

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
2000 Probation**

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**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Effective September 2, 1992, subdivision (f) of Rule 4.11 (Permanent appointments to encumbered positions) was repealed.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Note: State Personnel Management Manual section 1830(A), subsection .225 is no longer valid: a copy of replacement pages 1 & 2 of that section is enclosed.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.

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Advisory Memorandum #89-05

2000 Probation

July 14, 1989

TO: Agency Personnel and Affirmative Action Officers

FROM: Robert Parrish

SUBJECT: *Reis* Case Dismissal by Court of Appeals

DATE: July 12, 1989

SPMM Advisory Memorandum #89-01 discussed a proposed change to Rule 4.5 which specifies that probation commences on the effective date designated by the appointing authority and approved by the Civil Service Department. The change to Rule 4.5 was approved by the Commission and is currently before the Governor.

In the meantime the New York State Court of Appeals has decided the *Reis* case, which was also discussed in the Advisory Memorandum. In its unanimous, summary dismissal, the Court of Appeals held that the probationary period begins to run on the actual date of permanent appointment, and not the date of list establishment. This is in accord with long-standing practice and procedure, which the proposed amendment to Rule 4.5 reflects. This decision by the State's highest Court settles the matter.

Probation commences on the date formally designated by the appointing authority as the date of permanent appointment. Provisionals who are eligible and reachable for permanent appointment begin their probationary periods on the date their permanent appointments become effective.

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Advisory Memorandum #89-01

2000 Probation

January 27, 1989

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TO: Agency Personnel and Affirmative Action Officers

FROM: Robert Parrish *RP*

SUBJECT: Proposed Change in Rule 4.5

DATE: January 27, 1989

In the decision of the Appellate Division, 1st Department, in the Reis case, a provisional public employee's probationary period was determined to begin when the employee's name appeared on the eligible list for the position, not when the employee was formally appointed by the payroll process. That decision is now on appeal to the Court of Appeals. We expect to participate in the appeal with the filing of an amicus brief stating our interpretation of Law and Rule, and our historical practice of initiating probation upon formal appointment, following successful completion of the competitive examination process.

Several cases on this same issue have been brought since Reis. Pending the outcome of the appeal, the Civil Service Commission has proposed a change in Rule 4.5 to reiterate the longstanding policy regarding the point of inception of probation. This change is being published in the State Register as required for changes to agency regulations. The text is as follows:

Rule 4.5 Probation. (a) It is the intent of the Civil Service Commission that permanent appointments, promotions or transfers shall require, as provided herein, satisfactory completion of a probationary term which shall include a minimum and a maximum period of probation. Such probationary term shall commence on the effective date designated by the appointing authority and approved by the civil service department for the appointment, promotion or transfer on a permanent basis. Such appointments, promotions or transfers shall not become permanent prior to satisfactory completion of at least the minimum period and may require satisfactory completion of the maximum period of probation. If the conduct or performance of a probationer is not satisfactory, his or her employment may be terminated at any time after eight weeks and before completion of the maximum period of [service] probation.

[] = material to be deleted

_____ = material to be added

Following the receipt of any comments to the proposed change, the Commission will finalize the wording of the Rule.

In the interim agencies should be aware that provisionals who are successful on the examination for their position begin their probationary period when the eligible list is established, not when it is later determined that they are reachable for appointment.

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Advisory Memorandum #06-02

2010 PROBATION

July, 2006

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

FROM: Terry Jordan, Director of Staffing Services
Stella Chen Harding, Director of NYS Civil Service Commission Operations

SUBJECT: Revision to Advisory Memorandum #86-02 "Probation is the last, and perhaps most critical, step..."

This memorandum updates Advisory Memorandum #86-02 in Section 2010 of the State Personnel Management Manual. That Advisory Memorandum should be removed and replaced with this document. The "white pages" of SPMM section 2010 – distributed under Transmittal Memorandum 49, August 1999 – are under revision. The changes documented in this Advisory Memorandum will appear in the upcoming revision. Pending publication of the revision, please annotate SPMM 2010.220 to reflect this amended policy.

Probation is the last and perhaps most critical step in the selection process. It is the intent of the Civil Service Commission that permanent appointments, including promotions and transfers, require satisfactory completion of a probationary term which shall include a minimum and a maximum period of probation. As set forth in Rule 4.5, a probationer may be terminated if his or her conduct or performance is unsatisfactory. When effecting a probationary termination, agencies should adhere to all relevant Rule 4.5 procedural standards and requirements.

Appointing authorities are vested with discretion regarding whether to retain or terminate a probationer as specified in Rule 4.5. ***The Civil Service Commission will not review the determinations of appointing authorities in such matters, whether on the merits or in those instances alleging procedural defects in an agency's administration of Rule 4.5.*** Notwithstanding, the Department of Civil Service will continue to monitor agency compliance with Rule 4.5 and may elect to investigate and/or correct specific instances where substantiated, material violations of Rule 4.5 have occurred.

Agencies should not terminate probationers who voluntarily leave their positions before the end of their probationary terms solely to obtain budget waivers to fill behind the departed employees. This constitutes a violation of the intent and purposes of the probationary period.

Questions concerning probationary administration and the provisions of Rule 4.5 should be directed to your Staffing Services Representative.

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STATE PERSONNEL MANAGEMENT MANUAL

POLICY BULLETIN NO. 83-02

2010 (Probation)

January 25, 1983

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

TO: All Personnel Officers

SUBJECT: Revision of Rule 4.5 Probation to Foster Increased Career Mobility

The Governor recently signed Resolution 206 amending Rule 4.5 Probation that will foster increased career mobility for State employees. Attached is a copy of the signed Resolution for your reference.

Rule 4.5 Probation was amended to:

- 1) Provide the agency that is filling the position through transfer the authority to waive the probationary period for the appointee. The decision to waive a probationary period should be based on the assessment of the appointee's merit and fitness for the position as demonstrated by observed performance. The policy of this agency in implementing this rule change is to require that the decision to waive a probationary period be made at the time of transfer and noted in the "Remarks Section" of the Form PR-75 effecting the transfer. Requests to waive a probationary period subsequent to the date of transfer will not be approved.
- 2) A transfer shall become permanent upon the retention of the probationer after the completion of the maximum probationary period of service, or upon earlier written notice following completion of the minimum period that the probationary term is successfully completed, or upon written notice at the time of appointment that the appointing authority has elected to waive the probationary term.


Ralph J. Vecchio
Executive Deputy Commissioner

Attachment



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

No. 206

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 (i) 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) (i) 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) (i) 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

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.1 BACKGROUND

.110 Purpose

.111 The probationary period is the final and perhaps most critical step in the selection process. It is intended to provide an opportunity to evaluate an employee on the knowledge, skills, and ability (as demonstrated by the employee's conduct and performance) not evaluated by other parts of the selection process. Any permanent or contingent permanent appointment, including original appointment, promotion, reinstatement, or transfer requires satisfactory completion of a probationary period. Most probationary periods have a minimum and maximum term, specified in Title 4, Chapter 1 of the Rules for the Classified Service (hereafter, 4NYCRR). Probation continues until satisfactory completion, resignation, or termination.

.120 Legal Basis

.121 §63.1 of the Civil Service Law (CSL) requires that "every original appointment to a position in the competitive class and every interdepartmental promotion shall be for a probationary term." §63.1 also authorizes the Civil Service Commission to provide, by rule, for probation upon intradepartmental promotion and upon appointment to positions in the non-competitive, exempt, or labor classes.

.122 §4.5 (4NYCRR) implements §63.1 CSL and sets forth the conditions and extent of probationary service.

.2 Policy

.210 Minimum–Maximum Probation Period

General Statement—Every permanent and contingent permanent appointment to a position in the classified service requires a probationary period of 26 to 52 weeks unless otherwise specified. [Note: No probationary period is required or may be imposed if the appointment is temporary or provisional.] Exceptions to the 26–52 week provision:

1. A **promotion** to a position at grade 13 or below requires a probationary term of 8 to 26 weeks; promotion to a position at grade 14 or above requires a probation of 12 to 52 weeks (except see #6 below). Promotion is defined as an appointment of a permanent competitive, non-competitive, or labor class employee to a competitive class position from a promotion or transition list, or the appointment of a permanent non-competitive or labor class employee to a higher grade position in the same jurisdictional class.
2. **Appointment of a permanent non-competitive or labor class employee to another position in the same jurisdictional class** at grade 13 or below requires a probation of 8 to 26 weeks; appointment to a position at grade 14 or above requires a 12 to 52 week probation. Probation may be waived at the discretion of the appointing authority and with the consent of the employee if the appointment is to a position at the same or a lower salary grade, and within the same appointing authority. Probation may not be waived for a probationer so appointed; the probationer must serve a complete probationary period.

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3. A **transfer** (pursuant to §§70.1, 70.4 or 52.6 CSL) to a position at grade 13 or below requires a probation of 8 to 26 weeks; a transfer to a position at G-14 or above requires a 12 to 52 week probation. Probation may be waived at the time of transfer (see .235; also except see #6 below). A probationer who transfers may not have the probationary period waived and must serve a complete probationary period as specified in .231 below.
 4. A **preferred list reinstatement** does not require or permit any probation period EXCEPT if the employee was a probationer at the time of separation. In that case, the employee must complete the remainder of the probationary period upon preferred list reinstatement (except see # 6 below).
 5. An appointment from a **redeployment list or agency reduction transfer list** to a position in the same title—no probationary period is served EXCEPT if the individual is a probationer, in which case the remainder of the probationary period must be served (except see #6 below).
 6. A permanent appointment to a **traineeship** requires a probationary period for the duration of the trainee appointment. An exception: in the case of an appointment from an open-competitive list, the probationary period shall be 26 to 52 weeks, or the length of the training period, whichever is greater (§4.5(c) (4NYCRR)). (also, see .235 Trainee Appointments—Exceptional Circumstances, below.)
 7. An appointment to a position in a **title specified in §4.5** (4NYCRR) is for the probationary period specified in that section.
 8. No probation period is required or allowed upon a **disciplinary demotion** unless specified in the terms of the final disciplinary resolution.
 9. No probationary period is required or allowed upon **reassignment** of a permanent non-probationary employee.
 10. Upon **acquisition of a private institution or enterprise pursuant to §45 CSL**, no probationary period is allowed or required for an employee whose employment is continued, pending the classification or reclassification of the employee's position. *However, when such position is appropriately classified by the Civil Service Commission and the incumbent is covered-in as provided for in §45(2) CSL, the incumbent must serve a probationary period consistent with §4.5 (4NYCRR).*
 11. No probationary period is required or allowed when a **position in the non-competitive or labor class is reclassified** to a position in their same jurisdictional class in the same occupational category and within two salary grades, and if the incumbent of the position has completed probation and is found to be qualified for the new position upon review of education and/or experience. An incumbent who has not completed probation will serve the remainder in the new title.
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12. Upon **reinstatement after separation for disability** (§§71 and 73 CSL), no probationary period is required or allowed, except that an employee who had not completed probation upon separation will serve the remainder of the probationary period in the new position.
13. After **appointment to serve part-time**, the part-time employment should generally be equated to full time for purposes of completing probationary service. However, if the appointing authority believes there will not be a sufficient opportunity to evaluate a part-time employee, the appointing authority should inform the employee at the time of appointment that the probationary period will be equated to the actual amount of time worked.
14. Upon **appointment to a seasonal position**, the probationary term will be the same as for a non-seasonal position. If the probationary term is not completed during the initial employment season, it will be continued upon reappointment from the seasonal reemployment list.
15. The probationary term after a **voluntary demotion** is determined by the type of appointment transacted, i.e., if the voluntary demotion is effected by a reinstatement pursuant to §5.4 (4NYCRR), the probationary period will be 26 to 52 weeks. (See also SPMM 1845, Voluntary Demotions)
16. After **transfer of function** from one appointing authority to another pursuant to §70.2 CSL no probationary period is required or allowed for a tenured employee. A probationer so transferred must complete the remainder of the original probationary period.
17. No probation is required or allowed when the **Civil Service Commission reassigns permanently encumbered positions from one jurisdictional class to a different jurisdictional class** (assuming there has been no change in duties or responsibilities). A permanent incumbent "covered in," retains the status obtained in the original jurisdictional class. An incumbent who has not completed probation at the time of cover-in must complete the remainder of the probationary period.

+ .220 Probationary Termination

The decision to retain or terminate a probationer or to impose a second probationary term in lieu of termination resides exclusively with the appointing authority. A probationary termination must be effected in compliance with the procedural requirements of §4.5 (4NYCRR). The Civil Service Department may investigate specific occurrences to ensure that all relevant §4.5 requirements have been met.

Agencies should establish policies and internal controls for the administration of the probationary process consistent with §4.5 standards. Suggested procedures include:

- Providing each probationer with a description of the job responsibilities of the position and explaining the required standards of workplace conduct and performance. Ideally, such information will be conveyed at the

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- beginning of employment or as early as possible during the probationary term.
- Establishing a schedule of regular meetings between the probationer and supervisors and/or probationary evaluators to review and discuss the employee's job performance and conduct.
 - Adopting and employing standardized procedures and reporting methods for documenting the probationer's progress and/or deficiencies, and for providing timely notice to the employee.
- .221 An unsatisfactory probationer may be terminated without a formal hearing pursuant to §4.5(a) (4NYCRR) at any time after eight weeks and before completion of the maximum period of probationary service. However, a probationer should not be terminated while on approved FMLA leave. A probationary employee may be terminated prior to the eight week minimum:
- a. pursuant to §75 CSL; or
 - b. pursuant to the disciplinary procedures of a relevant collective bargaining agreement; or
 - c. If absences during the initial eight weeks can be deemed time served to complete the minimum eight week period pursuant to §4.5(g) (4NYCRR). (see .233(a))
- .222 The following circumstances can result in the termination of a probationary employee any time during probation, including prior to completion of the eight week minimum:
- a. after the completion of a specified minimum period of service (which may be less than eight weeks, if prescribed in the exam announcement, per §4.5(c) (4NYCRR), *Trainee appointment or promotion*. (also see .235 d); or
 - b. after being placed on involuntary medical leave pursuant to §72 CSL, remaining on leave for one continuous year, with eventual termination pursuant to §73 CSL (see SPMM 2234 and item 21.3, p. State Attendance & Leave Manual); or
 - c. following involuntary retention on work-related disability leave with termination pursuant to §71 CSL and §5.9 (4NYCRR) (see SPMM 2200, and item 21.8 State Attendance & Leave Manual); or
 - d. after disqualification proceedings pursuant to §50(4) CSL relating to any of the standards enumerated under that section.
- .223 **Written Recommendations**—At least two weeks prior to the end of the probationary term a supervisor must report in writing to the proper appointing authority the recommendation to retain a satisfactory probationer or to terminate a probationer for unsatisfactory performance.
- .224 **Rights of Probationer**—A probationer who is to be terminated for unsatisfactory service is entitled to receive written notice at least one week prior to such termination; upon request the probationer will be granted an interview with the

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appointing authority or the appointing authority's representative. This interview is for informational purposes only and should not be confused with the due process required by §75 CSL or the negotiated agreements.

A probationer who is terminated or who resigns before completing the probationary term may request the Civil Service Department to restore her or his name to the eligible list from which appointed, if the list is still in existence. The name may be restored if after due inquiry the Civil Service Department determines that the probationer's service warrants a second opportunity.

- .225 Extension Instead of Termination**—The appointing authority may, at its discretion, offer a probationer who would otherwise be terminated an opportunity to serve a second probationary term of not less than 12 nor more than 26 weeks in a different assignment. Wherever possible, the probationer should be assigned to a new immediate supervisor/evaluator. The employer is not required to rearrange the workplace or revise the organizational chart solely for the benefit of the probationer. If a second probationary term is imposed, the appointment may be made permanent any time after 12 weeks, or the employment may be terminated any time after 8 weeks and before 26 weeks. However, except for the circumstances described in .235 below, an employees in a traineeship may not have probation extended beyond the date on which the traineeships is completed.

.230 Specific Circumstances, Considerations, Limitations and/or Benefits.

- .231 Transfers for Probationers**—A probationer is eligible for transfer. However, a complete probationary term must be served in the new position in the same manner and subject to the same conditions as was required in the position from which transfer was made. Therefore, for example, a probationer serving a one year probationary period who transfers during that period must serve a complete one year probationary period in the new position even though transferred at or below grade 13. This probation may not be waived.

- .232 Leave for Probationers**—A permanent employee who is promoted or transferred (or appointed from an open competitive list as provided for by negotiated agreement) and is therefore required to serve a probationary term is entitled to a leave of absence until completion of the probationary term. The probationer may choose to return, and shall have the right to return prior to the completion of the probationary term if the probationary service is terminated by the appointing authority.

A probationer on leave from a position/agency (A) to serve in another position/agency (B) who accepts appointment or transfer and who must serve a new probationary term in a third position/agency (C) shall be continued on leave of absence both from the original position/agency (A) and from position/agency (B) for the duration of the probationary period in position/agency (C).

- .233 Absence During Probationary Term**—Authorized or unauthorized absences may, in the discretion of the appointing authority, be considered as time served in the probationary term within the following limits and conditions:
- a. Up to 10 workdays if the maximum probationary term is 26 weeks or less and up to 20 workdays if the maximum term exceeds 26 weeks may be

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considered as time served (these absences may be deemed as time served either to complete the probationary term, or to terminate an unsatisfactory probationer prior to eight weeks of actual probationary service);

- b. In the case of a trainee appointment or trainee promotion that requires a probationary term that exceeds one year, 20 workdays per year multiplied by the number of years may be considered as time served;
 - c. Any absences in excess of those allowed in (a) and (b) above and any absences not counted by the appointing authority as time served in the probationary term shall be added to the minimum and maximum periods of the probationary term;
 - d. Time spent on military duty as defined in §242 of the Military Law is treated the same as any other authorized or unauthorized absence if the agency has established fixed objective performance standards for satisfying the probation, and has a program of periodic review of each probationer against fixed objective standards. If not, the time must be credited as completed satisfactory service for purposes of probation;
 - e. Time spent on military duty as defined in §243 of the Military Law must be credited as completed satisfactory service for purposes of probation.
- .234 **Actual Service in the position**—Generally service is counted from the date of permanent appointment, and must be actual and in the position in which the individual will be evaluated during the period of probation. There are, however certain exceptions.
- A. *“Appoint-leaves”*—A new permanent employee may be given an immediate leave of absence until able report for work. In that case the probation begins on the date employee begins to serve, not on the appointment date.
 - B. *Retroactive appointments*—When as a result of arbitration or action by the courts a person is appointed with a past effective date the probationary period begins upon the first day of the employee’s actual service, not the date of appointment unless otherwise stated in the terms of the settlement or judgment.
 - + C. *Service in other positions*—§4.5 (4NYCRR) provides that for a permanent probationer service in higher level positions may satisfy the probationary requirements of the original position. In some cases service in positions at the same or lower level may be counted toward the completion of probation as well.
 - 1. When a probationer is appointed on a provisional, temporary, permanent, or contingent permanent basis to another position, the appointing authority, in its discretion, may count the service toward satisfactory completion of the probationary term required for the position from which placed on leave, and shall inform the employee in writing upon appointment, of whether or not such service will be counted.
 - 2. When the service in the other position will be counted toward completion of the probationary period required for the position from which the

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employee is on leave, the probationer must be periodically advised of whether or not the service has been satisfactory.

3. If the probationer returns or is returned to the position from which leave has been granted, the probationer may not be terminated from that position prior to the completion of at least 8 weeks of actual service in that position, except as specified under .221 or .222 above.

.235 Trainee Appointments—Exceptional Circumstances

- a. A trainee first appointed temporary or provisional who then becomes permanent in the same position must serve at least the minimum required probationary period or until completion of the traineeship, whichever is longer. Because probation cannot start until a permanent appointment has been made, there may be some cases where an employee may continue to be on probation although the traineeship has been completed;
- b. A trainee who transfers will serve the remainder of the probationary period or the normal transfer probationary period depending on the circumstances. Agencies should discuss the probationary period required for a trainee with their Staffing Services Representative (see c, below);
- c. An appointee to a position not under the regular supervision of the appointing authority, because of prescribed schooling or off-the-job training, shall serve a regular probationary term which shall commence after completion of the schooling or off-the-job training;
- d. In an exceptional case, a probationer-trainee may be terminated for cause in less than 8 weeks, provided provisions for such abbreviated minimum probationary period appears on the examination announcement.
- e. In an exceptional case, a probationer-trainee may have the probationary period extended, provided provisions for traineeship extension appears on the examination announcement.

*

.3 Interpretation

Because §63.1 CSL requires that every original [permanent] appointment in the competitive class and §4.5(b)(1) (4NYCRR) requires that every original permanent appointment in the non-competitive, exempt, and labor classes includes a probationary period prior to the achievement of permanent (i.e. tenured) status, this probationary period upon original appointment cannot be waived even by operation of an otherwise valid exception. For example, §4.5(b)(4)(i) provides that the appointing authority may waive probation upon transfer; however, a probationer—who is specifically provided with the right to transfer in subsection (d) of the same rule—is required to complete the probationary period in the new position; the probationary periods may not be waived upon transfer.