

NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
DIVISION OF STAFFING SERVICES
GENERAL INFORMATION BULLETIN No. 23-04

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

FROM: Jessica Rowe, Director of Staffing Services

SUBJECT: Provisional Service Counting Towards Completing Probation Once Permanently Appointed

DATE: November 30, 2023

On September 7, 2023, Governor Kathy Hochul signed Chapter 356 of the laws of 2023. This Chapter amends subdivision (1) of Civil Service Law (CSL) section 63, entitled “Probationary term,” to include the following language:

“Notwithstanding the foregoing or any law or rule to the contrary, any person appointed provisionally in accordance with section sixty-five of this title who receives a permanent appointment to the same title shall have all time spent as a provisional appointment credited to any probationary term that is required upon permanent appointment to a position.”

In addition, Governor Hochul issued a signing statement detailing an agreement with the Legislature to clarify who is eligible for the protections described in the bill (emphasis added):

*“The bill required technical changes to clarify who is eligible for the protections described in the bill. I have secured an agreement with the Legislature to clarify that **the permanent position must be immediately following the provisional position**. In light of this agreement, I am pleased to sign this bill into law.”*

As detailed in the signing statement, Governor Hochul and the Legislature have agreed to amend the statute to include language clarifying that the permanent appointment must be *immediately following* the employee’s provisional service in that title for such provisional service to count toward the completion of probation. Therefore, the guidance provided herein is in accordance with the mutually agreed upon intent.

This statute requires that on or after **September 7, 2023**, any employee serving provisionally in a title that receives a permanent appointment immediately following the provisional service to the same title shall have all actual service time in provisional status counted towards completing the required probationary period as set forth in Title 4, Chapter 1 of the Rules for the Classified Service (4NYCRR). All provisional service that meets such criteria shall be credited regardless of when the qualifying provisional service first began. **This change to the law does not impact individuals who served provisionally and were permanently appointed to the same title before September 7, 2023.**

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This statute applies only to provisional employees appointed in accordance with section 65 of the CSL and does not apply to employees appointed in temporary status in accordance with section 64 of CSL. Provisionals who have their status changed to “temporary revocation” upon eligible list establishment shall have such service considered as provisional service for the purposes of meeting the requirements of CSL section 63.

Policy and Agency Implementation

Continuous Provisional Service

For the provisional service to count towards completion of probation, the permanent appointment must be immediately following the period of provisional service and occur at the same appointing authority.

Employees that vacate provisional positions and then are later permanently appointed to the same title are not eligible to have the prior provisional service counted toward the completion of probation. Leave as required by the Attendance Rules (i.e., Paid Family Leave, Paid Parental leave, etc.) do not constitute a break in provisional service. Provisional employees who have their status changed to “temporary revocation” upon the establishment of an appropriate eligible list shall have such service considered as provisional service for purposes of meeting the requirements of this statute.

An employee serving provisionally who resigns from the position and later returns to the same title again serving provisionally, who is subsequently permanently appointed to the title shall only have the provisional service immediately preceding the permanent appointment credited towards completing the probationary period. Any provisional time served prior to the break in service shall not be counted.

An employee serving provisionally who is not reachable on the eligible list and must vacate the position, but appointed permanently at a later date to the same title shall not have the prior provisional service count towards completing probation, as there is a break in provisional service.

Employee Appointment Letters

Agency HR Offices should review and update the appointment letters provided to provisional employees to advise that, should the provisional employee receive a permanent appointment immediately following their provisional service in the same title, the time served in provisional status will count towards the completion of their required probationary period. Additionally, if an employee does receive such permanent appointment, the permanent appointment letter should factor in the time served provisionally and provide the employee with the anticipated probationary completion date.

Evaluation of Provisional Employee Performance

Agencies are strongly encouraged to evaluate and document the performance of provisional employees, so that performance issues may be addressed in a timely manner and corrective action taken as necessary. While not technically serving probation while in provisional status, agencies should evaluate provisional employee performance in a similar manner and with the same standards that would be used to evaluate the performance of a probationer.

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Provisional time served in the same title immediately prior to permanent appointment *must* be counted towards completing probation and may not be disregarded when calculating the probation end date. In some instances, this will result in the provisional employees completing probation on the same date of permanent appointment.

It is expected that agencies will thoroughly review the performance of provisional employees upon list revoke transactions related to the establishment of an eligible list and consider such performance prior to permanently appointing a provisional employee.

Career Mobility

Promotion Exams

This change to the statute does not affect the permanent service required in title for an employee to qualify for a promotion exam.

Time in Title for Transfer or Reinstatement

This change to the statute does not affect the amount of permanent service required to transfer under section 52.6, section 70.1, or section 70.4 of the CSL or required for reinstatement pursuant to 5.4 (NYCRR).

Tenure

This change to statute does not affect tenure. Provisional employees continue to be non-tenured while in provisional status even if their provisional service exceeds the maximum probationary period for their positions.

Traineeships & Credentials

Provisional Employees Serving in Traineeships

Where a trainee is first appointed provisionally, the time served in provisional status will count towards the completion of the traineeship and will also count towards completion of probation upon permanent appointment to the same title immediately following the provisional service. If the employee has progressed through the traineeship and has reached the journey level, the employee will automatically complete probation upon permanent appointment to the journey level title.

Completion of Probation for Titles Requiring Certification/Licensure/Other Credentials

Titles that require certain certification, licensure, or other credentials in order to advance or continue employment in a position may not have their probation completed until such requirements are obtained. Candidates permanently appointed to positions where they previously served provisionally will still be allowed the amount of time as detailed on the exam announcement to attain the requirement after their permanent appointment but should remain on probation until such requirement is obtained. Unique situations should be discussed with your Staffing Representative.

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Probation Extension & Termination

Extension Due to Absences while Serving Provisionally

Agencies may extend the probationary period due to absences for employees serving provisionally that are subsequently appointed permanently to the same title, as set forth in Rule 4.5(g) and SPMM 2010. Agencies should calculate the extension of probation due to absences and include this expected probation complete date on the appointment letter and contact their assigned Appointment Examiner at the Department of Civil Service with that information when submitting the NYSTEP transaction for permanent appointment. Agency HR staff should reach out to their Staffing Representative for any individuals that have already served the maximum length of the duration of the probationary period as a provisional employee to determine whether an extension due to absences prior to submitting the permanent appointment is appropriate and able to be effectuated.

Second Probationary Period

Agencies may require a second probationary period in lieu of termination, as outlined in SPMM 2010, for such employees that will not have immediately completed their probationary period upon permanent appointment. When determining the length of the second probationary period, the time in provisional service must be factored into the maximum amount of time allowed for such extension of probation. A second probationary period must comply with the requirements in Rule 4.5 (i.e., service in a different assignment). **Employees serving provisionally may not be given a second probationary period upon permanent appointment if they have already served provisionally for the maximum probationary duration**, as they will complete probation on the date of permanent appointment. Agency HR staff should reach out to their Staffing Representative for additional guidance on whether a second probationary period is allowable for an employee that first served provisionally in the title.

Probationary Termination

An employee in provisional status remains at-will and may be terminated without following the procedural requirements for a probationary termination in Rule 4.5. Once the employee has been permanently appointed and is serving the remainder of the probationary period, probationary termination requirements apply. It is critical that HR staff properly calculate the probationary period for employees who have served provisionally in a title prior to permanent appointment so all parties involved fully understand the length of the probationary period. Employees who have served provisionally for the maximum duration of probation and are then subsequently permanently appointed to the title will have their probation immediately completed upon such permanent appointment (where not extended for absences) and may not be probationary terminated.

When seeking the termination of an unsatisfactory probationer where the employee served provisionally and was subsequently appointed permanently to the same title, time that an employee served provisionally may be counted towards meeting the eight-week minimum period an employee must serve before they may be terminated.

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Non-Competitive Appointments

Permanent Non-Competitive Appointments of Provisional Employees

Employees serving provisionally that subsequently receive a non-competitive permanent appointment to the same title shall have the provisional service count towards meeting the required probationary period.

All questions regarding employees hired via the Hiring for Emergency Limited Placement (HELP) program that previously served provisionally should be directed to your agency's Staffing Representative.

55b/c Appointments of Provisional Employees

Employees nominated for 55b/c appointment to the same title in which they are serving provisionally should not be appointed temporary pending Civil Service Commission prior to the Commission approval. Rather, they should remain provisional until the Civil Service Commission approves their 55 b/c appointment, and they can be permanently appointed. This applies only to employees that were serving provisionally prior to the 55-b/c nomination.

Other Appointments of Provisional Employees

Non-Competitive Promotion Pursuant to Civil Service Law section 52.7

Employees serving provisionally that are subsequently permanently appointed to the same title by means of Civil Service Law section 52.7 non-competitive promotion examination immediately following their period of provisional service will have their provisional service counted toward the completion of probation in their permanent position.

Civil Service Rule 4.2b Appointments

Employees serving provisionally that are subsequently permanently appointed to the same title via successfully passing a Civil Service Rule 4.2b examination immediately following their period of provisional service will have their provisional service counted toward the completion of probation in their permanent position.

Reinstatements under Civil Service Rule 5.4

Employees serving provisionally that are subsequently appointed on a permanent basis by means of reinstatement pursuant to Rule 5.4 to the same title immediately following their period of provisional service will have their provisional service counted toward the completion of probation in their permanent position. Employees nominated for Civil Service Commission reinstatement to the same title in which they are serving provisionally should not be appointed temporary pending Civil Service Commission prior to the Commission approval. Rather they should remain provisional until the Civil Service Commission approves the reinstatement and they can be permanently appointed. This applies only to employees serving provisionally who are nominated for Civil Service Commission reinstatement to the same title in which they are serving provisionally.

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Temporary-Post Reclassification

Permanent competitive class employees who are serving in positions which have been reclassified and who are serving in temporary status in the reclassified position shall have such service credited towards the completion of probation upon permanent appointment to that title.

Provisional Service in Parenthetical Titles & Titles with Specialty Codes

Employees Serving Provisionally in Non-Parenthetical Title Receiving Appointment to a Parenthetical Title

The statute requires that for provisional service to count towards the completion of the probationary period, the permanent appointment must be to the *same* title. Employees serving provisionally in a title who are subsequently permanently appointed to a parenthetical of the title [including language parentheticals] **will not** have the provisional time served counted toward completing probation. Also, employees serving provisionally in a parenthetical title that are subsequently permanently appointed to the non-parenthetical title **will not** have the provisional time served counted toward completing probation.

Titles with Specialty Codes

Certain titles are differentiated by “specialty code” rather than “title code”. Examples of this include, but are not limited to, Teachers, Vocational Instructors, Assistants in Instructional Services, and Associates in Instructional Services.

In relation to this legislation, each specialty code will be viewed as a distinct title. As such provisional service in these titles will only be credited if the individual is permanently appointed to the same title and same specialty as their provisional service.

Agency HR staff should contact their Staffing Services Representative with any questions regarding specialty codes and qualifying provisional service to be credited toward probation completion.

NYSTEP Transactions

Processing the Probation Completion in NYSTEP

When submitting a NYSTEP transaction to make a permanent appointment for a provisional employee who has service creditable toward the completion of probation in the same title, for many appointment transactions, agencies will be unable to alter the minimum/maximum probation end dates in NYSTEP or enter an immediate probation completion (PBC) transaction. The duration of the probationary period continues to be determined by the appointment mechanism transacted.

Agencies should calculate the applicable provisional time served when determining the probationary minimum/maximum end dates and should send that information to the Appointment Examiner at Civil Service when submitting the NYSTEP transaction for permanent appointment. Agency Human Resources staff should contact their assigned Appointment Examiner with any questions regarding how to submit and note the permanent appointment transaction.

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Additionally, Civil Service staff will review permanent appointments where the appointees first served provisionally in the title to confirm the dates of probation completion are correct. In some instances, this may result in employees completing probation upon or soon after permanent appointment to the position. Agencies should pay close attention to when provisional employees were hired and the maximum probationary periods when entering permanent appointment transactions to ensure that the probation completion dates are fully understood by the employee, the program area supervisors and managers and agency Human Resources staff. It is especially important for Agency Human Resources staff to continue to run NYSTEP probation end date reports to ensure accurate awareness of probationary periods for such employees.

This guidance applies to both Business Services Center (BSC) and non-BSC agencies. While this guidance is in effect immediately, the Department of Civil Service (Department) will continue to explore long term NYSTEP system solutions to assist with the review and accurate calculation of probationary periods. The Department will be in communication with agencies regarding any adjusted probation end dates for impacted employees permanently appointed on or after September 7, 2023, to ensure that the probationary periods are correct. Any discrepancies noted by agency staff in the information provided by the Department regarding adjusted probation end dates should be promptly discussed with the Department.

Any questions regarding the information or how to properly calculate probation end dates may be directed to your Staffing Services Representative.

Additional Information

Please see the below FAQs, GIB information chart, and additional reference chart for employees.

[Appointment Chart](#)

[Frequently Asked Questions Regarding Change to Section 63.1 of the Civil Service Law](#)
[Employee FAQ – Changes Due to Civil Service Law Section 63 Amendment](#)