In the Matter of Interim Public Health Recovery Division, Epidemiology and Laboratory Capacity Enhancing Detection, Department of Health	**STATE OF NEW JERSEY**
	FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION
CSC Docket No. 2021-158	Request for Unclassified Appointments

ISSUED: AUGUST 26, 2020

The Division of Agency Services (Agency Services) seeks Civil Service Commission (Commission) approval to make temporary unclassified appointments to various career service titles in order to allow expedited staffing of the interim Public Health Recovery Division, Epidemiology and Laboratory Capacity Enhancing Detection, Department of Health (DOH).

By way of background, the DOH has received federal funding to establish a new Epidemiology and Laboratory Capacity (ELC) program, which will be responsible for enhanced detection, response, surveillance, and prevention of COVID-19. These funds will support necessary expenses to implement and oversee expanded testing capacity, including the ability to process, manage, analyze, use and report the increased data produced. The funding was approved for a period of 30 months, and the interim program would be subject to phasedown after this 30-month timeframe.

In light of the limited duration of the program and the need to rapidly fill positions funded by this program, and to ensure timely deployment, the DOH requests approval to make unclassified appointments to the career service titles it will need to operate these enhanced efforts. These unclassified appointments would be created solely to accomplish the mission of the ELC program, and they will terminate at the conclusion of the 30-month funding period. The titles the DOH seeks to utilize for this program are:

> Administrative Analyst 1

Administrative Analyst 1, Fiscal Managaement
Administrative Analyst 1, Information Systems
Administrative Analyst 1, Procurement
Administrative Analyst 2
Administrative Analyst 2, Fiscal Management
Administrative Analyst 2, Information Systems
Administrative Analyst 2, Procurement
Administrative Analyst 3
Administrative Analyst 3 Procurement
Administrative Analyst 3, Information Systems
Administrative Analyst 3, Fiscal Management
Administrative Analyst 4
Administrative Analyst 4, Fiscal Management
Administrative Analyst 4, Information Systems
Administrative Analyst 4, Procurement
Administrative Assistant 2
Advanced Practice Nurse
Agency Services Representative 1
Agency Services Representative 2
Agency Services Representative 3
Agency Services Representative 4
Buyer
Clerk Driver
Clerk Typist
Clinical Laboratory Evaluator 1
Clinical Laboratory Evaluator 2
Clinical Laboratory Evaluator 3
Clinical Laboratory Evaluator 4
Contract Administrator 1
Contract Administrator 2
Contract Administrator 3
Database Analyst 2
Executive Assistant 3
Executive Assistant 4
Grant Specialist
Grants Manager
Health Data Specialist 2

Health Science Specialist
Information Technology Specialist (new)
Inventory Control Specialist
Laboratory Service Worker 1
Laboratory Service Worker 2
Laboratory Technician
Management Assistant
Management Improvement Specialist 1
Medical Technologist
Microbiologist 1
Microbiologist 2
Microbiologist 3
Nursing Consultant
Principal Laboratory Technician
Program Specialist 1
Program Specialist Trainee
Project Manager, Data Processing
Program Manager, Health & Human Services
Public Health Consultant 1 Health Education
Public Health Consultant 1, Nursing
Public Health Consultant 2 Health Education
Public Health Consultant 2, Nursing
Public Health Representative 1
Public Health Representative 1, Bilingual
Public Health Representative 2
Public Health Representative 2, Bilingual
Public Health Representative 3
Public Health Representative 3, Bilingual
Public Health Trainee
Public Health Trainee, Bilingual
Quality Assurance Coordinator
Quality Assurance Officer
Research Scientist 1
Research Scientist 1, Microbiology
Research Scientist 2
Research Scientist 2, Microbiology
Research Scientist 3
Research Scientist 3, Microbiology
Senior Clerk Typist
Senior Management Asst
Software Development Specialist 1

Software Development Specialist 2
Software Development Specialist 3
Supervising Public Health Representative
Technical Assistant 2

CONCLUSION

In State service, *N.J.S.A.* 11A:3-4(l) provides that the unclassified service shall be limited to those titles specifically designated and all other titles as provided by law or as the Commission may determine in accordance with criteria established by rule. *N.J.A.C.* 4A:3-1.1(a) provides that all job titles shall be allocated to the career service, except for those job titles allocated by the Commission to the unclassified service pursuant to *N.J.A.C.* 4A:3-1.3. *N.J.A.C.* 4A:3-1.3(a) provides that a title shall be allocated to the unclassified service when:

1) In State service, the title is so designated under *N.J.S.A.* 11A:3-4;

2) In local service, the title is so designated under *N.J.S.A.* 11A:3-5;

3) The title is designated unclassified by another specific statute;

4) A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; *or*

5) The Commission determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

Our courts have recognized the State's strong public policy, as evinced by the State Constitution, favoring the inclusion of as many titles as possible in the career service. *See, Walsh v. Department of Civil Service*, 32 *N.J. Super.* 39, 43-44 (App. Div. 1954); *Loboda v. Clark Township*, 40 *N.J.* 424, 434 (1983); *State v. Clark*, 15 *N.J.* 334, 341 (1954); *In the Matter of Hudson County Probation Department*, 178 *N.J. Super.* 362, 371 (App. Div. 1981).

In the instant matter, there is no question that the titles requested by Agency Services are not specifically designated by *N.J.S.A.* 11A:3-4, nor is there specific statutory authority for unclassified appointments to these titles. Likewise, there is

no statutory provision allowing for the appointment of an incumbent in the title to serve for a fixed term or at the pleasure of an appointing authority. Therefore, it is necessary to evaluate this matter under *N.J.A.C.* 4A:3-1.3(a)5, which specifies that the Commission may allocate a title to the unclassified service if it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

It has been the established practice of this agency to administer separate examinations for each competitive title within a title series. As such, for each examination, this agency issues either an open competitive or promotional announcement, reviews the resultant applications that are received to determine eligibility to compete in the examination, develops and conducts an examination, issues eligible lists ranking those candidates who passed the examination, and certifies the eligible list so that an appointing authority can consider interested eligibles for appointment. While this methodology is clearly consistent with the constitutional and statutory mandate to select and advance employees on the basis of merit and fitness, it cannot be ignored that this process can take several months to complete. Additionally, it is anticipated that the interim Public Health Recovery Division will phase down no later than November 30, 2022. Given the immediate need for the DOH to make appointments in order to meet strict timelines mandated for the administration of the federal funds it has been granted and the fact that the Public Health Recovery Division will be phased down by November 30, 2022, the Commission finds that it would not be practicable to determine merit and fitness for appointment nor make permanent appointments to the titles utilized by the interim Public Health Recovery Division.

Additionally, the Commission notes that in accordance with *N.J.S.A.* 11A:3-6, a public hearing is required when moving a title from the career to the unclassified service. However, the titles at issue are *not* to be considered unclassified except for the specific positions utilized in the interim Public Health Recovery Division. In this regard, the positions in the interim Public Health Recovery Division are not yet encumbered. As such, a public hearing is not necessary. Nevertheless, the DOH is directed to ensure that all of the appointees to positions within its interim Public Health Recovery Division are advised that their appointments are in the unclassified service and that they are not entitled to the tenure protections provided under Civil Service law and rules.

Finally, Agency Services is authorized to review and approve future requests that may occur for unclassified appointments to career service titles in addition to the titles listed above, as deemed appropriate for the DOH, to assist in the staffing efforts for disaster recovery.

ORDER

Therefore, it is ordered that this request be granted and that the titles listed, as well as any other titles needed to staff positions in the Department of Health interim Public Health Recovery Division, be designated as unclassified. The Department of Health is to ensure that all of the appointees to positions within its interim Public Health Recovery Division are advised that their appointments are unclassified and that they will not be entitled to the tenure protections of Civil Service law and rules.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 19TH DAY OF AUGUST 2020

Deirdré L. Webster Cobb
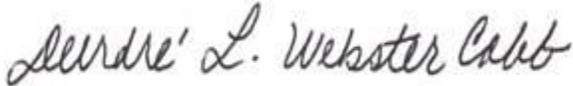
_____
Deirdré L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries   Christopher S. Myers
  and   Director
Correspondence   Division of Appeals and Regulatory Affairs
                                       Civil Service Commission
                                       Written Record Appeals Unit
                                       P. O. Box 312
                                       Trenton, New Jersey 08625-0312

c.   Agency Services
      Ann Marie Kopezynski