

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE
STATE PERSONNEL MANAGEMENT MANUAL
Policy Bulletin #17-01**

1805(B) Permanent/Non-Competitive

March, 2017

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

FROM: Scott DeFruscio *SAD*
Director, Division of Staffing Services

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

THIS BULLETIN REVISES AND REPLACES POLICY BULLETIN #11-01, ISSUED FEBRUARY, 2011, 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 Sections 55-b and 55-c of the Civil Service Law. These guidelines were adopted by the State Civil Service Commission at its meeting of February 2017, to clarify the policies and procedures to ensure the greatest employment opportunities for those persons with disabilities and Veterans' with disabilities whose disabilities have placed them at a disadvantage in obtaining entry into the workforce.

Attachment

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**PROGRAM GUIDELINES AND PROCEDURES FOR APPOINTMENTS PURSUANT
TO SECTIONS 55-b/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) sections 55-b and 55-c Programs. Administration of the 55-b/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-b/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 518-473-9733.

I. PROGRAM INTENT AND PHILOSOPHY

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. Section 55-c of such law, authorizes the CSC to determine up to 500 positions such as can be performed by wartime veterans with disabilities. 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 55b/c "eligible."

CSL sections 55-b and 55-c are not the only avenues for hiring individuals with disabilities into the civil service and are not intended to be the primary avenue. These sections provide agencies with significant flexibility for hiring, but are limited by statute to a small number of positions. For these reasons, the CSC has reconfirmed that the intent of the 55-b/c Program is to provide an entry-level employment opportunity in state government for those with severe physical or mental disabilities which have placed them at a serious disadvantage in the labor market. Of necessity, this will not include all persons who may possess a recognized or defined "disability" under any other law, such as the State Human Rights Law or Americans with Disabilities Act or program. While all individuals are invited to apply for 55-b/c Program eligibility, applicants should be aware that eligibility and appointment determinations will be made consistent with the CSL and Rules, and the Guidelines and Procedures described below.

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II. ELIGIBILITY DETERMINATION

A. Formal Application for Program Eligibility

Individuals interested in being considered for appointment pursuant to the 55-b/c Program must submit a formal application, including a personal statement of disability, medical documentation and employment history. Wartime veterans must also include their discharge paper. The applications are submitted to, and reviewed by, DCS.

B. Certification of Eligibility

1. Criteria for Eligibility

55-b Program applicants (including non-wartime veterans), as well as 55-c Program applicants who do not meet the qualifying criteria described in section B(2) below, will ordinarily be eligible provided s/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;

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- g. has other physical or mental conditions which significantly and adversely impact the individual's ability to work, shown by an employment history documenting the individual's inability to secure employment or inability to maintain employment.

All DCS determinations are made on an individual basis upon review of the applicant's entire application and record.

2. Criteria for 55-c Eligibility

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

- a. has proof of disability rating from the U.S. Department of Veterans Affairs (DVA) [formerly Veterans Administration] of 20 percent or more, or;
- b. documents a pending claim identified by the DVA as presumptive in nature where documented by physician's diagnosis, 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. DVA 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 eligibility criteria for the 55-b Program. An individual who does not qualify for eligibility in the 55-c Program may continue to be considered for eligibility in the 55-b Program.

Please note the following:

- In some situations, the employment record of the applicant will not be available (e.g., seniors graduating from high school); thus the eligibility determination will be based on the severity of the disability and an estimate of the applicant's future ability to be gainfully employed.
- Qualifying conditions should generally be permanent and will be assessed based on the applicant's current functional status, taking into account

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measures which the individual has taken to ameliorate functional limitations, including, but not limited to, prostheses, medications, eyeglasses or hearing aids.

C. Letter of Eligibility

Applicants determined to be eligible to participate in the 55-b/c Program will receive a letter of eligibility. The period of eligibility is three years from the date of the eligibility letter. Candidates must supply agencies with a copy of their eligibility letters when applying for positions. Agencies should verify that a candidate's eligibility remains active before making an offer of appointment. On request, an individual's eligibility for the program will be extended if his or her medical/employment circumstances remain the same. The 55b/c candidate should contact the DCS 55-b/c Unit to request such extension.

D. Appeals

As provided by section 58.3 of the Commission's Regulations, a person found not eligible for participation in the 55-b/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 to examine the individual, other than the physician who first examined the person. The determination of the CSC as to whether the applicant is eligible for appointment under the 55-b/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-b/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, is 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 sections 55-b/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, the CSC will generally not approve non-

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competitive classification if there is an agency promotion list at the appointment location.

3. The CSC will not approve the placement of positions in the non-competitive class pursuant to sections 55-b/c 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/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-b/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-b/c appointment:

- a. A person who has never worked for the state.
 - b. A 55-b/c certified, current or former State employee, .
 - c. A current state employee in a 55-b/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-b/c position who resigned from that position may be considered for reinstatement to a 55-b/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-b/c program may not be considered for a 55-b/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-b/c employees enjoy the same promotion opportunities as afforded competitive class incumbents. Consequently, 55-b/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-b/c eligible employees are intended to have the same career mobility as their competitive class colleagues in the same title. A permanent 55-b/c employee may be given a new appointment to a different 55-b/c position when the proposed transactions meets the technical requirements for transfer determined by the Department of Civil Service pursuant to Civil Service Law § 70.1, 70.4, 52.6 and Civil Service Rule 5.1.

F. Reinstatement to 55-b/c Position.

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

G. Probationary Service

1. All 55-b/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-b/c appointees are given subsequent appointments to different positions, such employees are deemed to be on leave of absence from their 55-b/c positions until they have satisfactorily completed probationary service in the new position.

H. Temporarily Vacant 55-b/c Positions

When a 55-b/c position is permanently vacated it automatically reverts to the competitive class. A 55-b/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-b/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-b/c candidate, agencies who are considering a 55-b/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 55b/c eligible
- Check list clearance
- 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 on the medical opinion from EHS

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/c. It is not necessary for the CSC to approve the agency request prior to such temporary appointment.

*Note: unencumbered items are preferred, but agencies can make appointments to items that are encumbered, with the understanding that the applicant is informed of his or her contingent status and potential loss of position if the incumbent returns. The identification of items and availability for filling are matters resolved by the agency consistent with its on-going personnel processes.

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 email of acknowledgment.

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

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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/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.