of those employees substantially engaged in the performance of the function to be transferred, and shall cause copies of such certified list to be publicly and conspicuously posted in the offices of the department or agency from which such function is to be transferred, along with copies of this subdivision. Any employee of the department or agency from which such function is to be transferred may, prior to the effective date of such transfer, protest his or her inclusion in or exclusion from such list by giving notice of such protest in writing addressed to the heads of the respective departments or agencies from which and to which transfer is to be made, which notice shall state the reasons for the protest. The head of the department or agency to which such function is to be transferred shall review the protest and after consultation with the head of the department or agency from which such function is to be transferred notify the protestor within ten days from the receipt of such protest of the determination with respect to such protest. Such determination shall be a final administrative determination. Failure to make such protest shall be deemed to constitute consent to inclusion in or exclusion from, as the case may be, the certified list of employees engaged in the function to be transferred. Officers and employees so transferred shall be transferred without further examination or qualification, and shall retain their respective civil service classifications and status. For the purpose of determining the officers and employees holding permanent appointments in competitive class positions to be transferred, such officers and employees shall be selected within each grade of each class of positions in the order of their original appointment, with due regard to the right of preference in retention of disabled and non-disabled veterans. Any employee who fails to respond to or accept a written offer of transfer from the department or agency to which such function is to be transferred within ten days after receipt of such offer shall be deemed to have waived entitlement to such transfer. All officers and employees so transferred shall, thereafter, be subject to the rules of the civil service commission having jurisdiction over the agency to which transfer is made. Officers and employees holding permanent appointments in competitive class positions who are not so transferred shall have their names entered upon an appropriate preferred list for reinstatement to the same or similar positions in

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the service of the governmental jurisdiction from which transfer is made and in the office or agency to which such function is transferred..."

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1850(D) To PR-50'd Positions

Page 1

File this material in the section of the manual referenced above.

.1 BACKGROUND

.110 Purpose

.111 Generally a position must be filled at its classified title and grade level; however, under certain circumstances, an agency may be permitted to fill a position at a level below that approved by the Division of Classification and Compensation and the Division of the Budget. Such an appointment is referred to as being made to a "PR-50'd" item. The term "PR-50'd" is, in fact, commonly accepted jargon which stems from a numbered payroll and personnel transaction form previously used to make such appointments. This form is no longer in use.

.120 Legal Basis

.121 Although the Civil Service Law does not directly provide for such an accommodation, the authority for filling a position at other than the approved classified budgeted title can be found in Section 44.4 of the State Finance Law. That Section, in part, provides "...that upon approval of the Director of the Budget and the State Civil Service Commission where the position involved is in the classified service... a part of any such appropriation may be expended for a position in the same occupational field or service, carrying a title, grade and salary lower than the position for which the appropriation is made...."

.2 POLICY

.210 Conditions

.211 Generally, an agency will be allowed to fill a position at a lower level, when it can demonstrate that it is experiencing difficulty in recruiting candidates to fill the position at the classified budgeted level.

.212 Positions that are budgeted at the journey level, but filled at the lower level, as part of a formalized traineeship or career ladder program, are exempted from the guidelines contained in this section because prior approval to "PR-50" is included in the establishment of the traineeships and career ladder. For example, appointment to Personnel Administrator Trainee I is made to a position which has been "PR-50'd" from the Senior Personnel Administrator (G-18 level).

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File this material in the section of the manual referenced above.

4 PROCEDURE

.410 Approval

- .411 Agencies seeking to fill a position at a lower than classified budgeted level must obtain specific approval from the appropriate Staffing Services Section. Agencies must come to an agreement with the Staffing Services Section on the duration for the appointment.
- .412 If such action would result in bargaining unit change the agency must contact the appropriate Classification and Compensation section for approval of the requested action.
- .413 Once approval to PR-50 a position is granted (see limitations below) a PR-75 Payroll Transaction Form must be submitted indicating in the remarks section that such approval has been received.

.420 Limitations

- .421 Staffing Services will approve a request to PR-50 a position if the following conditions are met:
 - A. The request for PR-50 is to a title in the same occupational field and at a lower functioning level than the budgeted title. Usually this means in the same classification series.
 - B. The title to which the position is being "PR-50'd" already exists as a classified title and is graded. With the exception of non-statutory traineeships or career ladder positions, PR-50's of non-statutory positions will not be approved.
 - C. There are no qualified candidates willing to accept appointment to the position at its original budgeted title and level; i.e., there is no viable eligible list, preferred list or placement roster in existence. The agency may also be requested to demonstrate that an effort has been made to fill the position at the budgeted level, through advertising, special recruitment, etc.
- .422 In situations where all of the above conditions have not been met, the Section 44.4 requests (PR-50's) should not be approved. In such cases the agency may wish to explore the appropriateness of having the position reclassified.

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- .423 Usually, only temporary appointments will be allowed to positions that have been PR-50'd; except for appointments made to the trainee level or to lower level positions that are part of a formalized career ladder. Any further exceptions must be discussed with and agreed to by the appropriate Staffing Section.
- .424 If an eligible list, preferred list or placement roster is in existence for the title to which the PR-50 has been approved, a list appointment must be made in accordance with normal Civil Service procedure.

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1. BACKGROUND

.110 Responsibilities

- .111 The Department of Civil Service is responsible for maintaining accurate personnel status records for State employees. Since these records serve as a basis for determining employees' eligibility to compete in promotion examinations, eligibility for transfer or reinstatement, and seniority dates for layoff purposes, it is critical that agencies process changes in personnel status in an accurate and timely fashion via NYSTEP transactions.

.120 Purpose

- .121 In those instances where such changes are not reported in a timely manner, or where an error preventing the processing of a change has occurred, agencies may request that an employee's status and/or appointment date be corrected on a retroactive basis. Such situations are often referred to as "Backdated Appointments; however for the purposes of state policy and operations, we shall now use the term "retroactive appointments" exclusively.

.2 POLICY

.210 Criteria

- + .211 Retroactive appointments are intended to correct past clerical or ministerial errors in processing or recording valid appointments.
- .212 The head of the appropriate Staffing Services Section has the authority to permit retroactive appointments where the requested retroactive date does not exceed six months and the action does not involve the payment of additional monies. Additionally, Staffing Services Section Heads have the authority to approve retroactively mandated trainee advances and formalized career ladder advances in those cases where there is no question as to the entitlement of the employee. (The six month limitation described above does not apply to mandated trainee or career ladder advances.)
Certain sensitive or complex cases may be referred to Director of the Division of Staffing Services for final determination.
- .213 Appointments effective retroactive more than six months or involving payment of additional monies may be authorized only by the Director of the Staffing Services Division (noting the exceptions of mandated trainee advances and formalized career ladder advances as mentioned in .212 above; and also excepting retroactive appointments of five pay periods or less, as described below in .214E.)

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- .214 Retroactive appointments are appropriate when all of the following criteria are met:
- A. A clerical or ministerial error needs correction. It is only when there was an error in processing an appointment on the part of either the agency or the Civil Service Department that agencies should request a retroactive appointment.
 - B. ALL constitutional and statutory conditions for permanent appointment must have been met at the time the "error" prevented the appointment. The agency making the request must show that there was an item available to which a permanent or contingent permanent appointment could have been made on the effective date and that the individual was eligible for permanent appointment on the requested effective date. The agency must demonstrate that there was no budget freeze, reemployment list or other factor that would have prevented the appointment on the date of the retroactive appointment.
 - C. The intent of the appointing authority on the proposed effective date to permanently appoint the employee in question must be apparent and documented by a denied NYSTEP transaction, an appointment letter, or some other dated document acceptable to the Department of Civil Service.
 - D. The agency must describe in writing the error that prevented permanent appointment and explain the circumstances which resulted in the error and include any available documentation to substantiate those circumstances.
 - E. + In cases where the appointment date is less than five payroll periods retroactive, the State Comptroller's Office does not require agencies to obtain advance approval or provide documentation for payment of any additional money. Retroactive appointments of five payroll periods or less do not require exceptional approval and may be submitted directly to NYSTEP. Except in cases of mandatory trainee advances or formalized career ladder advancements (where there is no question concerning the employee's entitlement) all requests for retroactive appointments which involve the payment of additional money beyond the five payroll periods must first be submitted in writing by the requesting agency to the Director of Staffing Services for review in accordance with the criteria set forth in A - D above. Approval by the Director of Staffing Services will be accepted by the Office of the State Comptroller as sufficient authorization in these cases.

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1850 (E) Retroactive Appointments

Review and Approval Requirements for Various Retroactive Appointment Transactions

type of backdate	5pp or less	5pp - 6 months	over 6 months
No \$\$ involved	DCS: NYSTEP review OSC: NYSTEP approval	DCS: Staffing Section Head approval OSC: Civil Service Approval	DCS: Staffing Director approval OSC: Civil Service Approval
\$\$ involved		DCS: Staffing Director approval OSC: Civil Service Approval	DCS: Staffing Director approval OSC: Civil Service Approval
Mandated trainee/career ladder advance		DCS: Staffing Section Head approval OSC: Civil Service Approval	DCS: Staffing Section Head approval OSC: Civil Service Approval

.3 INTERPRETATIONS

310. The following illustrate various situations in which retroactive appointments would NOT be appropriate, and, if based on case law, the decision on which the determination was based:

1. To avoid a hiring freeze an agency requests the retroactive appointment/leave of absence of an individual to a date BEFORE he/she passed the physical/medical test for the position.
In Montero v. Lum, the court determined that such an appointment is in violation of the constitutional mandate of appointment only upon proof of merit and fitness.
2. An agency appoints an individual temporary pending passing a required phys/med test. Before the test is conducted, the eligible list expires. The agency requests a retroactive appointment for the person, citing good faith in making the appointment, and also noting the Department of civil service's inability to provide a timely test.
See Montero v. Lum; also, in Hurley v. Bd. of Ed. the court stated that no constitutionally permissible appointment may be made after the expiration of the relevant list.
3. An agency seeks the retroactive appointment of an employee, noting that on the requested effective date the employee was reachable for appointment, and "it is the agency's policy to promote employees as they become reachable. Due to a clerical error we never effected the appointment." The agency does not provide evidence that the appointment of the employee in question was ever ordered or intended.

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.3 Interpretations (continued)

3. (continued)

The appointing authority must demonstrate that it had actually exercised its discretion in appointment by selecting a candidate for appointment, and making that appointment.

4. An agency seeks a retroactive permanent appointment of an employee who had indicated entitlement for veterans' credits. Processing the S-203 takes a number of weeks. The agency wishes to transact the permanent appointment back to the date of "original" appointment.

In Marlow v. Tully the court determined that the administrative procedure of processing the S-203 to confirm the claim of veterans' credits must be completed before the permanent appointment may be made.

.4 PROCEDURES

.410 Requests/Determination

- .411 + If an approved request will result in the retroactive payment of additional monies beyond five payroll periods (retroactive traineeship and formalized career ladder advances excepted) the agency must submit a written request to the Director of Staffing Services indicating how the request meets the above criteria.
- .412 + The agency must request approval of all retroactive appointments beyond five payroll periods in writing from the Civil Service Department, Division of Staffing Services. The request must show that the above criteria have been met and the item number of the position was available. Where approval of the Director of Staffing Services is required, the request must be submitted to the Director of the Staffing Services Division.
- .413 When a final determination has been made concerning a request for retroactive appointment, formal notification will be made by the appropriate Staffing Services Section to the requesting agency.
- .414 If approval has been granted, a NYSTEP transaction must be processed to effect the retroactive appointment.
- .415 + If the request is denied and the appointing authority wishes to challenge the Director of Staffing Services' decision, an appeal of the decision may be submitted to the Civil Service Commission.

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1850(F) Voluntary Demotions

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.1 Background

.110 Description and Legal Basis

.111 Voluntary demotions are herein defined as the movement of a permanent employee from a higher salary grade position to a lower salary grade position with the agreement of the employee. This includes those situations in which an employee agrees to a demotion in lieu of discipline, but does not include those demotions which are penalties explicitly imposed by the disciplinary process, nor those situations which occur because of reclassification or reallocation, nor the return of probationers to hold items.

.112 There is no explicit authority in statute or rule for a voluntary demotion. However, voluntary movement from a higher level position to a lower level position may occur through mechanisms which are extant in law or rule:

- Transfer to a lower level position may be made pursuant to §70.1, §70.4 or §52.6.
- Reinstatement to a lower level position may be made pursuant to Rule 5.4.
- Appointment may be made to a lower level non-competitive class or a labor class position pursuant to CSR 2.2 or 2.3, respectively.

Since these sections of law and rule are enabling, their related laws, rules and policies must also be applied.

.2 Policy

.211 The Department of Civil Service shall permit a voluntary demotion provided that the employee is qualified to perform the duties and responsibilities of the lower-level position, and the voluntary demotion takes place in accord with the general policies applicable to the type of appointment under which the demotion will occur.

.212 Probationary periods for voluntary demotions are those required by the type of appointment under which they occur.

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.4 Procedures

- .411 Where a voluntary demotion is intended, agencies should submit PR-75's with V DEMOTE as the appointment code. This code and the following procedures should not be confused with demotions which occur as a result of disciplinary action using the appointment code DEMOTE.
- .412 Agencies submitting Payroll Transactions with V DEMOTE as the transaction code must also indicate the appropriate type of appointment in the REMARKS section, i.e.
- Transfer §70.1 (or §52.6, or §70.4),
 - Reinstatement (Rule 5.4)
 - Appointment to the Non-competitive class (§2.2).
 - Appointment to the Labor class (§2.3).
- .413 Where a voluntary demotion via transfer occurs, an indication of whether or not the employee will serve a probationary period **must** also appear on the PR-75. Where a probationary period will be served, the appropriate probation end date should appear in Box 20 on the PR-75. Where no probationary period will be served "Probation waived" **must** appear in the REMARKS section.

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Policy Bulletin #91-04

1850 (G) Employment of Retired Public Employees

March 11, 1991

Appointments of Retirees

**Approved by the New York State Civil Service Commission
Pursuant to Section 211 of the NYS Retirement and Social Security Law**

By law, the Civil Service Commission reviews the return to public employment of retired public employees to determine whether they will be permitted to continue to receive their pensions. The law sets forth a number of conditions for Commission approval and limits any single term of a Section 211 waiver to two years, subject to renewal upon subsequent Commission review. Appointing officers must recognize that the Civil Service Commission approval grants the continuation of pension benefits during the period of public employment; Commission approval does not relieve appointing officers of all usual merit system requirements for appointment. For example, any non-permanent appointment, including those for which Section 211 privileges are granted, is subject to revocation upon establishment of an eligible list or reemployment list.

APPROVAL OF THE CONTINUED RECEIPT OF A RETIREMENT BENEFIT UNDER SECTION 211 DOES NOT BESTOW PERMANENT STATUS TO THE EMPLOYEE SO APPOINTED.

When appointing someone whose pension benefits have been preserved by Commission action, appointing officers must advise the appointee in writing:

"The NYS Civil Service Commission has approved for a period of up to two years your continued receipt of pension benefits while you are employed by New York State. This is not a two-year guarantee of employment. Your appointment is subject to all provisions of law, rule, regulation, and policy governing public employment: if you have been appointed on an other-than-permanent basis, i.e. temporary or provisional pending examination, certification of a preferred list, a reemployment roster, or an examination eligible list for your position may result in your termination. Please consult your personnel office if you have any questions about this."

Questions should be addressed to your Staffing Services Representative.

References:

- §§211, 212 NYS Retirement and Social Security Law
- 1850(G) NYS Personnel Management Manual

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Advisory Memorandum #99-06

1850 (G) Employment of Retired Public Employees

December 22, 1999

TO: Department and Agency Personnel, Human Resource and Affirmative Action Offices

FROM: Nicholas J. Vagianelis, Director of Commission Operations and James W. Sever, Director of Staffing Services

SUBJECT: Request to Employ Retired Public Employees Pursuant to Section 211 of the New York State Retirement and Social Security Law

The Department of Civil Service is streamlining the process for submitting requests to employ retired public employees pursuant to Section 211 of the New York State Retirement and Social Security Law. Effective beginning with materials for consideration at the January 2000 Civil Service Commission meeting, you should send this type of request directly to the Office of Civil Service Commission Operations. It is no longer necessary to send these requests to your Staffing Services Representative.

Form CSC-1, used for Section 211 requests, has been updated slightly. Section A, B, C, D, and E remain essentially the same. You should send in three copies of the original form instead of four. Instructions for preparation and submission are on the back of CSC-1.

Enclosed are revised copies of the Form CSC-1 dated December 1999. You may photocopy the form or you can download it from the Department of Civil Service Website. Please recycle form CSC-1 dated 4/95.

In all other respects, the processing of this request remains the same. Questions can be directed to Al Jordan of the Office of Commission Operations at (518) 457-2575.

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Advisory Memorandum #95-02**

1850 (G) Employment of Retired Public Employees

TO: Department and Agency Personnel and Affirmative Action Offices
FROM: Nicholas J. Vagianelis, Director of Commission Operations
SUBJECT: Requests to Employ Retired Public Employees Pursuant to Section 211 of the New York State Retirement and Social Security Law
DATE: May 12, 1995

Section 150 of the Civil Service Law requires that the pension of retirees be suspended upon the retiree's reemployment in the civil service of the state, municipality or political subdivision.

Sections 211 and 212 of Article 7 of the Retirement and Social Security Law provide statutory authority for the reemployment in the public service of retired public employees without suspension or diminution of retirement allowance under certain circumstances.

Section 212 provides for a retiree to earn up to the maximum entitled under the New York State Retirement Law without diminution of retirement allowance. The current limitation, effective 1994, is \$11,200 in any calendar year. Section 211 provides for a retiree to earn more than the maximum under Section 212 without loss or diminution of pension.

All requests to employ retirees pursuant to Section 211 must be approved by the Civil Service Commission.

Form ADM-10.4 has been used to process a Section 211 request through the Civil Service Commission. We are issuing Form CSC-1 (4/95) to replace ADM-10.4 which was last issued in January 1989. Enclosed is a copy of the new form which is available from the Department of Civil Service Mail and Supply Room at (518) 457-4495. Please destroy old ADM 10.4 forms.

If you choose to submit photocopies of the face page of CSC-1, it is important that you retain copies of the Instructions on the reverse page for reference.

Sections A, C, and D of form CSC-1 are essentially the same as on Form ADM-10.4. There are several revisions in other areas.

In Section B you are asked enter the employee's Retirement System mailing address and the number of years the retiree has been employed pursuant to Section 211. We have omitted the question on yearly salary at retirement and relocated the question on whether the retiree has worked under Section 211 or Section 212 in the calendar year.

The Certification now requires that the Appointing Authority or Designee **PRINT** Name, Title and Phone No. in addition to signing the affirmation.

Section E is to be completed by the Requesting Agency. We have omitted questions on whether the requesting agency is the former employer of the retiree, any earnings limitations and calculations. Any questions on pension benefits should be directed to the retiree's Retirement System. There are new questions asking if the retiree's salary exceeds the 212 limit, the year in which the retiree attains age 70, and if the retiree is receiving disability benefits.

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1850 (G) Employment of Retired Public Employees

DISABILITY RETIREES ARE NOT ELIGIBLE FOR EMPLOYMENT UNDER SECTION 211. PLEASE VERIFY THAT THE RETIREE RECEIVED A SERVICE RETIREMENT, NOT A DISABILITY RETIREMENT.

NOTE: Questions concerning whether or not an individual can be employed in Public Service in a calendar year pursuant to both Sections 211 and 212 should be directed to the employee's retirement system(s).

Instructions for preparation and submission are on the back of CSC-1. Any questions should be directed to your Staffing Services Representative.

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.1 BACKGROUND

.110 Legal Basis

- .111 Sections 211 and 212 of Article 7 of the Retirement and Social Security Law provide statutory authority for the reemployment in the Public service of retired Public employees without suspension or diminution of retirement allowance. A "retiree" as defined in Section 210 of the Article is "a retired member of a retirement system or pension plan administered by the state (New York) or any of its political subdivisions who is receiving a retirement allowance for other than physical disability."
- A. Section 210 of the Article also defines various other terms which relate to such reemployments.
- B. In addition, retirees employed pursuant to Sections 211 or 212 must meet the normal legal requirements for appointment.
- .112 Section 212 of Article 7 provides for a "retiree" to earn up to the maximum entitled under the New York State Retirement Law, without diminution of retirement allowance, pursuant to Section 203 of the Federal Social Security Act. The current maximum is \$6000 annually (effective January 1982). However, there are no limitations on maximum earnings under Section 212 during the calendar year the retiree reaches the age of 72 or in any year thereafter, although that retiree must still file form RS-4260, "Certification of Employment under 212," with the Retirement System, indicating he or she wishes to be subject to the provisions of Section 212.
- .113 Section 211 of Article 7 provides for a retiree to **earn more than the maximum entitlement under 212**, subject to some limitations determined on a case-by-case basis, with the approval of the appropriate body. In cases of State employment in the Classified Service, this body is the State Civil Service Commission. Section 211 should only be used for retirees **under** 72 years of age. Section 211 (2) (a) identifies the proper authority in the case of unclassified service positions in the State University system and certain positions in the municipal service and the judicial system.

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File this material in the section of the manual referenced above.

.2 POLICY

.210 Limitations

- .211 Section 211 should only be used for retirees **under** 72 years of age.
- .212 Disability retirees are **not** eligible for approval under Section 211.
- .213 Commission approval is generally granted for a two-year period. Once the approval has expired, a new request must be submitted. In those cases where approval under Section 211 is not granted by the Civil Service Commission, the retiree who wishes to be employed should contact the Retirement System to determine the effect on retirement benefits.
- .214 Approval for employment under Section 211 and appointment to a position are separate and distinct from each other. While the Section 211 approval is valid for two years, the appointment is not necessarily guaranteed for two years. If, for instance, the appointment were not permanent and a mandatory eligible list comes into existence for the position before the end of the two year period, the employee would be replaced by an individual appointed from the eligible list even though he or she had Section 211 approval. Conversely, some one with Section 211 approval could receive a permanent list appointment, and while the appointment would likely exist for more than two years, the Section 211 approval could not. Once the two years have expired, that person would then have the following options:
 - A. resign and continue to collect full retirement benefits;
 - B. remain in the position with his/her retirement benefits affected; or,
 - C. apply through the agency for a new Section 211 approval.

.4 PROCEDURE

.410 Requests

- .411 Section 212 - The retiree communicates with the Retirement System directly. No agency involvement is necessary.

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File this material in the section of the manual referenced above.

- A. The retiree must submit a completed form RS-4260, "Certification of Employment under 212" (attached), to the New York State Employees' Retirement System. This form may be obtained from the NYS Employees' Retirement System.
 - B. The Retirement System will notify the retiree directly, acknowledging his/her election to be subject to the conditions of Section 212, and advising the person of applicable earning limitations. The retiree's election is permanent and need not be renewed.
- .412 Section 211 - The agency must initiate the request. Before doing so, the agency should determine if the retiree is eligible to be employed under Section 211. (See .113 of this Section.)
- A. The agency must submit form ADM-10.1, "Request for Retiree Data" (attached), to the NYS Retirement System.
 - B. The Retirement System will note the appropriate financial information used in determining maximum yearly earnings for the individual and return form ADM-10.1 to the agency.
 - C. The agency retains form ADM-10.1, completes form ADM-10.4 "Request for Approval to Employ Retiree" (attached), and submits four copies of the latter form to the appropriate Staffing Services Section of the Department of Civil Service.
 - . This form (ADM-10.4) contains detailed instructions for agency use. If the retiree was not a former State employee, place "unlimited" in the space of "maximum yearly earnings."
 - D. Staffing Services will forward to the Civil Service Commission the 211 request and a recommendation for approval based on the evidence as to the unavailability of qualified nonretirees.
 - E. Formal notification will be made by the Commission staff to the requesting agency and the NYS Retirement System when the Commission determination has been made.
 - F. Upon Civil Service Commission approval, the agency will submit a PR-75 using the transaction code "ReEmp" in Box 45.

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1800 Appointments

1850(G) Employment of Retired Public Employees

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File this material in the section of the manual referenced above.

Reg. No. _____

Ret. No. _____

New York State Employees' Retirement System
New York State Policemen's and Firemen's Retirement System
Gov. Smith State Office Building
Albany, New York 12244

CERTIFICATION OF EMPLOYMENT UNDER SECTION 212

To Be Completed By Pensioner:

I, _____, hereby certify that I wish to have my earnings from public employment regulated under Section 212 of the Retirement Law, which limits my annual gross income from such public employment to _____. I realize that earnings in excess of this amount, without the approval required by Section 211 of the Retirement Law, may result in the termination of my retirement allowance and my restoration to membership in the Retirement System or, if ineligible for such membership, having my pension reduced or suspended in accordance with Section 101 of the Retirement Law.

(Signature)

(Address)

(Zip Code)

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Advisory Memorandum #17-03

1850 (H) Traineeships

November 14, 2017

T0: Department and Agency Personnel, Human Resource, and Affirmative Action Offices

FROM: Scott DeFrusco, Director of Staffing Services

SUBJECT: Engineer Trainee Probation

This memorandum is to provide clarification of the Probation Guidelines for the Engineering Traineeship section in General Information Bulletin (GIB) No. 17-01.

The GIB probation guidelines stated:

*Individuals appointed as an Engineer Trainee must serve one year in the traineeship regardless of when they obtained their FE. After **successful** completion of one year as an Engineer Trainee, individuals must be appointed to the Grade 20 title as soon as they inform the Human Resources Office that they obtained their FE.*
(Emphasis added.)

The Engineer traineeship follows the probation rules outlined in Civil Service Rule §4.5. The rule states that every permanent appointment, promotion or transfer shall require satisfactory completion of a probationary term and that the probationer's supervisor, from time to time, will observe conduct and performance during the probationary term and advise the probationer of their status and progress.

Individuals appointed to an Engineer Trainee position should be advised of the criteria they must meet for successful completion of one year of service as a trainee. They should also receive periodic notification of their performance towards meeting such criteria. It is at the agency's discretion to define the criteria required for successful completion of one year. As such, it is possible that a trainee who has obtained their FE and has served 12 months or more in the traineeship is not advanced to Assistant Engineer, G-20, because the agency determines the employee has not successfully completed one year as a trainee.

Agencies may find it helpful to develop an Individual Development Plan (IDP) to provide benchmarks and a consistent method to determine successful completion of one year as an Engineer Trainee and for completing probation.

In accordance with the original GIB guidelines, individuals who do not obtain their FE by the end of the two years, or do not successfully meet the agency-established requirements for completion of one year as an Engineer Trainee must be removed from the Engineer Trainee position and cannot advance to Assistant Engineer.

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Advisory Memorandum #15-01

1850 (H) Traineeships

February 26, 2015

T0: Department and Agency Personnel, Human Resource, and Affirmative Action Offices

FROM: Abner JeanPierre, Director of Classification & Compensation
Scott DeFruscio, Director of Staffing Services

SUBJECT: Early Advancement of Trainees in Two-Year Professional Traineeships

THIS MEMORANDUM REPLACES ADVISORY MEMORANDUM #01-04.

In an effort to give agencies additional tools to reward and retain skilled employees, the Department will expand the early advancement option for all trainees serving in professional titles with two-year traineeships leading to Salary Grade 18. This change is effective February 26, 2015.

Early Advancement (fast-tracking) is defined as advancement from the second level of a two-year traineeship to the full-performance level of the target title after 18 months of service that exceeds the traineeship's performance standards. The trainee must be, therefore, functioning at the full-performance level of the title after 18 months of service. Use of early advancement is at the discretion of the appointing authority after a documented review of an employee's performance.

"Advanced placement" within a traineeship is distinct from early advancement. Advanced placement allows appointment, based upon a candidate's qualifications, to either the second level of a traineeship or the full performance level of the target title. Use of advanced placement is at the discretion of the appointing authority and used only at the time of original appointment. Only professional experience is creditable toward advanced placement.

NYSTEP transactions involving early advancement should be submitted in the same manner as other trainee advances.

All other traineeship program requirements are unchanged. The following is an outline of the basic requirements:

A. Agency Responsibilities

I. Review - Agencies must maintain an internal review process to ensure consistent, objective administration of the program, and to provide guidance and assistance to supervisors and trainees. Because of the diverse nature of state agencies, no particular

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configuration is required. Agency level review boards, administrative officers or personnel/training officers may be vested with this responsibility and have the authority to establish and ensure that adequate administrative practices exist in support of the program.

II. Role and Functions - Agencies will be responsible for:

- Monitoring the timeliness of preparation of Individual Development Plans (IDP's) and evaluations.
- Determining that consistency exists between the duties described in the IDP and position classification standards.
- Ensuring that rating levels across title/organizational lines are consistent and that sufficient justification exists to support rating levels assigned and the ultimate personnel decision to retain, advance or terminate the trainee.
- Fostering adequate training and development activities to provide trainees with the opportunity to acquire and demonstrate knowledge, skills and abilities necessary for successful journey level performance.

B. Documentation Requirements at the Agency Level

I. Individual Development Plans - Supervisors must develop IDP's to furnish trainees with relevant information about their duties and the standards against which their performance will be measured during the term of trainee service. The trainee's background and experience should be assessed against the requirements of the position and applicable training and development activities should be identified and included in the Plan.

II. Performance Evaluation and Payments - Trainees are to be evaluated at each six months of service, and based on their observed performance, assigned an appropriate rating. Trainees, who meet payment eligibility requirements, will receive any applicable performance advance payment on the beginning of the pay period that follows completion of 6, 12 and 18 months of service. Payment amounts for titles not equated to salary grades are published by the Director of Classification and Compensation in Title and Salary Plan advisories.

C. Early Advancement

This provision allows an agency to choose to advance a trainee to Grade 18 at the 18th month interval or at any point between the 18-month and 24-month intervals of service when conditions for early advancement are met.

Generally, the conditions for early advancement are that trainees received the highest performance rating at the 12th and 18th month intervals of trainee service AND

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demonstrate performance of the full range of duties and responsibilities of the Grade 18 position. By early advancing a trainee, the agency is attesting that the trainee is performing the full range of duties and responsibilities of the Grade 18 position.

Early advancement is not allowed in the following instances:

- The trainee was advanced placed to the second level of a traineeship to the target title. Accordingly, an appointee to the second level of a traineeship must still complete 52 weeks as a trainee.
- Titles that allow automatic advancement to higher allocated titles after the completion of one year of satisfactory service.
- Traineeships or automatic advancement plans that rely upon completion of college coursework, formal training, or the earning or possession of certifications, licensure, or other credentials.

The Director of Classification and Compensation retains the discretion to modify or terminate this program.

D. Applicable Titles

Professional titles with two-year traineeships leading to Salary Grade 18 (current titles listed in the chart below).

Title Code	Title	SG	JC	NU
8303100	Addictions Program Specialist	18	0	05
2801200	Administrative Assistant	18	0	05
1487100	Affirmative Action Administrator 1	18	0	06
1464100	Agency Training and Development Specialist 1	18	0	05
0104100	Assistant Investment Officer	18	0	05
6109001	Biologist 1 (Aquatic)	18	0	05
6111001	Biologist 1 (Ecology)	18	0	05
6113001	Biologist 1 (Marine)	18	0	05
6112001	Biologist 1 (Wildlife)	18	0	05
2001200	Budget Examiner	18	0	06

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0816100	Business Systems Analyst 1	18	0	05
0816150	Business Systems Analyst 1 (Health)	18	0	05
8118100	Child Support Specialist 1	18	0	05
8145100	Children and Family Services Specialist 1	18	0	05
8145111	Children and Family Services Specialist 1 (Minority Group)	18	0	05
6812100	Claims Services Representative 1	18	0	05
0232100	Contract Management Specialist 1	18	0	05
8606100	Criminal Justice Program Representative 1	18	0	05
8606110	Criminal Justice Program Representative 1 (Administration)	18	0	05
6412100	Dairy Products Specialist 1	18	0	05
6412120	Dairy Products Specialist 1 (Spanish Language)	18	0	05
0478100	Data Processing Fiscal Systems Auditor 1	18	0	05
8556610	Economic Development Program Specialist 1	18	0	05
8556612	Economic Development Program Specialist 1 (Agriculture)	18	0	05
3566100	Education Credentials Specialist 1	18	0	05
0213100	Education Finance Specialist 1	18	0	05
1423100	Employee Benefits Representative 1	18	0	06
1618210	Environmental Analyst 1	18	0	05
6154100	Environmental Chemist 1	18	0	05
1631210	Environmental Program Specialist 1	18	0	05
7861100	Fire Protection Specialist 1	18	0	05
6410210	Food Inspector 1	18	0	05
6410212	Food Inspector 1 (Spanish Language)	18	0	05

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6127100	Food Laboratory Specialist 1	18	0	05
1516110	Forester 1	18	0	05
1757100	Grants Administrator 1	18	0	05
2845601	Health Program Administrator	18	0	05
1762200	Higher Education Services Program Analyst 2	18	0	05
8916100	Highway Safety Programs Analyst 1	18	0	05
3841400	Historic Preservation Program Analyst	18	0	05
8106410	Homeless Services Representative 1	18	0	05
2367100	Housing and Community Renewal Specialist 1	18	0	05
2367110	Housing and Community Renewal Specialist 1 (Spanish Language)	18	0	05
8131510	Housing Specialist 1	18	0	05
1447100	Human Services Training Specialist 1	18	0	05
0450200	Insurance Examiner	18	0	05
450210	Insurance Examiner (Spanish Language)	18	0	05
6165030	Laboratory Specialist 1	18	0	05
0225100	Management Specialist 1	18	0	05
0225115	Management Specialist 1 (Children and Family Services)	18	0	05
0225116	Management Specialist 1 (Children and Family Services) (Spanish Language)	18	0	05
0225110	Management Specialist 1 (Spanish Language)	18	0	05
5220410	Mental Health Program Specialist 1	18	0	05
6322100	Narcotic Investigator 1	18	0	05
6322105	Narcotic Investigator 1 (Spanish Language)	18	0	05

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0201100	Payroll Analyst 1	18	0	06
1643100	Pesticide Control Specialist 1	18	0	05
1643110	Pesticide Control Specialist 1 (Spanish Language)	18	0	05
1771100	Policy Analyst 1 Public Authority	18	0	05
0372100	Policyholder Services Representative 1	18	0	05
2456200	Program Research Specialist 2	18	0	05
2456210	Program Research Specialist 2 (Agricultural)	18	0	05
2456220	Program Research Specialist 2 (Criminal Justice)	18	0	05
2456230	Program Research Specialist 2 (Economics Finance)	18	0	05
2456235	Program Research Specialist 2 (Health Care Finance)	18	0	05
2456236	Program Research Specialist 2 (Health Systems Analysis)	18	0	05
2456240	Program Research Specialist 2 (Human Services)	18	0	05
2456245	Program Research Specialist 2 (Medical Assistance)	18	0	05
2456250	Program Research Specialist 2 (Public Health)	18	0	05
2456260	Program Research Specialist 2 (Transportation)	18	0	05
2366100	Property Manager 1	18	0	05
2341100	Real Estate Specialist 1	18	0	05
2327030	Real Property Analyst 1	18	0	05
6662201	Resources and Reimbursement Agent 1	18	0	05
2279100	Retirement Systems Information Representative 1	18	0	05

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0438300	Senior Abandoned Property Accounts Auditor	18	0	05
0403300	Senior Accountant	18	0	05
2810300	Senior Administrative Analyst	18	0	05
1484500	Senior Affirmative Careers Program Specialist	18	0	06
0421300	Senior Auditor	18	0	05
2000300	Senior Budgeting Analyst	18	0	05
2834300	Senior Capital Program Analyst	18	0	05
1403300	Senior Classification and Pay Analyst	18	0	06
2290300	Senior Engineering Research Editor	18	0	05
0428300	Senior Examiner of Municipal Affairs	18	0	05
0658300	Senior Forest Appraiser	18	0	05
0230300	Senior Health Care Fiscal Analyst	18	0	05
1775300	Senior Health Care Management Systems Analyst	18	0	05
2401000	Senior License Examination Specialist	18	0	05
1420300	Senior Municipal Personnel Consultant	18	0	06
1441300	Senior Personnel Administrator	18	0	06
1441315	Senior Personnel Administrator (Spanish Language)	18	0	06
1412300	Senior Personnel Examiner	18	0	06
6130300	Senior Radiological Health Specialist	18	0	05
1405300	Senior Staffing Services Representative	18	0	06
1405310	Senior Staffing Services Representative (Attendance and Leave)	18	0	06
1463310	Senior Training Technician (Police)	18	0	05
0422100	State Program Examiner 1	18	0	05

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0422110	State Program Examiner 1 (Fiscal)	18	0	05
0422120	State Program Examiner 1 (Systems)	18	0	05
8445200	State Veterans Counselor	18	0	05
8445210	State Veterans Counselor (Spanish Language)	18	0	05
0467100	Tax Auditor 1	18	0	05
8183100	Temporary Assistance Specialist 1	18	0	05
8183115	Temporary Assistance Specialist 1 (Refugee and Immigrant Services)	18	0	05
6852100	Underwriter 1	18	0	05
2324050	Utility Analyst 1	18	0	05
7896100	Weights and Measures Specialist 1	18	0	05
2422100	Workforce Programs Specialist 1	18	0	05
2422030	Workforce Programs Specialist 1 (Youth Systems)	18	0	05

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Advisory Memorandum #01-05

1850 (H) Traineeships

July 30, 2001

TO: Department and Agency Personnel, Human Resource and Affirmative Action Offices

FROM: William E. Doyle, Director of Staffing Services & Nicholas J. Vagianelis, Director of Classification and Compensation

SUBJECT: Calculations of lengths of traineeships

PLEASE PROVIDE COPIES OF THIS MEMORANDUM TO YOUR PAYROLL OFFICES

Currently, for some traineeships (e.g., Administrative Traineeships and Correction Officer Trainees), when the end date of the required period of the traineeship falls during a pay period, payment for the advancement is delayed until the beginning of the following pay period. **Effective July 26, 2001, trainee advancements and corresponding payments for all types of traineeships will be made effective the end date of the required period of the traineeship.**

For example, if a Personnel Administrator Trainee 1 was appointed on June 14, 2000, under the old policy, payment for advancement to Trainee 2 would be effective June 21, 2001. Under the new policy, the advancement and payment would be effective June 13, 2001. If the employee was later fast tracked under the new policy, the advancement and payment would be effective December 12, 2001.

This policy changes the effective date of an employee's advancement and salary increase (new hiring rate, service payment or performance advance payment) to coincide with the end of the required period of service. **Interim salary increases** (6 month service payments for an apprentice, for example) that are not tied to an employee's advancement to a new title **will also be paid at the end of the required amount of service.**

All other rules regarding the administration of traineeships remain in place.

As a reminder, NYSTEP has and will continue to calculate traineeships, career ladders and apprenticeships in weeks. A one year traineeship is calculated at 52 weeks, a six month traineeship or traineeship performance payment at 26 weeks, a three month traineeship at 13 weeks, etc. The end date of the traineeship displayed on NYSTEP is beginning of business of that date and advancements should be made effective that date.

If you have any questions, please contact Barbara Collum at (518) 485-6550.

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Policy Bulletin #92-01

**1600 Interviewing
1860 Verification of Credentials**

February 7, 1992

TO: Agency Personnel Officers
FROM: Bob Parrish
SUBJECT: Review of Promotion Applications for Derogatory Information

Effective immediately, the Department of Civil Service will no longer review promotion applications (Form XD-5) for "derogatory" information.

The current promotion application (XD-5) asks promotion candidates the following question:

"Since last permanent appointment have you been convicted of any crime or do you now have a criminal charge pending against you?"

Future revisions of this form will no longer contain this question. It will be the responsibility of each agency to inquire about each candidate's background at the time of interview, using your own internal employment application form. If you do not wish to consider a candidate for appointment because of his/her background, contact the Investigations Section of the Department of Civil Service with all relevant information. They will conduct a background investigation and advise you and the candidate of the results.

Currently, most restrictions and disqualifications result from agency requests to investigate candidates. Our own internal review of promotion applications has produced very few restrictions or disqualifications relative to the work load. We believe it is more productive and meaningful for agencies to contact us with concerns about candidates at the time of interview.

We will shortly be issuing a State Personnel Management Manual section on credentials, which will more completely articulate our policy with respect to candidate background and credentials generally.

Any questions you may have concerning this memorandum should be directed to the Investigations Section at 457-5507.

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1600 - Interviewing, 1860 - Verification of Credentials

TO: Appointing Officers
FROM: Walter D. Broadnax
SUBJECT: Credentials Verification
DATE: July 9, 1987

Over time, the Civil Service Department has decentralized verification of educational and experience requirements to appointing authorities. By delegating authority as far as practicable, we believe not only that personnel officers and the staffs which assist them are competent to perform these functions, but also that the verification process can be accomplished more rapidly and efficiently. We are writing to remind you of the importance of this function.

It is essential that credentials be verified during the interview and appointment process. This will avoid situations where it becomes known subsequent to appointment that an employee does not possess the necessary credentials and, therefore, must be terminated.

Examination announcements for competitive class positions describe the education, licensure or certification and experience requirements necessary for appointment. Similarly, minimum qualification requirements are established for appointment to non-competitive class positions. In addition, although labor and exempt class positions have no established minimum qualifications, in actuality, some positions may require specialized education (e.g., a law degree for a General Counsel).

Appointments to positions requiring specific credentials must include the following attestation in the "Remarks" Section of the Payroll and Personnel Transaction Form PR-75 signed by the personnel officer or designated representative:

"I certify that the credentials which qualify the above-named individual for the position to which he/she is being appointed have been verified as current and documented."

Although a specific credential may not be required as part of the minimum qualifications for a position, it may nonetheless be advisable to verify the education and experience represented by

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prospective employees on their resumes or applications (e.g., the minimum qualifications for a position is a bachelor's degree, but you decide to hire an individual because he or she has both a bachelor's and a master's in a field which would make the individual particularly valuable to your agency. In such a case, both degrees should be verified).

Questions concerning specific requirements should be addressed to your Staffing Services Representative.


Commissioner

cc: Personnel Officers
Affirmative Action Officers

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POLICY BULLETIN NO. 84-01 (Rev.)

1860 Verification of Credentials

September 19, 1984

Page 1

File this material in the section of the manual referenced above.

TO: All Appointing Authorities

SUBJECT: Verification of Credentials

All of us who share the responsibility for employment of health care professionals by the State of New York must insure that such current and prospective employees possess proper credentials. It has become evident that procedures for review of credentials need strengthening. The health care disciplines which are regulated and, therefore, require certification and periodic recertification are represented by numerous titles in the State Title and Salary Plan. This regulatory requirement applies to appropriate levels within the following disciplines:

Audiology	Physical Therapy
Dental Hygiene	Physical Therapy Assistant
Dentistry	Physician's Assistant
Licensed Practical Nursing	Podiatry
Massage	Psychology
Medicine	Radiologic Technology
Occupational Therapy	Registered Professional
Occupational Therapy Asst.	Nursing
Optometry	Social Work
Pharmacy	Speech-Language Pathology

Your Personnel Officer will now have sole responsibility for review of credentials required for appointment to a position in one of the above disciplines. The employee must present the original of his or her present certificate of registration to that Personnel Officer or designated representative who will verify that the certificate is appropriate to the title and current and will make a photocopy of it for inclusion in the employee's personnel file. You have discretion to require presentation of the original license, permit, registration or certification. You must, however, assure that the review takes place before the employee begins work.

Furthermore, future appointments to positions requiring current registration must include the following attestation in the "Remarks" section on the Personnel and Payroll Transactions Form PR-75 (or a separate certification attached to Copy 2 of the Form PR-75) signed by the Personnel Officer or designated representative. Absent this attestation, the appointment will be disapproved:

"I certify that the credentials which qualify the above-named individual for the position to which he/she is being appointed have been verified as current and documented."