

advances. In this regard, it notes that the federal funding received by the State was approved for a period of five years. Thus, it would be impractical to make permanent appointments to any positions to perform these duties since the positions are, at the outset, short-term in nature. Moreover, Agency Services underscores that the positions that DOH needs to fill will vary and, in some cases, require a very specific set of skills. As such, it is imperative that the DOH be given flexibility in the selection process in order to meet its needs. Accordingly, Agency Services requests that the attached list of career service titles be deemed appropriate to fill through unclassified appointments for the DOH's staffing related to funding received pursuant to the American Rescue Plan Act of 2021.

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 DOH's interim program to address Covid-19 and other infectious diseases will phase down in five years due to the end of federal funding. 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 interim program will be phased down in five years, 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 DOH in this program.

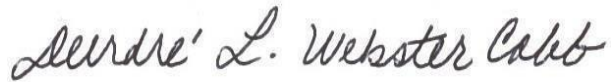
Additionally, the Commission notes that in accordance with *N.J.S.A.* 11A:3-6, a public hearing is required when moving a title from the career to the unclassified service. However, the titles at issue are *not* to be considered unclassified except for the specific positions utilized in the interim by the DOH to allow for expedited staffing related to funding received pursuant to the American Rescue Plan Act of 2021. In this regard, these positions 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 under this program 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.

ORDER

Therefore, it is ordered that this request be granted and that the titles attached be designated as unclassified. The Department of Health is to ensure that all of the appointees to positions within this interim program 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 22 DAY OF SEPTEMBER, 2021



Deirdre L. Webster Cobb
Chairperson
Civil Service Commission

Inquiries
and
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Director
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Civil Service Commission
Written Record Appeals Unit
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Attachment

c: Loreta Sepulveda
Division of Agency Services
Records Unit

Administrative Analyst 1
Administrative Analyst 1, Fiscal Management
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, Fiscal Management
Administrative Analyst 3, Information Systems
Administrative Analyst 4
Administrative Analyst 4, Fiscal Management
Administrative Analyst 4, Information Systems
Administrative Analyst 4, Procurement
Administrative Assistant 2
Agency Services Representative 1
Agency Services Representative 2
Agency Services Representative 3
Agency Services Representative 4
Buyer
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
Coordinator Consultation & Development Local Health Services
Coordinator of Supply Support Operations
Database Analyst 2
Fiscal Analyst
Forensic Morgue Technicians
Grant Specialist
Grants Manager
Health Data Specialist 1
Health Data Specialist 2
Health Data Specialist 3
Health Science Specialist
Information Technology Specialist
Inventory Control Specialist
Investigator 1 OCSME
Investigator 2 OCSME
Investigator 3 OCSME
Investigator Trainee
Laboratory Service Worker 1

Laboratory Service Worker 2
Laboratory Technician
Management Assistant
Medical Technologist
Nursing Consultant
Personnel Assistant 3
Personnel Assistant 4
Principal Laboratory Technician
Program Manager, Health & Human Services
Program Specialist 1
Program Specialist 1
Program Specialist 2
Program Specialist 3
Program Specialist 4
Program Specialist Trainee
Project Manager, Data Processing
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 1, Communicable Disease
Public Health Representative 2
Public Health Representative 2 Communicable Disease
Public Health Representative 2, Bilingual
Public Health Representative 3
Public Health Representative 3 Communicable Disease
Public Health Representative 3, Bilingual
Public Health Trainee
Public Health Trainee, Bilingual
Regulatory Officer 1
Regulatory Officer 2
Research Scientist 1
Research Scientist 2
Research Scientist 3
Senior Management Assistant
Software Development Specialist 1
Supervising Public Health Representative
Supply Support Technician 1
Supply Support Technician 2
Supply Support Technician 3
Technical Support Specialist 1
Technical Support Specialist 2