

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Job Banding: State Service

Proposed Amendment: N.J.A.C. 4A:3-3.2A

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

Authority: N.J.S.A. 11A:2-6(d) and 11A:3-1.

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

Proposal Number: PRN 2014-134.

A **public hearing** concerning the proposed amendment will be held on:

Wednesday, September 24, 2014, 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 October 17, 2014, to:

Henry Maurer, Director

Division of Appeals and Regulatory Affairs

Civil Service Commission

P.O. Box 312

Trenton, NJ 08625-0312

Or electronically at: <http://info.csc.state.nj.us/cscmailer>

Summary

The Civil Service Commission proposed a new rule, N.J.A.C. 4A:3-3.2A, and a series of amendments to existing rules, on March 18, 2013, at 45 N.J.R. 500(a), to establish a job banding program. Following extensive public comment, the Civil Service Commission proposed substantial changes to the proposed new rule as well as several of the proposed amendments, and proposed a new amendment to N.J.A.C. 4A:7-3.2. See 46 N.J.R. 260(a). The proposed substantial changes were, in part, a response to Assembly Concurrent Resolution 199 (ACR 199), transmitted to the Commission by the Legislature on December 4, 2013. ACR 199 asserted that the proposed new rule was not consistent with the New Jersey Constitution and was contrary to legislative intent.

Following a period of further public comment, the Civil Service Commission adopted the job banding notice of proposal, as well as the proposed substantial changes (with technical changes not requiring additional public notice and comment) at its meeting of May 7, 2014. The adoption went into effect on June 2, 2014b upon publication in the New Jersey Register. See 46 N.J.R. 1331(c). The adoption did the following:

1. Clarified that veterans shall receive the same preference in advancements within the band as they receive in promotional situations;
2. Limited the scope of job banding to State service;
3. Excluded law enforcement and public safety job titles;

4. Clarified that the new job banding rule will not affect existing job banding programs approved by this agency outside of the Executive Branch of State government; and

5. Clarified that if a State employee complains of discrimination in the advancement appointment process, the employee retains the right to pursue a complaint under the State Policy Prohibiting Discrimination in the Workplace, including the right to seek Civil Service Commission review of a departmental decision.

On June 17, 2014, the Legislature transmitted to the Civil Service Commission a copy of Senate Concurrent Resolution (SCR 116). SCR 116 requires that the Commission either amend or withdraw the rule within 30 days of receipt of the resolution.

In response to SCR 116, the Commission proposes to amend N.J.A.C. 4A:3-3.2A, Job banding: State service, to further emphasize the Commission's supervision of the job banding process as well as the role of veterans' preference. This amendment would provide additional safeguards against the potential abuses alleged in SCR 116, specifically paragraph numbers two through six, through advance approval of the advancement appointment selection process and documentation by the appointing authority.

Specifically, Paragraph (d)3 would be amended to specify that the selection process must be approved by the Chairperson of the Commission or designee. Currently, the Chairperson or Commission designee must approve the number of

competencies required to advance to the next higher level, and the appointing authority may proceed with its advancement appointment selection process without seeking Commission approval. Under the proposed amendment, the appointing authority would be required to obtain approval of the advancement appointment selection process from the Chairperson of the Commission or designee before administering such process. Further, the existing rule requires consideration of veterans' preference in the advancement appointment selection process, but does not explicitly require documentation by the appointing authority. Under the proposed amendment to paragraph (d)3, after making a determination as to which employee(s) may receive an advancement appointment, the appointing authority would be required to rank the candidates for the announced advancement appointment, taking into account veterans' preference, if applicable, as specified in subparagraphs (d)3i and ii, and to document accordingly.

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 major benefits of the job banding program, as amended, are the provision of greater flexibility in the advancement of employees, and streamlining the selection process by eliminating duplicative procedures, while preserving the underlying principles of merit and fitness. With regard to the proposed amendment, the Commission believes that it would have a positive social impact by

allowing flexibility in the selection process, based on such factors as the size and function of the appointing authority and the number of candidates in the job band. However, by requiring approval of the advancement appointment selection process by the Chairperson or designee (in addition to requiring such approval for the competencies) and documentation by the appointing authority, this rule amendment would provide additional safeguards against the abuses alleged in SCR 116 and ensure fulfillment of the Constitutional and statutory mandate that appointments be made according to merit and fitness. Additionally, documentation of the process would enable subsequent review, if needed, and emphasize the requirement for consideration of veterans' preference, where applicable, as already mandated in subparagraphs (d)3i and ii.

Economic Impact

As explained in the previous rulemaking notices, the Civil Service Commission anticipates a substantial fiscal benefit from the job banding program with respect to those titles and title series that have been approved for banding. The proposed amendment, by itself, would have minimal economic impact, since the Commission anticipates the approval of selection measures that are already widely used by State agencies in employment decisions. Nevertheless, the Commission believes that the amendment is fully consistent with the overall purpose of the job banding program, and would have a positive economic impact for State appointing authorities and employees.

Federal Standards Statement

A Federal standards analysis is not required because the proposed amendment would set forth the requirement that the Chairperson or designee approve the selection process utilized for advancement appointment in a job band in State service and that the appointing authority document the advancement appointment selection, taking into account veterans' preference, where applicable. This amendment would not be subject to any Federal standards or requirements.

Jobs Impact

It is not anticipated that any jobs would be generated or lost if the proposed amendment were adopted. The proposed amendment would set forth the requirement that the Chairperson or designee approve the selection process utilized for advancement appointment in a job band in State service and that the appointing authority document the advancement appointment selection, taking into account veterans' preference, where applicable.

Agriculture Industry Impact

It is not anticipated that the proposed amendment would have any agriculture industry impact. The proposed amendment would set forth the requirement that the Chairperson or designee approve the selection process utilized for advancement appointment in a job band in State service and that the appointing authority document the advancement appointment selection, taking into account veterans' preference, where applicable.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since the proposed

amendment 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 amendment would set forth the requirement that the Chairperson or designee approve the selection process utilized for advancement appointment in a job band in State service and that the appointing authority document the advancement appointment selection, taking into account veterans' preference, where applicable.

Housing Affordability Impact Analysis

Since the proposed amendment would set forth the requirement that the Chairperson or designee approve the selection process utilized for the evaluation of candidates for advancement appointment in a job band in State service, and that the appointing authority document the advancement appointment selection taking into account veterans' preference, where applicable, it 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 the proposed amendment would set forth the requirement that the Chairperson or designee approve the selection process utilized for the evaluation of candidates for advancement appointment in a job band in State service, and that the appointing authority document the advancement appointment selection taking into account veterans' preference, where applicable, it 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**):

SUBCHAPTER 3. CLASSIFICATION

4A:3-3.2A Job banding: State service

(a) The job banding program, in the interest of efficiency, facilitates advancement appointments of qualified employees to the next higher title level within a job band when a vacancy exists.

(b) The Civil Service Commission shall review titles and title series in State service to determine whether they are appropriate for job banding.

1. This determination shall be guided by whether a movement from one position to a higher level position may be achieved based on an evaluation of relative knowledge, skills, and abilities without resorting to competitive examination procedures, while still satisfying the State Constitutional and statutory mandate for merit and fitness in selections and appointments.

2. The Chairperson or designee shall approve a specific number of competencies for each title level that an employee must attain to advance from a lower title level to the next higher title level.

3. Job titles in the Police and Firemen's Retirement System (PFRS) shall not be included in job banding.

4. Any job banding program approved prior to June 2, 2014, pursuant to the Commission's authority under the law, such as the Judiciary's job banding program, can continue without adopting the changes provided in Title 4A.

(c) Each title assigned to a job band shall thereafter be considered a title level. Movement from a lower title level to the next higher title level within a band shall

be considered an advancement appointment. An involuntary movement from a higher title level to the next lower title level within a band, except for failure of the developmental period as set forth in (f) below, shall be considered a major disciplinary demotion. See N.J.A.C. 4A:2-2.

1. An employee may file a grievance regarding the appropriateness of the title level in which he or she is serving, in accordance with N.J.A.C. 4A:2-3 and 4A:3-3.9, as applicable.

(d) Eligibility for advancement appointment to the next higher level within a band requires that an employee attain a predetermined number of competencies approved by the Chairperson or designee in accordance with (b)2 above. Prior to attaining the predetermined number of competencies, an employee's competencies shall be evaluated twice a year, concurrently with an employee's Performance Assessment Review (PAR). (See N.J.A.C. 4A:6-5.)

1. When an appointing authority determines a need to fill a position at a particular level within a band, it may consider for advancement appointment all employees who have attained the predetermined competencies.

2. The appointing authority shall notify all employees of the advancement appointment opportunity by the conspicuous posting of a notice at all work sites where the announced advancement appointment may occur, as well as on the appointing authority's intranet and internet web sites, and via electronic communication.

i. Those interested employees serving in the level immediately below the higher level within the band to be filled who have demonstrated attainment of the required competencies shall be provided with a notice by the appointing authority and offered the opportunity to file a resume for consideration.

ii. Notices shall include the same information as required by N.J.A.C. 4A:4-2.1(c) and shall be posted for a period of no less than 14 calendar days prior to commencement of the advancement appointment selection process conducted by the appointing authority, with electronic communications to employees sent at least 14 days prior to commencement of the process.

3. Once an appointing authority determines which eligible employees are interested, it shall conduct an advancement appointment selection process **approved by the Chairperson or designee** and make a determination as to which employee or employees may receive an advancement appointment. **The appointing authority shall then rank the candidates for the announced advancement appointment and document same, taking into account the veterans' preference described in (d)3i and ii below, where applicable.**

i. Whenever a veteran ranks highest in the advancement appointment selection process, a nonveteran shall not be appointed unless the appointing authority shows cause before the Civil Service Commission why the veteran shall not receive the advancement appointment.

ii. When the advancement appointment selection process results in a tie between a veteran and a nonveteran, the veteran shall be offered the advancement appointment.

iii. An employee who is not selected for an advancement appointment may file a grievance in accordance with N.J.A.C. 4A:2-3, unless (d)3iv below applies.

iv. If the employee's non-selection is raised by that employee in a discrimination appeal under N.J.A.C. 4A:7-3, the model procedures for internal complaints alleging discrimination in the workplace at N.J.A.C. 4A:7-3.2 shall apply. Should the appeal reach the Civil Service Commission, the Commission, in determining the appeal, shall also decide the issues pertaining to non-selection.

(e) Once an employee accepts an advancement appointment, the employee shall be compensated in accordance with N.J.A.C. 4A:3-4.9, within the salary range established for that title level within the band.

1. An employee's anniversary date shall be set in accordance with N.J.A.C. 4A:3-4.5.

(f) All advancement appointments are subject to a six-month developmental period that commences upon the employee's selection for an advancement appointment. This developmental period shall serve as a transition between the employee's prior title level and the higher title level.

1. Upon successful completion of the six-month developmental period, the employee shall remain in the higher title level.

2. Should the employee fail the six-month developmental period, he or she shall be returned to his or her prior title level.

i. An employee may appeal his or her failure of the six-month developmental period by filing a grievance in accordance with N.J.A.C. 4A:2-3.

(g) If an employee receives an unsatisfactory final PAR rating, he or she shall again be required to demonstrate the attainment of the predetermined competencies corresponding to the title level in which the employee is serving.

(h) An appointing authority may, as a result of an employee's unsatisfactory final PAR rating, effect an involuntary demotion of the employee in accordance with major disciplinary procedures. See N.J.A.C. 4A:2-2.

(i) The movement to a supervisory title outside of the band shall be effected through promotional examination procedures. The movement from a title level within a band to a higher title level in a different band, or from a non-banded title to a title level within a band, may be authorized by the Chairperson or designee when the appointing authority has certified that the employee meets the predetermined competencies corresponding to the title level to which the employee is to move.