

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

TRANSMITTAL MEMORANDUM NO. 66

April 2009

<u>PAGES ATTACHED</u>	<u>CODE</u>	<u>NO. OF PAGES</u>
1815 Provisional Appointments	1800 Appointments	1-4

PAGES IN MANUAL TO BE DESTROYED

1815 Provisional Appointments	1800 Appointments	1-4
-------------------------------	-------------------	-----

SUMMARY OF REVISIONS OR NEW MATERIAL

This Section :

- Clarifies the probationary period to be served upon the permanent appointment of a provisional employee who has received trainee advances during provisional service (.219)
- Changes the requirement that a nominee for provisional appointment or recertification has not failed, failed to file for, or failed to appear for the most recent examination (.221)
- Updates language from previous policy to include Temp Post Reclass, NYSTEP (.223 and .411)

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

1815 Provisional Appointments

Page 1

.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)

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

1815 Provisional Appointments

Page 2

+ .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.

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

1815 Provisional Appointments

Page 3

.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.

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

1815 Provisional Appointments

Page 4

- + .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.