



The Reporter

News from the Civil Service Commission

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August 2018

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Welcome!

I am excited to announce the return of the Merit System Reporter, which is now called The Reporter. This was among the many priorities that I established as Chair of the Civil Service Commission (Commission). This publication will highlight notable decisions and appeals as well as significant rule changes and/or policies impacting the Commission.



Deirdre L. Webster Cobb, Esq.
Chair/Chief Executive Officer

Most importantly, the newly revised reporter will include both new and old topics, as well as provide updated information pertaining to matters such as new employee training initiatives, testing and position classifications, legislative updates, and the re-establishment of various Advisory Boards. Each edition of The Reporter will contain newsworthy information to keep our constituents informed and to serve as a guide for the Commission's constituents.

As you know, State government faces many significant challenges. Over the past few months, the Commission has worked closely with the Governor's Office to develop solutions on key fundamental issues such as pay equity, domestic violence, opioid addiction, and a healthy working environment. I am extremely optimistic about the future of our State government and the direction of the Commission. I look forward to working with State, county and local government agencies to promote a stronger and fairer New Jersey.

Lastly, I have established an open-door policy. If you have any issues or helpful suggestions that you would like to bring to my attention, please do not hesitate to contact my office directly.

Sincerely yours,

Deirdre L. Webster Cobb, Esq.
Chair/CEO, New Jersey Civil Service Commission



Chair Webster Cobb sworn in as Chair/CEO of the Civil Service Commission

CIVIL SERVICE COMMISSION DECISIONS

Leave and Pay

In Thomas M. Jardine and Karriem Beyah (CSC, decided August 13, 2014) the Commission determined that a leave of absence while an employee is receiving Workers' Compensation benefits is not to be deducted from an employee's continuous service or seniority for the calculation of vacation leave increments. As a result, program changes are being implemented to State agencies' timekeeping systems, such as e-CATS, TALRS, and KRONOS. New Job Numbers and Codes have been established so that such leave will no longer be deducted. The changes will only affect new Workers' Compensation unpaid leaves. Workers' Compensation leaves that are initiated prior to the implementation date of the program changes will be evaluated individually and handled manually on an as-needed basis. However, proration of leave entitlements during a Workers' Compensation leave will continue. In that regard, in the companion case, *In the Matter of Richard Latham, et al. (CSC, decided August 16, 2017)*, the Commission did not disturb the proration of leave entitlements during a Workers' Compensation leave or the employee's reimbursement of paid working days in excess of prorated and accumulated entitlements of vacation and sick leave. For technical advice on eCATS program changes, [click here](#).

In the Matter of Thomas M. Jardine and Karriem Beyah (CSC, decided August 13, 2014)

Thomas M. Jardine and Karriem Beyah, full-time Senior Correction Officers with the Department of Corrections (DOC), were on leave in 2013 and received "Workers' Compensation with Pension" benefits during their leave. They claimed that they were denied an increase of their vacation leave allotment by the appointing authority, which had determined that their Workers' Compensation leave was not deemed continuous service. In this regard, DOC maintained that the appellants' Workers' Compensation leave constituted an unpaid leave of absence, and thus, it did not provide the appellants with continuous service for vacation leave increments. However, the appointing

authority acknowledged that the appellants were considered in "active service" for pension purposes. Upon its review, the Commission initially noted that for payroll accounting, the appellants were properly considered in "non-pay status," as they were not receiving their salary. Nevertheless, the Commission indicated that employees who are receiving Workers' Compensation benefits do not cease being employees regardless of whether they are deemed to be in non-pay status. The appointing authority is obligated to make pension contributions during that time. Thus, the Commission found that it would be inconsistent for the appellants' service not to be deemed continuous when the appointing authority made pension contributions and the time period was considered in the calculation of retirement benefits. Additionally, the Commission stated that this determination correlated with regulations governing other seniority-based programs, where leave without pay for disability is not deducted from seniority calculations. See *N.J.A.C. 4A:8-2.4(d)3* (layoff) and *N.J.A.C. 4A:4-2.15(d)1ii* (promotional examinations). See also *N.J.A.C. 4A:3-4.6(b)6* (leave without pay while receiving Workers' Compensation benefits shall not be deducted from earned time for purposes of calculating anniversary dates). Accordingly, the Commission ordered that the appellants' vacation leave balances be adjusted immediately. To read the full text, [click here](#).

In the Matter of Richard Latham, et al. (CSC, decided August 16, 2017)

Richard J. Latham, Brian W. Hartem, Frank Grillo, Thomas M. Jardine, and Adam Veltre, permanent Senior Correction Officers with DOC, were injured at work and placed on Workers' Compensation leave. Prior to such leave, they had exhausted their yearly allotment of paid leave. Upon their absence, DOC prorated their leave time and required the appellants to pay back the vacation and sick leave that they previously took in excess of their accrued time. They were also not credited their paid vacation and sick leave upon their return to work until the amount of leave used in excess of the prorated entitlement was reimbursed. On appeal, the appellants argued that their Workers' Compensation leave was a paid leave of absence for purposes of *N.J.A.C. 4A:6-1.5* and their allotted leave days should not have been prorated. In support of their argument, the

appellants cited *In the Matter of Thomas M. Jardine and Karriem Beyah* (CSC, decided August 13, 2014). Upon review, the Commission found that the appellants were not being paid a salary through their agency during their leave. Rather, they received Workers' Compensation benefits. Consequently, the appellants were considered in "non-pay" status, i.e., they were on an authorized leave of absence without pay. Further, the Commission emphasized that vacation, sick, and administrative leave are given in the beginning of the calendar year in anticipation of continued employment. Although the appellants' employment did not cease, they were not at work to have earned the time. Therefore, based on Civil Service rules, the action of DOC in prorating the appellants' leave time was deemed appropriate. In addition, pursuant to *N.J.A.C. 4A:6-1.5(b)1* and *2*, respectively, the appellants were required to reimburse DOC for paid working days in excess of their prorated and accumulated entitlements of vacation and sick leave and were not entitled to be credited paid vacation or sick leave until the amount of leave used in excess of their entitlement was reimbursed. With respect to administrative leave, although this type of leave should also be prorated if an employee is placed on a leave of absence without pay, the Commission stated that the rules did not provide for reimbursement of unearned time used. See e.g., *N.J.A.C. 4A:6-1.9(e)*. To read the full text, [click here](#).



Chair Webster Cobb and Commission team poses with Governor Murphy at the Chair's swearing-in ceremony.

Noncompetitive Appointments

N.J.S.A. 11A:3-2 provides that the career service shall have two divisions: the competitive division and the noncompetitive division. The Commission shall assign and reassign such titles to each division and may provide for movement, including promotion, of employees from one division to the other. Moreover, as set forth in *N.J.S.A. 11A:3-2.1a*, the Legislature

has declared the importance of fairness and impartiality in State employment and has recognized the constitutional mandate that appointments shall be made according to merit and fitness, and as far as practicable, by examination. However, the Legislature also recognized that appointments to certain titles are not readily made through the competitive process, and, in implementing the constitutional provision, enacted *N.J.S.A. 11A:3-2* which established the competitive and noncompetitive divisions of the career service. See *N.J.S.A. 11A:3-2.1b* and *c*. The Legislature indicated that its purpose in making the distinction between the two divisions is to provide for positions in the noncompetitive division which cannot properly be tested for, such as lower-level jobs that do not require significant education or experience. See *N.J.S.A. 11A:3-2.1d*. Additionally, in *N.J.S.A. 11A:3-2.1e* through *g*, the Legislature warned of the potential misuse of the noncompetitive division where titles should actually be placed in the competitive division or in the unclassified service or where appointments to the noncompetitive division could be used to protect political appointees. Thus, pursuant to the constitutional and legislative provisions, *N.J.A.C. 4A:3-1.2* was adopted, setting forth the criteria to be considered by the Commission in allocating and reallocating career service titles to the competitive and noncompetitive divisions. Moreover, in accordance with the protections afforded to veterans in this State, the Legislature enacted *N.J.S.A. 11A:5-8*, which specifies that among those eligible for appointment in the noncompetitive division, before an appointing authority shall select a nonveteran and not appoint a qualified veteran, the appointing authority shall show cause before the Commission why a veteran should not be appointed. See also *N.J.A.C. 4A:5-2.3*.

The cases highlighted below illustrate the criteria considered by the Commission in allocating a title series to the noncompetitive division, as well as protecting the rights of veterans. It is noted that, unless an appellant who is a veteran, raises discriminatory reasons for his or her rejection, or is disqualified based on psychological or medical reasons, challenges to the non-appointment of a candidate cannot be reviewed by the Commission as the determination to appoint an individual to a noncompetitive title rests on the appointing authority. Regarding the latter, candidates for titles,

such as the Juvenile Detection Officer titles, who have historically been subject to psychological and medical examinations, may continue to appeal their disqualification on those grounds. In that case, the Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et seq.*, governs the actions of the appointing authority. An appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment, and may condition the offer of employment on the results of such examinations if certain criteria are met, such as all eligibles for the title, to whom an offer of employment is made, are subjected to such examinations. See *N.J.A.C. 4A:4-6.5(b)*.

In the Matter of Juvenile Detention Officer and Juvenile Detention Officer, Bilingual in Spanish and English from the Competitive to the Non-Competitive Division of the Career Service (CSC, decided March 27, 2018)

The Division of Agency Services (Agency Services) recommended the reallocation of the subject titles to the noncompetitive division of the career service in accordance with *N.J.A.C. 4A:3-1.2*, so as to provide local appointing authorities with the flexibility needed to more efficiently and quickly meet their hiring responsibilities. Agency Services maintained that competitive testing was not practicable for either title, as both titles required only a high school diploma; did not have experience requirements; and required only basic and elementary skills gained through on-the-job training. The Commission found that the required skills were best assessed by direct observation during the approved training program that appointees would be required to complete pursuant to the Police Training Act, *N.J.S.A. 52:17B-66, et seq.*, and during the one-year working test period that they would serve upon successful completion thereof in accordance with *N.J.A.C. 4A:4-5.2(d)*. Thus, based upon the foregoing, the Commission approved the reallocation of both titles to the noncompetitive division effective December 23, 2017. To read the full text, [click here](#).

In the Matters of Alexandre Gabler (CSC, decided March 27, 2018)

Alexandre Gabler, a disabled veteran, responded to job postings with the Ocean County Library and the Trenton Library for the position of Librarian 1, a

noncompetitive title, but was not appointed. Gabler noted that he disclosed his disabled veteran status during the application process with both appointing authorities. The Commission found that the selection process utilized by the appointing authorities adversely impacted Gabler's disabled veteran preference rights. In this regard, they presented insufficient reasons for not appointing Gabler. There was no dispute that Gabler met the minimum requirements in the job specification, making him eligible for appointment, and that the appointing authorities determined that his candidacy merited his moving to the interview stage of the selection process. Although the appointing authorities identified Gabler's lack of library work experience as a factor, the Commission noted that Librarian 1 is an entry-level title. The Ocean County Library's interviewers, while mostly finding that Gabler met or exceeded the various skill areas listed in its candidate evaluation form, determined that Gabler was not the best candidate for the position. The Trenton Library, while acknowledging Gabler's technology and telecommunications skills, determined that Gabler was comparatively not the most qualified candidate, based on factors that included technical skills, application quality, and interview performance. Nevertheless, in these particular cases, the appointing authorities' conclusions that Gabler merely was either not the best candidate or not comparatively the most qualified candidate would not have warranted his removal from a list. As such, the appointing authorities did not meet the standard for the non-appointment of a qualified, interested veteran to a noncompetitive position. Accordingly, the Commission mandated Gabler's appointment to whichever position he accepted, subject to an updated background check. To read the full text, [click here](#).



Chair Webster Cobb speaks at the IPMA-HR New Jersey Annual Conference on May 23, 2018.



LEGISLATIVE UPDATE

Since taking office, Governor Phil Murphy has signed into law a number of bills that will have a marked impact on the lives and careers of New Jersey's workforce: the "Diane B. Allen Equal Pay Act" (P.L. 2018, c.9, approved on April 24, 2018; enacted as *N.J.S.A. 34:11-56.13*, effective July 1, 2018; and amended certain parts of *N.J.S.A. 10:5-12*, effective July 1, 2018) and the earned sick leave law (P.L. 2018, c.10, approved on May 2, 2018, effective October 29, 2018, and will be enacted as *N.J.S.A. 34:11D-1, et seq.*).

The "Diane B. Allen Equal Pay Act" prohibits employers from discriminating between employees on the basis of sex through unequal compensation, including benefits, for substantially similar work. Differential compensation must be firmly and demonstrably grounded in fair and objective metrics such as those of a seniority or merit system. Only legitimate, bonafide factors such as training, education, experience, or the quantity or quality of professional production can serve as criteria for a valid justification of divergent compensation. Furthermore, the legislation provides enforcement and restitution mechanisms in the form of mandatory damage payments for violations of the equal pay regulations. Liability will accrue for any aggrieved person and that person may be entitled to back pay for the entire period, except not more than six years in which the violation had been continuous, if the violation continues to occur within the statute of limitations.

The earned sick leave law requires that employers provide 1 hour of earned sick leave for every 30 hours worked to each private sector employee of the State, except for construction employees that are under contract pursuant to a collective bargaining agreement or a per diem health care employee. However, the law does not include public employers that are required to provide its employees with sick leave with full pay pursuant to any other law, rule, or regulation of the State. The employer is not required to permit the employee to accrue at any one time, or carry forward from one year to the next, more than 40 hours of earned sick leave.

HELPFUL LINKS

Civil Service Commission

44 South Clinton Avenue
Trenton, New Jersey 08609
<https://nj.gov/csc/about/about/>

Division of Appeals and Regulatory Affairs

P.O. Box 312
Trenton, New Jersey 08625-0312
Telephone: (609) 984-7140
Facsimile: (609) 984-0442
www.nj.gov/csc/about/divisions/merit/

Division of Agency Services

www.nj.gov/csc/about/divisions/slo/

Civil Service Regulations and Laws

www.nj.gov/csc/about/about/regulations/index.html

Filing Appeals with the Civil Service Commission

www.nj.gov/csc/authorities/faq/appeals

Job Announcements and Testing

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Public Safety Testing News

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