CHAPTER 97. APPOINTMENT AND PROMOTION OF EMPLOYEES IN THE CLASSIFIED SERVICE

CERTIFICATION

Sec.
97.1. Multiple lists.
97.2. Maintenance of eligible lists.
97.3. Certification of eligible lists.
97.4. Effect of appointment from list.
97.5. Restoration of eligibility.

SELECTION AND APPOINTMENT OF ELIGIBLES

97.11. Appointment process.
97.15. Prohibition against securing withdrawal from competition.
97.16. Consideration of certified eligibles.

SUBSTITUTE APPOINTMENTS

97.20. Conditions for substitute appointments/promotions.
97.21. Evidence of substitute appointment.
97.22. Rights of substitute employees.
97.23. Filling of vacancies created by substitute appointments.
97.24. Duration of substitute appointments.

PROBATIONARY PERIOD

97.31. Duration and extension of probationary periods.
97.32. Effects of leaves of absence.
97.33. Service in higher level position.
97.34. Service in same level position.
97.35. [Reserved].
97.36. Restoration to eligible list.
97.37. Trainee classes.
97.38. Probation following promotion.
PROVISIONAL APPOINTMENTS

97.41. [Reserved].
97.42. [Reserved].
97.43. [Reserved].
97.44. [Reserved].
97.45. Responsibility of the Director.
97.46. Working test period.
97.47. Rights of provisional employees.

TEMPORARY AND EMERGENCY APPOINTMENTS

97.51. Temporary appointment.
97.52. Emergency appointment.

CLASSIFICATION STANDARDS

97.61. Use of classification titles.
97.62. Classification standards.
97.63. Working out-of-class.

CERTIFICATION

§ 97.1. Multiple lists.

An eligible list shall be composed of as many lists as necessary to meet employment needs in locations where the jobs are available.

Source


§ 97.2. Maintenance of eligible lists.

(a) Director’s canvass. The Director may inquire as to the availability of eligibles for appointment as is necessary and practicable.

(b) Appointing authority canvass. An availability canvass may be conducted by the appointing authority to the extent of the names so certified. The resultant certification, after appropriate elimination of names for lack of availability, will be used by the appointing authority in making appointments, subject to appropriate audit by the Director.

(c) Recanvass of availability. When conditions warrant, the Director may direct that the names of eligibles remaining on a list be recanvassed.
(d) *Time limits for availability canvass.* The Director may establish criteria to be met in canvassing availability of eligibles by mail, telephone or other media. Failure to reply within the time limit shall be considered a lack of interest sufficient to suspend eligibility for certification or consideration for appointment.

(e) *Recording availability data.* Availability data obtained from eligibles, as a result of canvasses or otherwise, shall be promptly entered on the records used for certification and appointment from eligible lists. Other data accepted by the Director materially affecting eligibility for certification or appointment, will be promptly entered in the records.

Source


§ 97.3 Certification of eligible lists.

(a) *General content of certification.* The Director will certify from the appropriate lists as many names of eligibles available, or subject to availability canvass, as necessary to satisfy the employment requirements of the appropriate appointing authority. Each certification, in addition to indicating relative ranks, shall include the last known addresses and veterans’ status of the eligibles. Upon request of the appointing authority, the Director will selectively certify the names of veterans eligible for preferential appointment.

(b) *Duration of certification.* A certification of names for appointment or for canvass and appointment shall be valid for 60 work days after the date of certification, unless extended by the Director, and appointive action may be initiated at any time within that period.

Source


§ 97.4 Effect of appointment from list.

The name of an eligible who has been appointed may not be certified from the list for a similar or lower level class, unless otherwise provided by law or this part, or by specific request of the eligible. The acceptance of other than permanent, full-time employment will not result in loss of eligibility for permanent appointment. Conversion of a temporary appointment to a permanent appointment shall require regular certification and appointment procedures.
§ 97.5. Restoration of eligibility.

An applicant fully qualified on the date of filing an application for examination, who has lost eligibility because of a temporary loss of qualifications not sufficient to prevent completion of the examination, or an eligible who has lost eligibility for certification or appointment to a particular position because of temporary loss of qualifications for the certification or appointment, may be restored to previous eligibility upon providing evidence of regained full qualification therefor satisfactory to the Director.

Source


SELECTION AND APPOINTMENT OF ELIGIBLES

§ 97.11. Appointment process.

(a) Right of choice in making appointments and promotions. The rule-of-three applies when making selections from employment and promotion lists. If the appropriate list contains fewer than three eligibles, the Director may, upon request of the appointing authority, certify candidates from other appropriate lists to ensure the appointing authority has at least three available eligibles from which to choose.

(b) Right of choice in making multiple appointments. In making multiple appointments from a certification, the appointing authority shall follow the same procedure, and shall make only appointments, as is permissible when a series of certifications is used in making single appointments. The appointing authority may, however, in its discretion, appoint a certified eligible whose name was rejected three times previously during the process of making the multiple appointments.

Source


(a) General. An eligible whose name is disregarded in the making of an appointment within the rule of three shall be considered as having been passed over. Three passovers from the same appointing authority shall result in that eligible’s name being deactivated on the eligible list. Eligibles so deactivated may

Not be certified back to the same appointing authority unless requested by that appointing authority or by retaking the appropriate examination.

(b) Exceptions. Exceptions include the following:

(1) An eligible whose name is disregarded in the making of a preferential appointment of a veteran whose name appears on the same certification, may not be considered as having been passed over.

(2) An eligible whose name is disregarded in the making of an appointment of another eligible when there are four or more appointable eligibles on the same certification, may not be considered as having been passed over.

Source


An objection to the eligibility for certification or appointment of an eligible whose name appears on a certification shall be promptly raised by the appointing authority using the process established by the Director as set forth in Management Directive 580.34 (as amended) (relating to removal of eligibles for certification or appointment in the classified service). If the objection is sustained by the Director or Commission, the appointing authority need not consider the eligible for appointment.

Source


The refusal of an eligible to accept an appointment offered as the result of a certification shall be construed as unavailability for appointment.

Source


§ 97.15. Prohibition against securing withdrawal from competition.

A person may not influence another person to withdraw from competition for a position in the classified service, nor may a waiver of another person’s rights or availability be solicited for the purpose of either improving or injuring the
prospects of an applicant for appointment or promotion. The Commission may
take action that it deems appropriate whenever it finds that a person has violated
this section.

Source
The provisions of this § 97.15 adopted August 19, 1974, effective August 20, 1974, 4 Pa.B. 1669;
appears at serial pages (68663) and (73393).

Notes of Decisions
A review of the record did not support the petitioner’s allegation that the Liquor Control Board
intentionally mislead another applicant about the availability of an open position. Winamaker v.

§ 97.16. Consideration of certified eligibles.
Appointing authorities may conduct interviews or otherwise assess relative
suitability for appointment of certified eligibles, but the assessments must be
based on job-related criteria and be conducted in accordance with standards
established by the Director.

Source
The provisions of this § 97.16 adopted March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151.

Notes of Decisions

Discrimination Cannot be Inferred
Discrimination in nonselection for promotion cannot be inferred. There must be affirmative factual
support to sustain the allegations. Price v. Luzerne, 672 A.2d 409 (Pa. Cmwlth. 1996); appeal denied

General Comment
The Commission has authorized the use of interviews to determine suitability for promotion. Price
v. Luzerne/Wyoming Counties Area Agency on Aging, 672 A.2d 409 (Pa. Cmwlth. 1996); appeal

Interview Appropriate
An agency’s reliance upon an interview wherein candidates for promotion to Clerk Typist 3 were
questioned about job-related criteria did not result in “technical” discrimination against one of the
candidates in violation of section 905.1 of the Civil Service Act (71 P.S. § 741.905.1). Price v.

Interviews
Clearly, this regulation authorizes the use of interviews to determine suitability for promotion. Price

SUBSTITUTE APPOINTMENTS

§ 97.20. Conditions for substitute appointments/promotions.
Substitute appointments or promotions shall be made to fill permanent posi-
tions whenever the probationary or regular status incumbent of the position is:
(1) On military, parental, sick or other leave where right of return is guaranteed.
(2) Promoted.

Source

§ 97.21. Evidence of substitute appointment.
Substitute appointments/promotions shall be indicated as such on the following:
(1) Request for a certification to fill a vacancy through a substitute appointment.
(2) Certification.
(3) Appointment/promotion documents.
(4) Vacancy notice.
§ 97.22. Rights of substitute employes.

(a) A substitute employe may be granted a right to a permanent appointment by virtue of service as a substitute when any of the conditions set forth in § 97.24 (relating to duration of substitute appointments) apply. The employment, however, may be terminated at any time if the employe is accorded all rights commensurate with civil service status.

(b) The rights of the employe to certification and appointment from an eligible list or to return to the previous position, if any, in the classified service shall not be impaired by the acceptance of an appointment as a substitute.

(c) A regular or probationary employe who accepts a substitute appointment, promotion or assignment shall continue to receive the same rights and privileges to which entitled if the employee had continued to serve in a previous position with the status. The substitute appointment will not prejudice the employee’s rights to promotion, transfer, reemployment or retention in service.

Source


§ 97.23. Filling of vacancies created by substitute appointments.

Temporary vacancies created by the acceptance of substitute appointments by employes in the classified service shall be filled by substitute appointments only.

Source


§ 97.24. Duration of substitute appointments.

Other than by action of the appointing authority, a substitute appointment shall end upon the termination of the reason on which it is based, including the following:

(1) Death or permanent total disability of the former incumbent.

(2) Failure of the former incumbent to return to the position within the specified time limit or within 90 calendar days after the termination of military duty, if that was the purpose of the leave.

(3) Appointment or promotion of the former incumbent to another position other than by way of a substitute appointment or promotion.

97-7

(366593) No. 465 Aug. 13
(4) Resignation or other affirmative act of the former incumbent accomplishing permanent separation from the position involved.

Source

Cross References
This section cited in 4 Pa. Code § 97.22 (relating to rights of substitute employes).

PROBATIONARY PERIOD

§ 97.31. Duration and extension of probationary periods.
(a) The length of the probationary period in appointments and promotions for full-time positions, except for trainee classes, shall be 6 months (defined as 180 calendar days—6 months at 30 days per month). See § 97.37 (relating to trainee classes). Probationary periods for part-time positions shall be prorated according to the number of hours in the work week.
(b) The probationary period, except for trainee classes, may be extended to a maximum of 18 months (defined as 545 calendar days—365 calendar days plus 6 months at 30 days per month), at the discretion of the appointing authority. If the appointing authority decides to extend an employee’s probationary period, it shall notify the employee in writing at least 1 work day prior to the effective date of the extension. A copy of the notice shall be submitted, upon request, to the Director.
(c) An employee who exceeds the maximum 18-month probationary period, shall have regular status on the day after the probationary period ends.
(d) An employee who exceeds the maximum 24-month probationary period in a trainee class, shall have regular status in the approved end of training class, the day after the probationary period ends.

Source

Notes of Decisions
Construction with Other Statutes
The Civil Service Act (71 P. S. §§ 741.1—741.1005), requires an affirmative act by the appointing authority, evaluation of the employee’s performance and notification to the employee that such performance was satisfactory, before the probationary employee attains regular status. Because this regulation provided that if an evaluation was not undertaken the employee was elevated to regular status by default, the regulation is in conflict with the Civil Service Act. If the regulation conflicts with the statute it is purporting to implement, the regulation must give way. Wernersville State Hospital v. Peters, 659 A.2d 67 (Pa. Cmwlth. 1995).

Probation Extension Appropriate
While the Civil Service Act (71 P. S. §§ 741.1—741.1005), did not specifically address what happens when an employee’s probationary period was not formally extended, subsection (a) of Section

(366594) No. 465 Aug. 13 Copyright © 2013 Commonwealth of Pennsylvania
603, 71 Pa.C.S. § 741.603, provides for a probationary period from a minimum of 6 months to a maximum of 18 months and did not require notification to the employee for extension of the probationary period. Because a civil service probationary employee statutorily cannot attain regular status absent a satisfactory evaluation by the appointing authority, when the employee did not receive a timely evaluation there was a de facto extension of the probationary period and the employer was acting within its authority when it discharged the employee after the 6 month probationary period had expired. Wernersville State Hosp. v. Peters, 659 A.2d 67 (Pa. Cmwlth. 1995).

General Comments


§ 97.32. Effects of leaves of absence.

A probationary employee who returns from a leave of absence shall make up the time lost on the leave by completing the unserved portion of the probationary period. When the leave exceeds 30 consecutive work days, except for military leave, the appointing authority may require that a new, full probationary period be served.

Source


§ 97.33. Service in higher level position.

A probationary employee who has served any portion of the probationary period and is given a temporary appointment to a higher level position in the same or closely related series of classes under the same appointing authority may have the period of the higher level service credited toward the lower level probationary period. Written notice to that effect shall be given to the employee on or before the date the probationary period expires.

Source


§ 97.34. Service in same level position.

(a) A probationary employee who has been reassigned to another position in the same or a similar class in the same appointing authority, shall be credited with time served in the previous position toward the completion of the probationary period required for the present position. The probationary employee shall meet the established requirements for the new class.

(b) When a regular status employee has been returned from furlough or has demoted voluntarily to a lower class and is subsequently promoted to the class

(302823) No. 354 May 04
previously held, the appointing authority may waive all or part of the probationary period for the higher class.

Source

§ 97.35. [Reserved].

Source

§ 97.36. Restoration to eligible list.
If a probationary employee resigns, is removed, is granted a leave of absence, is furloughed or is demoted and requests restoration to the eligible list, the Director may authorize the restoration to the same list or a comparable list to that from which appointed.

Source

§ 97.37. Trainee classes.
The Director, in cooperation with the appointing authorities and the Executive Board, may designate specific classes for training purposes. These classes shall be extensions of working level classifications. The probationary periods for the training and working levels will be combined and may be set by the Director at a minimum of 6 months (defined as 180 calendar days—6 months at 30 days per month) and a maximum of 24 months (defined as 730 calendar days—2 years at 365 days per year), to coincide with the length of the designated training period. Employees appointed into trainee positions may not attain regular status as trainees, but shall be promoted to the working level, with regular status, if the designated training period is successfully completed. Trainees who are unsuccessful in the training shall be removed promptly. The appointing authority may extend probationary periods of trainees up to the maximum of 24 months, if written notice is provided to the employee at least 1 work day prior to the effective date of the extension. A copy of the notice shall be submitted, upon request, to the Director.
§ 97.38. Probation following promotion.
A promoted employee shall serve the probationary period of the duration specified for the class to which promoted, subject to the following conditions:

(1) During the probationary period, the position vacated by the employee will not be filled except on a substitute basis.

(2) During the first 3 months of the probationary period, the employee has the option to return to the position previously held.

(3) At any time after the first 3 months of the probationary period, the employee may return to the previous position or classification with written consent of the appointing authorities.

(4) If the services of the employee are found unsatisfactory by the appointing authority, the employee shall be restored to the previous position or classification.

Source

Cross References
This section cited in 4 Pa. Code § 97.31 (relating to duration and extension of probationary periods).

The appointing authority shall notify the employee in writing whether the services of the employee have or have not been satisfactory prior to the expiration of the employee’s probationary period. If the employee’s performance has been satisfactory, the appointing authority shall confer regular status upon the employee.

Source
§ 97.45. Responsibility of the Director.

(a) When the Director is unable to certify an eligible from an eligible list, or arrange for other means of filling a vacancy with a qualified employee, the Director may authorize filling the position by provisional appointment through an accelerated examination.

(b) The Director will determine what type and scope of recruitment is necessary to assure adequate open competition and what examination procedures are necessary to assess the relative qualifications of applicants for the provisional appointment.

(c) The Director will certify eligibles who have been determined through job-related criteria in the accelerated examination to be “well-qualified” and “qualified,” in that order.

Source

§ 97.46. Working test period.
A provisional employee shall serve a 6-month working test period, during which the appointing authority shall assess the provisional employee’s assignments and work performance. This assessment shall constitute the final part of the accelerated examination and determine whether the provisional shall be granted probationary status.

Source

§ 97.47. Rights of provisional employees.
(a) Provisional employees shall not be promoted, reinstated or reassigned to another classification while in provisional status.
(b) Provisionals who successfully complete the working test period shall automatically be granted probationary status.
(c) Provisionals may be separated before the end of the working test period on the same basis as if they had probationary status.
(d) A regular or probationary status employee who has been promoted provisionally shall be returned to the former class and status if unsuccessful during the working test period, and may be returned to the former class and status upon request, if approved by the appointing authority and the Director.

Source

TEMPORARY AND EMERGENCY APPOINTMENTS

§ 97.51. Temporary appointment.
In connection with the request for a certification to fill a position by a temporary appointment, the certification and the appointment documents shall each show that the appointment is for 12 months or less (defined as 365 calendar days).

Source

§ 97.52. Emergency appointment.
When an emergency occurs and circumstances preclude securing the Director’s authorization for appointment of a certified eligible, a qualified person may be
appointed during the emergency for a period up to 30 work days. If the emergency continues, and the Director approves, the appointment may be extended for a period not to exceed an additional 30 work days.

Source
The provisions of this § 97.52 adopted March 29, 1985, effective March 30, 1985, 15 Pa.B. 1151.

CLASSIFICATION STANDARDS

§ 97.61. Use of classification titles.
(a) The title of a class shall be the official title of every position allocated to the class and shall be used in all records, communications, documents, reports and processes relating to personnel matters and transactions.
(b) Another appropriate title may be used as a working title, in official correspondence, for purposes of internal administration or public convenience.

Source

§ 97.62. Classification standards.
The classification of positions and the compensation of employes in the classified service shall conform to standards and rules adopted by the Executive Board. In the development or revision of the classification standards, the responsible authority shall consult with the staff of the Commission insofar as the standards relate to the recruitment, evaluation, and examination functions of the Commission.

Source

§ 97.63. Working out-of-class.
An appointing authority may temporarily assign an employee to perform duties and responsibilities of another class. Except in the case of emergency, which shall be limited to 30 work days, the employee so assigned shall meet all of the established requirements for the class to which assigned. Employees assigned to work out-of-class shall either have probationary or regular status in their current class. An out-of-class assignment does not entitle the incumbent to preferences for the position on a permanent basis.

Source