

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Appeals, Discipline and Separations

General Causes for Discipline

Major Disciplinary Hearings

Selection and Appointment

Residence Standards

New Jersey Residency

Proposed Amendments: N.J.A.C. 4A:2-2.3 and 2.5 and 4A:4-2.11

Authorized By: Civil Service Commission, Robert M. Czech, Chair/CEO.

Authority: N.J.S.A. 11A:2-6(d), 11A:2-13, and 11A:4-1 et seq.; and P.L. 2008, c. 29 and P.L. 2011, c. 70.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2011-237.

A **public hearing** concerning the proposal will be held on:

Tuesday, November 22, 2011 at 3:00 P.M.

Civil Service Commission Room

44 South Clinton Avenue

Trenton, New Jersey

Please call Elizabeth Rosenthal at (609) 984-7140 if you wish to be included on the list of speakers.

Submit written comments by January 6, 2012 to:

Henry Maurer, Director

Merit System Practices and Labor Relations

Civil Service Commission

P.O. Box 312

Trenton, New Jersey 08625-0312

The agency proposal follows:

Summary

P.L. 2011, c. 70, the “New Jersey First Act” (Act), requires all public employees appointed on or after the Act’s effective date, September 1, 2011, to be New Jersey residents. While non-resident individuals employed prior to the effective date of the New Jersey First Act would not be subject to the law, should a non-resident employee sustain a break in public service of more than seven days, he or she would be subject to the law. The Act provides standards for determining whether an individual makes New Jersey his or her principal residence. The new law also establishes a five-member committee to review requests for exemption from the residency requirement based on “critical need or hardship.” The Act further provides that a non-resident appointed to public employment in New Jersey will have one year from the appointment date to make New Jersey his or her principal residence. If the employee still has not become a New Jersey resident upon conclusion of the year and has not been granted an exemption from the five-member committee, the employee will be considered to be “illegally holding” and “unqualified for” New Jersey public employment. The Act requires the Superior Court to order the ouster of such an employee upon the filing by an officer or citizen of New Jersey of an action in lieu of prerogative writ.

Although the Act does not specifically empower the Civil Service Commission or any other State agency in the executive branch to enforce the law, all agencies must comply with the law. Therefore, the Commission finds that some amendments to civil service rules are necessary to ensure that civil service processes are within the parameters of the law.

N.J.A.C. 4A:2-2.3, General causes, is proposed for amendment to provide in paragraph (a)11 that an employee may be subject to discipline for the violation of the New Jersey residency requirements set forth in P.L. 2011, c. 70. Existing paragraph (a)11, which permits disciplinary action for “other sufficient cause,” would be recodified as paragraph (a)12. N.J.A.C. 4A:2-2.5, Opportunity for hearing before the appointing authority, is proposed for amendment at paragraph (a)1 to provide that an employee appointed on or after September 1, 2011, the Act’s effective date, who does not have a principal residence in New Jersey or does not receive an exemption within a year of appointment, would be considered unfit for duty by virtue of illegally holding and being unqualified for employment and, therefore, in accordance with N.J.S.A. 11A:2-13, subject to immediate suspension.

N.J.A.C. 4A:4-2.11, Residence standards, currently pertains only to residency requirements in local government, and sets forth the factors that shall be used in determining a local legal residence. This rule would be amended to reflect the mandates of the New Jersey First Act. A new subsection (a) would state that all open competitive examination announcements and noncompetitive job postings or announcements for both State and local service shall inform applicants of the requirements of the Act. It is noted that existing subsection (a) and paragraph (a)1 concern a local appointing authority’s obligation to notify the “Department of Personnel” of its residency ordinance or resolution on an annual or other basis as determined by the “Department.” Existing subsection (a)

would be recodified as subsection (b), and paragraph (a)1 as (b)1, and both are proposed for amendment to reflect the changes to civil service law in P.L. 2008, c. 29, in which the Department of Personnel was abolished and replaced with the Civil Service Commission, a State agency in, but not of, the Department of Labor and Workforce Development. Therefore, references to the Department of Personnel would be deleted and new language inserted referring to the Civil Service Commission or an appropriate representative of the Commission, as applicable.

Existing subsection (b), recodified as subsection (c), pertains only to local service. It now provides that, where a local appointing authority has established a residency requirement, a residence shall mean a single legal residence. Paragraphs (b)1 through 6, recodified as (c)1 through 6, set forth the standards that must be used in determining a single legal residence. This subsection is proposed for amendment to clarify that its standards are applicable to local service and are generally to be distinguished from the standards to be used in determining New Jersey State residency.

Proposed new subsection (d) would set forth the standards for establishing that an individual has a principal residence in New Jersey in accordance with P.L. 2011, c. 70. These standards are taken nearly verbatim from the law. Accordingly, the proposed new paragraph (d)1 would require consideration of whether the applicant spends most of his or her nonworking time at the residence. Proposed new paragraph (d)2 would require that the residence is most clearly the center of the applicant's domestic life, and that assistance in making this determination may be gleaned from consideration of the factors listed in paragraphs (c)3 and 6 (recodified from existing paragraphs (b)3 and 6). Recodified paragraphs (c)3 and 6 specifically address factors such as the relationship between the

applicant and those living at the residence and whether the applicant's children (if any) attend school in the district associated with the claimed residence.

Proposed new paragraph (d)3 would require the consideration of whether the individual's residence is designated as his or her legal address and residence for voting. In making this determination, the factors identified in paragraph (c)5 (recodified from paragraph (b)5) may be considered. Recodified paragraph (c)5 requires the consideration of the residence recorded on the individual's driver's license, motor vehicle registration, or voter registration card, as well as other documents, although post office box numbers are not acceptable in determining residency.

Existing N.J.A.C. 4A:4-2.11(c), regarding the date by which residency requirements shall be met, would be recodified without change as subsection (e). Existing subsection (d) would be recodified as subsection (f) and amended to change a reference from the Department of Personnel to the Civil Service Commission. This subsection concerns the Commission's existing obligation to review residence requirements applicable to examination candidates, but not with respect to appointment and continued employment, which are the responsibility of the appointing authority. Recodified subsection (f) would be further amended to note that the allocation of those responsibilities also pertains to the New Jersey residency requirement of P.L. 2011, c. 70.

N.J.A.C. 4A:4-2.11(e), which sets forth procedures for an appointing authority to follow in requiring that an employee reside within a certain distance of the work site, would be recodified as subsection (g) and also amended to change references to the Department of Personnel to either the Civil Service Commission or an appropriate representative of the Civil Service Commission, as applicable. N.J.A.C. 4A:4-2.11(f), which now provides for

residency determination appeals, is not proposed for amendment but would be recodified as subsection (h).

Proposed new N.J.A.C. 4A:4-2.11(i) would define a break in public service in accordance with P.L. 2011, c. 70, as meaning an actual separation from employment for more than seven calendar days due to such causes as resignation, retirement, layoff, or disciplinary removal. However, the proposed new subsection would state that a leave of absence and a resignation/new appointment would not be considered a break in public service.

As the Commission has provided a 60-day comment period for this notice of proposal, this notice is excepted from the rulemaking calendar requirements, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The proposed amendments to N.J.A.C. 4A:2-2.3 and 2.5 and 4A:4-2.11 would conform civil service procedures to the New Jersey First Act. New Jersey residency would be fostered, as new public employees would have to be State residents, barring an exemption granted by the five-member committee. Moreover, State and local appointing authorities under civil service would be able to use civil service rules to take action in case a non-resident employee appointed on or after September 1, 2011 remains a non-resident one year after his or her appointment date.

Economic Impact

The New Jersey First Act and these proposed amendments are intended to have a positive economic impact for New Jersey taxpayers. New State and local public employees would have to be New Jersey residents. Therefore, virtually all income resident employees earn would go back into the economy of the State, not just through expenditures for

necessities and entertainment, but also through the payment of sales, income, and property taxes, as well as other fees. However, there would be a negative economic impact on non-residents looking for work in New Jersey, as they would be unqualified unless they are able to obtain an exemption from the five-member committee or find a principal New Jersey residence within a year of appointment. Additionally, non-resident employees of New Jersey State and local government as of the effective date of the New Jersey First Act could sustain a negative economic impact were they to have a break in public service of more than seven days, since they would then be subject to the Act were they to seek a return to public employment in New Jersey.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendments pertain to New Jersey residency for State and local government employment and are not subject to any Federal standards or requirements.

Jobs Impact

It is not anticipated that the proposed amendments would cause the generation or loss of jobs. The amendments pertain to New Jersey residency for State and local government employment.

Agriculture Industry Impact

It is not anticipated that the proposed amendments would have any agriculture industry impact. The amendments pertain to New Jersey residency for State and local government employment.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed amendments would have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments would govern residency for State and local government employment.

Smart Growth Impact

It is not anticipated that the proposed amendments would have any impact on the achievement of smart growth and the implementation of the State Development and Redevelopment Plan as defined under Executive Order No. 4 (2002).

Housing Affordability Impact Analysis

Since they concern New Jersey residency for State and local government employment, the proposed amendments would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since they concern New Jersey residency for State and local government employment, the proposed amendments would have no impact on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 2

APPEALS, DISCIPLINE AND SEPARATIONS

SUBCHAPTER 2. MAJOR DISCIPLINE

4A:2-2.3 General causes

(a) An employee may be subject to discipline for:

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
4. Chronic or excessive absenteeism or lateness;
5. Conviction of a crime;
6. Conduct unbecoming a public employee;
7. Neglect of duty;
8. Misuse of public property, including motor vehicles;
9. Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment;
10. Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder; [and]
- 11. Violation of New Jersey residency requirements as set forth in P.L. 2011, c. 70; and**
- [11.] **12.** Other sufficient cause.

4A:2-2.5 Opportunity for hearing before the appointing authority

(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges

(specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. **An employee who has been appointed on or after September 1, 2011, who does not have a principal residence in New Jersey and who has not received a residency exemption in accordance with P.L. 2011, c. 70, within one year of appointment, is defined by that statute as illegally holding and unqualified for employment, and therefore subject to immediate suspension as unfit for duty.** However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See N.J.A.C. 4A:2-2.7.

(b) Where suspension is immediate under (a)1 and [(a)2] **2** above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing

authority. The response may be oral or in writing, at the discretion of the appointing authority.

(c) The employee may request a departmental hearing within five days of receipt of the Preliminary Notice. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action.

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date as agreed to by the parties. See N.J.A.C. 4A:2-2.13 for hearings regarding removal appeals by certain law enforcement officers and firefighters.

(e) Appeals concerning violations of this section may be presented to the Civil Service Commission through a petition for interim relief. See N.J.A.C. 4A:2-1.2.

CHAPTER 4

SELECTION AND APPOINTMENT

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.11 Residence standards

(a) All open competitive examination announcements and noncompetitive job postings or announcements for State and local service

shall inform applicants of the requirements for New Jersey residency in accordance with P.L. 2011, c. 70.

[(a)] **(b)** In local service, an appointing authority shall provide the [Department of Personnel] **Civil Service Commission** with its residency ordinance or resolution, if any, on an annual basis **or** as [determined by the Department] **requested by an appropriate representative of the Commission**, and shall provide any subsequent modifications within 20 days after adoption.

1. If the appointing authority provides the [Department] **Commission** with such a subsequent modification following promulgation of an eligible list, the [Department] **Commission** may charge it for the cost of reordering the list.

[(b)] **(c)** Where residence requirements have been established **in local service in addition to the New Jersey State residency requirement**, residence **with regard to local service requirements** means a single legal residence. The following standards shall be used in determining **local** legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an

individual claims a parent's residence because of separation from his or her spouse, or domestic partner (see section 4 of P.L. 2003, [c.246] c. 246, a court order or other evidence of separation may be requested;

4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;

5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and

6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

(d) To establish that an applicant has a principal residence in New Jersey, the following standards, set forth in P.L. 2011, c. 70, shall be used:

1. Whether the applicant spends most of his or her nonworking time at the residence;

2. Whether the residence is most clearly the center of the applicant's domestic life. In making this determination, the factors set forth in (c)3 and 6 above may be utilized; and

3. Whether the residence is designated as the applicant's legal address and legal residence for voting. In making this determination, the factors set forth in (c)5 above may be utilized. The fact that the applicant

is domiciled in the State of New Jersey shall not by itself satisfy the New Jersey residency requirement.

[(c)] (e) Unless otherwise specified, residency requirements shall be met by the announced closing date for the examination.

1. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. See N.J.A.C. 4A:4-4.7(a)7.

[(d)] (f) The [Department of Personnel] **Commission** will review residence requirements [for] **that apply to** examination candidates. It is the responsibility of the appointing authority to review and enforce residence requirements relating to appointment and continued employment, **including the New Jersey residency requirement set forth in P.L. 2011, c. 70.**

[(e)] (g) When there is a requirement that an employee reside within a specific distance of the work site, a written request must be submitted by the appointing authority to the [Department] **Commission** for approval of such a restriction.

1. A request must be received and approved prior to the announcement of the examination.

2. However, [the Department] **an appropriate representative of the Commission** may, in appropriate circumstances, add special residency limitations after an eligible list is promulgated.

[(f)] **(h)** An applicant seeking to appeal a residency determination shall utilize the procedures contained in N.J.A.C. 4A:4-6.6. The applicant shall have the burden of proving his or her residence.

(i) A break in public service for purposes of P.L. 2011, c. 70 shall mean an actual separation from employment for more than seven calendar days due to such causes as resignation, retirement, layoff, or disciplinary removal. A leave of absence or a resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in public service.