

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Appeals, Discipline and Separations

General Resignations

Selection and Appointment

Types of Eligible Lists

Regular Reemployment

Proposed New Rule: 4A:2-6.3

Proposed Amendments: N.J.A.C. 4A:4-3.1 and 4A:4-7.10

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

Authority: N.J.S.A. 11A:2-6(d), 11A:2-13 through 22, 11A:4-9 and 11A:4-16 and P.L.
2008, c. 29.

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

Proposal Number: PRN 2010-117.

A **public hearing** concerning the proposed new rule and amendments will
be held on:

Tuesday, July 27, 2010, 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 September 4, 2010 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

The proposed new rule and amendments were prompted by a rule petition submitted by the Commissioner of the Department of Corrections. See 39 N.J.R. 4867(a). The petitioner asked that the Civil Service Commission consider promulgating a new rule, N.J.A.C. 4A:2-6.3, to permit a permanent employee in the career service to receive a “general resignation” from service with the appointing authority’s consent. The petitioner explained that this new rule would serve to

permit an employee to resign without requiring an appointing authority to categorize such a resignation as either “in good standing” or “not in good standing” because all resignations may not fall within these categories. The petitioner suggested that this neutral option would “greatly increase the likelihood for an agreeable” resolution of disciplinary actions.

Following publication of the notice of receipt of petition for rulemaking, the Commission received several comments regarding adding the option of a general resignation to the existing resignation options available in the context of a settlement of a major disciplinary appeal. Among those commenters supporting the general resignation was Douglas J. Ianni, Human Resources Officer, Department of the Treasury, who echoed the opinion of the Department of Corrections that this option would “increase the likelihood of an agreeable resolution of a disciplinary action thereby decreasing the costs of the disciplinary appeal process.” Also supporting the rule petition was Donald Mangus, Director, Office of Cooperative Labor Relations, Department of Human Services. Mr. Mangus stated that the general resignation would benefit both employees and appointing authorities, as some employees may refuse to accept a settlement involving a resignation not in good standing, while the appointing authority may not be able to agree to a resignation in good standing due to the nature of the disciplinary infraction.

Gregory Kelley, President, PBA Local 105, also urged that the Commission take action on the rule petition. He indicated that, since 2007, 53 removal matters involving Senior Correction Officers have been appealed to the Commission; a

general resignation would enable more of such cases to settle. Mr. Kelley added that the facilitation of settlements is all the more urgent now that civil service law enforcement and firefighter removal appeals must be decided by the Commission within 180 calendar days from the date on which the individual was initially suspended without pay. See P.L. 2009, c. 16.

It is noted that Rae Roeder, President, CWA Local 1033, expressed opposition to the use of a general resignation as a settlement tool. She stated that this option would encourage appointing authorities to bring disciplinary actions against employees with little evidence, so as to force employees to accept a general resignation. She suggested instead a proposed new subsection (e) for N.J.A.C. 4A:2-6.1, the rule regarding resignations in good standing, which could provide that such a resignation may be the result of a disciplinary settlement between the parties where there is no admission of malfeasance or misfeasance on the part of the employee. She added that provisions in civil service rules already afford an appointing authority the ability to not recommend an individual's reemployment.

The Commission appreciates Ms. Roeder's concerns, but notes that the amendments the Commission has decided to propose would only provide the general resignation as an option that both parties agree to; no unilateral action by the appointing authority would be permitted. Additionally, Ms. Roeder's suggestion of re-characterizing the resignation in good standing to encourage its use in settlements appears to be unnecessary, as there is already authority for using it in

settlements (see N.J.A.C. 4A:2-6.2(f)), but it may not be appropriate for all settlements.

Therefore, the Commission proposes a new N.J.A.C. 4A:2-6.3, General resignation, which would create the general resignation as an alternative type of resignation for use in a settlement of a disciplinary appeal, either at the departmental (appointing authority) level or at the Commission level. However, the rule would also state that an appointing authority cannot unilaterally impose a general resignation on an employee.

An amendment to N.J.A.C. 4A:4-3.1, Types of eligible lists, would enable former permanent employees who have received a general resignation to request being added to a regular reemployment list. A similar amendment is proposed to N.J.A.C. 4A:4-7.10, Regular reemployment. Finally, technical amendments are proposed to change certain references from the Commissioner and the Department of Personnel to the Chair/CEO and Civil Service Commission, in light of P.L. 2008, c. 29.

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 Commission anticipates a positive social impact as a result of the proposed new rule and amendments. A general resignation would enable more disciplinary appeals to settle, thus permitting a more timely resolution to these

matters. Employees who agree to a general resignation via settlement would be able to seek new employment without also continuing to deal with the disciplinary appeal process. Appointing authorities would have a tool with which to resolve many of their disciplinary appeals. Also, employees' rights would still be safeguarded with these amendments. An appointing authority would be prohibited from imposing a general resignation on an employee. The employee could request placement on a regular reemployment list along with employees who resigned in good standing, retired or were voluntarily demoted.

Economic Impact

A positive economic impact is anticipated for both employees and appointing authorities as a result of the proposed new rule and amendments. To the extent that a general resignation is an option that both parties agree to and which leads to a settlement, an employee would benefit economically by seeing his or her appeal resolved in a timely manner and thus being able to seek replacement employment rather than just mitigate damages. Legal expenses would be minimized for both parties. Also, the appointing authority would save resources and staff time, the alternative being a costly appeal that may continue through to a final administrative determination by the Civil Service Commission. The Commission would benefit economically, as would the Office of Administrative Law, through resource and staff savings from the settlement of more appeals via a new general resignation option.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rule and amendments would govern State and local government civil service disciplinary matters and would not be subject to any Federal standards or requirements.

Jobs Impact

It is not anticipated that the proposed new rule and amendments would cause the generation or loss of jobs. The proposed new rule and amendments would govern State and local government civil service disciplinary matters.

Agriculture Industry Impact

It is not anticipated that the proposed new rule and amendments would have any agriculture industry impact. The proposed new rule and amendments would govern State and local government civil service disciplinary matters.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed new rule and 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 new rule and amendments would govern State and local government civil service disciplinary matters.

Smart Growth Impact

It is not anticipated that the proposed new rule and 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

Since the proposed new rule and amendments would add the general resignation as a category of resignation in civil service employment, they would have no impact on the number of housing units or the average cost of housing in New Jersey.

Smart Growth Development Impact

Since the proposed new rule and amendments would add the general resignation as a category of resignation in civil service employment, they 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 6. RESIGNATIONS

4A:2-6.3 General resignation (a) A general resignation is a third category of employee resignation from employment, distinct from a resignation in good standing and a resignation not in good standing.

(b) An employee may be deemed to have received a general resignation from employment for purposes of reaching a settlement in a disciplinary action appealed by an employee to the appointing authority or to the Civil Service Commission in accordance with N.J.A.C. 4A:2-2. The settlement shall clearly state in writing that the parties have agreed to a general resignation as a resolution to the disciplinary appeal.

(c) An appointing authority may not unilaterally impose a general resignation on an employee.

CHAPTER 4

SELECTION AND APPOINTMENT

SUBCHAPTER 3. ELIGIBLE LISTS

4A:4-3.1 Types of eligible lists

(a) The [Commissioner] **Chair/CEO** may establish the following types of eligible lists:

1. Open competitive, which shall include all qualified eligibles following examination procedures[.];

2. Promotional, which shall include permanent employees who meet qualification requirements[.];

3. Regular reemployment, which shall include former permanent employees who resigned in good standing, **received a general resignation**, retired[,] or were voluntarily demoted, who timely request reemployment and whose reemployment is certified by the appointing authority as being in the best interests of the service;

4. Police or fire reemployment, which shall include former permanent uniformed members of a police or fire department who resigned in good standing and whose reemployment is certified by the appointing authority as being in the best interests of the service; and

5. Special reemployment, which shall include former and current permanent employees who were laid off, laterally displaced or demoted in lieu of layoff.

SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

4A:4-7.10 Regular reemployment

(a) A permanent employee who has resigned in good standing, **received a general resignation**, retired or voluntarily demoted, may request consideration for reemployment by indicating availability to his or her appointing authority.

(b) Upon recommendation of the appointing authority that such reemployment is in the best interest of the service, the [Department of Personnel] **Chair/CEO of the Civil Service Commission** shall place the employee's name on a reemployment list. A regular reemployment list shall be subject to certification to all appointing authorities in a jurisdiction.

(c) Police and fire reemployment lists shall have unlimited durations. Regular reemployment lists for all other titles shall have durations of three years from the date of resignation, retirement or voluntary demotion, unless the list is extended pursuant to N.J.A.C. 4A:4-3.3(a)1.

1. Requests for reemployment must be submitted within the duration of the applicable list.

(d) Seniority commences as of the date of regular reemployment.