

**CIVIL SERVICE**

**CIVIL SERVICE COMMISSION**

**Job Banding Program**

**Proposed Amendments: N.J.A.C. 4A:1-1.3; 4A:2-3.7; 4A:3-1.2, 2.3, 2.6, 2.9, 3.2, 3.3, 3.5, 3.6, 3.7, 3.9, and 4.9; 4A:4-1.9, 2.4, 2.5, 3.2, 5.1, 6.3, 6.6, 7.1, 7.1A, 7.6, and 7.8; 4A:7-3.1; 4A:8-1.1 and 2.2; and 4A:10-1.1**

**Proposed New Rule: 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), 11A:2-11, 11A:2-20, 11A:3-1, 11A:3-3, 11A:3-7, 11A:4-9, 11A:4-12, 11A:4-13, 11A:4-16, 11A:6-15, 11A:6-26, 11A:6-28, 11A:7-1 et seq., and 11A:8-1 et seq.; and P.L. 2008, c. 29.

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

Proposal Number: PRN 2013-049.

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

Wednesday, April 10, 2013 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 May 17, 2013 to:

Henry Maurer, Director

Division of Appeals and Regulatory Affairs

Civil Service Commission

P.O. Box 312

Trenton, NJ 08625-0312

### **Summary**

The Civil Service Commission proposes amendments to Title 4A of the New Jersey Administrative Code to codify a new job banding program that would apply to positions in both State and local service. This job banding program is similar to the system that has been used successfully in the Judiciary for nearly 15 years. Job banding has also been implemented in a well-received pilot program in the Executive Branch of State government.

By way of background, the New Jersey Constitution, Article VII, sec. 1, par. 2, provides that:

Appointments and promotions in the civil service of the State, and of such political subdivisions as may be provided by law, shall be made according to merit and fitness to be ascertained as far as practicable by examination, which, as far as practicable, shall be competitive; except that preference in appointments by reason of active service in any branch of the military or naval forces of the United States in time of war may be provided by law.

The Legislature echoed this principle in N.J.S.A. 11A:1-2 when it declared, in pertinent part, that it is the public policy of this State to: select and advance employees on the basis of their relative knowledge, skills, and abilities; provide public officials with appropriate appointment, supervisory, and other personnel authority to properly execute their Constitutional and statutory responsibilities; encourage and reward meritorious performance by employees in the public service; and ensure equal employment opportunity at all levels of the public service. See also,

*O'Malley v. Dept. of Energy*, 109 N.J. 309, 316 (1987) (The legislative goal of appointments based on merit and fitness is the paramount consideration).

In order to carry out this Constitutional and statutory mandate, the Civil Service Commission is responsible for the establishment, administration, amendment, and continuous review of the State Classification Plan governing all positions in State service and similar plans for political subdivisions (hereinafter referred to as the "Classification Plan"). The Classification Plan consists of a list of job titles and a job specification for each title. A job specification includes a descriptive summary of duties and responsibilities of a position or group of positions that are sufficiently similar in content to be assigned the same job title. See N.J.S.A. 11A:3-1 et seq. and N.J.A.C. 4A:3-3.2(b). Significantly, the job specification identifies the knowledge, skills, and abilities required to satisfactorily perform the duties of a title or group of titles. Thus, the Classification Plan is central to the appointment and selection process; N.J.S.A. 11A:4-1(a) requires that merit and fitness be ascertained in the administration of examinations through the testing of the knowledge, skills, and abilities needed to satisfactorily perform the duties of a title or group of titles.

To this end, it has been the established practice of the Civil Service Commission to administer separate examinations for each specific title within a title series. For each examination, the Commission issues either an open competitive or promotional announcement, reviews the applications that are received to determine eligibility for the examination, develops and conducts an examination, issues eligible lists ranking those candidates who passed the examination, and certifies the list so that an appointing authority may consider interested eligibles for appointment. See generally, N.J.A.C. 4A:4-2, 3, and 4. This methodology is clearly consistent with the Constitutional and statutory mandate to select and advance civil service

employees on the basis of their relative knowledge, skills, and abilities in a competitive testing situation. However, it cannot be ignored that, for more than 60 years, the courts and civil service rules have permitted the Civil Service Commission and its predecessor agencies to waive competitive examinations on the grounds of impracticability, as long as the waiver was not arbitrary, capricious, or unreasonable. *See Pringle v. Department of Civil Service*, 45 N.J. 329 (1965); *Falcey v. Civil Service Commission*, 16 N.J. 117, 123 (1954).

Indeed, N.J.A.C. 4A:4-2.7(a) currently permits the Civil Service Commission to authorize the promotion of a qualified permanent employee in the competitive division of the career service by regular appointment *without* competitive examination if the employee has been successfully tested in the basic skills required for the promotional title; the employee has not failed, within one year prior to the announced closing date, a promotional examination for that title; the number of interested eligibles does not exceed the number of promotional appointments by more than two; and veterans preference rights are not a factor. Further, N.J.S.A. 11A:7-13 and N.J.A.C. 4A:4-2.14(b) permit the waiver of a competitive examination for an otherwise qualified candidate or provisional appointee with a disability if a number of conditions are met, including a statement from the appointing authority that the individual can satisfactorily perform the duties of the title under actual conditions of service. In other words, the competitive examination requirement may be waived if testing is not practicable, an eligible has been previously tested for the basic skills required for the promotional title, and the individual would be reachable for appointment in accordance with the “Rule of Three,” or an eligible has a disability that makes competitive testing impracticable but the appointing authority certifies that the individual can satisfactorily perform the duties of the title under conditions of actual service. Accordingly, the Constitutional and statutory mandate to select and advance employees on the

basis of their relative knowledge, skills, and abilities in a competitive testing situation does not require that a formal examination be administered for every position.

In the last calendar year alone, 74 State service promotions and 83 local service promotions (29 county and 54 municipal) have demonstrated how advancement based on relative knowledge, skills, and abilities can be achieved without resorting to formal examination procedures, while at the same time satisfying the Civil Service Commission's Constitutional and statutory mandate. Indeed, the benefit to an appointing authority of utilizing waiver of examination procedures is its ability to fill positions without undue delay, since developing and conducting an assembled examination and requesting a certification to make a permanent appointment are not required. The ability of an appointing authority to select and appoint qualified individuals in an expedited manner is tied to the Legislature's directive to the Commission to provide public officials with appropriate appointment, supervisory, and other personnel authority, so that they may properly execute their Constitutional and statutory responsibilities, as well as encourage and reward meritorious performance by employees in the public service.

As noted above, the Judiciary has successfully utilized the broad banding methodology for many years. The success of that program establishes it as an apt model for a system that may be used elsewhere in State and local employment. In fact, the job banding program set forth in the proposed amendments and new rule is based upon the Judiciary model.

In addition, within the Executive Branch, a job banding pilot program has been successfully implemented for certain staff positions within the Civil Service Commission and the Department of the Treasury. See *In the Matter of Job Banding for Human Resource Consultant, Personnel and Labor Analyst, State Budget Specialist, and Test Development Specialist Title*

*Series Pilot Program* (Civil Service Commission, decided 5/16/12). This program consolidated 16 separate titles from four title series into four broad bands. Instead of viewing each title in a broad band as a separate title, requiring the application of civil service promotional procedures to move from a lower to a higher title, the titles only represented *levels* within the band. Eligibility for advancement to the next level within the band was based on the attainment of pre-specified *competencies* for a particular level within the band. The evaluation of employees for attainment of the competencies was documented twice a year on a “Competency Assessment Review” (CAR) form, performed concurrently with the interim and final Performance Assessment Review (PAR) evaluations. See generally, N.J.A.C. 4A:6-5.1, 5.2, and 5.3. In this pilot program, once an employee attained the required competencies for a particular level within the band, he or she was considered eligible for all future advancement opportunities and did *not* need to further demonstrate the required competencies. For example, when the Commission needed to fill a position at a particular level within a band, it considered all interested employees for advancement who attained the required competencies. The Commission then conducted an internal selection process and selected the employee or employees for advancement *without* calling for an examination or effecting the advancement through certification procedures.

The Commission notes that there are no statutory definitions of “title,” “title series,” “promotion,” or “class code.” The definitions of these terms constitute regulatory, not statutory, provisions that have been utilized over the years to aid in the administration of the Classification Plan as it pertains to the selection process. The Civil Service Commission’s Constitutional and statutory mandate does not require the application of the formal examination process in every instance in which an employee demonstrates (and the needs of the appointing authority require) that he or she has progressed from being able to perform “routine” level work to being able to

perform “complex” level work associated with the title. Effectively, what has been treated as a “promotion” to the next higher, non-supervisory title in a title series is really the demonstration of an employee’s ability to handle increasingly difficult levels of work associated with the title. Thus, unless an individual moves to a supervisory or management position, he or she is not really “promoted” to a position that is significantly different from his or her former position. Rather, the employee has advanced to the point where he or she can be entrusted with higher level, non-supervisory duties. Accordingly, such a movement is not a “promotion” but the assignment of an appropriately higher level of duties associated with the position. Therefore, there is no Constitutional or statutory impediment to the advancement of employees to different levels within a single title without a formal, competitive examination.

Initially, prior to describing in detail the substantive aspects of the proposed amendments and new rule, the Commission notes that technical amendments are needed pursuant to 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, all references in the proposed amendments to the Department of Personnel, Commissioner of Personnel, or Merit System Board are proposed for deletion and replacement with, as appropriate, Civil Service Commission, Chairperson of the Civil Service Commission or designee, and appropriate representative of the Civil Service Commission. The affected rules are as follows: N.J.A.C. 4A:1-1.3 (definition of “eligible list” and “senior executive service”); 4A:2-3.7(a)1 and 2, (b) and (b)1, (c)1, (d), and (f); 4A:3-1.2(a), (c), (e)2, and (f); 2.3(a)1i, 2, 5, and 6, and (b)6; 2.9(a) and (c)7iii; 3.2(a); 3.3(a) through (f); 3.5(a), (b), (c), and (c)1 and 2; 3.6(a), (b), (b)3, (c), (d), (f), (f)1i and iii, and 2; 4.9(a)4; 4A:4-2.5(b)4 and 5, (c)2 and

4, and (d)5; 3.2(e); 6.3(c); 6.6(a)2 and (b); 7.6(c)4 and (d); 7.8(e); 4A:8-1.1(b); 2.2(d)5; and 4A:10-1.1(b) and (f).

With regard to the substantive changes, N.J.A.C. 4A:1-1.3, Definitions, is proposed for amendment to include several new terms. “Advancement appointment” would mean a movement within a job band, upon the achievement of a specific number of predetermined competencies, to a higher title level and, where applicable, associated higher class code, that does not require competitive examination. “Competency” would mean the minimum level of training and orientation needed to successfully perform at a particular title level within a job band. “Job band” would mean a grouping of titles or title series into a single broad band consisting of title levels with similar duties, responsibilities, and qualifications. “Lateral movement” would mean an employee movement from one position to another with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code. In the case of job bands, a lateral movement would mean a movement to a title level in another job band with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code.

Additionally, definitions of the terms “class code,” “promotion,” and “title” would be amended. Presently, “class code” means a designation assigned to job titles in State and local service with ranking based upon an evaluation of job content. The amendment would provide that, in the case of job bands, class code means a designation given to a title level unless a job band class code is specifically indicated. Presently, “promotion” means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title. The amendment would state that, in the case of job bands, a promotion means a movement to a title with a higher class code not in the employee’s current



job band. Presently, “title” means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications. The amendment would retain the existing definition of “title” but would go on to state that, in the case of those titles approved for inclusion in job bands, any references to such titles in these rules shall mean the title level within the job band, and, where applicable, the level’s associated class code, unless otherwise stated, or the context clearly suggests otherwise. A cross-reference to the proposed new rule, N.J.A.C. 4A:3-3.2A, would also be provided.

N.J.A.C. 4A:2-3.7, Appeals from appointing authority decision: State service, is proposed for amendment. Presently, paragraph (a)1 provides that the former Commissioner of Personnel shall review minor discipline appeals based on a written record and determine if issues of general applicability in the interpretation of law, rule, or policy are present. If not, the appeal may be dismissed as a final administrative action. The same is the case for the review of grievances in paragraph (b)2. The amendment to both paragraphs (a)1 and (b)2 would provide that the Civil Service Commission shall make the determination (minor discipline in paragraph (a)1 and grievances in paragraph (b)2) and that it may dismiss the matter without further review of the merits of the appeal where issues of general applicability are not fully presented.

N.J.A.C. 4A:3-1.2, Divisions within the career service, is proposed for amendment at subsection (b). Presently, subsection (b) states that a career service job title in the competitive division is subject to competitive examination procedures and provides a cross-reference to N.J.A.C. 4A:4-2. The amendment would retain the cross-reference and add an exception for those titles in job bands, while including a new cross-reference to the proposed job banding rule at N.J.A.C. 4A:3-3.2A.

N.J.A.C. 4A:3-2.3, SES appointments: State service, would be amended at subparagraph (b)4i with regard to the rights of permanent employees holding a position that is allocated to the senior executive service (SES) but who are not selected for the SES. Specifically, subparagraph (b)4i provides that a non-appointed incumbent may accept an appointment to another title at the same or lower class code, in the same or different title series, for which the employee is qualified, in the same or another organizational unit. The proposed amendment would provide that the non-appointed incumbent may also accept an appointment to a title that meets the aforementioned criteria, but in a job band.

N.J.A.C. 4A:3-2.6, SES benefits: State service, would be amended to include new paragraphs (c)1 and 2 with regard to the ability of an SES member to apply for a career service promotional examination. Presently, an SES member may apply for a promotional examination for the unit scope in which he or she is now serving, so long as the member is permanent in a title to which the test is open. The proposed amendment would permit the same for an SES member whose permanent status is in a job band, where the member is eligible for a promotion outside of the band. The proposed amendment would also permit the SES member to apply for an advancement appointment to the next higher level in the job band.

N.J.A.C. 4A:3-2.9, Separation from the SES: State service, would be amended with regard to the rights of an employee with underlying permanent status who is separated from the SES. Subparagraph (c)4i states that the employee may accept an appointment to other titles at the same or lower class code, in the same or different title series, for which he or she is qualified, in the same organizational unit. The amendment would add the option of a position in the same or different job band, if the appointing authority makes such an offer. It is noted that a technical amendment is proposed to subsection (d) to correct an apparent typographical error. The

amendment would have subsection (d) read: “If the position to which an SES member is appointed **is** vacated or abolished,” rather than the current, “If the position to which an SES member is appointed **or** vacated or abolished.”

N.J.A.C. 4A:3-3.2, Establishment of classification plans, would be amended to add a new paragraph (b)3 to require that the Civil Service Commission establish classification plans consisting not only of a list of job titles, with a job specification for each title, but also a list of job bands. Subsection (c) would be amended to state that, in addition to a single job specification being used for a title series, a single specification may also be used for a job band.

Proposed new N.J.A.C. 4A:3-3.2A, Job banding, would describe the consolidation of a grouping of titles or title series into a single band. Specifically, subsection (a) would explain the reasons for establishment of the program, including facilitating advancement appointments of qualified employees to the next higher title level within a job band when a vacancy exists. Subsection (b) would require the Civil Service Commission to review titles and title series for inclusion in the job banding program. Paragraph (b)1 would state that the determination in subsection (b) shall be guided by whether or not a movement from one position to a higher level position may be achieved without resorting to competitive examination procedures, while still satisfying the Commission’s State Constitutional and statutory mandates. Paragraph (b)2 would establish that an employee must attain certain competencies, approved by the Chairperson or designee, before the employee may be eligible for an advancement appointment from a lower title level to the next higher title level. Subsection (c) would state that each title assigned to a job band shall be considered a title level. Subsection (c) would further state that advancement appointments shall be the method by which an employee may move to the next higher title level within the job band. Additionally, the subsection would state that an involuntary movement

from a higher title level to the next lower title level within a band shall be considered a major disciplinary demotion and include a cross-reference to N.J.A.C. 4A:2-2, the subchapter concerning major discipline, unless the movement is for the failure of a development period. Paragraph (c)1 would state that 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, the grievance subchapter, and 4A:3-3.9, regarding classification appeals, as applicable.

Proposed new N.J.A.C. 4A:3-3.2A(d) would set forth criteria for advancement appointments within a job band. A particular set of competencies must be met by the employee and these must be evaluated twice a year until such time as the employee has met them. Paragraph (d)1 would establish that when the appointing authority needs to fill a position at a particular title level, it may consider for an advancement appointment all employees who have met the predetermined competencies. Paragraph (d)2 would require the appointing authority to conspicuously post notice of the vacancy at all work sites where the advancement appointment may occur, as well as on the appointing authority's intranet and internet web sites and through electronic communication. Subparagraph (d)2i would require that eligible employees be provided a notice by the appointing authority and offered the opportunity to file a resume for consideration. Subparagraph (d)2ii would require that the appointing authority post, or provide through electronic communications, a vacancy announcement at least 14 calendar days prior to beginning the selection process. Paragraph (d)3 would require that, once all eligible employees have submitted resumes, the appointing authority will conduct an advancement appointment selection process and make a determination as to which employee or employees will receive an advancement appointment. Subparagraph (d)3i would state that an employee who is not selected may file a grievance.

Proposed new N.J.A.C. 4A:3-3.2A(e) would state that once an employee accepts an advancement appointment, he or she shall be compensated in accordance with N.J.A.C. 4A:3-4.9. Paragraph (e)1 would state that an employee's anniversary date is set pursuant to N.J.A.C. 4A:3-4.5. Subsection (f) would state that all advancement appointments are subject to the successful completion of a six-month developmental period to occur after an advancement appointment is made. Paragraph (f)1 would state that upon completing the six-month developmental period, the employee will remain in the higher title level. Paragraph (f)2 would state that, should the employee fail the six-month developmental period, he or she will be returned to his or her prior title level. Subparagraph (f)2i would afford the employee the right to file a grievance for failure to complete the six-month developmental period.

Proposed new N.J.A.C. 4A:3-3.2A(g) would provide that, should an employee receive an unsatisfactory final PAR rating, he or she will be required to demonstrate the attainment of the predetermined competencies once again. Subsection (h) would give the appointing authority the discretion to effect an involuntary demotion of an employee who receives an unsatisfactory final PAR rating, in accordance with major disciplinary procedures. This subsection would include a cross-reference to N.J.A.C. 4A:2-2, the subchapter regarding major discipline. Subsection (i) would provide that the movement to a supervisory position outside of the job band will be effected through promotional examination procedures. The subsection would also provide that a movement from a title level within a band to a higher title level in a different job band, or a movement from a non-banded title to a title level within a band, may be approved by the Chairperson or designee if the appointing authority certifies that the employee has met the predetermined competencies corresponding to the title level to which the employee is to move.

N.J.A.C. 4A:3-3.3, Administration of classification plans, is proposed for amendment at paragraph (a)3 with regard to the implementation and administration of classification plans, which would include, among other things, not only the modification of job specifications for existing titles and title series, but also the modification of job specifications for job bands, as the case may be.

N.J.A.C. 4A:3-3.5, Reclassification of positions, would be amended at paragraph (c)2. This paragraph currently permits an employee in either the career or unclassified service in State or local government, or an appointing authority in local service, to submit an appeal regarding a reclassification determination in accordance with N.J.A.C. 4A:3-3.9. The amendment would specify that such appeals are to be submitted to the Civil Service Commission. A further change would provide that appeals pertaining to an employee's title level within a job band are governed by N.J.A.C. 4A:3-3.9(c)4, 5, and 6 (State) and 4A:2-3.1(d) (local).

N.J.A.C. 4A:3-3.6, New titles, is proposed for amendment at subsection (a) to permit the establishment of a new job band, as well as a new title or title series, where it appears that a new set of functions necessitates a review. Subsections (b) through (d) would be amended to include the job band in the procedures for reviewing titles and title series and making a determination as to a change in titles and title series.

N.J.A.C. 4A:3-3.7, Trainee, apprentice, recruit, and intern titles, would be amended at paragraph (a)2 to state that a single trainee title may provide entry level employment not only for a title or title series, but also for a job band.

N.J.A.C. 4A:3-3.9, Appeal procedure, would be amended at subsection (c) to reflect procedures for a State employee to challenge his or her position's placement at a given title level. Proposed new paragraph (c)4 would provide that the possible outcomes of such a challenge will

include the position being properly placed at the existing title level; the position being properly placed but that higher level duties are being performed with such duties to be immediately removed; and the position should be placed at a different title level. Proposed new paragraph (c)5 would set forth procedures for a State appointing authority to follow where an employee serving in a job band is found to be performing duties at a higher level in the band. The appointing authority may post a vacancy announcement and select the employee who has demonstrated the attainment of the level's required competencies, or, where the incumbent employee has not demonstrated such attainment, remove the higher level duties. Proposed new paragraph (c)6 would provide that a State employee disagreeing with a title level determination may file a grievance appeal in accordance with N.J.A.C. 4A:2-3. A title level determination, however, would not be subject to a Commission-level classification appeal. New subparagraph (c)6i would require an appointing authority to notify the appropriate Civil Service Commission representative of the title level determination for the Commission's records. Existing paragraphs (c)4 and 5 would be recodified as paragraphs (c)7 and 8.

Recodified paragraph (c)7 would be amended to provide that Commission-level classification appeal procedures in State service shall not apply to an employee's title level in a job band. Recodified paragraph (c)8 would be amended to make clear that procedures enumerated in the paragraph pertain only to the non-title level appeals referred to in paragraph (c)7.

Proposed new N.J.A.C. 4A:3-3.9(d) would address title level challenges in local service. Subsection (d) would provide that such an appeal would not be subject to N.J.A.C. 4A:3-3.9. New paragraph (d)1 would require the local appointing authority to advise the appropriate Commission representative of any changes in title levels for recordkeeping purposes. Existing

subsection (d) is proposed for recodification as subsection (e) and would be amended to state that the procedures for local service classification appeals do not apply to title level appeals. Existing subsection (e) is proposed for recodification as subsection (f) and would be amended to limit classification appeals to those appeals not involving a title level challenge.

For clarity, existing subsections (f) and (g) are proposed for recodification as paragraphs (f)3 and 4, while existing subsection (h) is proposed for recodification as subsection (g). This way, all the provisions regarding non-title level appeals from a Commission representative's decision to the Civil Service Commission would fall under one subsection, subsection (f).

N.J.A.C. 4A:3-4.9, Advancement pay adjustments: State service, is proposed for amendment. Presently, the procedures for an employee receiving an advancement pay adjustment in State service, as delineated in subsection (a), apply in three scenarios. The scenario in paragraph (a)1 concerns employees who are appointed from a permanent title to a title with a higher class code following or subject to a promotional examination. The scenario in paragraph (a)2 concerns employees who are serving in a title that is reevaluated to a higher class code. Employees whose circumstances do not fit the scenarios in paragraphs (a)1 or 2 have to show, in accordance with existing subparagraphs (a)3i and ii, that they have served continuously in the lower title for at least four months immediately preceding the advancement's effective date; and that service in the lower title provided a significant preparation and training for service in the higher title. The proposed amendment to N.J.A.C. 4A:3-4.9 would include a new paragraph (a)3 and apply to employees receiving an advancement appointment to a higher title level with a higher class code in a job band. As a result of the proposed new paragraph (a)3, existing paragraph (a)3 would be recodified as paragraph (a)4 and amended to state that employees appointed to a title with a higher class code who do not fall under the scenario in the



proposed new paragraph (a)3, nor fall under the scenarios in paragraphs (a)1 and 2, could nevertheless receive an advancement pay adjustment under subsection (a), so long as the aforementioned criteria of subparagraphs (a)3i and ii, to be recodified as subparagraphs (a)4i and ii, are met.

N.J.A.C. 4A:4-1.9, Return of employees to their permanent titles, would be amended to include new subsection (g) to state that, for purposes of N.J.A.C. 4A:4-1.9, in the case of a position within a job band, the word “title” shall refer to the entire job band. New subsection (g) would also include a cross-reference to the proposed new job band rule at N.J.A.C. 4A:3-3.2A.

For purposes of clarity, N.J.A.C. 4A:4-2.4, Promotional title scope: local service, is initially proposed for a technical amendment at subsection (b). N.J.A.C. 4A:4-2.4(b) states that, when a title that is the subject of a promotional examination is part of a series, the test shall be open to all applicants having a “total of **one-year** permanent service who meet the open competitive requirements.” The technical amendment would rephrase the provision to refer to applicants having a “total of **one year of** permanent service who meet the open competitive requirements” (emphasis added).

N.J.A.C. 4A:4-2.4 provides promotional title scopes in local service in the case of titles that are part of a title series (subsection (a)), those where the title is not part of a title series (subsection (b)), and those where the promotion is to be made from the noncompetitive division to the competitive division (subsection (c)). The rule would be substantively amended at subsection (c). In subsection (c), an individual currently must meet the open competitive requirements and be serving in one of four categories of titles, such as the next lower in-series noncompetitive title used in the local jurisdiction or all related noncompetitive titles, set forth as paragraphs (c)1 through 4. New paragraph (c)5 would add that an employee who meets the open

competitive requirements and is serving in a job band shall be considered eligible. Accordingly, subsection (d), which in the context of using a combination of title scopes refers to the title scopes described in paragraphs “(a)2 and 3 and (c)2 through 5 above,” is proposed for amendment. The first change would be a technical amendment to modify the reference to paragraphs “(a)2, 3” to paragraphs “(a)2 and 3.” The second would refer to paragraphs “(c)2 through 5” rather than “(c)2 through 4,” in light of proposed new paragraph (c)5.

N.J.A.C. 4A:4-2.5, Promotional title scope: State service, is proposed for amendment. Subsection (a) sets forth the promotional examination categories in State service. Subsection (b) now provides for promotional title scopes in State service where a promotion is within the same category. New paragraph (b)5 would permit, when a promotion within the same category is open to a job band, that the promotion be open to the highest level in the band. Additionally, existing paragraph (b)5, which provides for the setting under extraordinary circumstances of another appropriate title scope in the case of a promotion within the same category, would be recodified as paragraph (b)6, without substantive amendment. Subsection (c), which provides for promotions between categories, would be amended to add new paragraph (c)4. The new paragraph would permit, when open to a job band, that the promotion be open to the highest level in the band. Additionally, existing paragraph (c)4, which provides for the setting under extraordinary circumstances of another appropriate title scope, would be recodified as paragraph (c)5, without substantive change.

N.J.A.C. 4A:4-3.2, Order of names on eligible lists, currently provides in subsection (c) for the ranking of names on special reemployment lists in descending order of the class code or class level of the title from which the eligible was displaced. The second sentence in N.J.A.C. 4A:4-3.2(c) provides a cross-reference to N.J.A.C. 4A:8-2.3(c)1, which sets forth the rankings

within each class code or class level. N.J.A.C. 4A:4-3.2(c) would be amended to state that, in the case of special reemployment lists containing the names of eligibles laid off from a job band, the eligibles are also to be ranked in descending order of the class code or class level of the band, as applicable. The cross-reference to N.J.A.C. 4A:8-2.3(c)1 would further apply to job band situations.

N.J.A.C. 4A:4-5.1, General provisions, concerns working test periods. New subsection (e) is proposed to state that advancement appointments are subject to a developmental period; a cross-reference to the proposed new job band rule, N.J.A.C. 4A:3-3.2A, would also be provided.

N.J.A.C. 4A:4-6.3, Examination and selection appeals, sets forth the appropriate subject matter for such appeals, as well as certain procedural requirements. New subsection (g) is proposed to distinguish that the non-selection for an advancement appointment shall not be subject to examination appeal procedures and provide that grievance procedures shall apply instead.

N.J.A.C. 4A:4-6.6, Disqualification appeals, would be amended to add new subsection (c) to distinguish that the non-selection for an advancement appointment shall not be subject to examination appeal procedures and provide that grievance procedures shall apply instead.

N.J.A.C. 4A:4-7.1, Transfers within the same governmental jurisdiction, would be amended at subsection (b) to state that the provisions regarding concurrent transfers to a title not held on a permanent basis at the time of transfer (to accurately reflect new duties), would also apply to concurrent transfers to a job band. In both instances, the concurrent transfer would be subject to appropriate promotional, lateral title change, or voluntary demotion procedures. Paragraph (b)1 now indicates that the employee in the situation described in subsection (b) retains permanent status in the previously held title within the recipient organizational unit. This

paragraph would be amended to include, in the case of job bands, retention of permanent status in the job band within the recipient organizational unit. Paragraph (b)2 states that, if the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit must return the employee to his or her permanent title. This paragraph would be amended to provide that, in the case of job bands, the recipient organizational unit must return the employee to his or her permanent job band.

N.J.A.C. 4A:4-7.1A, Intergovernmental transfers, would be amended to include new subsection (e), to provide that, for purposes of the rule section, in the case of a position within a job band, “title” means the entire job band; a cross-reference would be included to the proposed new job band rule at N.J.A.C. 4A:3-3.2A. Existing subsection (e), which provides a number of cross-references to other rule sections impacting intergovernmental transfers, would be recodified as subsection (f), without substantive change.

N.J.A.C. 4A:4-7.6, Lateral title change, would be amended to include new subsection (e), to provide that, for purposes of the rule section, in the case of a position within a job band, “title” means the entire job band; a cross-reference would be included to the proposed new job band rule at N.J.A.C. 4A:3-3.2A. A technical amendment is proposed for paragraph (b)2. The existing language at paragraph (b)2 reads: “In State service, the employee’s rate of compensation on direct movement as adjusted **or** workweek, work year and the employee relations grouping, anniversary date and administrative leave entitlement shall be retained.” For clarity, paragraph (b)2 would be modified to read: “In State service, the employee’s anniversary date, administrative leave entitlement, and rate of compensation on direct movement as adjusted **for** workweek, work year, and the employee relations grouping, shall be retained” (emphasis added).

N.J.A.C. 4A:4-7.8, Voluntary demotion, would be amended at subsection (a) to add a new category of voluntary demotion where job bands are involved. Therefore, subsection (a) would be reworked by dividing it into three paragraphs. The existing category of voluntary demotion in local service in which a permanent employee is voluntarily moved from his or her permanent title to a lower title would be codified as paragraph (a)1. The existing category of voluntary demotion in State service in which a permanent employee is voluntarily moved to another title with a lower class code in the same organizational unit would be codified as paragraph (a)2. Proposed new paragraph (a)3 would provide for two types of voluntary demotions where job bands are involved. New subparagraph (a)3i would state that a voluntary demotion involving a job band includes a voluntary movement to a lower title level within the same job band. New subparagraph (a)3ii would state that a voluntary demotion involving a job band includes a voluntary movement to another job band with a lower level of duties, responsibilities, and qualifications and, where applicable, a lower class code. Additionally, proposed new subsection (g) would provide that, for purposes of the section, in the case of a position within a job band, “title” shall mean the entire job band.

N.J.A.C. 4A:7-3.1, Policy prohibiting discrimination in the workplace, which sets forth the Statewide policy protecting every State employee and prospective State employee from violations of the policy, would be amended. Paragraph (a)3 would be amended to include the advancement appointment as an employment practice in which an individual may not be treated less favorably based on the protected categories in subsection (a).

Subparagraph (c)2v is proposed for amendment with regard to types of sexual harassment, so that prohibited conduct would include situations in which a supervisor or manager makes explicit or implicit suggestions of sex in return for not only hiring,

compensation, promotion, or retention, but also advancement appointment. Subparagraph (c)2vi is proposed for amendment similarly to subparagraph (c)2v. The prohibited conduct in subparagraph (c)2vi involves suggesting or implying that failure to accept a request for a date or sex will result in adverse employment consequences, affecting, as currently provided, a performance evaluation or promotional opportunity. The proposed change would add an employee's advancement appointment as a prohibited adverse employment consequence.

Subsection (h) concerns prohibited retaliation against any employee alleging that he or she was a victim of discrimination/harassment, providing information in the course of an investigation into claims of discrimination/harassment, or opposing a discriminatory practice. Existing paragraph (h)2 states that failing to promote an employee under these circumstances is prohibited. The paragraph is proposed for amendment to include failure to select an employee for an advancement appointment as prohibited under these circumstances.

N.J.A.C. 4A:8-1.1, concerning layoffs, would be amended to include new subsection (b), providing that, in the case of those titles approved for inclusion in job bands, all layoff rights, including lateral, demotional, and special reemployment rights, shall be based on the job band, not the title level within the band. The amendment would further state in proposed new paragraph (b)1 that all references to titles in N.J.A.C. 4A:8 shall mean the job band in the case of titles approved for inclusion in job bands. Proposed new paragraph (b)2 would state that all references to class codes in N.J.A.C. 4A:8 shall mean the class code of the lowest title level in the band in the case of titles approved for inclusion in a job band. Existing subsections (b) and (c) would be recodified as (c) and (d).

N.J.A.C. 4A:8-2.2, Exercise of lateral and demotional rights, would be amended at subsection (g) with regard to employees who are placed in trainee titles in the course of the

layoff process. Currently, employees so placed are required to serve a complete training period if the title is outside of either the specialized or generalized title series from which they were laid off. The amendment would apply the same principle to an employee placed in a trainee title outside of either the specialized or generalized job band from which he or she was laid off.

N.J.A.C. 4A:10-1.1, General provisions, is proposed for amendment at paragraphs (e)1 and 2 with regard to the prohibited solicitation or offer of payment, service, or other consideration to induce a retirement or resignation to gain any appointment or other personnel transaction. Among the personnel transactions specifically referenced are promotions and opportunities for promotion. Therefore, the amendment would include advancement appointments and the opportunity for advancement appointments among those personnel transactions for which extra-legal agreements to induce a retirement or resignation may not be made.

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 technical amendments to numerous rules in Title 4A of the New Jersey Administrative Code, which would change terminology to reflect enactment of P.L. 2008, c. 29, are anticipated to have a positive social impact, by continuing to ensure that all users of the rules are aware of the current name of the rulemaking agency and the current title and authority of the Chairperson of the Civil Service Commission.

The major benefit of the job banding program would be the provision of greater flexibility in the advancement of employees. Ordinarily, to promote an employee to a higher

title, both the appointing authority and interested eligibles are required to go through a process that consists of requesting an announcement, filing an application in order to determine eligibility to compete in an examination, developing an examination, conducting the examination, issuing an eligible list, certifying the list, and making appointments of reachable eligibles from the certification. The time necessary for accomplishing the foregoing tasks, in the case of every potential promotional action, is often excessive, causing a duplication of efforts by Civil Service Commission staff that does not necessarily improve the ultimate merit and fitness determination. It is the intention of the proposed new job banding program to streamline the selection process by eliminating duplicative promotional procedures, while preserving the underlying principles of merit and fitness.

Although the competencies would be specific to a band, they would be designed to ensure that incumbents in the band who work in different subject or skill areas have the opportunity to achieve the necessary competencies to be eligible for advancement to the next level.

All applicants who possess the required competencies for advancement would compete for a position when it is posted. The appointing authority would have discretion to choose from among all of the candidates who have demonstrated the required competencies for the level of the position at issue based on the determinations it makes in the internal selection process. Thus, the appointing authority would not be limited to the top three interested eligibles whose names appear on a certification. Rather, it could evaluate the entire pool of qualified, interested eligibles to make its selection determination.

However, the proposed amendments and new rule could have a negative impact on some civil service employees. Proposed new N.J.A.C. 4A:3-3.2A would establish a new program in



which, in some situations, employees could effectively have more competition for advancement to higher levels than they would have had under the promotional examination process. The appointing authority under these new circumstances would have greater discretion in choosing employees for advancement than they would have had in a true promotional situation. But the Commission believes that the positives outweigh the negatives since merit and fitness would still be served by greater competition and employees and appointing authorities would benefit from speedier decision-making on advancements than currently exists for promotions not involving an examination waiver.

The proposed amendments and new rule could also have a negative impact for some employees in restricting the review of challenges employees may file regarding the appropriateness of the title level in which an employee is serving, a non-selection for an advancement appointment, or a failure of the developmental period following an advancement appointment. In these cases, the employee would only be able to file an appeal that does not reach the Civil Service Commission but is decided by the head of the agency involved. Presently, an employee is able to file appeals regarding promotional eligibility, promotional certification issues, and failure of a promotional working test period, all of which are subject to ultimate review by the Civil Service Commission. It is important to note that such appeals involving promotions would still be utilized for actual promotional situations as recognized by the proposed amendments (for example, promotion to a supervisory position outside of the band) and would also be available for employees whose titles or title series have not been assigned a job band. However, the Commission anticipates an overall net positive impact through the provision to employees of a greater opportunity for advancement, speedy decision-making regarding advancement appointments and, ultimately, better service to the public.

Proposed amendments to N.J.A.C. 4A:3 would have an overall positive social impact in ensuring the smooth operation of the classification and compensation system whenever job banding is implicated. Proposed amendments to N.J.A.C. 4A:3-3.5, Reclassification of positions, and 3.9, Appeal procedure, would make clear that a decision affecting a job band in local service that pertains only to the appropriateness of the title level would be subject to the appointing authority's internal review procedure but not to the classification appeal procedures outlined in N.J.A.C. 4A:3-3.9. Similarly, a job band title level challenge in State service would initially be subject only to the first level classification appeal procedures, after which regular grievance procedures would apply. These limitations on classification appeals would have a positive impact on the ability of the Civil Service Commission to effectively and efficiently administer the classification plan.

A positive social impact is anticipated to result from proposed amendments to N.J.A.C. 4A:4-2.4, Promotional title scope: local service, and 2.5, Promotional title scope: State service. The amendments would bring job bands into promotional scenarios for title scope eligibility purposes.

The proposed amendment to N.J.A.C. 4A:4-3.2, Order of names on eligible lists, should have a positive social impact due to the proposed new language in subsection (c) that would explain how eligibles on special reemployment lists are ranked if they are laid off from a job band.

Proposed amendments to N.J.A.C. 4A:4-6.3, Examination and selection appeals, and 6.6, Disqualification appeals, would have a positive social impact because they would inform employees who are not selected for an advancement appointment of their appeal rights. In this instance, their appeal rights would be governed by grievance appeal procedures rather than by

regular examination appeal procedures. While the employees would not be able to appeal their non-selection to the Civil Service Commission, they would still have the opportunity to challenge their non-selection through review in their State department or local appointing authority.

A positive social impact is also expected for proposed amendments to N.J.A.C. 4A:4-7.1, Transfers within the same governmental jurisdiction, and 7.1A, Intergovernmental transfers. In each instance, the transfer process would be clear where job bands are involved, for both employees and appointing authorities. In particular, employees in job bands, like other employees, would have opportunities for transfer. In a proposed amendment to N.J.A.C. 4A:4-7.8, Voluntary demotion, employees in a job band, like other employees, could be subject to a voluntary demotion, which means that they would be treated no differently from employees not serving in a job band.

The proposed amendment to N.J.A.C. 4A:7-3.1, Policy prohibiting discrimination in the workplace, would have a positive social impact, because employees serving in a job band would be protected from discrimination with regard to advancement appointments.

The proposed amendment to the layoff rule at N.J.A.C. 4A:8-1.1, General, which would provide that all layoff rights are to be based on the job band in those cases where employees are serving in job bands, could have a negative social impact in some instances due to there being fewer displacement options when job bands are involved than if all layoff rights are to be based on titles. On the other hand, a positive social impact is also likely because, for employees serving in job bands, the displacement process would be much less disruptive for both employees and appointing authorities.

The proposed amendment to N.J.A.C. 4A:10-1.1, General provisions, with regard to the effecting of appointments and other personnel transactions based on illegal payments, offers, or solicitations, or the acceptance of such payments, offers, or solicitations, would have a positive social impact. This is because such illegal actions would also be prohibited with respect to advancement appointments.

### **Economic Impact**

It is already the case that, when an appointing authority utilizes promotional waiver of competitive examination procedures, the appointing authority is able to fill positions without undue delay, since developing and conducting an assembled examination and requesting a certification to make a permanent appointment are not required. The capability of selecting and appointing qualified individuals in an expedited manner is tied to the Legislature's directive to the Civil Service Commission to provide public officials with appropriate appointment, supervisory, and other personnel authority to properly execute their Constitutional and statutory responsibilities and to encourage and reward the meritorious performance of employees in the civil service.

The proposed job banding program would take the examination waiver process one step further by permitting appointing authorities to advance an employee to a higher level without having to go through the civil service promotional process of requesting an examination and then a certification based on the results of the examination, and appointing a reachable individual from the certification. The program would also be highly economically beneficial to affected employees; it is expected that such employees would be able to move up the pay scale much more quickly under this new system.

The Civil Service Commission would see a substantial fiscal benefit from the job banding program. The Commission would announce fewer promotional tests; thus, the Commission could reallocate resources to other important matters, including administering the classification and compensation system, leave programs, and any layoffs that may arise, ensuring equal employment opportunity and announcing and administering open competitive examinations.

The proposed new definitions and amended definitions in N.J.A.C. 4A:1-1.3, Definitions, would have a positive economic impact in facilitating the operation of the new job banding program, which would inure to the economic benefit of affected employees. Providing that the unsatisfactory PAR rating of an employee serving in a job band is cause for major discipline would have a negative economic impact on an employee on whom the discipline is imposed. However, it is important to note that the appointing authority may use its discretion in imposing major discipline on an employee for an unsatisfactory PAR rating. The appointing authority may not believe that the circumstances warrant such an action.

Limiting challenges regarding a non-selection of an advancement appointment, a failure of a developmental period following an advancement appointment, or the appropriateness of the title level, would have a positive economic impact on appointing authorities and the Civil Service Commission, as they would have to allocate fewer resources to employee appeals.

Similarly, the proposed amendment to N.J.A.C. 4A:3-3.9, Appeal procedure, regarding title level challenges, would provide limited appeal rights for State employees serving in a job band where the issue is placement at a different title level within the band, while local employees could pursue the issue at the appointing authority level. Limiting appeals for such employees would serve to streamline the classification process when it comes to job bands, while reducing the resources needed for the classification appeal process.

Advancement pay adjustments for State employees serving in a job band who receive an advancement appointment would be economically beneficial to such employees, as provided in the proposed amendment to N.J.A.C. 4A:3-4.9, Advancement pay adjustments: State service.

The proposed amendment to N.J.A.C. 4A:4-1.9, Return of employees to their permanent titles, would have a positive economic impact on employees serving in job bands. This is because an employee's right to return to the job band in which he or she is permanent would be recognized where the employee's appointment, from which he or she is returning, was made on a nonpermanent basis. Examples of nonpermanent appointments that an employee may return from include, among others, unclassified, temporary, provisional, and conditional regular appointments.

Proposed amendments to N.J.A.C. 4A:4-2.4, Promotional title scope: local service, and N.J.A.C. 4A:4-2.5, Promotional title scope: State service, would have a positive economic impact on employees serving in job bands because title scopes would encompass job bands, thus enhancing the opportunities for advancement of affected employees. A proposed amendment to N.J.A.C. 4A:4-3.2, Order of names on eligible lists, would have a positive economic impact on employees serving in job bands who are impacted in a layoff, as it will streamline the special reemployment process.

Economic opportunity for employees serving in a job band would also be positively impacted by proposed amendments to N.J.A.C. 4A:4-7.1, Transfers within the same governmental jurisdiction, and N.J.A.C. 4A:4-7.1A, Intergovernmental transfers. Potential mobility from job to job is just as important for employees serving in a job band as it is for employees serving in titles not assigned to job bands. This type of flexibility is expected to have

a positive economic impact on appointing authorities, too, as they search for qualified employees who do not have to be trained to fill certain positions.

Employees serving in a job band may take a voluntary demotion, pursuant to a proposed amendment to N.J.A.C. 4A:4-7.8, Voluntary demotion. The amendment would provide that the voluntary demotion could involve either a voluntary movement to a lower title level within the same band or a voluntary movement to a lower job band. This amendment would not have a particularly marked effect on such employees, except that they would be treated similarly to employees not serving in a job band.

The proposed amendment to N.J.A.C. 4A:7-3.1, Policy prohibiting discrimination in the workplace, would have a positive economic impact in ensuring the protection of the right against illegal discrimination for those employees aspiring to an advancement appointment, which comes with a higher income for such employees.

The proposed amendment to N.J.A.C. 4A:8-1.1, General, which would provide that, in the case of job bands, all layoff rights are to be based on the job band, all references to titles in the Layoffs rule chapter are to mean job bands and all references to class codes in the Layoffs rule chapter are to mean the class code of the lowest title level in the band, is expected to have both positive and negative economic impacts. Appointing authorities and affected employees would benefit from a less complicated layoff process in which displacement and special reemployment rights would be vastly simplified and more predictable than they are now. Fewer resources would be expended in implementing layoff plans on the part of appointing authorities and approving them on the part of the Civil Service Commission. However, employees serving in job bands who are affected in a layoff could have fewer displacement options which, in turn, could have a more adverse economic impact compared to the present layoff procedures.

Finally, the prohibition in the proposed amendment to N.J.A.C. 4A:10-1.1, General provisions, against the illegal payment, inducement, or coercion of a civil service employee to retire or resign so that an advancement appointment of another employee may be made, could potentially have a positive economic impact on some employees who might have been pressured with such an inducement.

#### **Federal Standards Statement**

A Federal standards analysis is not required because the proposed amendments and new rule would establish a new job banding program in State and local service and are not subject to any Federal standards or requirements.

#### **Jobs Impact**

It is not anticipated that any jobs would be generated or lost if the proposed amendments and new rule were adopted. The proposed amendments and new rule would establish a new job banding program in State and local service.

#### **Agriculture Industry Impact**

It is not anticipated that the proposed amendments and new rule would have any agriculture industry impact. The proposed amendments and new rule would establish a new job banding program in State and local service.

#### **Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required since the proposed amendments and new rule 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 and new rule would establish a new job banding program in State and local service.

#### **Housing Affordability Impact Analysis**



Since the proposed amendments and new rule would establish a new job banding program in State and local service, they 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 amendments and new rule would establish a new job banding program in State and local service, 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 follow (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## CHAPTER 1

### GENERAL RULES AND DEPARTMENT ORGANIZATION

#### SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

##### 4A:1-1.3 Definitions

The following words and terms, when used in [these rules] **any Commission rule**, shall have the following meanings unless the context clearly indicates otherwise:

**“Advancement appointment” means a movement within a job band, upon achievement of a specific number of predetermined competencies, to a higher title level and, where applicable, associated higher class code, which does not require competitive examination.**

...

“Class code” means a designation assigned to job titles in State and local service with ranking based upon an evaluation of job content. **In the case of job bands, all references to class code shall mean a designation assigned to title levels, unless a job band class code is specifically stated.**

...

“Competency” means the minimum level of training and orientation needed to successfully perform at a particular title level within a job band.

...

"Eligible list" means a roster compiled or approved by the [Department of Personnel] **Civil Service Commission** of persons who are qualified for employment or reemployment.

...

“Job band” means a grouping of titles or title series into a single broad band consisting of title levels with similar duties, responsibilities, and qualifications.

“Lateral movement” means an employee movement from one position to another with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code. **In the case of job bands, a lateral movement means a movement to a title level in another job band with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code.**

...

"Promotion" means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title. **In the case of job bands, a promotion means a movement to a title with a higher class code not in the employee’s current job band.**

...

"Senior executive service" means positions in State service designated by the [Board] **Commission** as having substantial managerial, policy influencing, or policy executing responsibilities not included in the career or unclassified services.

...

"Title" means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications. **In the case of those titles approved for inclusion in job bands (see N.J.A.C. 4A:3-3.2A), any references to such titles in any Commission rule shall mean the title level within the job band, and, where applicable, the level's associated class code, unless otherwise stated, or the context clearly suggests otherwise.**

...

## CHAPTER 2

### APPEALS, DISCIPLINE, AND SEPARATIONS

#### SUBCHAPTER 3. MINOR DISCIPLINE AND GRIEVANCES

##### 4A:2-3.7 Appeals from appointing authority decisions: State service

(a) Minor discipline may be appealed to the [Board] **Commission** under a negotiated labor agreement or within 20 days of the conclusion of departmental proceedings under this subchapter, provided any further appeal rights to mechanisms under the agreement are waived.

1. The [Commissioner] **Civil Service Commission** shall review the appeal upon a written record or such other proceeding as the [Commissioner] **Commission** directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule, or policy. If such

issues or evidence are not fully presented, the appeal may be dismissed **without further review of the merits of the appeal** and the [commissioner's] **Commission's** decision will be a final administrative decision.

2. Where such issues or evidence under (a)1 above are presented, the [Board] **Commission** will render a final administrative decision upon a written record or such other proceeding as the [Board] **Commission** directs.

(b) Grievances may be appealed to the [Commissioner] **Commission** within 20 days of the conclusion of Step Two procedures under [these rules] **this subchapter** or the conclusion of departmental procedures under a negotiated agreement.

1. The [Commissioner] **Commission** shall review the appeal on a written record or such other proceeding as the [Commissioner] **Commission** directs and render the final administrative decision.

2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy. **If such issues or evidence are not fully presented, the appeal may be dismissed without further review of the merits of the appeal and the Commission's decision will be a final administrative decision.**

(c) Appeals shall include:

1. A copy of the Appeal of Minor Discipline Action form or [Department of Personnel] **Civil Service Commission** grievance[s] form and all written records and decisions established during departmental reviews; and

2. Written argument and documentation.

(d) A copy of all material submitted to the [Department of Personnel] **Civil Service Commission** must be served on the employee's appointing authority.

(e) Failure to submit the material specified in (c) above may result in dismissal.

(f) In [Commissioner or Board] **Commission** reviews, the employee shall present issues of general applicability in the interpretation of law, rule, or policy (see (a)1 and (b)2 above). If that standard is met:

1. In grievance matters, the employee shall have the burden of proof.
2. In minor disciplinary matters, the appointing authority shall have the burden of proof.

### CHAPTER 3

#### CLASSIFICATION, SERVICES, AND COMPENSATION

##### SUBCHAPTER 1. CAREER AND UNCLASSIFIED SERVICES

###### 4A:3-1.2 Divisions within the career service

(a) The [Commissioner] **Civil Service Commission** shall allocate and reallocate career service titles between the competitive and noncompetitive divisions.

(b) A career service job title in the competitive division is subject to the competitive examination procedures[. See] of N.J.A.C. 4A:4-2, **except as provided in N.J.A.C. 4A:3-3.2A.**

(c) A job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the [Commissioner] **Civil Service Commission** that it is appropriate to make permanent appointments to the title and one or more of the following criteria are met.

1. Competitive testing is not practicable due to the nature of the knowledge, skills, and abilities associated with the job;

2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems, and working conditions; or

3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

(d) All appointees to noncompetitive titles shall meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period.

(e) Prior to any reallocation from the competitive to noncompetitive divisions, whether on an ongoing or interim basis, an administrative review shall be conducted and notice of the proposed reallocation shall be sent to affected appointing authorities and negotiations representatives. The notice shall designate the period of time, which in no event shall be less than 20 days, during which written comment may be submitted, and may provide for a public hearing.

1. Data, reports, analyses, and other information utilized in the determination shall constitute the administrative record, and shall be available for review by affected employees, appointing authorities, and negotiations representatives.

2. After the comment period and the public hearing, if any, the [Commissioner] **Civil Service Commission** shall issue a final administrative decision containing findings and conclusions with respect to the proposed reallocation, based upon the administrative record and any comment received, and implementation procedures.

(f) When a job title is reallocated from the competitive to noncompetitive divisions, the [Commissioner's] **Commission's** decision shall specify an effective date for reallocation.

1. Permanent employees in that title as of the effective date shall retain their permanent status in the noncompetitive division.

2. Probationary employees in that title as of the effective date shall continue serving their working test periods and, upon successful completion, attain permanent status in the noncompetitive division.

3. Provisional employees who remain in that title as of the effective date shall receive regular appointments and begin serving their working test periods on the effective date.

(g) If a title is designated noncompetitive on an interim basis, at the end of the interim noncompetitive period, which shall be no greater than one year, the job title shall be redesignated as competitive. Individuals appointed during the interim noncompetitive period shall, upon successful completion of their working test periods, attain permanent status in the competitive division.

## SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE

### 4A:3-2.3 SES appointments: State service

(a) The SES selection process includes the following:

1. Notice of vacancies in SES positions shall be posted, at a minimum, within the department in which the vacancies exist. Posting is not required if the department selects the incumbent for a position at the time of the initial allocation to the SES.

i. A department head wishing to circulate a Statewide posting of the vacancy shall do so through the [Department of Personnel] **Chairperson of the Civil Service Commission or designee**.

2. The department shall contact the [Department of Personnel] **Chairperson or designee** for assistance in recruiting to fill SES vacancies before recruiting applicants outside State service. Where possible, SES members from other departments will be encouraged to apply for a vacant SES position when it will not be filled from within the requesting department.

3. If the position is an initial conversion of a position previously assigned to the career service, the appointing authority shall notify in writing the incumbent of the availability of the

SES position and provide the individual with the opportunity to complete the entire SES selection process.

4. The departmental selection process is at the option of the department. However, once a selection process is chosen, it must be consistently applied to all candidates for that position.

5. The department head shall forward his or her selection(s) to the [Commissioner] **Chairperson or designee.**

6. Final appointment shall be subject to approval by the [Commissioner] **Chairperson or designee.**

(b) A permanent employee holding a position allocated to the SES who is not selected to join the SES or chooses not to join the SES (referred to as a "non-appointed incumbent"), shall be placed in a career service position in the same organizational unit for which he or she is qualified at the same class code.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the placement of the non-appointed incumbent:

i. Reassign the employee to a vacant position;

ii. Separate a provisional employee without underlying career status and reassign the non-appointed incumbent to the position; or

iii. Return an employee, serving provisionally in the highest permanent title held by the non-appointed incumbent, and reassign the non-appointed incumbent to the permanent title vacated by the provisional employee.



4. The organizational unit and the non-appointed incumbent may agree to use the following optional procedures:

i. The non-appointed incumbent may accept an appointment to another title at the same or lower class code, in the same or different title series **or job band, as the case may be**, for which the employee is qualified in the same or another organizational unit.

ii. The career status and compensation rights of the non-appointed incumbent shall be determined in accordance with the rules governing voluntary demotion. See N.J.A.C. 4A:4-7.8.

iii. If the organizational unit offers the non-appointed incumbent options under either (b)3 or 4 above, the employee may accept either option.

iv. If the organizational unit offers only the option under (b)3 above, the non-appointed incumbent shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the placement of a non-appointed incumbent under (b)3 or 4 above. See N.J.A.C. 4A:8.

6. If the placement of the non-appointed incumbent causes a reduction in salary of the employee, the department head may, at his or her discretion, recommend to the [Commissioner] **Chairperson or designee** placement of the employee at a salary no greater than the salary the employee received in the permanent title held immediately prior to non-appointment.

(c) A non-appointed incumbent without career status may be:

1. Reassigned to an unclassified title;
2. Reassigned to a vacant career service title for which no eligible list exists; or
3. Terminated.

#### 4A:3-2.6 SES benefits: State service

(a) Effective January 1, 1997, SES members with underlying career service status shall be entitled to the same amount of vacation, sick, and administrative leave received by career service employees. See N.J.A.C. 4A:6-1.2, 1.3, and 1.9. SES members without underlying career status shall be subject to the unclassified leave plan, if any, utilized in his or her department.

(b) SES members shall be entitled to participate in all leave-related programs open to career service employees and employees in the executive/senior management cadre of a department, including State family leave, Federal family and medical leave, donated leave, and the voluntary furlough program. See N.J.A.C. 4A:6.

(c) An SES member may apply for a career service promotional examination in his or her current unit scope, as long as the permanent title he or she held immediately prior to SES appointment would have made the SES member eligible for the examination.

**1. If the SES member had been permanent in a job band, and in accordance with N.J.A.C. 4A:3-3.2 and 4A:4-2.6 would be eligible for a promotion outside of the band, the SES member may apply for the promotional test.**

**2. If the movement in a job band would be an advancement appointment to a higher level within the band, the SES member may apply for the advancement in accordance with N.J.A.C. 4A:3-3.2.**

#### 4A:3-2.9 Separation from the SES: State service

(a) Any SES member may be separated from the SES at the discretion of the department head upon 20 days' notice. A copy of the separation notice shall be provided to the [Commissioner]

**Chairperson of the Civil Service Commission or designee** at the same time it is sent to the employee.

(b) In case of removal of an SES member with career status from State service, or return to a lower level than provided in (c) below, the procedures set forth in N.J.A.C. 4A:2-2 (major discipline) shall apply.

(c) An employee with underlying career status who is separated from the SES shall have the right to return to his or her highest held class code permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the return of the employee to his or her career status:

i. Reassign the employee to a vacant position/title;

ii. Separate a provisional employee without underlying career status and reassign the returning employee to the position/title;

iii. Return an employee serving provisionally in the permanent title previously held by the returning employee to his or her permanent title and reassign the returning employee to the position/title vacated by the provisional employee; **and**

iv. If the returning employee's last held permanent position/title no longer exists, or his or her last held permanent title is no longer appropriate as a result of the position's allocation to SES, the employee shall have lateral and demotional rights determined as if the title currently exists.

4. The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee:

i. The employee may accept appointment to other titles at the same or lower class code, in the same or a different title series **or job band, as the case may be**, for which the employee is qualified in the same or another organizational unit.

ii. The status and compensation rights of the returning employee shall be determined in accordance with applicable rules.

iii. When the organizational unit offers the employee options under either (c)3 or 4 above, the employee may accept either option.

iv. If the organizational unit offers only the option under (c)3 above, the employee shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the return of a permanent employee under (c)3 or 4 above. See N.J.A.C. 4A:8.

6. The employee shall have permanent status in the title immediately upon return to the career service, and shall have seniority as if it had continued to accrue in the permanent title held immediately prior to SES service.

7. Upon return to the career service, the salary shall be the same as if the employee had remained in the career service and had not been appointed to the SES, provided, however:

i. The salary shall in no event be greater than the salary earned in the SES; and

ii. If the minimum guaranteed in (c)7 above places the employee above the salary level of the title in which he or she is placed, the salary shall not change until such time as the salary range increases to include the guaranteed minimum salary.

iii. The department head may, at his or her discretion, recommend to the [Commissioner] **Chairperson of the Civil Service Commission or designee** placement of the employee at a higher salary than the minimum.

(d) If the position to which an SES member is appointed [or] is vacated or abolished due to a reduction in force, and the SES member has career status, the SES member shall have lateral, demotional, and special reemployment rights based upon the permanent title held immediately prior to SES appointment.

(e) Individuals without underlying career status who are separated from the SES may be:

1. Appointed to an unclassified title;
2. Appointed to a vacant career service title for which no eligible list exists; or
3. Terminated.

### SUBCHAPTER 3. CLASSIFICATION

#### 4A:3-3.2 Establishment of classification plans

(a) The [Commissioner] **Civil Service Commission** shall establish and maintain classification plans for all job titles in the career, senior executive, and unclassified services.

(b) The classification plans shall consist of:

1. A list of job titles; [and]
2. A job specification for each title, which shall include a descriptive summary of duties and responsibilities of a position or group of positions which are sufficiently similar in content to be assigned a job title[.]; **and**
  3. **A list of job bands to which titles have been assigned (see N.J.A.C. 4A:3-3.2A).**

(c) A single specification may be used for a title series **or job band**. In such cases, the distinction between different titles in the series **or levels in the job band, as the case may be**, will be set forth in the specification.

(d) To the extent feasible, the same job titles shall be used in the State and local classification

plans.

#### **4A:3-3.2A Job banding**

**(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 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.**

**(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 and make a determination as to which employee or employees may receive an advancement appointment.**

**i. An employee who is not selected for an advancement appointment may file a grievance in accordance with N.J.A.C. 4A:2-3.**

**(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.

#### 4A:3-3.3 Administration of classification plans

(a) The [Commissioner] **Chairperson of the Civil Service Commission or designee** shall implement and administer the classification plans and in this regard shall:

1. Classify new positions and reclassify existing positions through job analysis;
2. Establish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority, and responsibility;
3. Modify specifications for existing titles [or], series, **or job bands, as the case may be,** to ensure their accuracy; and
4. Notify appointing authorities and provide for notice to other affected persons of changes in classification plans.

(b) Appointing authorities shall promptly notify the [Department of Personnel] **Chairperson or designee** of new positions to be established, the authority and reasons for their establishment, and of all organizational changes or changes in the duties and responsibilities of individual

positions, and such additional information as may be required.

(c) Appointing authorities shall provide the [Department of Personnel] **Chairperson or designee** with updated organization charts on an annual basis.

(d) Positions in the career, unclassified, and senior executive services shall be subject to job audit by the [Department of Personnel] **Chairperson or designee** to ensure accurate classification and compliance with Title 11A, New Jersey [Statutes] **statutes**, and Title 4A, N.J.A.C.

(e) In State service, each department and autonomous agency shall designate an individual as the agency representative, to serve as its liaison with the [Department of Personnel] **appropriate Commission representative** on all classification and compensation matters.

(f) In State service, the agency representative shall provide notice to affected and potentially affected negotiations representatives upon submission of the following to the [Department of Personnel] **appropriate Commission representative**. The [Department of Personnel] **Commission representative** shall verify that proper notice has been given of each of the following:

1. Reorganizations;
2. Job content reevaluation requests;
3. Requests for new titles or title series;
4. Job specification modification requests;
5. Employee relations group changes; and
6. Establishment, modification, or termination of flexitime programs, alternate workweek

programs, and adjusted hours of operation.

#### 4A:3-3.5 Reclassification of positions

(a) When the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the [Commissioner] **Chairperson of the Civil Service Commission or designee**, shall after review:

1. Reclassify the position to a more appropriate title if there is one;
2. Establish a new title to which the position shall be reclassified; or
3. Take other appropriate action based on the organizational structure of the appointing authority.

(b) An appointing authority may request a classification review by the [Department of Personnel] **Chairperson of the Commission or designee** in a manner and form as determined by the [Commissioner] **Chairperson or designee**. Such review may be initiated by the [Department of Personnel] **Chairperson of the Commission or designee**. An employee or union representative may request a classification review in accordance with N.J.A.C. 4A:3-3.9.

(c) No reclassification of any position shall become effective until notice is given to affected permanent employees and approval is given by [the Commissioner] **an appropriate Commission representative**.

1. Within 30 days of receipt of the reclassification determination, unless extended by the [Commissioner] **Chairperson or designee** in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional,

demotional, or lateral, shall be effected in accordance with all applicable rules.

2. Should an employee in the career or unclassified service in State or local service, or an appointing authority in local service, disagree with a reclassification **determination**, an appeal **to the Civil Service Commission** may be filed in accordance with N.J.A.C. 4A:3-3.9. **Appeals pertaining to an employee's title level within his or her particular job band are governed by N.J.A.C. 4A:3-3.9(c)4, 5, and 6 (State) and 4A:2-3.1(d) (local).**

#### 4A:3-3.6 New titles

(a) The [Department of Personnel] **Civil Service Commission** may determine that a new title [or], title series, **or job band** is necessary, when it is found that a new set of functions is assigned to the position(s) being reviewed and these new functions are not appropriately described by an existing title [or], title series, **or job band**.

(b) Requests for new titles [or], title series, **or job bands** must be submitted in writing by the appointing authority to [the Department of Personnel] **an appropriate representative of the Civil Service Commission** on a designated form. In State service, such requests shall be submitted by the agency representative. The request must include:

1. A detailed explanation of why the new title is needed and why an existing title cannot be used or specification modified;
2. Designation of any title to be abolished or replaced; and
3. Any other information requested by the [Department of Personnel] **Commission representative**.

(c) If the [Department of Personnel] **Commission representative** determines that there is a need for a new title [or], title series, **or job band**, [a] new job specification(s) will be prepared and in

State service the title, **series, or band** will be evaluated for compensation purposes.

(d) Pending approval by the [Commissioner] **appropriate Commission representative** of a new title [or], title series, **or job band**, the designation "Tentative Title" may be used for affected positions. See N.J.A.C. 4A:3-4.15 for compensation procedures in State service.

(e) In State service, appeals from a salary evaluation of a new title will be processed in accordance with N.J.A.C. 4A:3-4.3.

(f) The effective date of the creation of a new title by the [Commissioner] **appropriate Commission representative** will be:

1. In State service:

i. The beginning of the pay period immediately after 14 days from the date the [Department of Personnel] **appropriate Commission representative** receives the new title request and all requested information;

ii. The date of appointment to the Tentative Title; or

iii. An appropriate date as established by the [Commissioner] **Commission representative** when a classification review has been initiated by the [Department of Personnel] **Commission representative**; or

2. In local service, an appropriate date as established by the [Commissioner] **Commission representative**.

4A:3-3.7 Trainee, apprentice, recruit, and intern titles

(a) Trainee, apprentice, recruit, and intern titles may be established in State and local service to provide for entry level employment.

1. Unless otherwise specified, this section applies to all titles designated by the term

"trainee" and to other titles where the job specification necessitates the application of this section, such as apprentice, recruit, and intern titles.

2. A single trainee title may provide entry level employment for more than one title [or], title series, **or job band**, under appropriate circumstances.

3. In State service, trainee positions are established by the temporary downward classification of another title.

(b) Positions in competitive trainee titles may only be filled by regular appointments from open competitive, promotional, regular, or special reemployment lists, or, in the absence of such lists, by provisional appointments. Positions in noncompetitive trainee titles may only be filled by regular appointments, including appointments from regular or special reemployment lists. Eligibility for promotion to a trainee title shall include open competitive requirements.

(c) Upon regular appointment, trainees must successfully complete a working test period.

(d) The duration of the training period shall be as follows:

1. In the case of trainees and recruits only, the length of the training period shall be designated in the job specification for the particular title.

i. The designated length of a training period for a trainee (not an apprentice, recruit, or intern) title shall not be longer than 12 months, unless otherwise provided by law.

ii. The length of a training period for a recruit title may vary in accordance with the applicable job specification or be determined by separate regulatory requirements; or

2. The length of a training period for an apprentice or intern title shall be not less than 12 months and not more than the length of time provided in the applicable job specification to successfully complete the training period, as determined by the time permitted for completion of formal coursework and preparatory training, and, where applicable, attainment of any required

certifications, permits, and/or licenses.

(e) The training period must be continuous, except if interrupted by leave or layoff from the title.

(f) The training period may include provisional service in the case of a trainee title.

(g) The training period may include service of the trainee, recruit, apprentice, or intern in a higher related title.

(h) In the case of trainees (not apprentices, recruits, or interns), the training period shall be extended, upon approval by the Chairperson of the Civil Service Commission or designee, beyond the time designated in the job specification when:

1. The trainee has not yet completed the working test period; or

2. A trainee is serving provisionally and an eligible list for the title has not yet been issued.

(i) In the case of trainees, apprentices, recruits, and interns, the training period may be reduced, upon approval by the Chairperson of the Civil Service Commission or designee, to a shorter period than designated in the specification when:

1. The employee has completed the working test period;

2. The employee meets the minimum qualifications for the primary title; and

3. All employees in the same title subject to the training period in the same appointing authority who meet the conditions specified in (i)1 and 2 above are provided with a reduced training period.

(j) The advancement of the successful, permanent trainee, apprentice, recruit, or intern, as applicable, to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by regular appointment of the employee to the appropriate

primary title.

1. To effect advancement, the appointing authority must certify the employee's successful completion of the training period, as well as, where the job specification for the primary title so provides, the satisfaction of any and all additional requirements beyond the trainee requirements, such as obtaining a license, completing extra training, or attaining a particular proficiency standard.

2. In State service, advancement to a primary title shall coincide with the beginning of a pay period.

3. The failure of a permanent employee to successfully complete the training period as indicated in the job specification shall be considered a cause for separation.

4. Trainees, apprentices, recruits, or interns, as applicable, who are advanced to a primary title, shall be required to complete a working test period in the primary title. Employees who fail to successfully complete a working test period in the primary title have no right to return to the trainee, apprentice, recruit, or intern title.

(k) For anniversary date changes in State service when a trainee, apprentice, recruit, or intern receives a regular appointment to the primary title, see N.J.A.C. 4A:3-4.5.

#### 4A:3-3.9 Appeal procedure

(a) An appeal from the classification or reclassification of a position is a request for review, or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position.

(b) The procedures in this section are applicable to employees in the career and unclassified services.



(c) In State service, a classification appeal by an employee or union representative shall be made in writing. The appeal shall include a position classification questionnaire completed by the appellant, and shall specify the title which the appellant believes is appropriate to the duties performed by the employee and explain how the duties at issue are more appropriate to the requested title than to the title in which the employee is currently serving.

1. The employee's immediate supervisor shall indicate on the position classification questionnaire the supervisor's agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent on each duty, and the title proposed by the appellant as appropriate to the duties performed. To the extent that the supervisor disagrees with information on the questionnaire, the supervisor shall explain in writing the nature of the disagreement. The supervisor shall also sign the position classification questionnaire.

2. The employee's immediate supervisor shall forward the completed position classification questionnaire to the program manager/division director, as applicable, who shall indicate on the questionnaire agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent on each duty, and the title proposed by the appellant as appropriate to the duties performed. To the extent that the program manager/division director disagrees with information on the questionnaire, he or she shall explain in writing the nature of the disagreement. The program manager/division director shall also sign the questionnaire.

3. The supervisor and program manager/division director shall complete their portions of the questionnaire and provide their signatures on the form in accordance with (c)1 and 2 above within 15 days of the employee's submission of the appeal to the immediate supervisor. By no later than the end of this period, the program manager/division director shall submit to the

agency representative the completed questionnaire, along with the appellant's most recent PAR form (see N.J.A.C. 4A:6-5).

**4. In the case of an employee challenging his or her title level within a job band, the agency representative shall review the appeal and determine one of the following:**

- i. The position is properly placed at the existing title level;**
- ii. The position is properly placed at the existing title level, but that duties of a different title level are being performed, in which case the appointing authority shall immediately remove all inappropriate duties; or**
- iii. The position should be placed at a different title level.**

**5. If an employee serving in a job band title is found to be performing duties at a higher level in the band, the appointing authority:**

- i. May post a notice of advancement appointment opportunity for the position and select the employee who has demonstrated the attainment of the required competencies for that level (see N.J.A.C. 4A:3-3.2A(d)); or**
- ii. If the incumbent employee has not demonstrated the attainment of the required competencies, shall remove the higher level duties.**

**6. If an appellant challenging his or her title level disagrees with the determination rendered by the agency representative, the appellant may file a grievance appeal regarding job band title level issues. See N.J.A.C. 4A:2-3.**

**i. The appointing authority shall notify the appropriate representative of the Civil Service Commission of the determination for recordkeeping purposes.**

[4.] **7. [The] In the case of an appeal not pertaining to a title level within the employee's particular job band, the agency representative shall review the appeal, affix to it an**

organizational chart, and ensure that the information set forth in (c)1 [through], **2, and 3** above has been included. Within 10 days of receipt of the appeal, the agency representative shall either notify the appellant that specific additional information is required, or forward the appeal with organizational chart to the appropriate representative of the Civil Service Commission. The agency representative may in writing indicate with the submitted appeal a recommended approval or rejection of the appeal for specified reasons. The agency representative shall notify the appellant of the submission to the Commission representative. If additional information is required of the appellant, the agency representative shall forward the appeal with organizational chart and the additional information to the appropriate representative of the Civil Service Commission within 10 days of receipt of the appellant's response to the request for additional information.

[5.] **8.** A representative of the Civil Service Commission shall review the appeal **filed pursuant to (c)7 above**, request additional information if needed, order a desk audit where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and all completed documentation as required by the representative of the Civil Service Commission, and shall:

i. Where the agency representative, Commission representative, and appellant are in agreement with the proposed title, issue an abbreviated decision letter; or

ii. Where the agency representative, Commission representative, and appellant are not in agreement with the proposed title, include a summary of the duties of the position, findings of fact, conclusions, a notice to an employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

(1) The position is properly classified;

(2) The position is properly classified, but that out-of-title duties are being performed, in which case the Commission representative shall order, in writing, the immediate removal of inappropriate duties within a specified period of time; or

(3) The position should be reclassified, in which case, normal reclassification procedures shall be initiated immediately.

**(d) In local service, a complaint regarding the employee's title level within the band shall not be subject to the classification appeal process.**

**1. The appointing authority shall advise the appropriate representative of the Commission of any changes in the title levels of employees for recordkeeping purposes.**

[(d)] (e) In local service, an appeal from an employee, union representative, or appointing authority **not pertaining to a title level within the employee's particular job band** shall be submitted, in writing, to the appropriate representative of the Civil Service Commission. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title. If requested by a representative of the Commission, the appeal shall also include a completed position classification questionnaire and an organizational chart. If the appellant's supervisor has not signed the questionnaire within five working days of receipt of the questionnaire from the appellant, the appellant may forward the questionnaire to the appropriate representative of the Commission without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the Civil Service Commission shall review the appeal, request additional information if needed, order a desk audit where warranted, and issue a written

decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and of all completed documentation as required by the Commission representative, and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to the employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

i. The position is properly classified;

ii. The position is properly classified, but that out-of-title duties are being performed, in which case the Commission representative shall order, in writing, the immediate removal of inappropriate duties; or

iii. The position should be reclassified, in which case normal reclassification procedures shall be initiated.

[(e)] **(f)** Appeals from the decision of the Commission representative to the Civil Service Commission **pursuant to (c)7 and 8 or (e) above** may be made by an employee, authorized employee representative, or local appointing authority. The appeal shall be submitted in writing within 20 days of receipt of the decision letter and include copies of all materials submitted, the determination received from the lower level, [and] statements as to which portions of the determination are being disputed, and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered. When new information and/or argument is presented, the appeal may be remanded to the prior level.

1. The Civil Service Commission may render a decision based on the written record or appoint an independent classification reviewer. If the Commission appoints an independent classification reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An

employee may be represented by counsel or by a union representative.

2. The classification reviewer shall submit a report and recommendation to the Commission within 30 days of the review. The report and recommendation shall include an analysis of the duties of the position as they relate to the job specification, findings, conclusions, and the recommendation. The report and recommendation shall be sent to all parties with notice that exceptions are to be filed within 15 days of receipt of the report and recommendation. Exceptions must be served on all parties. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of exceptions.

[(f)] **3.** If an appeal is granted by the Civil Service Commission, the effective date of implementation shall be:

[1.] **i.** In State service, the pay period immediately after 14 days from the date an appropriate Civil Service Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission; or

[2.] **ii.** In local service, the date an appropriate representative of the Commission first received the appeal or reclassification request, or at such earlier date as directed by the Commission.

[(g)] **4.** The decision by the Commission is the final administrative determination.

[(h)] **(g)** See N.J.A.C. 4A:10-2 for enforcement of determinations by the Commission.

## SUBCHAPTER 4. COMPENSATION

### 4A:3-4.9 Advancement pay adjustments: State service

(a) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to

place them on the next higher step in the new range, unless a different salary adjustment is established in a collective negotiations agreement, except that in no event shall such adjustment result in a higher salary than that provided for in this section. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determination. (See (f) below). This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;

2. Employees are serving in a title which is reevaluated to a higher class code; [or]

**3. Employees receive an advancement appointment to a higher title level with a higher class code in a job band; or**

[3.] **4.** Employees are appointed to a title with a higher class code, when the conditions in (a)1, [or] 2, **or 3** above are not applicable, provided the **Chairperson of the Civil Service Commission or designee** finds the following criteria are met:

i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and

ii. The service in the lower title provided significant preparation and training for service in the higher title.

(b) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (a) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

(c) When an employee has been at the maximum of his or her previous salary range for at least

39 pay periods, and the salary increases after workweek adjustment would be less than two increments in the employee's previous range, the employee shall receive an additional increment in the new range, providing the employee is not already at the maximum of the new range.

(d) Employees who do not meet the criteria set forth in (a) above shall be placed on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code.

1. The adjustments described in (b) and (c) above shall be applied as appropriate.

(e) The anniversary date will be retained if the total salary increase after workweek adjustment is less than two increments in the employee's previous range. If the total salary increase after workweek adjustment is two increments or more, or the advancement results in step eight or nine, the anniversary date will be determined by the effective date of the action (frozen if step eight or nine).

(f) The workweek adjustment is computed by finding the workweek adjusted range, according to the following chart, and then placing the employee on the same step in the workweek adjusted range as the employee's step in the former range.

		WORKWEEK OF EMPLOYEE'S NEW TITLE		
		35 or 3E	NL or NE	40, 4E, or N4
	35 or 3E	NO CHANGE	+1	+2
Workweek of Employee's Former Title	NL or NE	-1 SALARY RANGE	NO CHANGE	+1 SALARY RANGE
	40, 4E or N4	-2 SALARY RANGES	-1 SALARY RANGE	NO CHANGE



EXAMPLE: An employee on step four in salary range A10 in a 35-hour week title is appointed to a 40-hour week title. Adjusting salary range A10 (35 hours) to the 40-hour week (+2 salary ranges) will result in a range A12, step four.

(g) When an employee's work year changes, a work year adjustment shall first be performed before making any other adjustments under this section. The work year adjustment is computed by placing the employee in the same step three ranges up, when work year is increased from 10 to 12 months, or three ranges down, when work year is decreased from 12 to 10 months.

EXAMPLE: An employee on step four, range A10 in a [10 month] **10-month** title, is promoted to a [12 month] **12-month** title with salary range A15. There is no change in workweek. The work year adjustment would bring the employee to step four, range A13. Then, salary is calculated based on (a) above.

## CHAPTER 4

### SELECTION AND APPOINTMENT

#### SUBCHAPTER 1. TYPES OF APPOINTMENTS

##### 4A:4-1.9 Return of employees to their permanent titles

(a) An employee with permanent status in a career service title, who is returned during or at the end of the working test period in another title, or from an appointment under N.J.A.C. 4A:4-1.3, 1.4, 1.5, 1.6, 1.7, or 1.8, to his or her permanent title, will have rights to a position in the permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.
2. In State service, an organizational unit shall mean an appointing authority. In local service, an organizational unit shall mean a department or separate agency within the same

governmental jurisdiction. A school district shall be considered a separate jurisdiction.

(b) The appointing authority shall use the following procedures, to effect the return of the permanent employee:

1. Reassign the employee to a vacant position/title;
2. Separate a provisional employee with no permanent status and reassign the returning employee to the position/title; or
3. Return an employee serving provisionally in the permanent title of the returning employee to his or her permanent title and reassign the returning employee to the position/title.

(c) The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee[.]:

1. The employee may accept appointment to other titles at the same or lower level, in the same or a different series for which the employee qualifies in the same or another organizational unit.
2. The status and compensation rights of the returning employee shall be determined in accordance with normal merit system rules and policies.

(d) When the appointing authority offers the employee options under (b) and (c) above, the employee may choose to accept either option.

(e) If the appointing authority offers only an option under (b) above, the employee must accept the option offered.

(f) Layoff procedures must be utilized when the appointing authority cannot effect the return of a permanent employee under (b) or (c) above. See N.J.A.C. 4A:4-4.8(d) on certification procedures.

**(g) For purposes of this section, in the case of a position within a job band, “title” shall**

**mean the entire job band. See N.J.A.C. 4A:3-3.2A.**

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## SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

### 4A:4-2.4 Promotional title scope: local service

(a) If a title which is the subject of a promotional examination is part of a title series, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to one of the following:

1. The next lower in-series title used in the local jurisdiction;
2. The next two lower in-series titles used in the local jurisdiction; or
3. All applicants in the unit scope who meet the open competitive requirements and all

applicants in the next lower or next two lower in-series titles used in the local jurisdiction.

(b) When the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to all applicants having a total of [one-year] **one year of** permanent service who meet the open competitive requirements.

(c) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the complete open competitive requirements and who are either serving in:

1. The next lower in-series noncompetitive title used in the local jurisdiction;
2. The next two lower in-series noncompetitive titles used in the local jurisdiction;
3. All related noncompetitive titles; [or]
4. Any competitive title[.]; **or**
5. **Any job band, as appropriate.**

(d) The title scopes described in (a)2[,] **and** 3 and (c)2 through [4] **5** above or any combination of such scopes may be used when a wider title scope is appropriate or the appointing authority provisionally promotes an employee who does not have permanent status in the next lower in-series title of the title series established by the Civil Service Commission.

(e) In extraordinary circumstances, the Chairperson of the Civil Service Commission may set another appropriate title scope.

(f) The local jurisdiction may be required to provide an appropriate representative of the Civil Service Commission with copies of ordinances, tables of organization, or other evidence of the jurisdiction's use of titles.

#### 4A:4-2.5 Promotional title scope: State service

(a) For the purpose of announcing promotional examinations, all titles will be divided into one of the following categories:

1. Professional, which requires a Bachelor's or higher level degree, with or without a clause to substitute experience for education;

2. Para-professional, which requires at least 60 general college credits or 12 or more specific college credits (but less than a full degree), with or without a clause to substitute experience for education; or

3. Non-professional, which requires less than 60 general college credits or less than 12 specific college credits.

(b) When a promotion is within the same category as listed in (a) above, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to

permanent competitive division employees serving in one of the following:

1. The next lower or next two lower in-series titles. See N.J.A.C. 4A:1-1.3 for definition of title series.

2. The next lower in-series title, if one exists, and all other competitive division titles at specified class code levels below the promotional title. See N.J.A.C. 4A:1-1.3 for definition of class code.

3. The next lower in-series title, if one exists, and all other permanent competitive division employees who meet the complete open competitive requirements.

4. To related titles, pursuant to an established plan approved by the [Commissioner] **Chairperson of the Civil Service Commission or designee.**

**5. When open to a job band, to the highest level within the band.**

[5.] **6.** In extraordinary circumstances, the [Commissioner] **Chairperson or designee** may set another appropriate title scope.

(c) When a promotion is between categories as listed in (a) above, the examination shall be open to permanent competitive division employees currently serving in the announced unit scope and who meet one of the following criteria:

1. All applicants who meet the complete open competitive requirements;

2. All applicants who are permanent in a bridge title or titles approved by the [Commissioner] **Chairperson or designee** and who meet the complete open competitive requirements. A bridge title is one which is recognized by the [Department of Personnel] **Civil Service Commission** as related to a higher category title in terms of work performed and knowledge, skills, and abilities required;

3. All titles that are in the same category as the announced title and that are in specified

class codes below the announced title, including the next lower in-series title if one exists, with or without all or part of the open competitive requirements, as appropriate, and all applicants as described in (c)2 above; [or]

**4. When open to a job band, to the highest level within the band; or**

[4.] **5.** In extraordinary circumstances, the [Commissioner] **Chairperson or designee** may set another appropriate title scope.

(d) When a promotion is to be made from the noncompetitive division to a related title in the competitive division, the examination shall be open to all permanent employees who meet one of the following:

1. Serving in the next lower or next two lower in-series noncompetitive titles and possessing the complete open competitive requirements;

2. Serving in all related noncompetitive titles and possessing the complete open competitive requirements;

3. All competitive division titles at specified class code levels below the announced title, with or without all or part of the open competitive requirements, and all titles as described in (d)1 or 2 above;

4. Competitive division employees who meet complete open competitive requirements and all titles as described in (d)1 or 2 above; or

5. In extraordinary circumstances, the [Commissioner] **Chairperson or designee** may set another appropriate title scope.

(e) The movement of a permanent employee in the noncompetitive division to a related title in the same category and with the same class code in the competitive division shall be considered a promotion for purposes of this subchapter. The title scope of the examination shall be established

as set forth in (d) above.

### SUBCHAPTER 3. ELIGIBLE LISTS

#### 4A:4-3.2 Order of names on eligible lists

(a) The order of names on an open competitive list shall be as follows:

1. When an announcement is open to more than one local jurisdiction, the resulting list of eligibles shall be separated into sub-lists by the residency requirements as provided by applicable law and ordinance.

2. Within each sub-list as provided in (a)1 above, the order of names shall be:

- i. Eligibles entitled to disabled veterans preference in order of their scores;
- ii. Eligibles entitled to veterans preference in order of their scores; and
- iii. Non-veteran eligibles in order of their scores.

3. Eligibles who receive the same score shall have the same rank. See N.J.A.C. 4A:4-4.2(c).

4. See N.J.A.C. 4A:5-2.1 for examples on use of open competitive list.

(b) Eligibles on a promotional list shall appear in the order of their scores.

1. When scores are tied, veterans shall be listed first within each rank. See N.J.A.C. 4A:4-4.2(c).

2. See N.J.A.C. 4A:5-2.2 for examples on use of a promotional list.

(c) Eligibles on special reemployment lists shall be ranked in descending order of the class code or class level of the title from which the eligible was displaced. **In the case of special reemployment lists containing the names of eligibles laid off from a job band, the eligibles shall be ranked in descending order of the class code or class level of the job band, as**

**applicable.** Within each class code or class level, eligibles shall be ranked in accordance with N.J.A.C. 4A:8-2.3(c)1.

**EXAMPLE 1.:** Emily is a State employee, and was displaced in the layoff process from her permanent title of Administrative Analyst 1, which has a class code of 29. She has a total of 10 years of seniority. George is also a State employee, and was displaced in the layoff process from his permanent title of Administrative Analyst 2, which has a class code of 26. He has a total of 15 years of seniority. The names of both Emily and George are placed on the special reemployment list for the title of Administrative Analyst 3, since it is a lower, related title. Emily's name will be listed first, because the class code of the title from which she was displaced is higher than the class code of the title from which George was displaced.

**EXAMPLE 2.:** Robert, a municipal employee, was displaced in the layoff process from his permanent title of Supervising Maintenance Repairer, the highest class level title in his title series. He has 15 years of service with the municipality. Angela, who was permanent in the title of Assistant Supervising Maintenance Repairer when she was displaced in the layoff process, has 16 and one-half years of service with the municipality. The names of both Robert and Angela will be placed at the head of special reemployment lists for Senior Maintenance Repairer and Maintenance Repairer. On both of these lists, Robert's name will appear first and Angela's second, since Robert was displaced from a higher class level title.

(d) Eligibles on regular or police and fire reemployment lists shall be ranked in the order of seniority in the permanent title from which they resigned, retired, or were voluntarily demoted, with the name of the person with the greatest seniority appearing first on the list.

(e) It shall be the responsibility of an eligible to keep a current address on file with the [Department of Personnel] **Civil Service Commission.**



## SUBCHAPTER 5. WORKING TEST PERIOD

### 4A:4-5.1 General provisions

(a) The working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title.

(b) All regular appointments to a title in the career service shall be subject to a working test period, except:

1. Appointments from special, police and fire, and regular reemployment lists;
2. Appointments to a comparable or lower related title in lieu of layoff; [or]
3. Appointments to titles previously held on a permanent basis within current permanent continuous service[.]; **or**
4. For lateral title changes, see N.J.A.C. 4A:4-7.6(b).

(c) During the working test period, an employee shall perform the duties of the title for which appointment was made.

(d) An employee who is serving a working test period shall not be eligible for a promotional examination from that title.

**(e) Advancement appointments to a higher title level in a job band are subject to a developmental period. See N.J.A.C. 4A:3-3.2A.**

## SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

### 4A:4-6.3 Examination and selection appeals

(a) Appeals may be made on:

1. Examination items, scoring, and administration (see N.J.A.C. 4A:4-6.4);
2. Disqualification for medical or psychological reasons (see N.J.A.C. 4A:4-6.5); and
3. Examination related matters other than (a)1 and [(a)2] **2** above (see N.J.A.C. 4A:4-6.6)

including:

- i. Disqualifications under N.J.A.C. 4A:4-6.1;
- ii. List extension or revival; and
- iii. Denial of veterans preference for a particular examination.

(b) The appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

(c) Unless ordered by the [Commissioner] **Civil Service Commission**, the filing of an appeal shall not affect the promulgation of a list, a certification, or an appointment. See N.J.A.C. 4A:4-1.4 for conditional appointments.

(d) A person who has filed an appeal concerning an examination disqualification may, where appropriate, be admitted to the examination. However, the person's examination results will not be processed while the review is pending.

(e) All appeals shall be in writing and include the examination title and symbol number where appropriate, the action being appealed, the specific objections and requested relief.

(f) A party to an appeal must serve copies of all materials on every other party.

**(g) The non-selection of an employee for an advancement appointment in accordance with N.J.A.C. 4A:3-3.2A shall not be subject to examination appeal procedures. Grievance appeal procedures shall apply. See N.J.A.C. 4A:2-3.**

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item, and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1. The appeal shall be filed within 20 days of notice of the action, decision, or situation being appealed.

2. An appeal must be filed with [the Department of Personnel] **an appropriate representative of the Civil Service Commission** as indicated on the notice advising of disqualification.

(b) The [Merit System Board] **Civil Service Commission** shall decide any appeal on the written record or such other proceeding as the [Board] **Commission** deems appropriate.

**(c) The non-selection of an employee for an advancement appointment in accordance with N.J.A.C. 4A:3-3.2A shall not be subject to examination appeal procedures. Grievance appeal procedures shall apply. See N.J.A.C. 4A:2-3.**

## SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

### 4A:4-7.1 Transfers within the same governmental jurisdiction

(a) A permanent transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction.

1. In State service, an organizational unit shall mean an appointing authority. The Department of Human Services shall constitute a single appointing authority for purposes of this subchapter.

2. In local service, an organizational unit shall mean a department or separate agency within the same county or municipality. A school district shall be considered a separate

jurisdiction.

(b) If the transferred employee is concurrently appointed to a title **or job band, as applicable**, other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change, or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 through 2.7, 7.6, and 7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title **or job band** with the recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title **or job band** within this organizational unit pursuant to N.J.A.C. 4A:4-1.9 unless the employee has been disqualified for further employment.

(c) In local service, a permanent transfer shall require the consent of both organizational units and the approval of the Chair/CEO of the Civil Service Commission. In State service, the consent of the affected employee shall also be required.

1. Consent may be withdrawn by any party prior to the effective date of the transfer.

2. In State service, the consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines.

(d) A temporary transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of six months to effect economies, make available a needed service for short periods, or for any other documented purpose, which is in the best interest of the public service. All

temporary transfers must be approved by the Chair/CEO of the Civil Service Commission.

(e) An emergency transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of 30 days.

1. The Chair/CEO of the Civil Service Commission may authorize an emergency transfer when the appointing authority for the receiving unit certifies that the failure to make such transfer will result in harm to persons or property.

2. If there is a need to extend the emergency transfer beyond 30 days, the procedures governing temporary transfers must be followed.

(f) Any affected employee must be given at least 30 days' written notice of an involuntary transfer, except an involuntary emergency transfer, in which case reasonable notice must be given.

1. The notice shall contain the following:

- i. The organizational unit to which the transfer is being made;
- ii. The effective date of the transfer; and
- iii. The reason for the transfer.

2. Less than 30 days' notice may be given where the employee gives his or her consent for a shorter notice period or the Chair/CEO of the Civil Service Commission finds that a more immediate transfer is required to provide a needed service.

#### 4A:4-7.1A Intergovernmental transfers

(a) An intergovernmental transfer is the movement of a permanent employee between governmental jurisdictions operating under Title 11A, New Jersey Statutes, or the appointment

of an employee, by a governmental jurisdiction operating under Title 11A, within one year of the effective date of a layoff for reasons of economy or efficiency in which the employee is separated from service from another governmental jurisdiction operating under Title 11A.

(b) An intergovernmental transfer shall require the consent in writing of the sending jurisdiction, if any, the receiving jurisdiction, and the affected employee, and the approval of the Chairperson of the Civil Service Commission or designee.

1. The receiving jurisdiction may waive its residency ordinance or resolution in consenting to receive a transferring employee, provided, however, transferring police officers and firefighters must maintain their New Jersey residency. See N.J.S.A. 40A:14-9.8 and 40A:14-122.8. A transferring employee, other than a police officer or firefighter, who is not a New Jersey resident and transfers to a receiving jurisdiction following a layoff of more than seven days, is subject to the New Jersey residency requirement at P.L. 2011, c. 70.

2. The optional waiver of accumulated sick leave and seniority rights by a law enforcement officer, including a sheriff's officer and a county correction officer, shall require the consent in writing of the receiving jurisdiction, the affected employee, and the Chairperson of the Civil Service Commission or designee.

(c) A transferred employee shall be moved to a title substantially at the same level.

1. The existence of an open competitive or promotional list in the receiving jurisdiction shall not be a bar to the transfer.

2. Where the title to which the employee is transferring is different from that held on a permanent basis in the sending jurisdiction, or from that held on a permanent basis prior to the effective date of a separation from service due to layoff, as the case may be, the receiving jurisdiction shall request that the Chairperson of the Civil Service Commission or designee

approve the title, based on the following criteria:

- i. The title(s) shall have substantially similar duties and responsibilities;
- ii. The education and experience requirements for the title(s) are the same or similar and the mandatory requirements of the new title shall not exceed those of the former title;
- iii. There shall be no special skills, licenses, certification, or registration requirements for the new title which are not also mandatory for the former title; and
- iv. Any employee in the former title can, with minimal training and orientation, perform the duties of the new title by virtue of having qualified for the former title.

(d) Permanent employees serving in law enforcement and firefighter titles shall be eligible only for an intergovernmental transfer to the corresponding entry-level title in the receiving jurisdiction.

**(e) For purposes of this section, in the case of a position within a job band, “title” shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.**

[(e)] (f) See N.J.A.C. 4A:4-2.15, Rating of examinations, for the calculation of seniority in a promotional examination situation when an employee has had an intergovernmental transfer; N.J.A.C. 4A:4-3.7, Priority of eligible lists, for the priority of an open competitive list with regard to an intergovernmental transfer; N.J.A.C. 4A:4-7.4, Retention of rights, for the retention of seniority following intergovernmental transfers; N.J.A.C. 4A:6-1.2, Vacation leave, [4A:6-]1.3, Sick leave, and [4A:6-]1.9, Administrative leave, for paid leave entitlements following an intergovernmental transfer; N.J.A.C. 4A:6-3.5, SCOR: Intergovernmental transfers, for SCOR entitlements following an intergovernmental transfer; N.J.A.C. 4A:8-2.3, Exercise of special reemployment rights, for intergovernmental transfers following a separation of service due to layoff; N.J.A.C. 4A:8-2.4, Seniority, for the affect of intergovernmental transfers on seniority for

layoff purposes; and N.J.A.C. 4A:10-2.2, Failure to appoint from complete certification, for the consequences of a receiving jurisdiction's failure to appoint from an open competitive list when an intergovernmental transfer is effected.

#### 4A:4-7.6 Lateral title change

(a) A lateral title change is the movement of a permanent employee from his or her permanent title to an equivalent title within the same organizational unit. Such procedures are also applicable to certain transfers under N.J.A.C. 4A:4-7.1.

1. In State service, a lateral title change may only be made if the titles are assigned the same class code.

2. Movement between variants of a title shall be considered a lateral title change.

3. In State service, a lateral title change from the noncompetitive to the competitive division is considered a promotion. See N.J.A.C. 4A:4-2.5(e).

(b) If the nature of the work, education, and experience requirements of both titles are substantially similar, the employee shall retain his or her permanent status.

1. The employee shall retain accumulated seniority or service for purposes of determining promotional, layoff, or demotional rights and sick and vacation entitlements.

2. In State service, the employee's **anniversary date, administrative leave entitlement, and** rate of compensation on direct movement as adjusted [or] **for** workweek, work year, and the employee relations grouping, [anniversary date and administrative leave entitlement] shall be retained.

(c) If the nature of the work, education, and experience qualifications of both titles are dissimilar, then the employee shall be appointed pending examination, if the new title is in the competitive



division, and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. Examination procedures shall be waived, permanent status retained, and aggregate seniority granted, if the employee has previously held the title on a permanent basis during current continuous service. See N.J.A.C. 4A:8-2.4(e).

2. The employee shall retain accumulated service for purposes of determining sick and vacation leave entitlements.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year, and employee relations grouping, anniversary date, and administrative leave entitlement shall be retained.

4. A lateral title change pending examination shall not be permitted when either a special reemployment or complete promotional list exists or when [the Department of Personnel] **an appropriate representative of the Civil Service Commission** has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit, and the approval of the [Department of Personnel] **Chairperson of the Civil Service Commission or designee**, except when the title change results from changes in the [Department of Personnel] **Civil Service Commission** Classification Plan, reclassification of the employee's position, or a pre-layoff action agreed to by affected negotiations representatives and approved by the [Commissioner] **Chairperson or designee**.

(e) **For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.**

#### 4A:4-7.8 Voluntary demotion

(a) A voluntary demotion is [the]:

1. **The** voluntary movement of a permanent employee from his or her permanent title to a lower title in local service [or, in];

2. **In** State service, **the voluntary movement** to another title with a lower class code, within the same organizational unit[.]; **or**

3. **In the case of a job band, the voluntary movement to:**

i. **A lower title level within the same band; or**

ii. **Another job band with a lower level of duties, responsibilities, and qualifications and, where applicable, a lower class code.**

(b) Permanent status and seniority shall be retained when the demotion is to a lower related title. See N.J.A.C. 4A:8-2.1(b) for criteria on determining related titles.

1. When the demotion is to any title previously held on a permanent basis during current continuous service, permanent status shall be retained. All permanent continuous service in the previously held title shall be aggregated for seniority purposes.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title during or upon successful completion of the working test period in the lower title may request placement on a regular reemployment list.

2. An appointing authority may require an employee to execute a written waiver of layoff rights from the higher title during the working test period. If so waived, in the event of a layoff during the working test period, the employee's layoff rights shall be based only on the probationary title.

(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.

(e) With the [Commissioner's] approval **of the Chairperson of the Civil Service Commission or designee**, this section may also apply to employees with permanent status in titles in the non-competitive division who take a voluntary demotion to a title in the competitive division of the career service.

(f) When an employee is returned to his or her prior permanent title after a voluntary demotion, seniority in the prior permanent title shall be aggregated when:

1. The demotion was necessary due to the temporary loss of licensure required to perform the duties of the position;

2. The demotion was agreed to by both the employee and the appointing authority; and

3. The demotion was for a set period of time up to a maximum of one year.

**(g) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.**

## CHAPTER 7

### EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

#### SUBCHAPTER 3. POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE; COMPLAINT PROCEDURES, AND APPEALS

#### 4A:7-3.1 Policy prohibiting discrimination in the workplace

(a) The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender (including pregnancy), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

1. Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as "State agencies" or "State agency"). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, or persons doing business with the State. This policy also applies to both conduct that occurs in the workplace and conduct that occurs at any location which can be

reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed).

2. This policy also applies to third party harassment. Third party harassment is unwelcome behavior involving any of the protected categories referred to in (a) above that is not directed at an individual but exists in the workplace and interferes with an individual's ability to do his or her job. Third party harassment based upon any of the aforementioned protected categories is prohibited by this policy.

3. It is a violation of this policy to engage in any employment practice or procedure that treats an individual less favorably based upon any of the protected categories referred to in (a) above. This policy pertains to all employment practices such as recruitment, selection, hiring, training, promotion, **advancement appointment**, transfer, assignment, layoff, return from layoff, termination, demotion, discipline, compensation, fringe benefits, working conditions, and career development.

(b) It is a violation of this policy to use derogatory or demeaning references regarding a person's race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

1. Examples of behaviors that may constitute a violation of this policy include, but are not limited to:

i. Discriminating against an individual with regard to terms and conditions of employment because of being in one or more of the protected categories referred to in (a) above;

ii. Treating an individual differently because of the individual's race, color, national origin, or other protected category, or because an individual has the physical, cultural, or

linguistic characteristics of a racial, religious, or other protected category;

iii. Treating an individual differently because of marriage to, civil union to, domestic partnership with, or association with persons of a racial, religious, or other protected category; or due to the individual's membership in or association with an organization identified with the interests of a certain racial, religious, or other protected category; or because an individual's name, domestic partner's name, or spouse's name is associated with a certain racial, religious, or other protected category;

iv. Calling an individual by an unwanted nickname that refers to one or more of the above protected categories, or telling jokes pertaining to one or more protected categories;

v. Using derogatory references with regard to any of the protected categories in any communication;

vi. Engaging in threatening, intimidating, or hostile acts toward another individual in the workplace because that individual belongs to, or is associated with, any of the protected categories; or

vii. Displaying or distributing material (including electronic communications) in the workplace that contains derogatory or demeaning language or images pertaining to any of the protected categories.

(c) It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

1. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example:

i. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;

ii. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or

iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

2. Examples of prohibited behaviors that may constitute sexual harassment and are therefore a violation of this policy include, but are not limited to:

i. Generalized gender-based remarks and comments;

ii. Unwanted physical contact such as intentional touching, grabbing, pinching, brushing against another's body, or impeding or blocking movement;

iii. Verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions including letters, notes, e-mail, text messages, invitations, gestures, or inappropriate comments about a person's clothing;

iv. Visual contact, such as leering or staring at another's body; gesturing; displaying sexually suggestive objects, cartoons, posters, magazines, or pictures of scantily-clad individuals; or displaying sexually suggestive material on a bulletin board, on a locker room wall, or on a screen saver;

v. Explicit or implicit suggestions of sex by a supervisor or manager in return for a favorable employment action such as hiring, compensation, promotion, **advancement appointment**, or retention;

vi. Suggesting or implying that failure to accept a request for a date or sex would

result in an adverse employment consequence with respect to any employment practice such as performance evaluation, **advancement appointment**, or promotional opportunity; or

vii. Continuing to engage in certain behaviors of a sexual nature after an objection has been raised by the target of such inappropriate behavior.

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment, is encouraged to promptly report the incident(s) to a supervisor or directly to the State agency's Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints. All employees are expected to cooperate with investigations undertaken pursuant to (g) below. Failure to cooperate in an investigation may result in administrative and/or disciplinary action, up to and including termination of employment.

(e) Supervisors shall make every effort to maintain a work environment that is free from any form of prohibited discrimination/harassment. Supervisors shall immediately refer allegations of prohibited discrimination/harassment to the State agency's Equal Employment Opportunity/Affirmative Action Officer, or any other individual designated by the State agency to receive complaints of workplace discrimination/harassment. A supervisor's failure to comply with these requirements may result in administrative and/or disciplinary action, up to and including termination of employment. For purposes of this section and N.J.A.C. 4A:7-3.2, a supervisor is defined broadly to include any manager or other individual who has authority to control the work environment of any other staff member (for example, a project leader).

(f) Each State agency shall annually distribute the policy described in this section, or a summarized notice of it, to all of its employees, including part-time and seasonal employees. The



policy, or summarized notice of it, shall also be posted in conspicuous locations throughout the buildings and grounds of each State agency (that is, on bulletin boards or on the State agency's intranet site). The Department of the Treasury shall distribute the policy to [State-wide] **Statewide** vendors/contractors, whereas each State agency shall distribute the policy to vendors/contractors with whom the State agency has a direct relationship.

(g) Each State agency shall follow the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual or individuals to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

1. All investigations of discrimination/harassment claims shall be conducted in a way that respects, to the extent possible, the privacy of all the persons involved. The investigations shall be conducted in a prompt, thorough, and impartial manner. The results of the investigation shall be forwarded to the respective State agency head to make a final decision as to whether a violation of the policy has been substantiated.

2. Where a violation of this policy is found to have occurred, the State agency shall take prompt and appropriate remedial action to stop the behavior and deter its reoccurrence. The State agency shall also have the authority to take prompt and appropriate remedial action, such as moving two employees apart, before a final determination has been made regarding whether a violation of this policy has occurred.

3. The remedial action taken may include counseling, training, intervention, mediation, and/or the initiation of disciplinary action up to and including termination of employment.

4. Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records shall be maintained as confidential records to the extent practicable and appropriate.

(h) Retaliation against any employee who alleges that she or he was the victim of discrimination/harassment, provides information in the course of an investigation into claims of discrimination/harassment in the workplace, or opposes a discriminatory practice, is prohibited by this policy. No employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy shall be subjected to adverse employment consequences based upon such involvement or be the subject of other retaliation. Following are examples of prohibited actions taken against an employee because the employee has engaged in activity protected by this subsection:

1. Termination of an employee;

2. Failing to promote an employee **or select an employee for an advancement appointment;**

3. Altering an employee's work assignment for reasons other than legitimate business reasons;

4. Imposing or threatening to impose disciplinary action on an employee for reasons other than legitimate business reasons; or

5. Ostracizing an employee (for example, excluding an employee from an activity or privilege offered or provided to all other employees).

(i) An employee who knowingly makes a false accusation of prohibited

discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, may be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

(j) All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout the investigatory process. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive may result in administrative and/or disciplinary action, up to and including termination of employment.

(k) Any employee found to have violated any portion or portions of this policy may be subject to appropriate administrative and/or disciplinary action which may include, but which shall not be limited to: referral for training, referral for counseling, written or verbal reprimand, suspension, reassignment, demotion, or termination of employment. Referral to another appropriate authority for review for possible violation of State and Federal statutes may also be appropriate.

(l) All State agencies shall provide all new employees with training on the policy and procedures set forth in this section within a reasonable period of time after each new employee's appointment date. Refresher training shall be provided to all employees, including supervisors, within a reasonable period of time. All State agencies shall also provide supervisors with training

on a regular basis regarding their obligations and duties under the policy and regarding procedures set forth in this section.

## CHAPTER 8

### LAYOFFS

#### SUBCHAPTER 1. PROCEDURES

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##### 4A:8-1.1 General

(a) An appointing authority may institute layoff actions for economy, efficiency, or other related reasons.

1. Demotions for economy, efficiency, or other related reasons shall be considered layoff actions and shall be subject to the requirements of this chapter.

**(b) In the case of those titles approved for inclusion in job bands (see N.J.A.C. 4A:3-3.2A), all layoff rights, including lateral, demotional, and special reemployment rights, shall be based on the job band, not the title level within the band.**

**1. All references to titles in this chapter shall mean the job band in the case of those titles approved for inclusion in job bands.**

**2. All references to class codes in this chapter shall mean the class code of the lowest title level in the band in the case of those titles approved for inclusion in a job band.**

[(b)] (c) The Chairperson [or authorized representative] of the Civil Service Commission **or designee** shall determine seniority (see N.J.A.C. 4A:8-2.4), and shall designate lateral, demotional, and special reemployment rights for all career service titles prior to the effective date of the layoff and have such information provided to affected parties.

[(c)] **(d)** At no time shall any employee be subject to any layoff action if the employee is on a military leave of absence for active service in the Armed Forces of the United States in time of war or emergency.

## SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

### 4A:8-2.2 Exercise of lateral and demotional rights

(a) Employees shall be ranked, for purposes of exercise of layoff rights, in order of seniority.

(b) In State service, a permanent employee in a position affected by a layoff action shall be provided applicable lateral and demotional title rights first at the employee's option within the municipality in which the facility or office is located, and then to the job locations selected by the employee within the department or autonomous agency. The employee shall select individual job locations in preferential order from the list of all job locations within the department or autonomous agency and indicate:

1. Job locations at which he or she will accept lateral title rights; and

2. Job locations at which he or she will accept demotional title rights, including any restrictions based on salary range or class code.

(c) In local service, a permanent employee in a position affected by a layoff action shall be provided title rights within the layoff unit.

(d) Following the employee's selection of job location preferences, lateral and demotional title rights shall be provided in the following order:

1. A vacant position that the appointing authority has previously indicated it is willing to fill;

2. A position held by a provisional employee who does not have permanent status in another title. Where there are multiple provisional employees at a job location, the specific position shall be determined by the appointing authority;

3. A position held by a provisional employee who has permanent status in another title. Where there are multiple provisionals at a job location, the specific position shall be based on the level of the permanent title held and seniority;

4. The position held by the employee serving in a working test period with the least seniority;

5. In State service, and in local jurisdictions having a performance evaluation program approved by the [Department of Personnel] **Chairperson of the Civil Service Commission or designee**, the position held by the permanent employee whose most recent (within the last 12 months) performance rating in his or her permanent title was Unsatisfactory or equivalent rating;

6. The position held by the permanent employee with the least seniority (see N.J.A.C. 4A:8-2.4).

(e) Employees serving in their working test periods shall be provided rights to their probationary titles in the same order as (d)1 through 4 above.

(f) Demotional rights may extend beyond the employee's demotional title rights to include any title previously held on a permanent basis within current continuous service. Displacement may be made only on the basis of greater permanent continuous service except when a provisional or probationary employee is serving in the previously held title. In such cases, the provisional or probationary employee shall be subject to displacement.

1. Such extended rights shall not be granted when the employee has either lateral title rights options, or demotional title rights options to a title with a higher class code than the previously held title, within the selected job locations.

(g) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series **or job band** from which they were laid off.

(h) When employees are granted demotional title rights, the employees shall be entitled to exercise these rights regardless of whether they have greater or less seniority than the employees against whom they are exercising such rights.

## CHAPTER 10

### VIOLATIONS AND PENALTIES

#### SUBCHAPTER 1. VIOLATIONS

##### 4A:10-1.1 General provisions

(a) No person or appointing authority shall violate the provisions of Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C.

(b) No person or appointing authority shall fail to comply with an order of the [Commissioner or Board] **Civil Service Commission or the Chairperson of the Commission or designee.**

(c) No person or appointing authority shall obstruct a person's lawful opportunity to participate in the selection and appointment process or a person's lawful pursuit of any remedy or appeal under Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(d) No person shall make any false statement or perform any fraudulent act in connection with any examination, certification, appointment, or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

(e) No person shall pay, offer, solicit, or accept any compensation, service, or other consideration to affect any appointment or other personnel transaction under the provisions of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.

1. No person shall pay or offer any compensation, service, or other consideration to induce the retirement or resignation of an employee in order to gain a promotion or the opportunity for a promotion, **or an advancement appointment or the opportunity for an advancement appointment.**

2. No person shall solicit or accept any compensation, service, or other consideration as an inducement to retire or resign in order to allow an employee to gain a promotion or the opportunity for a promotion, **or an advancement appointment or the opportunity for an advancement appointment.**

(f) Appointing authorities shall timely supply all information, documents, and other materials requested by the [Department of Personnel] **Civil Service Commission or an appropriate representative of the Commission** for the purpose of efficiently and accurately administering the merit system.