

Commonwealth of Pennsylvania

State Civil Service Commission



RULES OF THE

Civil Service Commission

Title 4, Part IV, Subparts A&B

Amended Effective March 13, 2004
As Published in the Pennsylvania Code

TABLE OF CONTENTS

Sec./Title	Page
Chapter 91 General Provisions	
91.1 Short Title	1
91.2 Purpose	2
91.3 Definitions.....	2-4
91.4 Classified service coverage.....	5-6
Chapter 93 Civil Service Commission and Executive Director	
93.1 Meetings of Commission	7
93.2 Powers and duties of the Director	7-8
93.4 Public hearings.....	8
93.5 Oaths.....	9
93.6 Records open to the public.....	9
93.7 Receiving funds and allocating or apportioning costs	9
93.8 Services to departments, boards and commissions, agencies and political subdivisions; cooperation with other civil service agencies.....	9-10
Chapter 95 Selection of Employees for Entrance to, or Promotion in, the Classified Service	
Examinations Requisite for Appointment and Promotion	
95.1 Application requirements	12-13
95.1a United States citizenship	13
95.2 Residence requirements	14-15
95.5a Special requirements.....	15
95.7 Promotion procedure.....	15-18
95.8 Qualifying examinations	18-19
Nature of Examinations	
95.11 Frequency of examinations	19
95.12 Cooperation regarding examinations	19-20
95.13 Tests in examinations.....	20
95.14 Use of class specifications in examinations	20-21
Conducting Examinations and Rating Competitors	
95.20 Authority	21
95.21 Scheduling of examinations	21
95.22 Administration and scoring of examinations.....	21-22
95.23 Security of competitive standards	22
Public Notice of Examinations	
95.31 Maintenance of mailing lists	23
95.32 Special assistance in recruitment.....	23
95.33 Content and publication of examination announcements.....	23
Ratings of Competitors	
95.41 Qualifying points on examinations.....	24
95.42 Preservation of examination records.....	24
95.43 Inspection of examination records.....	25
95.44 Information regarding unsuccessful candidates	25

Sec./Title	Page
95.45 Correction of errors in scoring	25-26
95.46 Calculation of final earned ratings	26
95.47 Determination of rank in event of tie.....	26
95.48 Examination analysis and alternatives	26-27
95.49 Special examinations	27
Establishment of Employment and Promotion Lists	
95.51 Eligible lists.....	27
Duration of Employment and Promotion Lists	
95.61 Extension and cancellation of eligible lists	27-28
95.63 Amendment of an eligible list	28
Ratings of Competitors	
95.71 Review of eligibility or examination results.....	28

Chapter 97

Appointment and Promotion of Employees in the Classified Service

Certification

97.1 Multiple lists.....	30
97.2 Maintenance of eligible lists	30
97.3 Certification of eligible lists	30-31
97.4 Effect of appointment from list.....	31
97.5 Restoration of eligibility	31

Selection and Appointment of Eligibles

97.11 Appointment process.....	31-32
97.12 Rejection of eligibles—passovers	32
97.13 Removal of eligible	32
97.14 Refusal of appointment	32
97.15 Prohibition against securing withdrawal from competition.....	33
97.16 Consideration of certified eligibles.....	33

Substitute Appointments

97.20 Conditions for substitute appointments/promotions	34
97.21 Evidence of substitute appointment	34
97.22 Rights of substitute employees	34
97.23 Filling of vacancies created by substitute appointments	35
97.24 Duration of substitute appointments.....	35

Probationary Period

97.31 Duration and extension of probationary periods.....	35-36
97.32 Effects of leaves of absence	36
97.33 Service in higher level position.....	36-37
97.34 Service in same level position	37
97.36 Restoration to eligible list	37
97.37 Trainee classes	37-38
97.38 Probation following promotion	38
97.39 Notice about performance	38

TABLE OF CONTENTS

Sec./Title	Page
Provisional Appointments	
97.45 Responsibility of the Director.....	39
97.46 Working test period	39-40
97.47 Rights of provisional employees.....	40
Temporary and Emergency Appointments	
97.51 Temporary appointment	40
97.52 Emergency appointment	40
Classification Standards	
97.61 Use of classification titles	41
97.62 Classification standards	41
97.63 Working out-of-class.....	41
Chapter 99	
Employees in the Classified Service	
Subchapter A. Training Programs	
99.2 Trainees	42
Subchapter B. Service Standards and Ratings	
99.11 Establishment of system	43-44
99.13 Reporting of performance evaluations	44
99.14 Review of performance evaluations	44-45
99.15 Application of performance evaluations	45
Subchapter C. Reassignments and Transfers	
99.21 Reassignments and transfers authorized.....	45-46
99.22 Initiation of transfer.....	46
99.23 Limitations on transfer.....	46
99.24 Effect of transfer on probationary period	46
99.25 Effect of reassignment on promotion rights.....	46-47
99.27 Transfer of classified service employees entering the Senior Management Service	47
Subchapter D. Reductions in Pay or Demotions	
99.31 Reductions of pay within the same class	47
99.32 Demotions to a different class	48
99.34 Effect of demotion on status.....	48
Subchapter E. Status of Incumbents of Reclassified Positions	
99.41 Effect of reclassifications.....	49
99.43 Effect of reclassification on probationary period.....	49
Subchapter F. Compensation	
99.52 Effect of change in compensation schedules	50
Chapter 101	
Separation of Employees from Classified Service	
Temporary and Permanent Separations	
101.1 Furlough	51-54

Sec./Title	Page
Suspension	
101.21 Generally	54-55
Removal During Probationary Period	
101.31 Generally	55
101.32 Rights of promoted employee during probationary period	56
Resignation	
101.51 General.....	57
101.52 Notice of acceptance or rejection	57
101.54 Reemployment after resignation	58
101.55 Resignation following leave of absence	58
Leave of Absence	
101.61 General.....	59
101.62 Extension or renewal of leave	59
101.63 Successive leaves of absence	59
101.64 Returning employees	60
Seniority	
101.71 Break in service.....	60-61

Chapter 103
Prohibitions, Penalties and Enforcement

Director's Review of Legality of Employment	
103.5 Report of personnel changes	63
103.6 Action on personnel changes	63
103.7 Effect of out-of-class work	63
Political Activity, Assessments and Discrimination	
103.11 Exception to prohibited political activities	64
103.12 Complaint procedure	64
103.13 Complaint form	64
103.14 Prohibition of assessments	65
103.15 Prohibition of discrimination	65
Removal and Disqualification of Officers and Employees	
103.21 Falsification or concealment of material information	65
103.22 Notice of violation of act or rules	65
103.23 Penalty for violation	65

Chapter 105
Notice and Hearings

Notice	
105.1 Written notice required	66-67
105.2 Personnel actions.....	67-68
105.3 Statement of reason	68-69
105.4 Signatory authority	69-70
105.5 Time limits	70

TABLE OF CONTENTS

Sec./Title	Page
Hearings	
105.11 General.....	70-71
105.12 Requests	71-72
105.13 Form of hearing	73
105.14 Legal representation.....	73
105.14a Subpoenas	73-74
105.14b Depositions and discovery	74-75
105.14c Settlement	75
105.14d Pre-hearing conferences	75-76
105.15 Procedure under section 951(a) of the act (71 P.S. § 741.951(a))	76-79
105.16 Procedure under section 951(b) of the act (71 P.S. § 741.951(b))	80-81
105.17 Petition for reconsideration.....	81
105.18 Procedure under section 951(d) of the act (71 P.S. § 741.951(d))	81
Chapter 109	
Proceedings	
109.1 Mechanical and electronic records.....	83
Chapter 110	
Documentary Filings	
Subchapter A. Documentary Filings	
110.1 Praecept of appearance	84
110.2 Exhibits.....	84
110.3 Briefs	84-85
110.4 Transcripts.....	85
110.5 Form of documents	85
Subchapter B Reproduction of Records	
110.21 Scope	86
110.22 Determination of need	86
110.23 Method of reproduction and format	86
110.24 Documents which may be furnished without charge	86-87
110.25 Documents which may not be furnished without charge	87
110.26 Requests for reproductions of records	87
110.27 Payment for reproductions and postage	87
110.28 Records retention	87

PART IV. CIVIL SERVICE COMMISSION

Subpart	Chap.
A. RULES OF THE CIVIL SERVICE COMMISSION.....	91
B. EXECUTIVE DIRECTOR OF CIVIL SERVICE	109

Authority

The provisions of this Part IV issued under section 203(1) of the Civil Service Act (71 P.S. § 741.203(1)), unless otherwise noted.

Subpart A. RULES OF THE CIVIL SERVICE COMMISSION

Chap.	Sec.
91. GENERAL PROVISIONS	91.1
93. CIVIL SERVICE COMMISSION AND EXECUTIVE DIRECTOR.....	93.1
95. SELECTION OF EMPLOYEES FOR ENTRANCE TO, OR PROMOTION IN, THE CLASSIFIED SERVICE	95.1
97. APPOINTMENT AND PROMOTION OF EMPLOYEES IN THE CLASSIFIED SERVICE	97.1
99. EMPLOYEES IN THE CLASSIFIED SERVICE.....	99.1
101. SEPARATION OF EMPLOYEES FROM CLASSIFIED SERVICE.....	101.1
103. PROHIBITIONS, PENALTIES AND ENFORCEMENT.....	103.1
105. NOTICE AND HEARINGS.....	105.1

Source

The provisions of this Subpart A adopted October 18, 1961, amended October 15, 1964, and April 16, 1970, unless otherwise noted.

Notes of Decisions

A downward reclassification of Department of Environmental Resources employees was held not to be arbitrary or discriminatory, when it was done to preserve a pay difference between the supervisors and those supervised. *Department of Environmental Resources v. Bartal*, 618 A.2d 1062, 1069 (Pa. Commw. 1992).

CHAPTER 91. GENERAL PROVISIONS

Sec.

- 91.1. Short title.
- 91.2. Purpose.
- 91.3. Definitions.
- 91.4. Classified service coverage.

§ 91.1. Short title.

This subpart shall be known and cited as the “Rules of the Civil Service Commission.”

Source

The provisions of this § 91.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970.

§ 91.2. Purpose.

This subpart is designed to effectuate the primary purpose of the Civil Service Act (71 P.S. §§ 741.1—741.1005), declared to be greater efficiency and economy in the administration of the government of the Commonwealth, including, as a means to that end, the “establishment of conditions of service which will attract to the service of the Commonwealth qualified persons of character and ability and their appointment and promotion on the basis of merit and fitness.” As amplifications, enlargements, and extensions of the Civil Service Act (71 P.S. §§ 741.1—741.1005), the provisions of these rules shall be read in conjunction with appropriate and corresponding provisions of such act and shall be liberally construed to effectuate its purposes.

Source

The provisions of this § 91.2 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970.

§ 91.3. Definitions.

Words, terms and phrases, when used in this part, have the meaning in section 3 of the act (71 P.S. § 741.3), unless the context clearly indicates otherwise. In addition, the following terms, when used in this part, have the following meanings, unless the context clearly indicates otherwise:

Act—The Civil Service Act (71 P.S. §§ 41.1—741.1005).

Appointing authority—The officers, board, commission, person or group of persons having power by law to make appointments in the classified service.

Certification—The referral of one or more eligibles by the Director to an appointing authority, in order to fill one or more positions or to take appropriate classification action.

Class or class of positions (also known as jobs)—A group of positions in the classified service which are sufficiently similar in respect to the duties and responsibilities that the same descriptive title may be used for the position, the same requirements as to experience, knowledge, and ability are demanded of incumbents, the same tests of fitness may be used to choose qualified appointees, and the same schedule of compensation may be made to apply with fairness under like working conditions.

Classification plan—A plan consisting of a schedule of class titles and related codes arranged according to a series of classes and occupational services, including class specifications for each class, as approved by the Executive Board.

Commission—The State Civil Service Commission of the Commonwealth.

Demotion—The voluntary or involuntary movement of an employee to a class assigned to a pay range with a lower maximum salary, except as provided for in § 99.41 (relating to effect of reclassifications).

Director—The Executive Director of the Commission.

Eligible—A person whose name is on an eligible list.

Eligible list—An employment list, promotion list, or reemployment list.

Emergency employee—A qualified person hired by an appointing authority to meet an unexpected need and whose tenure will be not more than 60 work days.

Employee—A person legally occupying a position in the classified service.

Employment list—A list of persons who have been found qualified by an entrance examination for appointment to a position in a particular class.

Entrance examination—An examination for positions in a particular class, admission to which is not limited to persons employed in the classified service.

Examination—A test, series of tests, or assessments used to determine the degree to which applicants or employees are qualified for appointment or promotion and includes, but is not limited to, written tests, oral tests, ratings of qualifications, performance tests, medical tests, physical or agility tests, personality or interest inventories, and biographical inventories.

Furlough—The termination of employment because of lack of funds or work.

Intermittent position—A position filled from an eligible list and utilized by an appointing authority on a periodic or recurrent basis.

Leave of absence—A temporary interruption of employment for which the employee is given a specified period of leave without pay for purposes such as illness, school attendance, cyclical employment, military duty or training or employment in a non-civil service position.

Limited term employment—Work that is usually a standard workweek for a specified period of time.

Minimum qualifications—The education, experience, licensure, certification or other requirements which are established in the classification standards for a class and which must be met by applicants or employees seeking appointment or promotion.

Part-time employment—Work that is less than the standard workweek.

Permanent position—A position in the classified service which does not have an expiration date.

Position—A group of current duties and responsibilities assigned or delegated by competent authority requiring the full-time or part-time employment of one person.

Probationary employee—A person serving a probationary period prior to acquiring regular status in a classified service position.

Probationary period—A preliminary period of employment the purpose of which is to determine the fitness of an employee for regular status.

Promotion—The movement of an employee to another class in a pay range with a higher maximum salary.

Promotion examination—An examination for positions in a particular class, admission to which is limited to employees in the classified service.

Promotion list—A list of persons who have been found qualified by a promotion examination for appointment to a position in a particular class.

Provisional employee—A person selected by an accelerated examination program and serving a 6-month working test period prior to the required probationary period.

Qualifier—An employee whose position has been placed in the classified service by proper authority and who will be required to take and pass an examination in order to continue in the position.

Reallocate—To reclassify or to change the classification of a position from one class title and code to another class title and code.

Reassignment—The movement of an employee from one position to another position in the same class or in a similar class for which the employee qualifies at the same maximum salary.

Regular employee—An employee who has been appointed to a position in the classified service under the act after completing the probationary period.

Regular status—Standing achieved by a classified service employee who has successfully completed a probationary period.

Reinstatement—The return to the classified service of a former employee who resigned or otherwise left in good standing.

Removal—The permanent separation from the classified service of an employee who has been permanently appointed.

Resignation—The voluntary termination of employment by an employee, usually evidenced by the employee's written notice.

Rule of three—The requirement that the appointing authority is required to choose from among the three highest-ranking available eligibles in filling a particular vacancy and is therefore entitled to have three eligibles from which to choose. This rule does not prohibit an appointing authority from making an appointment if there are fewer than three available eligibles.

Seasonal employment—Work that may be a standard workweek for a specified part of the calendar year and may be recurring.

Seniority—The amount of time an employee has served in a class or classes in the classified service, calculation and use of which is defined in this part.

Separation—The voluntary or involuntary termination of employment, including temporary termination as in suspension or permanent termination as in removal.

Suspension—The temporary, involuntary separation of an employee.

Temporary employee—A qualified person appointed to a position from an eligible list for a period not to exceed 12 months.

Temporary position—A position in the classified service which arises out of temporary pressure of extra work for a period of 12 months or less.

Trainee—A qualified person appointed or promoted to a class identified as a training level class.

Training period—The period of time prescribed for a trainee class, during which the incumbent receives general or specialized training, or both, upon the successful completion of which the trainee is promoted without further examination to the class for which trained.

Transfer—The movement of an employee from one appointing authority to a different appointing authority.

Unskilled labor—A person occupying or assigned to a position for which the principal job requirement is good physical condition as related to the duties of the particular position.

Source

The provisions of this § 91.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (275934), (299499) to (299500) and (275937).

Notes of Decisions

The reassignment of two Office of Budget employees at the same time of the furlough of two other Office of Budget employees created a "vacancy," because a "vacancy" existed under the Civil Service Commission regulations when the reassigned employees would no longer function as assistant comptrollers in their new positions, thus creating a vacancy simultaneous with the furlough action. *Roetenberg v. Office of Budget*, 550 A.2d 825 (Pa. Cmwlth. 1988).

§ 91.4. Classified service coverage.*(a) Coverage.*

(1) Existing and newly established positions in the agencies identified in section 3(d) of the act (71 P.S. § 741.3(d)) shall be in the classified service unless specifically exempted by action of the Commission.

(2) Positions in classes which are or have been determined to be professional or technical by action of the Executive Board, or which are directly or indirectly derived from the classes, shall be in the classified service.

(b) Exemptions.

(1) Requests for exemption of positions from the classified service under section 3(c) of the act shall be submitted in writing to the Director. The Director, after investigation, will recommend approval or denial of the exemption request to the Commission, which will make the final determination of classified service coverage.

(2) Criteria which shall be met for exemption are as follows:

(i) *Under section 3(c)(1) of the act.* Department heads and deputy department heads are automatically exempt and require no Commission approval. Other positions will be reviewed to determine whether they fully participate in policy development, at the level required for exemption. Factors to be considered include things such as whether: the incumbent regularly and customarily meets with the Department head in formulating the general policies of the Department; the position is considered to be part of the Department's top management team; the position is responsible for recommending or approving policies which govern one or more major program areas having major impact on attainment of the goals and objectives of the Governor or the Department head; the position is expected to exercise discretionary powers in carrying out major agency missions; and the position involves development and advocacy of the agency's legislative programs. In addition, the Commission will consider the position's placement in the organization, lines of authority, reporting relationship within the agency structure, classification standards, the pay level allocated to the position and the independence of action inherent in the position.

(ii) *Under section 3(c)(2) of the act.* Members of boards and commissions are automatically exempt and require no Commission approval.

(iii) *Under section 3(c)(3) of the act.* Appointing authorities shall identify and notify the Director, in writing, which positions are designated as personal aides or confidential and provide the Director with a copy of the current job description for each position so identified. Commission approval is not required. Positions exempted under this subsection shall be assigned work as personal aides or assistants and not as program supervisors or managers.

(iv) *Under section 3(c)(4) of the act.* Appointing authorities shall request exemptions in writing. Justification shall include specific reasons why the position should be excluded from the classified service, as well as the period of time for which the exemption is requested.

(v) *Under section 3(c)(5) of the act.* Positions in attorney classifications are automatically exempt and require no Commission approval.

(vi) *Under section 3(c)(6) of the act.* Positions in classes which meet the definition of "unskilled" in the act are automatically exempt and require no Commission approval.

(vii) *Under section 3(c)(7) of the act.* The appointing authority shall identify and notify the Director in writing of the professional positions attached to the department head's office which function in press or public relations, or both, legislative liaison or development of executive policy, and provide the Director with a copy of the current job description for each position so identified. Commission approval is not required.

Source

The provisions of this § 91.4 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (275937) to (275938).

APPENDIX A

(*Editor's Note:* 1 Pa. Code § 3.13(b) (relating to contents of *Bulletin*) gives the Legislative Reference Bureau discretion to exclude from publication in the *Pennsylvania Bulletin* classes of documents which are voluminous and applicable only to Commonwealth property or contracts or agency organization, management or personnel. Section 3.13(c) requires the Bureau to publish and codify a summary table of documents filed under § 3.13(b).)

(1) Administrative Circular No. 92-30, Dated August 6, 1992. Installation of Revised Appeal Request Form, SCSC-4112, Rev. 7-92.

CHAPTER 93. CIVIL SERVICE COMMISSION AND EXECUTIVE DIRECTOR

Sec.

- 93.1. Meetings of Commission.
- 93.2. Powers and duties of the Director.
- 93.3. [Reserved].
- 93.4. Public hearings.
- 93.5. Oaths.
- 93.6. Records open to the public.
- 93.7. Receiving funds and allocating or apportioning costs.
- 93.8. Service to departments, boards and commissions, agencies and political subdivisions; cooperation with other civil service agencies.

§ 93.1. Meetings of Commission.

- (a) The Commission will meet at least once each month, consistent with the act, at its offices in Harrisburg, Pennsylvania, or at other places as will best serve the public interest. Meetings may be cancelled with appropriate public notice.
- (b) One member of the Commission will be designated as secretary by the Chairperson.
- (c) Not less than 48 hours' notice of the date, time and place of a meeting shall be given to each member of the Commission.
- (d) The Director will be responsible for preparing the agenda of the Commission meeting.
- (e) Minutes of Commission meetings will be filed and maintained in the executive office of the Commission.

Source

The provisions of this § 93.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (275941).

§ 93.2. Powers and duties of the Director.

- (a) *Duties mandated by rules.* No provisions of this section mandating action by the Director shall be construed as limiting the statutory duties, responsibilities, and powers of the Director.
- (b) *Promulgation of regulations.* The Director may, subject to the prior approval of the Commission, promulgate, as Subpart B, reasonable regulations as shall be appropriate for carrying out the responsibilities imposed by law or this subpart.
- (c) *Periodic review of laws and rules.* The Director will periodically review the laws and rules applicable to the classified service and recommend to the Commission changes desirable for the most appropriate, efficient, and economical compliance with the act.
- (d) *Editing and publishing laws and rules.* The Director will periodically compile and publish provisions of the act, related laws, rules, and appropriate regulations applicable to the classified service.

(e) *Research and staff development.* The Director will undertake appropriate study and research to develop methods for the most efficient and economical administration of the work of the Commission. Within available funds therefore the Director will seek to develop the fullest capabilities of staff through appropriate training, including attendance at, and participation in, the programs of professional conferences and institutes.

Source

The provisions of this § 93.2 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (67253) to (67254).

§ 93.3. [Reserved].

Source

The provisions of this § 93.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (67254).

§ 93.4. Public hearings.

(a) *Time and place of certain hearings.*

(1) The Commission shall hold public hearings in connection with its adoption or amendment of rules, or amendments or cancellation of eligible lists on account of illegality or fraud.

(2) These hearings shall be held in Harrisburg or other locations as the Commission shall determine necessary to insure proper balance of potential interests.

(3) Public notice shall be given of the time and place of hearings and continuations thereto.

(b) *Participation at hearings.*

(1) Those desiring to participate in the hearing or to speak or present their views on the subject to be covered at the hearing shall, not later than the regular closing time of the previous business day, so notify the Director, specifying whether attendance will be as individuals or as representatives of a named group.

(2) Speakers at hearings shall be required to identify themselves and the organizations they represent, if any.

(3) The Commission may limit the time granted to any one speaker or to successive speakers on the same subject.

(4) Briefs, and pertinent written material, in typewritten or printed form, presented at hearings by a speaker who announces the presentation, shall be made a part of the record.

(c) *Minutes of hearings.* The proceedings of the hearings shall be recorded steno graphically or electronically, as determined by the Commission. The minutes shall be transcribed promptly and filed in the office of the Director, where they shall be open for public reference.

(d) *Determination of the Commission.* The Commission may accept or reject recommendations made at the public hearings and shall endeavor to make its determination and notify interested parties thereof promptly after the conclusion of the hearings and the review of the record established.

Source

The provisions of this § 93.4 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (67254) to (67255).

§ 93.5. Oaths.

Authorization of an employee or agent of the Commission to administer oaths or affirmations in matters pertaining to the work of the Commission shall be in writing and filed in the executive office of the Commission as a public record.

Source

The provisions of this § 93.5 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended October 16, 1981, effective October 17, 1981, 11 Pa. B. 3551; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (67255) to (67256).

§ 93.6. Records open to the public.

(a) An employee of the Commission shall be present at the inspection of records open to the public.

(b) Test material shall be held confidential and may not be subject to inspection, except as provided in this subpart.

(c) A person may not have the privilege of making notes of or copying any type of test material.

Source

The provisions of this § 93.6 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (67256).

§ 93.7. Receiving funds and allocating or apportioning costs.

The Director shall report periodically to the Commission the receipt of any funds for the administration of the act and the allocation among the departments and agencies thereunder of the cost of administering the act or any part thereof.

Source

The provisions of this § 93.7 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970.

§ 93.8. Service to departments, boards and commissions, agencies and political subdivisions; cooperation with other civil service agencies.

(a) *Acquisition of services.* The services and facilities of the Commission and its staff shall be available to departments, boards, commissions, or agencies, and political subdivisions of the Commonwealth under the following terms and conditions:

(1) Formal application for extension of the services of the Commission shall be made in writing and shall be signed by the executive head of the requesting department, or by the chairman of the board, commission, or agency, accompanied by a proper resolution adopted by the board, commission, or agency, or by the proper official of the political subdivision, as appropriate.

(2) Applications for the extension of the services of the Commission shall state in detail the particular services requested, if less than a complete merit system is desired. If the applying agency desires the Commission to administer a complete merit system, the application shall so state and shall specify desired exceptions to the application of the act.

(3) Granting of the application shall be evidenced by a formal written contract or agreement, consistent with this section, between the applicant and the Commission, a copy of which shall be retained by the Commission as a public record.

(4) Applications for the requested extension of services may be granted in whole or in part at the discretion of the Commission.

(5) The Director will maintain, and make available to prospective applicants on request, a list of classes of positions in the classified service and of classes of positions to which the services of the Commission have been extended.

(6) In the case of a contract between an agency and the Commission extending a complete merit system to a class of positions, the legally applicable provisions of the act and this part shall be deemed incorporated in the contract, unless the contract specifies otherwise.

(b) *Reimbursement for services.* Reimbursement shall be as follows:

(1) The Commission shall be reimbursed for the actual cost of preparing, administering and rating examinations; and for the semi-annual cost of services and facilities made available, in the proportion which the cost of the services and facilities bears to the total cost of these services and facilities of the Commission, based on the ratio of its employees in the classified service to those of all the agencies serviced by the Commission.

(2) The number of employees in the classified service in each agency serviced shall be reported to or tabulated by the Director on the last working day of each month.

(c) *Personnel actions by political subdivisions.* Personnel actions taken by political subdivisions under contract with the Commission shall conform to the act, this part, and the contract, unless the action would have an impossible or unreasonable result, in which case the Director shall determine the appropriate action to be taken.

Source

The provisions of this § 93.8 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (96743) to (96744).

Notes of Decisions

Because a contract between a county and an agency specifically provided that the county should adhere to its prevailing practices as to retirement, the contract controls, pursuant to the provisions of 4 Pa. Code § 93.8(6), over the Commission's interpretation of the Civil Service Act, and the county correctly adhered to its prevailing practice of requiring an employee to retire at age 65. *Delaware County Child Care Services v. Goodley*, 53 Pa. Commw. Ct. 333, 336, 417 A.2d 868, 870 (1980).

CHAPTER 95. SELECTION OF EMPLOYEES FOR
ENTRANCE TO, OR PROMOTION IN,
THE CLASSIFIED SERVICE

EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION

Sec.

- 95.1. Application requirements.
- 95.1a. United States citizenship.
- 95.2. Residence requirements.
- 95.3. [Reserved].
- 95.4. [Reserved].
- 95.5. [Reserved].
- 95.5a. Special requirements.
- 95.6. [Reserved].
- 95.7. Promotion procedure.
- 95.8. Qualifying examinations.

NATURE OF EXAMINATIONS

- 95.11. Frequency of examinations.
- 95.12. Cooperation regarding examinations.
- 95.13. Tests in examinations.
- 95.14. Use of class specifications in examinations.

CONDUCTING EXAMINATIONS AND RATING COMPETITORS

- 95.20. Authority.
- 95.21. Scheduling of examinations.
- 95.22. Administration and scoring of examinations.
- 95.23. Security of competitive standards.
- 95.24. [Reserved].

PUBLIC NOTICE OF EXAMINATIONS

- 95.31. Maintenance of mailing lists.
- 95.32. Special assistance in recruitment.
- 95.33. Content and publication of examination announcements.

RATINGS OF COMPETITORS

- 95.41. Qualifying points on examinations.
- 95.42. Preservation of examination records.
- 95.43. Inspection of examination records.
- 95.44. Information regarding unsuccessful candidates.
- 95.45. Correction of errors in scoring.
- 95.46. Calculation of final earned ratings.
- 95.47. Determination of rank in event of tie.
- 95.48. Examination analysis and alternatives.
- 95.49. Special examinations.

ESTABLISHMENT OF EMPLOYMENT AND PROMOTION LISTS

- 95.51. Eligible lists.
 95.52. [Reserved].

DURATION OF EMPLOYMENT AND PROMOTION LISTS

- 95.61. Extension and cancellation of eligible lists.
 95.62. [Reserved].
 95.63. Amendment of an eligible list.

RATINGS OF COMPETITORS

- 95.71. Review of eligibility or examination results.

EXAMINATIONS REQUISITE FOR APPOINTMENT AND PROMOTION

§ 95.1. Application requirements.

(a) *Submission of applications.* Applications required of a candidate for entrance to, or promotion in, the classified service, shall be made in a format prescribed by the Director and shall contain a statement made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities), verifying the truthfulness of all responses contained thereon.

(1) *Completeness of application.* An application shall be complete. An incomplete application may be rejected.

(2) *Timeliness of applications.* An application shall be submitted by the date and time if specified in the public notice of examination. An application received or bearing a postmark prior to midnight of the final filing date will be deemed filed within the time limit.

(b) *Evidence of merit and fitness.* The Director may require an applicant to supply information relevant for determining the possession by the applicant of the minimum requisites for appointment or promotion. The Director may also require an applicant to supply certificates and other appropriate documents from citizens, physicians, public officers, school officials, employers and others having knowledge of the applicant as will be relevant in assessing the applicant's fitness and qualifications for appointment or promotion.

(c) *Limitations on inquiry.* Limitations shall be as follows:

(1) Except as provided in paragraphs (2) and (3), no questions in the application nor in the examination will require the applicant to provide information concerning the sex, age, race, color, religious creed, ancestry, national origin, political affiliations, labor union affiliations, political opinions or disability, nor will the information be required in another manner by a member, official or employee of the Commission or of an appointing authority in connection with the examination, certification or appointment of an applicant for another purpose.

(2) The Director may make inquiries of an applicant's age or national origin, or both, as is necessary to comply with Federal and State statutes and this part.

(3) The Director may make inquiries of applicants regarding sex, race, age and similar factors, as are necessary to conduct research required to validate selection procedures or to comply with State and Federal regulations on equal opportunity. Applicants shall be informed that response to questions is not mandatory.

(d) *Rejection of applicants and disqualification of eligibles.* The Director will not be required to examine, nor after examination, to certify an eligible applicant who is found to lack the established or announced requirements for admission to the examination or for appointment from an entrance or promotion list. The Director, with the approval of the Commission, may refuse to examine an applicant, or after examination, to certify an eligible applicant who:

(1) Is addicted to the use of narcotics, or intoxicating beverages when the addiction renders the applicant unable to competently perform the duties of the position sought.

(2) Has been guilty of a crime or of conduct which renders the eligible unfit or unsuitable for the position sought.

(3) Has been dismissed from employment for incompetency or misconduct when the incompetency or misconduct renders the applicant unfit or unsuited for the position sought.

(4) Has a physical or mental disability which renders the applicant unfit or unsuited to perform the essential functions of the position's duties and responsibilities with or without reasonable accommodation.

(5) Has made a false statement, or omitted a material fact, or practiced, or attempted to practice, deception or fraud in application, examination, in securing eligibility, or seeking appointment.

(e) *Discretionary acceptance of applications.* The Director may authorize the acceptance of applications filed after the announced final filing date if sufficient need exists for additional applicants, and if acceptance is uniformly applied to all applications for the same examination filed on the same date or on an earlier date.

(f) *Notice of rejection or acceptance of applications.* Whenever an application has been rejected prior to the holding of the examination, notice thereof, with the reasons for the rejection, shall be given to the applicant. Applicants may be admitted to the examination conditioned upon establishing eligibility within a reasonable time after the date of the examination, in which case, notice of the conditional admittance will be given to the applicant involved. Notice of the acceptance of an application or notice to an applicant being admitted to the examination will be given in sufficient time for the applicant to arrange to be at the examination site at the time specified.

Source

The provisions of this § 95.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229020) to (229022).

§ 95.1a. United States citizenship.

To the extent permitted by law, when all applicants for appointment or promotion to a position in the classified service are equally qualified, the appointing authority will prefer United States citizens over those who are not.

Source

The provisions of this § 95.1a adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229022).

§ 95.2. Residence requirements.

(a) *Resident defined.* A resident is a person who resides, and who has manifested the intent to continue to reside in this Commonwealth or a former resident of this Commonwealth who meets the criteria in paragraph (2)(i) or (ii).

(1) Evidence of intent to continue to reside in this Commonwealth includes the following:

(i) Rent, lease or purchase of a property which the applicant has made a primary residence in this Commonwealth.

(ii) Payment of State and local taxes.

(iii) Registration of personal property, such as bank accounts, stocks, and bonds and automobiles within this Commonwealth.

(iv) Possession of a current Pennsylvania driver's license.

(v) Current registration to vote in this Commonwealth.

(2) Former residents of this Commonwealth who relocated out-of-State for academic or employment purposes shall establish Pennsylvania residency within 6 months of beginning employment in the classified service and shall have done one of the following:

(i) Graduated from a public, private or nonpublic secondary school in this Commonwealth within 5 years of applying for a position in the classified service.

(ii) Attended a public, private or nonpublic school in this Commonwealth at least 80% of the time while enrolled in grades one through twelve and attended the school within 5 years of applying for a position in the classified service.

(b) *Application.* Application requirements are as follows:

(1) Persons appointed, promoted or reinstated to positions in the classified service shall be legal residents of this Commonwealth, unless residency has been waived. The provisions in this paragraph do not apply to persons who previously held regular civil service status and are returned to employment from an approved leave of absence without pay or through mandatory reemployment or contractual recall or placement rights.

(2) The Director, upon submission by an appointing authority of satisfactory justification, may limit certification for appointment or promotion to eligibles who are residents of a county or other administrative district. The limitations will not be imposed for a class for which residence in this Commonwealth has been waived.

(3) In the absence of, or upon exhaustion of, a county or other administrative district list, the Director may certify residents of contiguous counties or districts or of the entire Commonwealth as deemed appropriate by the Director.

(4) If an eligible changes residence from one district or county to another district or county of this Commonwealth, the Director may, upon request, transfer the person's eligibility to the other existing promotion or employment list.

(c) *Waiver.* When it appears that there is an inadequate supply of well qualified residents of this Commonwealth available for a particular occupation, the Director, upon request by one or more appointing authorities, may waive the residency requirement for a position, a class or a group of classes.

Source

The provisions of this § 95.2 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004,

effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229022) and (287671).

Notes of Decisions

A Commission decision, that an employee had not violated the provisions of subsection (a), while not binding on unemployment compensation authorities, supports a court holding, contrary to that of the Unemployment Compensation Board of Review, that the record does not support a conclusion that the employee was guilty of willful misconduct. *Chew v. State Correctional Institution*, 412 A.2d 206 (Pa. Cmwlth. 1980).

§ 95.3. [Reserved].

Source

The provisions of this § 95.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (50731) to (50732).

§ 95.4. [Reserved].

Source

The provisions of this § 95.4 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (50732).

§ 95.5. [Reserved].

Source

The provisions of this § 95.5 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (50732) and (6676).

§ 95.5a. Special requirements.

(a) Where there is a clear, objective demonstration that such criteria as age, sex, race, medical or physical standards, or special knowledges, skills, and abilities constitute qualifications essential to the performance of the duties and responsibilities of a position, the Director may restrict application for or selectively certify to that position.

(b) Requests to impose special requirements must be submitted in writing to the Director by the appointing authority.

Source

The provisions of this § 95.5a adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 95.6. [Reserved].

Source

The provisions of this § 95.6 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (287672).

§ 95.7. Promotion procedure.

(a) *Methods of promotion.* Vacancies may be filled by promotion in the following ways:

(1) By appointment of probationary or regular employees of a given appointing authority or between appointing authorities from an appropriate employment list.

(2) By appointment of probationary or regular employees from an appropriate promotion list resulting from a promotional examination.

(3) By appointment of Commonwealth employees of a given appointing authority or between appointing authorities, who appear on an appropriate employment list and who meet eligibility criteria as established by the Director.

(4) By appointment of probationary or regular employees from the next most appropriate promotion list or employment list, if the official promotion or employment lists have been exhausted.

(5) By appointment of regular employees without formal examination, based upon meritorious service and seniority.

(b) *Promotion examinations.* Examinations shall be as follows:

(1) Except as indicated in this subsection, promotion examinations shall be open to regular or probationary status employees who meet the qualifications and who occupy positions within a lower maximum salary. As determined by the Director, promotion examinations may be limited to employees occupying positions in specified classes.

(2) The Director may, after consultation with the appropriate appointing authorities, establish the length of service required of candidates in the qualifying class or classes for eligibility to participate in promotion examinations.

(3) The Director will have the power to decide whether the promotion examination is to be interdepartmental or intradepartmental.

(c) *Promotion without examination.* Promotion without examination may be accomplished under the following circumstances:

(1) When a trainee in a lower level training title has successfully completed the prescribed period of training, the trainee will be promoted, without further examination, to the higher level title.

(2) When an appointing authority desires to fill a vacant position by promotion without examination, based on meritorious service and seniority, it may follow one of the following alternatives:

(i) *Competitive promotion without examination.* The appointing authority shall post the vacancy, consider the eligible employees who express an interest and make the promotion decision based upon an objective review of each employee's meritorious service and seniority. Seniority for this purpose shall be the length of continuous service of an employee in the designated next lower classes if there has been no break-in-service. Eligibility for consideration for the promotion may be limited by the appointing authority to a particular geographic or program area. The posting shall, whenever possible, specify the classes determined to be next lower. Otherwise, the posting shall state that applications will be reviewed to determine if employees previously held regular status or currently hold regular status in a class for which there is a logical occupational, functional or career development relationship to the posted position or if there is a clear linkage between the required knowledges, skills and abilities of the previously or currently held class with those needed for the posted position.

(ii) *Noncompetitive promotion without examination.* The agency head will insure that the employee meets the experience and training requirements of the higher level position, has regular status, and meets the meritorious service and seniority requirements.

(3) When a classification audit reveals that a position should properly be classified to a higher level, the incumbent of the position will be promoted without examination to the higher level, if the incumbent possesses the established requirements for the higher classification.

(4) When an unskilled position in the unclassified service exists immediately below a vacancy in a position in the classified service, the incumbent of the unskilled position shall be promoted into the classified service position, if the following occur:

(i) The promotion is into a classified service position immediately above the employee's position.

(ii) The promotion is based on seniority and meritorious service.

(iii) The employee meets all of the established requirements for the higher position.

(iv) The employee satisfactorily completes a 6-month probationary period in the classified service position.

(v) A promotion shall be possible only within agencies provided full classified service coverage and listed in section 3(d) of the act (71 P.S. § 741.3(d)).

(5) When there is a labor agreement covering the positions to which employees are to be promoted, the terms of the agreement as to promotion procedures shall be controlling.

(d) *Eligibility for promotion.* An employee whose last regular or probationary performance evaluation is unsatisfactory or otherwise fails to meet standards will be disregarded for appointment or promotion from any list and will not be eligible for promotion without examination.

Authority

The provisions of this § 95.7 amended under sections 203(1) and 208 of the Civil Service Act (71 P.S. §§ 741.203(1) and 741.208).

Source

The provisions of this § 95.7 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 5, 1971, effective March 6, 1971, 1 Pa. B. 999; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended April 28, 1989, effective April 29, 1989, 19 Pa. B. 1835; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 29, 2002, effective March 30, 2002, 32 Pa. B. 1643; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (287672) to (287675).

Notes of Decisions

Generally

Agency employer's position that its personnel action did not constitute an involuntary demotion under the Civil Service Act, but was a proper retraction of an invalid promotion, rested solely upon three mistakes and such position was found not to have a reasonable basis in fact so that the agency was liable for attorneys fees and costs incurred by employee who was successful in obtaining reinstatement of the promotion. *West v. Western Center, Department of Public Welfare*, 641 A.2d 41 (Pa. Cmwlth. 1994).

Although the State employee's promotion was due to employer's error, absent a showing that the employee's performance was unsatisfactory, the employer could not demote the employee to correct the error. *West v. Department of Public Welfare*, 614 A.2d 357 (Pa. Cmwlth. 1992).

The Commission has acted within the authority of the Civil Service Act (71 P.S. §§ 741.1—741.1005) in promulgating subsection (b)(3). The rule, making only regular or probationary employees within the classified service eligible for promotion, is both reasonable and consistent

with legislative intent. *Humphreys v. Civil Service Commission*, 301 A.2d 400 (Pa. Cmwlth. 1973).

Interview Appropriate

Nothing in the Civil Service Act (71 P.S. § 741.1 et seq.) or this regulation precludes an agency from determining that two candidates, whose scores for meritorious service and seniority were within two points of each other, were relatively equally qualified for promotion. Therefore, the supervisor took the legitimate next step in the promotion process by interviewing the two promotion candidates. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409 (Pa. Cmwlth. 1996).

Relatively Equally Qualified for Promotion

Because the two candidates scores in meritorious service and seniority were only two points apart, the agency concluded that the candidates were relatively equally qualified to be promoted. Nothing in the Civil Service Act (71 P.S. § 741.1 et seq.) or related rules precluded the agency from determining that the two candidates were relatively equally qualified for promotion. Accordingly, the agency official took the legitimate next step in the promotion process by interviewing the two candidates. *Price v. Luzerne*, 672 A.2d 409 (Pa. Cmwlth. 1996).

Law Reviews

Selected Agency Decisions: Civil Service: Filice v. Commonwealth, Dep't of Labor & Industry, Chung, Steven L., 4 Widener J. Public L. 853 (1995).

§ 95.8. Qualifying examinations.

(a) *Application.* The Director, after consultation with the appointing authority, and with the approval of the Commission, will determine whether qualifying examinations are appropriate and whether they will be competitive or noncompetitive. Qualifying examinations may be administered to incumbents whose positions have been placed in the classified service by proper authority such as the following:

(1) A reorganization of one or more agencies, as approved by the Executive Board, which places positions into agencies covered by the act.

(2) A reclassification of a position in a non-civil service classification to a civil service covered classification.

(3) Action by the General Assembly which results in the placement of a position into the classified service, but is silent on the status of the incumbent.

(4) Action of the Federal Government which requires placement of a position into the classified service to assure continued eligibility for Federal funding.

(b) *Types of qualifying examinations.* Qualifying examinations are competitive or noncompetitive examinations for the purpose of qualifying employees for probationary or regular classified service status.

(1) *Competitive.*

(i) Incumbents shall score high enough on the employment list to be appointable under section 602 of the act (71 P.S. § 741.602).

(ii) Incumbents who are appointed under subparagraph (i) shall serve a probationary period as specified in section 603 of the act (71 P.S. § 741.603).

(iii) Incumbents who refuse to take or are unsuccessful on the examination, or who are not appointable under section 602 of the act, shall be promptly removed from their positions.

(2) *Noncompetitive.*

(i) Incumbents shall attain a passing score on the examination.

(ii) Incumbents who attain a passing grade and who have occupied their positions for a period of time at least equal to the probationary period required for their positions shall be granted regular status.

(iii) Incumbents who attain a passing grade and who have occupied their positions for a period of time less than the probationary period required for their positions shall be granted probationary status, with probationary service credit commensurate with time already served.

(iv) Incumbents who refuse to take or do not attain a passing grade on the examination shall be promptly removed from their positions.

Source

The provisions of this § 95.8 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (138172) to (138173).

NATURE OF EXAMINATIONS

§ 95.11. Frequency of examinations.

(a) *Anticipation of need.* The Director shall authorize examinations to establish employment and promotion lists whenever necessary to meet or anticipate employment needs of the agencies involved and shall consult with appointing authorities regarding such need.

(b) *Frequency and location.* The Director shall schedule examinations on a Statewide, regional or local basis as necessary to achieve maximum effective use of Commission resources, attract sufficient qualified applicants, and provide for reasonable open competition. Examinations may be opened continuously or periodically, as necessary, to meet the Commonwealth's employment needs.

Source

The provisions of this § 95.11 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended February 8, 1974, effective February 9, 1974, 4 Pa. B. 223; amended September 12, 1975, effective September 13, 1975, 5 Pa. B. 2359; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (24278).

§ 95.12. Cooperation regarding examinations.

(a) *Consultation on examination information.* The Director will collect information regarding work performed and, when necessary, the knowledges, skills and abilities needed for successful performance of the duties and responsibilities of the class for which examinations will be given, and may consult with qualified authorities regarding the relative importance of work performed or of the knowledges, skills and abilities and the most appropriate methods for testing their possession by candidates. The interchange of information shall be made under circumstances and subject to conditions designed to avert premature disclosure of examination content to prospective candidates.

(b) *Review of examination content.* The Director may have test material reviewed by representatives of an appointing authority or other qualified authorities with a member of the staff of the Commission.

(c) *Cooperative testing.* The Director may authorize collaboration with another public testing or placement agency in a program of cooperative testing of applicants, if competitive principles are observed.

Source

The provisions of this § 95.12 adopted October 18, 1961; amended October 15, 1964; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (138174).

§ 95.13. Tests in examinations.

(a) *Types of tests.* In addition to written, oral and performance tests, the Director may authorize an evaluation of education and experience, medical tests, physical strength and physical agility tests, and other types of tests, singly or in combination as the circumstances warrant. For promotional examinations, the Director may authorize other performance criteria, such as seniority and performance evaluations developed under a uniform Departmental system. Performance evaluations shall not be a weighted factor in an interdepartmental promotion examination.

(b) *Weights of tests.* The Director, after considering the relative value of the tests in assessing the relative capacity and fitness of candidates to perform the duties of the class to which they seek to be appointed or promoted, and after consultation with the appointing authority, will fix the relative weights of the tests. Modifications to the relative weights will be announced to all candidates.

Source

The provisions of this § 95.13 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (24279).

§ 95.14. Use of class specifications in examinations.

(a) *Basis for examinations.* The classification standards for a class, as adopted by the Executive Board, shall constitute a primary basis and source of authority for the content and level of difficulty of the examinations for the class and for the evaluation of the qualifications of applicants for examinations. Supplemental job information, obtained through job analysis, may be used as a further basis for examinations and evaluation standards. The examination content for classes peculiar to one agency shall be discussed with the appointing authority. In cases of difficult recruitment, the Director, with the cooperation of the appointing authority, may use discretion in interpreting minimum experience and training and in accepting equivalent experience and training.

(b) *Implied qualifications.* Qualifications commonly required of all employees shall be implied, even though not specifically set forth in the classification standards, as follows:

(1) Freedom from physical or mental defects which would render the employee unfit for competent performance with or without reasonable accommodation.

(2) Good moral character, honesty, sobriety, industry, loyalty and dependability.

(3) Possession of a valid appropriate driver's license, when driving or parking motor vehicles is necessary to carry out work assignments.

(4) Possession of suitable instruments, tools or equipment when they are customarily furnished by the employee in a profession, skilled trade or other occupation.

(5) Residence, sex and similar qualifications imposed by law or rule.

(c) *Lines of promotion.* Lines of promotion, when indicated in the classification standards, will not be considered as barring other lines of promotion, unless so specified in the public announcement of examinations.

Source

The provisions of this § 95.14 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229030).

CONDUCTING EXAMINATIONS AND RATING COMPETITORS

§ 95.20. Authority.

Examinations for all classified service positions will be prepared and approved by the Director. Except as otherwise authorized in this part, or as authorized in writing by the Director, appointing authorities shall not develop and administer their own examinations for employment or promotion in the classified service.

Source

The provisions of this § 95.20 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 95.21. Scheduling of examinations.

(a) The Director, in authorizing the times and places of examinations, will give due consideration to the convenience of the candidates, consistent with the needs of the service.

(b) The Director will establish and notify candidates of procedures for rescheduling and retesting when appropriate.

(c) The Director may authorize postponement, cancellation or rescheduling of examinations.

Source

The provisions of this § 95.21 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229031).

§ 95.22. Administration and scoring of examinations.

(a) *Administrators.* The Director will appoint and fix the compensation of test administrators, proctors and other assistants required to administer examinations.

(b) *Notice of examinations.* A candidate will be notified of admittance or non-admittance to examinations. Applicants shall be given a delayed examination in place of the one for which they failed to appear if the failure to appear was caused by an act or omission of the Commission's staff. Delayed examinations also may be authorized for other appropriate reasons.

(c) *Cancellation of part of an examination.* Whenever the Director finds that it is impracticable or unnecessary, for reasons which shall be made part of the examination record, to hold any part of a multipart examination the Director may cancel that part or parts and reassign the weights, in an equitable manner, to the remaining part or parts.

(d) *Retaking examination.* A candidate may be permitted to retake an examination. Standing on an eligible list will be determined by the score received on the most recent examination.

Source

The provisions of this § 95.22 adopted October 18, 1961; amended October 15, 1964; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229031) to (229032).

§ 95.23. Security of competitive standards.

(a) *Maintenance of competitive conditions.* The Director will establish appropriate procedures to insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness.

(1) The Director will establish proper precautions to prevent an unauthorized person from securing in advance questions or other materials to be used in a test, unless the questions or materials are available to all applicants.

(2) When the conditions under which a test is held have materially impaired its competitive nature or worth in assessing qualifications, the Director will order that the tests or appropriate sections thereof, if severable, be cancelled. New tests or parts of tests may be substituted therefore, if possible.

(b) *Anonymity of candidates.* The Director will establish appropriate procedures to insure that the identity of candidates in all competitive tests do not adversely affect the objective rating or scoring of the candidates' examinations.

(c) *Cheating on examinations or seeking undue advantage.* The Director will disqualify an applicant who impersonates another or has another person impersonate the applicant in connection with an examination, or who uses or attempts to use unauthorized aids or assistance, including copying or attempting to copy from or helping or attempting to help another applicant in any part of an examination, or who otherwise seeks to attain undue advantage for himself or others in connection with the examination. In addition, the Director will refer these cases to the Commission for determination of possible violations of sections 902 and 903 of the act (71 P.S. §§ 741.902 and 741.903).

(d) *Examination materials.* A candidate in an examination may not copy, record or transcribe an examination question or answer, or remove from the examination room a question sheet, answer sheet or booklet, scrap papers, notes or other papers or materials related to the content of the examination. A candidate will be notified of these requirements, and no examiner, proctor, monitor or other person charged with the supervision of a candidate or group of candidates will have authority to waive it. The Director may disqualify a candidate or refuse to certify an eligible person who violates this section. In addition, the Director will refer these cases to the Commission for determination of possible violations of sections 902 and 903 of the act.

Source

The provisions of this § 95.23 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229032) to (229033).

§ 95.24. [Reserved].**Source**

The provisions of this § 95.24 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; reserved November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (138178).

PUBLIC NOTICE OF EXAMINATIONS

§ 95.31. Maintenance of mailing lists.

The Director will, as far as practicable, establish and maintain mailing lists of individuals, as well as of public and private agencies or groups, to which appropriate public notices or other information regarding prospective examinations may be sent.

Source

The provisions of this § 95.31 adopted October 18, 1961; amended October 15, 1964 amended April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (138178).

§ 95.32. Special assistance in recruitment.

The Director will encourage interested appointing authorities and agencies, public and private, to aid in the recruitment of qualified applicants through appropriate means of communication concerning the examinations. When classes are unique to one appointing authority, the primary responsibility for recruitment may rest with that appointing authority.

Source

The provisions of this § 95.32 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229033).

§ 95.33. Content and publication of examination announcements.

(a) The Director or a designee will determine the content and method and scope of publication for each examination announcement. The publication may be electronic. Examination announcements will be published for a minimum of 2 weeks. The scope of publication will be based on the geographic availability of positions and potentially qualified and available applicants and may be regional, Statewide or include both in-State and out-of-State locations.

(b) The content of examination announcements may include the following:

(1) The general nature of work and pay for the classes for which the examination is being announced.

(2) Any experience, training or other requirements for the classes for which the examination is being announced.

(3) Information on whether the examination is being given for appointment or promotion, or both.

(4) The nature of the examination.

(5) How to apply.

Source

The provisions of this § 95.33 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229033) to (229034).

RATINGS OF COMPETITORS

§ 95.41. Qualifying points on examinations.

(a) *Basis for Director's determination.* The Director, or a designee, will set the qualifying points for part or all of an examination, as the case may be. The determination will take into account both the number and quality of prospective eligibles needed to serve the best interests of the classified service, as well as the validity and reliability of the examination.

(b) *Notice of qualifying points.* When there is a multipart examination, the Director may require applicants to attain a qualifying score or rating on each test or part of test.

(c) *Effect of failure on part of examination.* An applicant who has failed to achieve a passing score on any part of the examination may be disqualified from participation in any other parts of the examination, whether or not the applicant has participated or has been rated therein, and if so disqualified, shall be deemed to have failed in the entire examination.

(d) *Effect of failing a higher but passing a lower level test.* Whenever an applicant is unsuccessful on a higher level examination but has obtained a qualifying score on a lower level examination for which an application had not previously been filed, the applicant may be given a reasonable opportunity to apply for eligibility in the lower level examination.

(e) *Effect of passing a higher but failing a lower level test.* Whenever an applicant is unsuccessful on a lower level test but has obtained a qualifying score on a higher level test the applicant may be given the minimum passing score on the lower level test.

Source

The provisions of this § 95.41 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229034) to (229035).

§ 95.42. Preservation of examination records.

The Director will insure that the following documents are maintained as official Commission records:

- (1) The original or a copy of any tests used.
- (2) The description of any test used.
- (3) The public notice of the test.
- (4) The examination instructions.
- (5) The scoring keys or other scoring standards used.
- (6) The reports of the examiners.

Source

The provisions of this § 95.42 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229035).

§ 95.43. Inspection of examination records.

(a) *By the applicant.* The Director will, upon request of the applicant, authorize the inspection of the applicant's own examination records in the presence of an authorized employee of the Commission. The inspection will not include authorization to copy examination instructions, questions or answers and will be conducted to maintain security of the examination standards.

(b) *By law enforcement or other public officials.* The Director may authorize review of the application and examination records of an applicant or eligible, upon request and for legitimate official purposes, by law enforcement or other public officials when there are satisfactory reasons for the inspection. Copies of examination materials will not be provided except as provided for by other applicable statutes or regulations.

(c) *By private individuals other than the candidate.* The Director will authorize the exhibiting of applications and examination records to a private individual only when the individual seeking access to the records can demonstrate a clear necessity for the records in order to pursue a legal right. The Director will take necessary precautions to avoid disclosure of the identities of the persons whose applications and test records are being examined. When it is evident that the release of the information would operate to prejudice or impair a person's reputation or personal security, access to the information shall be denied under section 1(2) of the act of June 21, 1957 (P. L. 390, No. 212) (65 P.S. § 66.1(2)).

Source

The provisions of this § 95.43 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229035) to (229036).

Cross References

This section cited in 4 Pa. Code § 95.44 (relating to information regarding unsuccessful candidates).

§ 95.44. Information regarding unsuccessful candidates.

Except as provided in § 95.43(b) and (c) (relating to inspection of examination records), the examination records of applicants who failed all or part of an examination, or who voluntarily withdrew from the examination, may not be exhibited; nor may information be divulged concerning their participation in the examination.

Source

The provisions of this § 95.44 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229036).

§ 95.45. Correction of errors in scoring.

The Director, upon finding an error in the determination of an applicant's eligibility or examination scores, which has, or may have, a material bearing on certification or appointment from the resulting eligible list, shall correct the errors and report them to the affected eligible and periodically to the Commission.

Source

The provisions of this § 95.45 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (0615).

§ 95.46. Calculation of final earned ratings.

(a) When test scores are used to rank candidates, the requirements of this section apply. The final earned ratings of each applicant who passes all parts of an examination shall be calculated prior to the addition of any veterans' preference credit, as follows:

- (1) The qualifying score shall be assigned a final earned rating of 60.
- (2) The estimated highest score, the score which the best qualified applicant would be reasonably expected to attain, shall be assigned a final earned rating of 100.
- (3) The intermediate scores shall be assigned ratings between 60 and 100 on the basis of their relationship to the qualifying score, the estimated highest score, and the reliability and accuracy of the examination procedures. Scores above the estimated highest score shall exceed 100, and shall be assigned final earned ratings on the basis of their relationship to the qualifying score and the estimated highest score.

(b) When test scores are used to categorize or group similarly qualified applicants, all candidates in a category shall be assigned the same final earned rating.

Source

The provisions of this § 95.46 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (138182) to (138183).

§ 95.47. Determination of rank in event of tie.

Final earned ratings shall be calculated to whole numbers or categories represented by whole numbers. Ties in final earned ratings shall not be broken. All available eligibles with the same final earned rating shall be certified in accordance with the rule of three. This section provides for issuance of a complete certification of eligibles, as determined by the number of vacancies, which includes all eligibles with the same final earned rating, as well as to group for consideration those eligibles determined by the examination process to be approximately equally qualified.

Source

The provisions of this § 95.47 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (0616).

§ 95.48. Examination analysis and alternatives.

(a) The Director will initiate analysis of examinations as necessary to insure that examinations do not discriminate on the basis of non-merit factors.

(b) The Director, after investigation, may invalidate all or part of the examination results and substitute an alternative procedure, if notice of the action and the reasons therefore are presented to all candidates.

Source

The provisions of this § 95.48 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 95.49. Special examinations.

The Director may make special accommodations or adjustments to examinations for applicants with disabilities which might affect their examination performance but not their job performance. Adjustments or accommodations shall be designed to assure that applicants with disabilities receive equal and fair participation and consideration in the examination process.

Source

The provisions of this § 95.49 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (138183).

ESTABLISHMENT OF EMPLOYMENT AND PROMOTION LISTS

§ 95.51. Eligible lists.

The names of those persons who have been found qualified for and have successfully passed the examination shall be arranged in order of final earned ratings and including applicable veterans' credits.

Source

The provisions of this § 95.51 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229038).

§ 95.52. [Reserved].**Source**

The provisions of this § 95.52 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; reserved March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229038).

DURATION OF EMPLOYMENT AND PROMOTION LISTS

§ 95.61. Extension and cancellation of eligible lists.

(a) *Length of eligibility.* The duration of employment and promotion lists will be fixed by the Director with the approval of the Commission for up to 4 years.

(b) *Replacing and integrating lists.* A newly established eligible list may replace an earlier list, appropriate for the same class or classes. The Director may integrate an eligible list with an equivalent list established later, based on final earned ratings, and veterans' preference when applicable.

(c) *Notice to eligibles.* When a list is cancelled or an examination is announced which may result in an eligible list which replaces an existing list, the persons whose names remain on the list being cancelled or replaced shall be notified of the cancellation or of their opportunity to participate in a new examination, unless the notice has been included in their original notification of eligibility.

Source

The provisions of this § 95.61 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229039).

§ 95.62. [Reserved].**Source**

The provisions of this § 95.62 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended September 12, 1975, effective September 13, 1975, 5 Pa. B. 2359; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (68658).

§ 95.63. Amendment of an eligible list.

(a) *Basis for amendment.* The Director, with the approval of the Commission, may amend an eligible list to: correct a clerical error; indicate a change in veterans' status; add or remove a name; or suspend or alter eligibility for certification or for appointment. The reasons for the amendment shall be entered in, or be evident from records on file.

(b) *Effect of amendment.* An amendment to an eligible list may not disadvantage a fully qualified eligible already appointed or notified of appointment in good faith, based on a valid certification previously issued.

Source

The provisions of this § 95.63 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (229039) to (229040).

RATINGS OF COMPETITORS

§ 95.71. Review of eligibility or examination results.

An applicant who wishes to challenge a finding of ineligibility or an examination score shall contact the Director, in writing, within 30 calendar days of receipt of notice of the result being challenged. The Director will review the applicant's qualifications or examination results and provide the applicant with an explanation or revised result. An applicant still dissatisfied may appeal this decision under section 905.1 of the act (71 P.S. § 741.905a). An appeal shall be filed within 20 calendar days as provided for in § 105.12 (relating to requests).

Source

The provisions of this § 95.71 adopted November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334.

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.
- 97.12. Rejection of eligibles—passovers.
- 97.13. Removal of eligible.
- 97.14. Refusal of appointment.
- 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.
- 97.39. Notice about performance.

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

The provisions of this § 97.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (0619).

§ 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

The provisions of this § 97.2 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (96764) to (96765).

§ 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

The provisions of this § 97.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (204945).

§ 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.

Source

The provisions of this § 97.4 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (204945) to (204946).

§ 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 therefore satisfactory to the Director.

Source

The provisions of this § 97.5 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (0620) and (68662).

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

The provisions of this § 97.11 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (96765) to (96766).

§ 97.12. Rejection of eligibles—passovers.

(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

The provisions of this § 97.12 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended January 29, 1982, effective January 30, 1982, 12 Pa. B. 468; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (204946) to (229041).

§ 97.13. Removal of eligible.

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 provisions of this § 97.13 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (229041).

§ 97.14. Refusal of appointment.

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

Source

The provisions of this § 97.14 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (68663).

§ 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; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text 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. *Wanamaker v. Liquor Control Board*, 611 A.2d 1368 (Pa. Cmwlth. 1992).

Law Reviews

Selected Agency Decisions: Civil Service: Commonwealth Civil Service Commission v. Knight, Keepers, Eric L., 4 Widener J. Public L. 859 (1995).

§ 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 non-selection 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).

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).

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. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409 (Pa. Cmwlth. 1996).

Interviews

Clearly, this regulation authorizes the use of interviews to determine suitability for promotion. *Price v. Luzerne*, 672 A.2d 409 (Pa. Cmwlth. 1996).

SUBSTITUTE APPOINTMENTS

§ 97.20. Conditions for substitute appointments/promotions.

Substitute appointments or promotions shall be made to fill permanent positions 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

The provisions of this § 97.20 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96767).

§ 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.

Source

The provisions of this § 97.21 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96768).

§ 97.22. Rights of substitute employees.

(a) A substitute employee 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 employee is accorded all rights commensurate with civil service status.

(b) The rights of the employee 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 employee 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

The provisions of this § 97.22 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (73393) and (22942).

§ 97.23. Filling of vacancies created by substitute appointments.

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

Source

The provisions of this § 97.22 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970.

§ 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.
- (4) Resignation or other affirmative act of the former incumbent accomplishing permanent separation from the position involved.

Source

The provisions of this § 97.24 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended May 5, 1972, effective May 6, 1972, 2 Pa. B. 813; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (96768) to (96769).

Cross References

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

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

The provisions of this § 97.31 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended May 5, 1972, effective May 6, 1972, 2 Pa. B. 813; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended September 2, 1994, effective September 3, 1994, 24 Pa. B. 4460; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (204950) and (227453).

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 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

Extension of an employee's probationary period is at the discretion of the employer. *Golashevsky v. Department of Environmental Resources*, 683 A.2d 1299 (Pa. Cmwlth. 1996).

§ 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

The provisions of this § 97.32 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended September 12, 1975, effective September 13, 1975, 5 Pa. B. 2359; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (96769).

§ 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

The provisions of this § 97.33 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended August 9, 1974, effective August 10, 1974, 4 Pa. B. 1669; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended September 2, 1994, effective September 3, 1994, 24 Pa. B. 4460; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (227453).

§ 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 previously held, the appointing authority may waive all or part of the probationary period for the higher class.

Source

The provisions of this § 97.34 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96770).

§ 97.35. [Reserved].**Source**

The provisions of this § 97.35 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; reserved September 2, 1994, effective September 3, 1994, 24 Pa. B. 4460. Immediately preceding text appears at serial page (164736).

§ 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

The provisions of this § 97.36 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended August 9, 1974, effective August 10, 1974, 4 Pa. B. 1669; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended September 2, 1994, effective September 3, 1994, 24 Pa. B. 4460. Immediately preceding text appears at serial page (164736).

§ 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.

Source

The provisions of this § 97.37 adopted October 16, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended September 2, 1994, effective September 3, 1994, 24 Pa. B. 4460; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (227454) and (204953).

Cross References

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

§ 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

The provisions of this § 97.38 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended September 2, 1994, effective September 3, 1994, 24 Pa. B. 4460. Immediately preceding text appears at serial pages (164737) to (164738).

Cross References

This section cited in 4 Pa. Code § 99.34 (relating to effect of demotion on status).

§ 97.39. Notice about performance.

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

The provisions of this § 7.39 adopted September 2, 1994, effective September 3, 1994, 24 Pa. B. 4460; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (204953).

PROVISIONAL APPOINTMENTS

§ 97.41. [Reserved].**Source**

The provisions of this § 97.41 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (17596).

§ 97.42. [Reserved].**Source**

The provisions of this § 97.42 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (17596).

§ 97.43. [Reserved].**Source**

The provisions of this § 97.43 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (17596) and (0627).

§ 97.44. [Reserved].**Source**

The provisions of this § 97.44 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (0627).

§ 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

The provisions of this § 97.45 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 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

The provisions of this § 97.46 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96772).

§ 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

The provisions of this § 97.47 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

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

The provisions of this § 97.51 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (204955).

§ 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

The provisions of this § 97.61 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970.

§ 97.62. Classification standards.

The classification of positions and the compensation of employees 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

The provisions of this § 97.62 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 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

The provisions of this § 97.63 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (204956).

CHAPTER 99. EMPLOYEES IN THE CLASSIFIED SERVICE

Subchap.	Sec.
A. TRAINING PROGRAMS	99.1
B. SERVICE STANDARDS AND RATINGS	99.11
C. REASSIGNMENTS AND TRANSFERS	9.21
D. REDUCTIONS IN PAY OR DEMOTIONS	99.31
E. STATUS OF INCUMBENTS OF RECLASSIFIED POSITIONS	99.41
F. COMPENSATION	99.51

Subchapter A. TRAINING PROGRAMS

Sec.

- 99.1. [Reserved].
- 99.2. Trainees.
- 99.3. [Reserved].
- 99.4. [Reserved].
- 99.5. [Reserved].
- 99.6. [Reserved].
- 99.7. [Reserved].

§ 99.1. [Reserved].

Source

The provisions of this § 99.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (249567).

§ 99.2. Trainees.

The Director may initiate examination programs for trainees, recruited competitively. Trainees will be given training in general or specialized areas of governmental operations and shall be promoted, at the successful completion of the training period to a position for which they have been trained and have become qualified.

Source

The provisions of this § 99.2 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96775).

§ 99.3. [Reserved].

Source

The provisions of this § 99.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86305).

§ 99.4. [Reserved].**Source**

The provisions of this § 99.4 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86305).

§ 99.5. [Reserved].**Source**

The provisions of this § 99.5 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (86305) to (86306).

§ 99.6. [Reserved].**Source**

The provisions of this § 99.6 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86306).

§ 99.7. [Reserved].**Source**

The provisions of this § 99.7 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86306).

Subchapter B. SERVICE STANDARDS AND RATINGS**Sec.**

- 99.11. Establishment of system.
- 99.12. [Reserved].
- 99.13. Reporting of performance evaluations.
- 99.14. Review of performance evaluations.
- 99.15. Application of performance evaluations.

Notes of Decisions

A PER is each employee's relative numerical rank rating derived from his regular service rating. *Pavia v. Department of Transportation*, 466 A.2d 735 (Pa. Cmwlth. 1983); *Johnson v. Department of Transportation*, 466 A.2d 731 (Pa. Cmwlth. 1983).

§ 99.11. Establishment of system.

(a) The Director, in cooperation with the appointing authorities, will establish a job-related system of performance evaluations for each class in the classified service.

(b) Performance evaluations will be based upon job-related factors appropriate for determining the manner in which the employee performs the duties and carries out the responsibilities of the position occupied. To provide a uniform and equitable basis for rating employees, the Director, in cooperation with appointing authorities, may establish work performance guides.

(c) Performance evaluation forms and procedures will be reviewed and approved by the Director prior to utilization.

Source

The provisions of this § 99.11 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (249569).

§ 99.12. [Reserved].**Source**

The provisions of this § 99.12 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86307).

§ 99.13. Reporting of performance evaluations.

Performance evaluations for probationary status employees shall be completed and provided to the employees prior to the scheduled expiration of the probationary period by the appointing authority. Other performance evaluation reports shall be completed at least once each year, unless a different schedule is approved by the Director, and copies retained in the employee's official personnel file. Upon request by the Director, performance evaluation reports shall promptly be made available for audit.

Source

The provisions of this § 99.13 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (249569) to (249570).

Notes of Decisions

The civil service employee was properly furloughed by the Department as according to the county furlough unit set up by the Department of which only two people had the same job title and the furloughed employee's performance evaluation review which was then "due" was the lower evaluation of the two. *Valence v. Department of Public Welfare*, 641 A.2d 644 (Pa. Cmwlth. 1994).

The Department of Public Welfare failed to complete all necessary performance evaluations as required so that they could be considered in making furlough decisions and, therefore, the decisions were invalidated. The absence of an administrative penalty does not mean that the specific directives of this section can be ignored, unless reasons beyond the appointing authority's control exist. *Wydra v. Department of Public Welfare*, 620 A.2d 683, 686 (Pa. Cmwlth. 1993).

§ 99.14. Review of performance evaluations.

Every employee for whom a performance evaluation is submitted will be shown the component parts of the evaluation by the supervisor as soon as practicable after the evaluation is made. The employee will be given an opportunity to review the component parts with the rater and the reviewing officer. Evidence of the review shall be indicated by the employee's signature on the completed evaluation form. Refusal to sign the form will be reported in writing to the reviewing officer by the rater. Every employee shall have the right to be informed of this part and standards used in determining the evaluation.

Source

The provisions of this § 99.14 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 16, 1991, effective November 17, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (86308).

§ 99.15. Application of performance evaluations.

Performance evaluations shall be utilized for purposes of determining eligibility for promotion, to assist in establishing priority for promotion, or for determining order of furlough as provided for in the rules covering these subjects.

Source

The provisions of this § 99.15 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 16, 1991, effective November 17, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (86308) to (86309).

Subchapter C. REASSIGNMENTS AND TRANSFERS**Sec.**

- 99.21. Reassignments and transfers authorized.
- 99.22. Initiation of transfer.
- 99.23. Limitations on transfer.
- 99.24. Effect of transfer on probationary period.
- 99.25. Effect of reassignment on promotion rights.
- 99.26. [Reserved].
- 99.27. Transfer of classified service employees entering the Senior Management Service.

§ 99.21. Reassignments and transfers authorized.

(a) An employee may be:

- (1) Reassigned in the same appointing authority from one position to another in the same class or in a similar class for which the employee qualifies.
- (2) Transferred from one position to another position in the same class or in a similar class under a different appointing authority.

(b) A similar class means one:

- (1) Having the same maximum salary rate in the compensation plan.
- (2) Involving essentially the same or lower level duties and responsibilities.
- (3) Requiring essentially the same or lower level minimum qualifications.
- (4) Calling for essentially the same or lower level knowledges, skills, and abilities.

Source

The provisions of this § 99.21 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (140012).

Notes of Decisions

The reassignment of two Office of Budget employees at the same time of the furlough of two other Office of Budget employees created a “vacancy,” because a “vacancy” existed under the Civil Service Commission regulations when the reassigned employees would no longer function as assistant comptrollers in their new positions, thus creating a vacancy simultaneous with the furlough action. *Roetenberg v. Office of Budget*, 550 A.2d 825 (Pa. Cmwlth. 1988).

Pursuant to 4 Pa. Code § 99.21 an appointing authority may reassign employees within the same or similar class without reason or just cause. *Carr v. Department of Public Welfare*, 456 A.2d 240 (Pa. Cmwlth. 1983).

§ 99.22. Initiation of transfer.

A transfer shall be initiated by the appointing authority having jurisdiction over the position to which the transfer is sought, and shall be made upon a form the Director authorizes. Transfer requires the written consent of the employee and the present employer.

Source

The provisions of this § 99.22 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 16, 1991, effective November 17, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (249571).

§ 99.23. Limitations on transfer.

A transfer may be disapproved by the Director in the following circumstances:

- (1) When the consent and approvals required by law and this subpart have not been given.
- (2) When a Departmental reemployment list is in existence, appropriate for filling the position to which transfer is sought.
- (3) When the employee sought to be transferred has a disqualification which would bar that person from qualifying for the position sought.

Source

The provisions of this § 99.23 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (82310).

§ 99.24. Effect of transfer on probationary period.

The probationary period of a transferee shall continue to be served in the position to which transferred, unless the appointing authority having jurisdiction over the position, with the consent of the prospective transferee, requires service of a full probationary period in the position as a condition of the transfer.

Source

The provisions of this § 99.24 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (82311).

§ 99.25. Effect of reassignment on promotion rights.

An employee who has been reassigned will not lose rights to promotion from the position from which reassigned during a period equivalent to the probationary period prescribed for the new position.

Source

The provisions of this § 99.25 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (82311).

§ 99.26. [Reserved].**Source**

The provisions of this § 99.26 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; reserved March 12, 2004, March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (249572).

§ 99.27. Transfer of classified service employees entering the Senior Management Service.

When a classified service employee accepts a Senior Management Service position, under a different appointing authority, the employee shall be transferred to the agency having the Senior Management Service position. The return right of a Senior Management Service employee shall be to a position in the classified service under the same appointing authority in which the Senior Management Service position is located.

Source

The provisions of this § 99.27 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

Subchapter D. REDUCTIONS IN PAY OR DEMOTIONS

Sec.

- 99.31. Reductions of pay within the same class.
- 99.32. Demotions to a different class.
- 99.33. [Reserved].
- 99.34. Effect of demotion on status.

§ 99.31. Reductions of pay within the same class.

(a) An appointing authority may reduce the salary of an employee because of unsatisfactory performance of duties, or for disciplinary reasons, to a lower salary rate within the salary range prescribed for that position.

(b) Salary reduction under these circumstances will not be deemed a demotion, and is appealable under section 905.1 of the act (71 P.S. § 741.905a).

Source

The provisions of this § 99.31 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (140014).

§ 99.32. Demotions to a different class.

An appointing authority may demote an employee who requests the demotion or who does not satisfactorily perform the duties of the position to which appointed or promoted, to a position in any class in the classified service in which the employee previously had the status of a regular employee, or to any position for which the employee is qualified.

Source

The provisions of this § 99.32 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86311).

Notes of Decisions

This section restricts involuntary demotion to unsatisfactory performance by the employee. It cannot be used to excuse an employer's error with respect to a promotion. *West v. Department of Public Welfare*, 614 A.2d 357 (Pa. Cmwlth. 1993).

In asserting that a demotion was not supported by advance notice or a showing of unsatisfactory job performance within the meaning of 4 Pa. Code § 99.32, a public employee must follow the definition of demotion found at 71 P.S. § 741.3(r) which defines demotion to mean "a change [in status] to a position in a class carrying a lower maximum salary." *Carr v. Department of Public Welfare*, 456 A.2d 240 (Pa. Cmwlth. 1983).

Cross References

This section cited in 4 Pa. Code § 99.34 (relating to effect of demotion on status).

§ 99.33. [Reserved].**Source**

The provisions of this § 99.33 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86311).

§ 99.34. Effect of demotion on status.

Employees returned under § 97.38 (relating to probation following promotion) or demoted under § 99.32 (relating to demotions to a different class) shall be assigned status as follows:

(1) *Regular status employees.* An employee who has achieved regular status shall be assigned regular status in the class to which returned or demoted.

(2) *Probationary status employees.* An employee who has never held regular status in a classification shall be assigned probationary status in the class to which returned or demoted and shall be required to successfully complete the probationary period begun at a higher level. An employee who held regular status in a lower level class shall be assigned regular status in the class to which the employee is returned or demoted.

Source

The provisions of this § 99.34 adopted November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334.

Subchapter E. STATUS OF INCUMBENTS OF RECLASSIFIED POSITIONS

Sec.

- 99.41. Effect of reclassification.
99.42. [Reserved].
99.43. Effect of reclassification on probationary period.

§ 99.41. Effect of reclassifications.

When an employee's job duties change or the Executive Board changes a class and a reallocation of the position becomes necessary, the employee shall be reclassified to the new class if the employee meets the established requirements. This reclassification, if it is to a lower level, will not be construed as a demotion and the reclassified employee shall be credited with seniority acquired in the higher class.

Source

The provisions of this § 99.41 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended September 12, 1975, effective September 13, 1975, 5 Pa. B. 2359; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (140014) to (140015).

Notes of Decisions

The reassignment of two Office of Budget employees at the same time of the furlough of two other Office of Budget employees created a "vacancy", because a "vacancy" existed under the Civil Service Commission regulations when the reassigned employees would no longer function as assistant comptrollers in their new positions, thus creating a vacancy simultaneous with the furlough action. *Roetenberg v. Office of Budget*, 550 A.2d 825 (Pa. Cmwith. 1988).

Cross References

This section cited in 4 Pa. Code § 91.3 (relating to definitions).

§ 99.42. [Reserved].**Source**

The provisions of this § 99.42 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 5, 1982, effective March 6, 1982, 12 Pa. B. 868; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; reserved November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (140015).

§ 99.43. Effect of reclassification on probationary period.

Incumbents reclassified laterally or downward shall retain current status.

Source

The provisions of this § 99.43 adopted November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334.

Subchapter F. COMPENSATION

Sec.

99.51. [Reserved].

99.52. Effect of change in compensation schedules.

§ 99.51. [Reserved].**Source**

The provisions of this § 99.51 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86312).

§ 99.52. Effect of change in compensation schedules.

Revision of the established schedule of compensation for a class, with no significant change in classification standards as determined by the Director, will have no effect upon the status and seniority of employees. Changes in compensation may not be construed as promotions or demotions.

Source

The provisions of this § 99.52 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86312).

CHAPTER 101. SEPARATION OF EMPLOYEES FROM CLASSIFIED SERVICE

TEMPORARY AND PERMANENT SEPARATIONS

Sec.

101.1. Furlough.

SUSPENSION

101.21. Generally.

101.22. [Reserved].

REMOVAL DURING PROBATIONARY PERIOD

101.31. Generally.

101.32. Rights of promoted employee during probationary period.

101.41. [Reserved].

101.42. [Reserved].

101.43. [Reserved].

101.44. [Reserved].

101.45. [Reserved].

RESIGNATION

101.51. General.

101.52. Notice of acceptance or rejection.

101.53. [Reserved].

101.54. Reemployment after resignation.

101.55. Resignation following leave of absence.

LEAVE OF ABSENCE

101.61. General.

101.62. Extension or renewal of leave.

101.63. Successive leaves of absence.

101.64. Returning employees.

SENIORITY

101.71. Break in service.

101.72. [Reserved].

TEMPORARY AND PERMANENT SEPARATIONS

§ 101.1. Furlough.

(a) *Reasons.* Furloughs shall occur only because of lack of funds or lack of work.

(b) *Preference in retention.* An appointing authority will not furlough a regular employee while a probationary, qualifier, provisional, temporary or emergency employee is employed in the same class, in the same furlough unit designated by the appointing authority. An appointing authority will not furlough a probationary employee while a qualifier, provisional, temporary or emergency employee is employed in the same class and furlough unit.

(c) *Furlough units.* Furloughs will be conducted within approved furlough units. For purposes of this section, a furlough unit shall be defined as all employees in the classification within an affected institution, division, bureau or a combination of the institutions, divisions or bureaus within an agency. Each appointing authority will submit recommended furlough units to the Director. Once approved by the Director, these furlough units will be used for subsequent furloughs. Changes to the approved furlough units shall be submitted to and approved by the Director prior to their use in subsequent furloughs.

(d) *Order of furlough.* When a furlough is necessary, the last annual or probationary performance evaluations, as applicable, of regular employees in the same furlough unit and class shall be converted to categories or relative ranks. The employees will be placed into quarters, and those in the lowest quarter will be furloughed or returned under subsection (e), in the inverse order of classified service seniority. Seniority for this purpose shall be the length of continuous service in the classified service if there has been no break in service.

(e) *Right of return before furlough.* Upon notification of, and until the effective date of furlough, regular employees to be furloughed shall have right of return to vacant positions in the appointing authority in any class and status previously held, or to a class and status in the same or lower levels, if the employee meets the minimum qualifications therefore. Probationary employees will be restored to the eligible list from which appointed or to the class previously held if the probationary status resulted from promotion.

(f) *Mandatory reemployment.* Furloughed employees who are unable to exercise their right of return will be given a mandatory 1-year preference for reemployment in the same class and appointing authority from which furloughed. The preference does not apply to vacancies to which employees on leave of absence have priority of return, or to a filled position which has been reallocated upward after the effective date of furlough.

(g) *Optional reemployment.* Furloughed employees who are unable to exercise their right of return also will be placed, for 1 year, on optional reemployment lists for the class from which furloughed and for equal and lower level classes for which qualified, for certification to all appointing authorities.

(h) *Reemployment certifications.* Requirements for certifications shall be as follows:

(1) Certifications from mandatory reemployment lists shall preclude issuance of certifications otherwise applicable to available vacancies except for certifications from preferred reemployment lists which shall take precedence over all other eligible lists. Certifications from optional reemployment lists shall be considered coequally with all other employment or promotion certifications issued for available vacancies.

(2) Furloughed employees shall be certified from mandatory reemployment lists according to their stated availabilities. The appointing authority will give reemployment preference to those on mandatory reemployment lists with higher overall performance evaluations. In cases of identical performance evaluations, furloughees with greater continuous classified service seniority will have reemployment preference.

(3) Furloughed employees shall be certified from optional reemployment lists according to their stated availabilities. The appointing authority may select any furloughed employee from the optional reemployment list.

(i) *Refusal of mandatory reemployment.* Furloughed employees who refuse reemployment in the same class, location and appointing authority from which furloughed shall forfeit all reemployment preferences, and shall be considered as having voluntarily resigned as of the furlough effective date.

(j) *Refusal of optional reemployment.* Furloughed employees who refuse appointment from an optional reemployment list shall forfeit appointment eligibility for that class and lower level classes, but shall retain mandatory preference and other optional preferences for reemployment. If preferences subsequently are not, or cannot be, exercised, the furlougees shall be considered as having voluntarily resigned as of the furlough effective date.

(k) *Separate reemployment lists.* Separate reemployment lists will be established for State and non-State agencies.

(l) *Furlough under collective bargaining agreement.* If there is a labor agreement covering the employees to be furloughed, the terms of the agreement as to furlough and reemployment procedures shall be controlling.

Source

The provisions of this § 101.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended February 8, 1974, effective February 9, 1974, 4 Pa. B. 233; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (96784) and (140017) to (140018).

Notes of Decisions

Furloughs

Substantial evidence existed in the record to support the hearing examiner's finding that the dean for student services was furloughed for lack of funds, where, despite increased revenue, the university was able to show a budgetary shortfall which necessitated modifications in the system, the university, through the termination of the dean's position, was able to project a savings of \$43,000, and the university was not obligated to adopt the dean's alternative solutions as the university had a great deal of managerial flexibility in the decision making process. *Bumba v. State System of Higher Education*, 734 A.2d 36 (Pa. Cmwlth. 1999).

The civil service employee was properly furloughed by the Department as according to the county furloughed unit set up by the Department of which only two people had the same job title and the furloughed employee's performance evaluation review which was then "due" was the lower of the two. *Valence v. Department of Public Welfare*, 641 A.2d 644 (Pa. Cmwlth. 1994).

A Department of Labor and Industry's furlough of a rehabilitation specialist based on lack of work was upheld, where the agency introduced evidence that necessary duties performed by the specialist could be contracted out and the object of the furlough action was the elimination of a position. *Stump v. Department of Labor and Industry*, 624 A.2d 229 (Pa. Cmwlth. 1993).

The reassignment of two Office of Budget employees at the same time of the furlough of two other Office of Budget employees created a "vacancy," because a "vacancy" existed under the Civil Service Commission regulations when the reassigned employees would no longer function as assistant comptrollers in their new positions, thus creating a vacancy simultaneous with the furlough action. *Roetenberg v. Office of Budget*, 550 A.2d 825 (Pa. Cmwlth. 1988).

Since appellant could not show that he was actually injured by the designation of an improper furlough unit, the dismissal of his appeal was appropriate. *Pronko v. Department of Revenue*, 539 A.2d 456 (Pa. Cmwlth. 1988).

Where employee's application for lower grade position was submitted prior to notification of furlough and the lower level position was eliminated prior to furlough notification, the employee had no right to the abolished lower position under this section. *O'Byrne v. Department of Transportation*, 498 A.2d 1385 (Pa. Cmwlth. 1985) (Footnote 3).

The provisions of subsection (c) necessarily require an agency or department to designate furlough units before commencing a reduction in force. *Reneski v. Department of Public Welfare*, 479 A.2d 652 (Pa. Cmwlth. 1984).

The rights of a furloughed employee under 4 Pa. Code § 101.1 (relating to furloughs) or under section 802 of the Civil Service Act (71 P.S. § 741.802) are not affected by his failure to file a timely appeal from a notice of furlough. *Marks v. Civil Service Commission*, 299 A.2d 691 (Pa. Cmwlth. 1973).

SUSPENSION

§ 101.21. Generally.

(a) Good cause for suspension is one of the following:

- (1) Insubordination.
- (2) Habitual lateness in reporting for work.
- (3) Misconduct amounting to violation of law, rule or lawful and reasonable Departmental orders.
- (4) Intoxication while on duty.
- (5) Conduct either on or off duty which may bring the service of the Commonwealth into disrepute.
- (6) Similar substantial reasons.

(b) Suspension pending investigation may be instituted for the purpose of ascertaining an employee's fitness for continued employment.

(1) When the investigation has not revealed cause for disciplinary action, the suspension shall be retracted and expunged from all records, with the employee receiving back pay for the full period of suspension.

(2) When the investigation has revealed cause for disciplinary action, the suspension shall be converted, either in whole or in part, to a disciplinary action.

(c) Suspensions, to include suspensions pending internal investigation, may not exceed an aggregate of more than 60 work days in a calendar year.

(d) An employee suspended, pending investigation by an external agency, may be suspended for the duration of the external investigation and up to 30 consecutive work days after the conclusion of the external investigation.

(e) The Commission may impose a suspension of not more than 120 work days under section 905.2 of the act (71 P.S. § 741.905b).

Source

The provisions of this § 101.21 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (261921) to (261922) and (257133) to (257134).

Notes of Decisions

An employee, who received and ignored 40 parking tickets for which an arrest warrant was issued, was discharged for just cause because this disregard for the law adversely affected the image of the agency for which he worked. *Office of Attorney General v. Colbert*, 598 A.2d 344 (Pa. Cmwlth. 1991).

Where some of the crimes with which the petitioner was charged and arrested related directly to the performance of his duties as a forester, the court held that the appointing authority had good cause for its suspension of the petitioner. *Lylo v. Department of Environmental Resources*, 477 A.2d 897 (Pa. Cmwlth. 1984).

An arrest for possessing and selling controlled substances may be considered in determining good cause for suspension of the type specified in 4 Pa. Code § 101.21(a)(5), “scandalous or disgraceful conduct while on or off duty which may bring the service of the Commonwealth into disrepute”. *Salvati v. Berks County Board of Assistance*, 474 A.2d 399 (Pa. Cmwlth. 1984).

An Income Maintenance Worker II with the Department of Public Welfare who was suspended for 30 days after her arrest and arraignment on criminal charges relating to her possession and sale of controlled substances was suspended for good cause as described in subsection (a)(5). *Salvati v. Department of Public Welfare*, 463 A.2d 1224 (Pa. Cmwlth. 1983).

Failure of a physician to comply with the hospital director’s repeated instructions to prepare a plan to implement unit rounds by staff under the physician’s supervision constitutes insubordination and just cause for suspension, despite physician’s belief that such a program could not be carried out. *Gorby v. Department of Public Welfare*, 426 A.2d 223 (Pa. Cmwlth. 1981).

Dismissal of a prison guard for possession of marijuana at a State correctional institution is proper, since such conduct violates the parameters of the sensitive position he holds and casts doubt on his competency and ability to execute his duties. *Stone v. State Correctional Institution at Graterford*, 422 A.2d 1227 (Pa. Cmwlth. 1980).

It was improper to suspend a workmen’s compensation referee on the grounds that he had threatened to “even the score” against an attorney with whom he had had dealings in his status as a private attorney, since there was no evidence that the referee had made such a threat and since he had instead requested that cases involving the attorney be reassigned to another referee. *Kanjorski v. Department of Labor and Industry*, 403 A.2d 631 (Pa. Cmwlth. 1979).

Evidence in a criminal court proceeding that an employee had committed a crime is sufficient just cause for suspension and termination and the employing agency is not required to conduct its own investigation of the facts. *Brown v. Department of Transportation*, 383 A.2d 978 (Pa. Cmwlth. 1978).

§ 101.22. [Reserved].

Source

The provisions of this § 101.22 adopted September 12, 1975, effective September 13, 1975, 5 Pa. B. 2359; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (95416).

REMOVAL DURING PROBATIONARY PERIOD

§ 101.31. Generally.

An appointing authority shall specify, by written notice, the reasons for removal of an employee before the expiration of the probationary period.

Source

The provisions of this § 101.31 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (257134).

§ 101.32. Rights of promoted employee during probationary period.

The position vacated by an employee serving a probationary period after promotion may not be filled during the period except on a substitute basis, subject to the return of the employee promoted or the successful completion of the probationary term. An employee serving a probationary period which has resulted from a promotion may be removed from the classified service only for just cause.

Source

The provisions of this § 101.32 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (257134).

§ 101.41. [Reserved].**Source**

The provisions of this § 101.41 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; reserved March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (257135).

§ 101.42. [Reserved].**Source**

The provisions of this § 101.42 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; reserved March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (257135).

§ 101.43. [Reserved].**Source**

The provisions of this § 101.43 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (92036).

§ 101.44. [Reserved].**Source**

The provisions of this § 101.44 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (92036).

§ 101.45. [Reserved].**Source**

The provisions of this § 101.45 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (92036).

RESIGNATION

§ 101.51. General.

A resignation shall consist of a voluntary termination of employment evidenced by written notice containing:

- (1) The employee's signature.
- (2) The date of signature and the date the resignation is to take effect.
- (3) An affirmative statement of the employee's intent to resign.

Source

The provisions of this § 101.51 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (140020).

§ 101.52. Notice of acceptance or rejection.

(a) Unless the employee is being investigated or removal action is pending, an appointing authority may not reject a written resignation, proper in form, which gives at least 2 weeks' notice.

(b) The acceptance of a resignation may not bar an appointing authority from giving notice of removal thereafter for causes which occur or become known during the period between the acceptance and the effective date of the resignation.

(c) A written resignation specifying no effective date shall take effect immediately.

(d) Acceptance of resignation shall be evidenced by written notice to the resigning employee within 15 calendar days after the appointing authority's receipt of the written notice of resignation.

(e) A written resignation may not be withdrawn without the written consent of the appointing authority once it has been accepted, in writing, by the appointing authority.

(f) A resignation submitted, but not yet accepted, in writing, by the appointing authority, may be withdrawn by the employee at any time prior to acceptance or the effective date.

Source

The provisions of this § 101.52 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (155635).

Notes of Decisions

Since the appointing authority may consent to withdrawal of a resignation, refusal by the appointing authority to consent to such withdrawal converted a voluntary quit into an involuntary quit for Unemployment Compensation purposes. *Department of Labor and Industry v. Unemployment Compensation Board of Review*, 502 A.2d 771 (Pa. Cmwlth. 1986).

§ 101.53. [Reserved].**Source**

The provisions of this § 101.53 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; reserved November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (155635) to (155636).

§ 101.54. Reemployment after resignation.

(a) *Initiation of action.* An appointing authority may make written application to the Director for reinstatement of a former regular status employee to a position in the same or comparable class from which resigned. The appointing authority shall submit a current application of the former employee and certify that, the former employee is in all respects qualified and able to serve in the class involved.

(b) *Approval.* The Director shall approve the request if:

(1) The former employee is qualified for the position sought.

(2) The former employee would derive no greater rights or privileges as a result of reinstatement than if continued as a regular employee or granted a leave of absence without pay.

(3) The rights of persons on reemployment or preferred lists would not be violated by the reinstatement.

(c) *Probationary period after reinstatement.* The appointing authority may waive the probationary period if the former employee returns within 2 years after resignation. If more than 2 years have expired, the reinstated employee shall serve the probationary period prescribed for the class to which returned.

Source

The provisions of this § 101.54 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended August 9, 1974, effective August 10, 1974, 4 Pa. B. 1669; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (47174) and (67261).

Notes of Decisions

Reinstated referee, who was reinstated after 5 years of retirement, was competent to decide workers' compensation case. *McAfee v. Workmen's Compensation Appeal Board*, 579 A.2d 1363, 1366 (Pa. Commw. 1990).

§ 101.55. Resignation following leave of absence.

A voluntary resignation submitted during or at the termination of a leave of absence shall be effective on the date thereof.

Source

The provisions of this § 101.55 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (155636).

Notes of Decisions

An employee who refuses to return to work in her previous position after termination of her leave of absence, but instead requests to return to work in a light work position, is deemed to have resigned if no vacancies in a light work position exist for the employee to assume. *Marsh v. Department of Public Welfare*, 417 A.2d 862 (Pa. Cmwlth. 1980).

LEAVE OF ABSENCE

§ 101.61. General.

(a) A leave of absence may be granted at the discretion of the appointing authority and shall be granted for a definite period, usually in 2 year increments.

(b) Absence on leave for more than 2 years, unless the leave has been extended or renewed as provided in this subsection, shall be deemed the equivalent of a resignation as of the date of termination of the leave. An employee filling a position in the classified service on a substitute basis may, in the discretion of the appointing authority, be granted successive leaves of absence for the duration of the substitute employment aggregating more than 2 years without being required to return to duty between the successive leaves.

(c) This section may not apply to military leave of absence, or to a leave of absence granted to a classified service employee to occupy a position in the Senior Management Service.

Source

The provisions of this § 101.61 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (67261).

§ 101.62. Extension or renewal of leave.

(a) *For illness or disability.* Leave of absence may be extended beyond the initial period granted by the appointing authority, if the circumstances indicate that illness or disability will render the employee temporarily incapable of efficiently performing the duties of the position at the scheduled termination of the leave.

(b) *For military service.* Leave of absence granted for military purposes shall extend for the period of service.

(c) *For employment in the unclassified service.* Leave of absence granted to an employee to take a position in the unclassified service may be renewed for additional periods not exceeding 2 years in each instance, up to a maximum of 12 years after the date the leave commenced.

(d) *For employment in a position in the Senior Management Service.* Leave of absence granted to an employee to take a position in the Senior Management Service shall extend without necessity for renewal, until the employee leaves the Senior Management Service.

Source

The provisions of this § 101.62 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended September 12, 1975, effective September 13, 1975, 5 Pa. B. 2359; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (67262).

§ 101.63. Successive leaves of absence.

An appointing authority may require an employee to serve at least 3 months in a position following a leave of absence without pay aggregating 2 or more years before granting the employee a further leave of absence.

Source

The provisions of this § 101.63 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (67262).

§ 101.64. Returning employees.

(a) An employee's right of return is not restricted to a vacancy at the geographic location from which leave was granted.

(b) An employee may return to a vacancy whenever available for reemployment during the period of approved leave, if the appointing authority has been given written notice of the employee's availability.

(c) Priority of return to the class from which leave was granted shall terminate upon the employee's refusal of reemployment in the class and at the location from which leave was granted.

(d) An employee may return to an appointing authority other than the one from which leave was granted at the discretion of the gaining appointing authority.

Source

The provisions of this § 101.64 adopted September 12, 1975, effective September 13, 1975, 5 Pa. B. 2359; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (155638).

SENIORITY

§ 101.71. Break in service.

(a) Seniority as used in this part shall be continuous service unless broken by one or more of the following: resignation; retirement; failure to report after notification of appointment through mandatory, preferred or optional reemployment rights; expiration of mandatory, preferred or optional reemployment rights; or failure to report after leave and acceptance of other permanent employment while on leave of absence without pay. If service is broken for one of these reasons, the employee shall lose accrued seniority. If an employee is returned within 1 year after this type of break in service, the employee is entitled to credit for seniority purposes the time accrued up to the time the break in service occurred, but is not entitled to credit for the time represented by the break in service.

(b) Periods of furlough and approved leave of absence without pay shall be deemed continuous employment for seniority purposes, except that the period of furlough or leave of absence without pay will not be counted toward seniority.

(c) Removal for cause shall terminate accrued seniority. Demotion for cause shall terminate seniority in the class from which demoted.

Source

The provisions of this § 101.71 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended August 9, 1974, effective August 10, 1974, 4 Pa. B. 1669; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (155638).

Notes of Decisions*Break in Service*

An employee of the Department of Conservation and Natural Resources failed to provide sufficient evidence to show that his protected activity of filing a lawsuit successfully challenging his dismissal was a substantial or motivating factor for the deprivation of his seniority status upon his reemployment, where the employee did not have seniority when the Department rehired him based on his service prior to his 1988 removal because the break in service for exceeded 1 year. *Fultz v. Dunn*, 165 F.3d 215 (3d. Cir. 1998).

§ 101.72. [Reserved].**Source**

The provisions of this § 101.72 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; reserved November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (155638).

CHAPTER 103. PROHIBITIONS, PENALTIES AND ENFORCEMENT

DIRECTOR'S REVIEW OF LEGALITY OF EMPLOYMENT

Sec.

- 103.1. [Reserved].
- 103.2. [Reserved].
- 103.3. [Reserved].
- 103.4. [Reserved].
- 103.5. Report of personnel changes.
- 103.6. Action on personnel changes.
- 103.7. Effect of out-of-class work.

POLITICAL ACTIVITY, ASSESSMENTS AND DISCRIMINATION

- 103.11. Exception to prohibited political activities.
- 103.12. Complaint procedure.
- 103.13. Complaint form.
- 103.14. Prohibition of assessments.
- 103.15. Prohibition of discrimination.

REMOVAL AND DISQUALIFICATION OF OFFICERS AND EMPLOYEES

- 103.21. Falsification or concealment of material information.
- 103.22. Notice of violation of act or rules.
- 103.23. Penalty for violation.

DIRECTOR'S REVIEW OF LEGALITY OF EMPLOYMENT

§ 103.1. [Reserved].

Source

The provisions of this § 103.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (61827).

§ 103.2. [Reserved].

Source

The provisions of this § 103.2 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (61827) and (47177).

§ 103.3. [Reserved].**Source**

The provisions of this § 103.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (47177).

§ 103.4. [Reserved].**Source**

The provisions of this § 103.4 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; reserved March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (47177).

§ 103.5. Report of personnel changes.

Each appointing authority shall, on a form approved by the Director, promptly report to the Director an appointment or change in position, status or residence of an employee in the classified service under its jurisdiction, or a permanent change in the salary or other basis upon which an employee is paid and the effective date of the change.

Source

The provisions of this § 103.5 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (47177).

§ 103.6. Action on personnel changes.

(a) The Director will audit each appointment and personnel change by reference to the records of the Commission and to the act and this subpart.

(b) An appointment and personnel change which is in accordance with the act and this subpart shall be so noted and entered in the records of the Commission.

(c) Whenever it is determined that an appointment or personnel change is not in accordance with the act and this subpart, the appointing authority shall be given written notification thereof, including the reasons for the determination.

Source

The provisions of this § 103.6 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial pages (47177) to (47178).

§ 103.7. Effect of out-of-class work.

When it is determined that an employee is filling a position under a title other than that for which examined and certified, or is performing duties or assuming responsibilities which do not properly belong to the position for which examined and certified, except during an emergency period, the Director may take appropriate action consistent with the act.

Source

The provisions of this § 103.7 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (47178).

POLITICAL ACTIVITY, ASSESSMENTS AND DISCRIMINATION

§ 103.11. Exception to prohibited political activities.

(a) Notwithstanding the political activities expressly prohibited by the act, classified service employees are permitted to seek and accept appointment, nomination and election to the office of school board director. This exception applies only to the employee who is the candidate. For other civil service employees, the restrictions on political activity remain in effect for school director elections.

(b) The provisions of the act which expressly prohibit certain political activities do not apply to the classified service employee who has been furloughed or who is on a regular leave of absence, or leave of absence to take a non-civil service position. An employee on another type of leave of absence shall continue to comply with the political activity restrictions while on leave. Upon return to the classified service the employee shall immediately cease the political activities prohibited by the act. An employee elected to public office while on leave, who returns to the classified service, may serve out the remaining portion of the present term of office if the duties of the office are not among those prohibited by the act. The employee may not run for or be nominated for a new term of office.

Source

The provisions of this § 103.11 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96794).

§ 103.12. Complaint procedure.

Complaints against a classified service employee for engaging in prohibited political activity shall be addressed to the Director, and shall be promptly investigated with corrective or referral action taken as necessary.

Source

The provisions of this § 103.12 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (49468).

Cross References

This section cited in 4 Pa. Code § 103.14 (relating to prohibition of assessments).

§ 103.13. Complaint form.

Complaints in a written form are acceptable if they contain sufficient details of the alleged prohibited political activity so as to enable proper investigation.

Source

The provisions of this § 103.13 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (49468).

Cross References

This section cited in 4 Pa. Code § 103.14 (relating to prohibition of assessments).

§ 103.14. Prohibition of assessments.

Complaints against persons for engaging in prohibited assessment activities for political purposes shall be made in the manner and form as prescribed for prohibited political activities in §§ 103.12 and 103.13 (relating to complaint procedure; and complaint form).

Source

The provisions of this § 103.14 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (49468).

§ 103.15. Prohibition of discrimination.

Complaints of discrimination against an officer or employee of the Commonwealth, under section 905.1 of the act (71 P.S. § 741.905a), shall be addressed to the Director in writing.

Source

The provisions of this § 103.15 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (49468).

REMOVAL AND DISQUALIFICATION OF OFFICERS
AND EMPLOYEES

§ 103.21. Falsification or concealment of material information.

Whenever the Commission shall, after due inquiry, determine that an employee has been appointed or promoted as a result of having furnished false information or concealed material information about himself, or others, the Director shall give written notice of the determination to the appropriate appointing authority. The notice shall contain reference to section 906 of the act (71 P.S. § 741.906) and shall include instructions as to the remedial actions to be taken by the appointing authority.

Source

The provisions of this § 103.21 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (49469).

§ 103.22. Notice of violation of act or rules.

Whenever the Commission shall determine, after due inquiry, that an employee has violated the act or this subsection, the Director shall give written notice to the appropriate appointing authority of the determination, including appropriate corrective actions.

Source

The provisions of this § 103.22 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (49469).

§ 103.23. Penalty for violation.

If after due inquiry, an employee has been found to have violated the act or this subsection and has been penalized by removal for 1 year from the classified service as set forth in section 906 of the act (71 P.S. § 741.906), the employee may not reenter the classified service except through appointment from an employment list.

Source

The provisions of this § 103.23 adopted November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334.

CHAPTER 105. NOTICE AND HEARINGS

NOTICE

Sec.

- 105.1. Written notice required.
- 105.2. Personnel actions.
- 105.3. Statement of reasons.
- 105.4. Signatory authority.
- 105.5. Time limits.

HEARINGS

- 105.11. General.
- 105.12. Requests.
- 105.13. Form of hearing.
- 105.14. Legal representation.
- 105.14a. Subpoenas.
- 105.14b. Depositions and discovery.
- 105.14c. Settlement.
- 105.14d. Pre-hearing conferences.
- 105.15. Procedure under section 951(a) of the act (71 P.S. § 741.951(a)).
- 105.16. Procedure under section 951(b) of the act (71 P.S. § 741.951(b)).
- 105.17. Petition for reconsideration.
- 105.18. Procedure under section 951(d) of the act (71 P.S. § 741.951(d)).

NOTICE

§ 105.1. Written notice required.

(a) Each appointing authority shall give employees written notice of personnel actions affecting them. At the time that the appointing authority notifies an employee of a furlough or a suspension, it shall simultaneously submit a copy of the notice to the Director.

(b) The notice requirements in this subsection are mandatory. Failure to adhere to the requirements set forth in this section and §§ 105.2—105.5 may nullify the personnel action.

Source

The provisions of this § 105.1 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (261923) to (261924).

Notes of Decisions

Failure to adhere to mandatory notice requirements of this section is not grounds for automatic nullification of personnel action. *Department of Corrections v. Adamson*, 567 A.2d 763 (Pa. Cmwlth. 1989).

An employee-applicant is not entitled to written notice of non-selection to fill a vacancy. *Taylor v. State Civil Service Commission*, 447 A.2d 1098 (Pa. Cmwlth. 1982).

When an employee is given inadequate notice of removal and receives adequate notice only after the stated effective date of dismissal, the effective date of removal is postponed until the date of the adequate notice and the employee is entitled to back pay until the date of the adequate notice. *Wood v. Department of Public Welfare*, 411 A.2d 281 (Pa. Cmwlth. 1980).

When a State employee received a letter listing certain actions as the cause for his discharge, he received notice sufficient to prepare a defense to the charges against him. *Rizzo v. Civil Service Commission*, 333 A.2d 212 (Pa. Cmwlth. 1975).

§ 105.2. Personnel actions.

Written notice shall be required for:

- (1) Appointment.
- (2) Promotion.
- (3) Removal.
- (4) Suspension.
- (5) Demotion.
- (6) Furlough.
- (7) Retirement.
- (8) Resignation.
- (9) Transfer.
- (10) Reassignment.
- (11) Leave of absence.
- (12) Extension or reduction of probationary period.
- (13) Compensation changes, except salary increments, general pay increases, or special pay for such things as overtime or out-of-class work.
- (14) Performance evaluation.
- (15) Reclassification.

Source

The provisions of this § 105.2 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (150314) to (150315).

Notes of Decisions

Furlough

The State Civil Service Commission did not err in allowing the Department of Community Affairs to present testimony and evidence indicating that the employee was furloughed due to lack of work even though the furlough notice indicated that he was being furloughed for lack of funds, where this regulation does not direct the appointing authority to provide reasons for a furlough, and where, because there can only be two reasons for a furlough, an employee is on notice that he or she is being furloughed due to lack of funds or work. *McAndrew v. State Civil Service Commission*, 736 A.2d 26 (Pa. Cmwlth. 1999).

Although the list provided by this section is not exclusive, written reprimands are distinguishable from performance evaluation reports and may not be interpreted as “personnel actions” which are appealable. *McGuire v. Department of Aging*, 592 A.2d 830 (Pa. Cmwlth. 1991).

Service ratings are appealable personnel actions under paragraph (14). *Boris v. Department of Environmental Resources*, 474 A.2d 722 (Pa. Cmwlth. 1984).

Pay reductions are not among the types of personnel actions encompassed by the Civil Service Act and listed in this section; therefore, deductions from store manager's pay by the Liquor Control Board because of unexplained cash shortages are not appealable. *Coventry and Independent State Store Union v. Liquor Control Board*, 473 A.2d 249 (Pa. Cmwlth. 1984).

The notice requirement of this section protects only those persons directly subject to personnel action such as transfer, appointment or suspension from a violation of their due process right to be apprised of any change in employment status. Written notice of another employee's promotion to fill a vacancy is not a "personnel action" within the meaning of this section. *Taylor v. State Civil Service Commission*, 447 A.2d 1098 (Pa. Cmwlth. 1982).

Loss of supervisory authority, without more, is not a personnel action. *Tempero v. Department of Environmental Resources*, 403 A.2d 226 (Pa. Cmwlth. 1979).

Cross References

This section cited in 4 Pa. Code § 105.1 (relating to written notice required).

§ 105.3. Statement of reasons.

Notices of removal, involuntary demotion or suspension issued to regular employees shall include a clear statement of the reasons therefore, sufficient to apprise the employee of the grounds upon which the charges are based. Notices determined to be defective may result in the reversal of the personnel action.

Source

The provisions of this § 105.3 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (285981) to (285982).

Notes of Decisions

Applicability

The State Civil Service Commission did not err in allowing the Department of Community Affairs to present testimony and evidence indicating that the employee was furloughed due to lack of work even though the furlough notice indicated that he was being furloughed for lack of funds, where this regulation did not direct the appointing authority to provide reasons for a furlough, and where, because there can only be two reasons for a furlough, an employee is on notice that he or she is being furloughed due to lack of funds or work. *McAndrew v. State Civil Service Commission*, 736 A.2d 26 (Pa. Cmwlth. 1999).

The provisions of this section, which require a statement of reasons to be provided the employee in case of removal and involuntary retirement, are not applicable to furlough actions; it is sufficient if notice adequately informs the employee of the fact that he will be furloughed. *Eastern Pennsylvania Psychiatric Institute v. Russell*, 465 A.2d 1313 (Pa. Cmwlth. 1983).

Neither the provisions of 71 P.S. § 741.950 nor those in this section require that reclassified employees be informed of the loss of seniority rights acquired as a member of a different bargaining unit upon reclassification. *Johnson v. Department of Transportation*, 466 A.2d 731 (Pa. Cmwlth. 1983).

Sufficiency of Notice

Although the notice requirements of § 105.3 are mandatory, failure to adhere to them is not grounds for automatic nullification of the personnel action taken. The removal notice need only be framed in a manner which enables the employee to discern the nature of the charges and adequately to prepare a defense. Due process of law is afforded when the employee is informed

with reasonable certainty of the substance of the charges. *Bosnjak v. State Civil Service Commission*, 781 A.2d 1280 (Pa. Cmwlth. 2001).

A notice of the suspension of a staff psychiatrist was sufficiently clear so as to inform her of the charges, where the terms “proper allegations and pre-disciplinary conferences” placed her on notice that her suspension was due to her administration and monitoring of Lithium prescriptions to her patients. *Bazargani v. State Civil Service Commission*, 711 A.2d 529 (Pa. Cmwlth. 1998).

Notice of Ethics code violations referring specifically to aspects of employee responsibilities where deficiency was alleged is sufficient to enable employee to discern the nature of the charges and to prepare a defense thereby satisfying both Civil Service Commission requirements and due process requirements. *Department of Corrections v. Adamson*, 567 A.2d 763 (Pa. Cmwlth. 1989).

Notice of Ethics code violations referring specifically to aspects of employee responsibilities where deficiency was alleged is sufficient to enable employee to discern the nature of the charges and to prepare a defense thereby satisfying both Civil Service Commission requirements and due process requirements. *Department of Corrections v. Adamson*, 567 A.2d 763 (Pa. Cmwlth. 1989).

A regular status employee has not been given adequate notice of the reasons for dismissal if the only reason given is “continued unsatisfactory work performance.” *Wood v. Department of Public Welfare*, 411 A.2d 281 (Pa. Cmwlth. 1980).

While a listing of specific incidents of an employee’s behavior in the notice may be unnecessary, the reasons listed should at least refer specifically to those aspects of the employee’s responsibility in which he was found to be deficient and should identify those deficiencies with particularity. *Chavis v. Philadelphia County Board of Assistance*, 370 A.2d 445 (Pa. Cmwlth. 1977).

A removal notice need not be drafted with the certainty of a bill of indictment but must be framed in a manner which enables the employee to discern the nature of the charges and to prepare adequately his defense. *Chavis v. Philadelphia County Board of Assistance*, 370 A.2d 445 (Pa. Cmwlth. 1977).

Charges against regular status employee in charge of maintenance at State hospital alleging “past performance as relates to job duty and failure to make command decisions while under the direct influence of alcohol” is an adequate notice of charges against him. *Foster v. Civil Service Commission*, 321 A.2d 409 (Pa. Cmwlth. 1974).

Under the 1973 version this section, a notice of furlough met the requirements of this section by stating the reasons for the furlough, if in fact the notice gives sufficient reason. *Marks v. Civil Service Commission*, 299 A.2d 691 (Pa. Cmwlth. 1973).

Cross References

This section cited in 4 Pa. Code § 105.1 (relating to written notice required).

§ 105.4. Signatory authority.

Personnel action notices shall be personally signed by the agency head, or a designated subordinate. If this responsibility has been delegated within the appointing authority, the delegation shall be submitted in writing to the Director and identify the designees by specific work title. Subordinates properly delegated signatory authority by the appointing authority may not further delegate the authority. For performance evaluations, the designated subordinate shall be the employee’s immediate supervisor and the appointing authority is not required to submit written notification of work titles to the Director for this purpose.

Source

The provisions of this § 105.4 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (150316).

Cross References

This section cited in 4 Pa. Code § 105.1 (relating to written notice required).

§ 105.5. Time limits.

Written notices of personnel actions shall be provided to employees in advance of the effective dates of these actions, except in cases of suspension, acceptance of resignation or reclassification. Advance notice shall be at least 1 work day, except in circumstances of unusually serious employee infractions where continued employment would be detrimental to the appointing authority, its other employees or its clients. Notice of suspension or acceptance of resignations shall be given no later than 10 work days after the effective dates of the action. Notice of acceptance of resignation shall be given within 15 calendar days after the appointing authority's receipt of the employee's written notice of resignation. Notice of reclassification shall be given within 10 work days after the final decision to reclassify the employee has been made.

Source

The provisions of this § 105.5 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (150316) to (150317).

Cross References

This section cited in 4 Pa. Code § 105.1 (relating to written notice required).

HEARINGS

§ 105.11. General.

Hearings granted to employees demoted under section 706 of the act (71 P.S. § 741.706), furloughed under section 802 of the act (71 P.S. § 741.802), resigned under section 806 of the act (71 P.S. § 741.806), removed under section 807 of the act (71 P.S. § 741.807), suspended under section 803 or persons alleging discrimination under section 905.1 of the act (71 P.S. § 741.905a) shall be public hearings. At least 10 working days notice in advance of the date of the hearing shall be tendered in writing to the employee affected and to the appointing authority and others interested in the case, informing them of the date, time and place of hearing. Notice of the hearings shall be posted on the bulletin board located in or near the principal office of the Commission. The Civil Service Commissioners may grant requests for continuances. The Commission, on its own motion, may grant a continuance if the scheduled hearing lasts longer than 2 hours.

Source

The provisions of this § 105.11 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (292975).

Notes of Decisions

The employee must actually receive the notice at least 10 days prior to the scheduled date of the hearing, and merely placing the notice in the mail at least 10 days prior to the hearing date is not sufficient. *Courtney v. Civil Service Commission*, 391 A.2d 6 (Pa. Cmwlth. 1978).

In an action which does not involve an allegation of discrimination, and is not pursuable under section 951(a) or (b) of the Civil Service Act (71 P.S. § 751.951(a) or (b)), the provisions of this section do not provide an employee with an adequate remedy; the employee is therefore not required to exhaust administrative remedies available. *Magnelli v. Civil Service Commission*, 383 A.2d 561 (Pa. Cmwlth. 1978).

§ 105.12. Requests.

(a) Requests for hearings shall be:

- (1) Made in writing.
- (2) Personally signed by the individual appealing.

(3) Received or postmarked not more than 20 calendar days after the employee receives notice of the challenged personnel action. A person appealing discrimination under section 905.1 of the act (71 P.S. § 741.905(1)) shall appeal within 20 calendar days of the alleged discrimination.

(b) The person appealing shall state clearly and concisely the:

- (1) Grounds of the interest of the person in the subject matter.
- (2) Facts relied upon.
- (3) Relief sought.

(c) Appeals alleging discrimination which do not include specific facts relating to discrimination may be dismissed. Specific facts which should appear on the appeal form include:

- (1) The acts complained of.
- (2) How the treatment differs from treatment of others similarly situated.
- (3) When the acts occurred.
- (4) When and how the appellant first became aware of the alleged discrimination.

(d) Acceptance of an amendment to an appeal is solely at the discretion of the Commissioners.

(e) Subsections (a)—(d) supplement 1 Pa. Code §§ 35.9 and 35.10 (relating to formal complaints generally; and form and content of formal complaints).

Source

The provisions of this § 105.12 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (132381) to (132382).

Notes of Decisions

An appeal alleging that, although the name of a public employee had on two occasions appeared on a Commission promotion list due to his top performance on a civil service examination, the employee had not on either occasion received any notice of promotions or vacancies or of interviews connected with filling those two vacancies, and that on both occasions a black person was hired to fill the position in question, is sufficiently specific to assert a racial discrimination claim. *Filice v. Department of Labor and Industry*, 625 A.2d 148 (Pa. Cmwlth. 1993).

The Commission's finding of employment discrimination was reversed in light of the public employee's failure to introduce evidence of disparate treatment from those who were similarly situated in order to establish a *prima facie* case. *Department of Health v. Nwogwugwu*, 594 A.2d 847 (Pa. Cmwlth. 1991).

Letters written by the petitioner to the Commission were amendments sufficiently specific to constitute allegations of discrimination for purposes of this section. *Pannacci v. Department of Public Welfare*, 560 A.2d 288 (Pa. Cmwlth. 1989).

The fact that an employee wrote letters which did not indicate his intent to file an appeal of a non-selection and also failed to allege specific facts of discrimination precluded treating those letters as a timely appeal to the Commission. *Shepta v. Board of Probation and Parole*, 555 A.2d 297 (Pa. Cmwlth. 1989).

It is within the discretion of the Commission to deny or entertain an amendment to an appeal alleging discrimination. *Keim v. Department of Health*, 543 A.2d 1261 (Pa. Cmwlth. 1988).

This section permits the Commission to dismiss *sua sponte* an appeal for failure to specifically allege discrimination; the dismissal does not violate due process. *Keim v. Department of Health*, 543 A.2d 1261 (Pa. Cmwlth. 1988).

An allegation that the appellant was a union member coupled with an allegation that the successful applicant was a nonunion member was insufficient to state a cause of action for discrimination. *Keim v. Department of Health*, 543 A.2d 1261 (Pa. Cmwlth. 1988).

An appeal alleging discrimination in violation of section 905.1 of the Civil Service Act (71 P.S. § 905a) must include specific allegations; conclusory allegations may be dismissed for failure to state a cause of action. *Keim v. Department of Health*, 543 A.2d 1261 (Pa. Cmwlth. 1988).

A letter setting forth details of alleged discrimination following an appeal request form which lacked sufficient facts may provide information sufficient to entitle a civil service employee to a hearing. *Pannacci v. Civil Service Commission*, 516 A.2d 1327 (Pa. Cmwlth. 1986).

A Civil Service employee alleging a violation of section 905.1 of the Civil Service Act (71 P.S. § 741.905a) relating to discrimination in personnel actions because of non-merit factors must state specific acts of discrimination in his appeal under section 951(b) of the act (71 P.S. § 741.951(b)) or face dismissal of that appeal. *McHale v. Department of Transportation*, 514 A.2d 290 (Pa. Cmwlth. 1986).

In determining propriety of Commission's dismissal of appellant's appeal, Court would not consider facts which were not of record before the Commission where there had been no allegation that the facts were unavailable at the time appellant filed his appeal with the Commission. *Behm v. Civil Service Commission*, 494 A.2d 1166 (Pa. Cmwlth. 1985).

Sufficiency of Allegations

Employee satisfied the pleading requirement as to race discrimination by listing allegations of high rate of minority discharge and disparities in the amount of work assigned to minorities, as well as including the names of those who discriminated against him during a specified time period. The Commission's dismissal for insufficiency of allegations was therefore reversed. *Craig v. State Civil Service Commission*, 800 A.2d 364 (Pa. Cmwlth. 2002).

Employee's request for a hearing contained only a general and conclusory allegation concerning sex discrimination, and no factual support as to discrimination based on disability. Therefore, the Commission's denial of those claims for insufficiency was correct. *Craig v. State Civil Service Commission*, 800 A.2d 364 (Pa. Cmwlth. 2002).

Cross References

This section cited in 4 Pa. Code § 95.71 (relating to review of eligibility or examination results).

§ 105.13. Form of hearing.

(a) The hearing shall be formal, but not all of the strict rules of evidence need be enforced. Evidence offered should be the best evidence available. Documents which constitute reliable evidence or whose contents or meaning are in dispute should be brought to hearing and entered into evidence. Whenever possible, the original document should be available to be offered into evidence.

(b) A complete stenographic, electronic or other exact record of the proceedings shall be made.

(c) A Civil Service Commissioner or a hearing officer designated by the Commission may conduct hearings.

Source

The provisions of this § 105.13 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (292977) to (292978).

Notes of Decisions

This section requires that a complete stenographic record be made of the proceedings, nothing more. Section 105.13 does not require that a free copy of the notes of testimony be provided. *Silvia v. Department of Public Welfare*, 437 A.2d 535 (Pa. Cmwlth. 1981).

§ 105.14. Legal representation.

(a) Appointing authorities shall be represented by counsel presently admitted to practice before the Supreme Court of Pennsylvania.

(b) Appellants may represent themselves, or may be represented by anyone presently admitted to practice before the Supreme Court of Pennsylvania. This does not prohibit representation on behalf of either an appointing authority or an appellant by a legal intern certified under the Pennsylvania Bar Admission Rules.

(c) A person other than one noted in subsection (b) will not be permitted to represent an appellant at a hearing of the Commission.

(d) In all cases, where a legal representative represents an appellant, notices of the date of hearing and of the decision, and other communication arising from the case, shall be directed to the legal representative. The communication shall have the same force and effect as though personally given to the appellant.

Source

The provisions of this § 105.14 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; corrected June 19, 1992, effective April 4, 1992, 22 Pa. B. 3064. Immediately preceding text appears at serial pages (164782) to (164783).

§ 105.14a. Subpoenas.

(a) *Procedure for requesting* subpoenas.

(1) Subpoenas for the attendance of witnesses or for the production of documents will be issued only upon written application to the Chairperson of the Commission or the Commissioner presiding at hearing, with a copy to the opposing party.

(2) Written application shall specify as clearly as possible the relevance of the testimony or documentary evidence sought. As to documentary evidence, the request must specify to the extent possible the documents desired and the facts to be proved thereby.

(3) Failure to adhere to the requirements of this subsection may result in the refusal by the Commission to issue the requested subpoenas.

(4) Subpoenas for new or additional witnesses will not be issued after a hearing has been commenced and continued unless orally requested on the record at the hearing and approved by the Commission, except that subpoenas issued prior to the commencement and continuance of the hearing may be reissued upon written request.

(b) *Service.*

(1) A subpoena shall be served personally upon the witness.

(2) Subpoenas for the production of documents shall be served personally or by first-class mail upon the individual in possession of the documents, if known, or the agency head, who may designate a knowledgeable alternate as custodian of the documents, or the legal counsel for the appointing authority.

(3) Service of subpoenas for the attendance of witnesses shall be made at least 48 hours prior to hearing, unless the witness agrees to waive the 48-hour requirement. Subpoenas for the production of documents shall be served no later than 5 work days prior to hearing.

(4) Failure to adhere to the requirements of this subsection may result in a ruling by the Commission denying the enforceability of the subpoena.

(c) *Compensation of witnesses.*

(1) Witnesses subpoenaed to appear before the Commission shall be paid a witness fee at the rate specified for the courts of common pleas by the party requesting the subpoena.

(2) Witnesses subpoenaed to appear before the Commission shall be paid, by the party serving the subpoena, mileage at the rate specified for the courts of common pleas for each mile actually and necessarily traveled between the place named in the subpoena and either the place of residence of the witness or the work site, whichever distance is less.

(3) At the time a witness is served with a subpoena, the witness shall, upon demand, be paid the witness fee and travel expenses provided in this subsection by the party serving the subpoena. If no demand is made by the witness at the time of service, the fee shall be tendered to the witness prior to the start of the hearing.

(4) Paragraphs (1)—(3) supersede 1 Pa. Code § 35.139 (relating to fees of witnesses).

(d) *Supplementation.* Subsections (a)—(c) supplement 1 Pa. Code § 35.142 (relating to subpoenas).

Source

The provisions of this § 105.14a adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial pages (292978) to (292979) and (228459).

§ 105.14b. Depositions and discovery.

(a) *Depositions.* At the discretion of the Commission, depositions—statements of witnesses under oath—may be transcribed and submitted in lieu of testimony at the hearing, where the witness will be unavailable to testify at hearing because of unavoidable absence from the jurisdiction, illness or other compelling reasons. The costs of depositions shall be borne by the requesting party.

(b) *Discovery of documents.* At the discretion of the Commission, relevant documents may be obtained from an opposing party prior to the hearing.

(1) Requests for discovery of documents shall be in writing and shall initially be served upon the opposing party or legal representative in sufficient time to allow completion of discovery prior to the hearing.

(2) If the parties are unable to agree upon a reasonable scope of discovery, requests for discovery may then be forwarded in writing to the Commission, which may, in its discretion, issue appropriate subpoenas under this title.

(c) *Witness list.* Each party shall attempt to determine the witnesses they intend to call at the hearing and the names shall be provided to the Commission no later than 3 work days in advance of the hearing, with a copy to the opposing party. Calling a witness whose name does not appear on the list may be permitted at the discretion of the Commission.

Source

The provisions of this § 105.14b adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (142737).

§ 105.14c. Settlement.

(a) Parties, at their discretion, may enter into agreements to settle or otherwise terminate a proceeding before the Commission at any point in the appeal process prior to adjudication. All parties shall notify the Commission in writing in a timely manner of a settlement agreement. Upon receipt of notice from the appellant or the appellant's legal representative, an appeal shall be deemed withdrawn.

(b) Unless the Commission is requested to review and approve the settlement, the Commission will not be responsible for the enforcement of a settlement agreement.

(c) When the Commission finds in favor of the appellant and the appointing authority complies with the order, questions about the sufficiency of compliance shall be submitted to the Commission within 20 calendar days of the appointing authority's action.

Source

The provisions of this § 105.14c adopted November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334.

§ 105.14d. Pre-hearing conferences.

(a) *Pre-hearing conference.* To facilitate the submission and consideration of issues and facts, the Commission may schedule a pre-hearing conference and request the parties to participate in the proceeding. The conference may be conducted by telephone or in person, either by a Commissioner or by an attorney employed by the Commission to consider the following:

- (1) Simplification of the issues.
- (2) Stipulations of fact and authenticity of documents.
- (3) Admissibility and relevance of witness testimony.
- (4) Admissibility and relevance of exhibits, which will be identified and exchanged at the conference.
- (5) Subpoenas and all issues related to subpoenas.
- (6) Offers of settlement or proposals for adjustment, if appropriate.
- (7) Other matters that would facilitate the efficiency of the proceeding.

(b) *Pre-hearing conference memorandum.* No later than 3 work days in advance of the pre-hearing conference, the parties will submit to the Commission an original memorandum, plus three copies, that contains the following:

- (1) Caption identifying the parties and the appeal by its assigned appeal number.
 - (2) Statement of issues to be decided by the Commission. If a party intends to move the Commission to dismiss the appeal, that issue should be noted, but a Motion to Dismiss must be filed separately.
 - (3) Statement of stipulations, or facts not in dispute, that includes requested stipulations of fact and any agreements already reached by the parties regarding undisputed facts.
 - (4) Witness list with brief description of testimony of each witness listed.
 - (5) Exhibit list with brief description of exhibits and a brief explanation of the relevance of each exhibit listed.
 - (6) Estimate of time anticipated to complete presentation of evidence to the Commission.
 - (7) Requests for subpoenas may be included with the memorandum.
 - (8) At the hearing, the parties may be limited to those witnesses and exhibits set forth in the memorandum unless one or more of the following apply:
 - (i) A supplemental memorandum is submitted to the Commission at least 1 business day prior to the hearing.
 - (ii) There has been proper notice to other parties and there is no showing of undue inconvenience or prejudice.
 - (iii) The parties have conferred and agree to the additional witnesses or exhibits, or both.
- (c) *Supplementation.* Subsections (a) and (b) supplement 1 Pa. Code § 35.113 (relating to initiation of conferences).

Source

The provisions of this § 105.14d adopted March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442.

§ 105.15. Procedure under section 951(a) of the act (71 P.S. § 741.951(a)).

(a) The appointing authority shall go forward to establish the charge or charges on which the personnel action was based. If, at the conclusion of its presentation, the appointing authority has, in the opinion of the Commission, established a *prima facie* case, the employee shall then be afforded the opportunity of presenting his case.

(b) If, after due notice, the appellant fails to appear at the scheduled hearing, the appointing authority has no burden to go forward and the appeal may be dismissed without the presentation of evidence.

(c) While in each case the Commission may adapt the procedures and conduct of the hearing in accordance with the requirements of justice and due process, generally the routine shall follow the following order:

(1) The presiding commissioner shall open the hearing and shall enter as exhibits a copy of the letter initiating the action taken by the appointing authority, the written appeal of the appellant from the action, and evidence of proper notification to all parties in interest.

(2) The parties shall, subsequent to the presiding commissioner's introduction of documents, present any preliminary motions.

(3) The appointing authority shall call witnesses to testify after being sworn by the presiding commissioner.

(4) The appointing authority may, through witnesses or by stipulation, offer any other relevant evidence for introduction into the record.

(5) The appointing authority shall cite all relevant provisions of law and all relevant rules and regulations.

(6) The appellant may object to questions directed to the witnesses and to the introduction of any evidence offered.

(7) The appellant shall be allowed reasonable opportunity to cross-examine the witnesses.

(8) At the conclusion of the appointing authority's case, the appellant may move to dismiss on the ground that no *prima facie* case has been established.

(9) If no motion to dismiss is made, if the motion is denied, or if the Commission defers ruling on the motion, the appellant may present the defense by the testimony of witnesses, the introduction of relevant evidence, and the citation of relevant provisions of law, rules or regulations.

(10) The appointing authority may object to questions directed to the witnesses and to the introduction of any evidence offered.

(11) The appointing authority shall be allowed reasonable opportunity to cross-examine the witnesses.

(12) When all the evidence has been introduced, the Commission may hear oral argument.

(13) The transcript of the record will be prepared as soon as practicable after the hearing. A copy of the transcript shall be available at the Commission's Harrisburg office for inspection, or upon request, at one of the other Commission offices.

(14) The parties may submit briefs within a period of time fixed by the Commission. Failure by either party to file its brief within the fixed time may lead to the refusal of the Commission to consider the brief in making its determination.

(15) The record shall be considered as closed upon receipt of transcripts, depositions and briefs and the hearing shall be deemed concluded at that time. The Commission will determine the facts upon the evidence of record and decide relevant questions of law within 90 calendar days after the conclusion of the hearing.

(16) A copy of the adjudication in writing, containing findings and reasons, as a result of a resolution adopted by a quorum at a meeting of the Commission, shall be prepared as a decision of the Commission, and, when signed by one of the members of the Commission under its seal, shall be final. A copy of adjudication shall be sent to the appellant and to the appointing authority.

Source

The provisions of this § 105.15 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (142737) to (142740).

Notes of Decisions

The civil service employee was properly furloughed by the Department of Public Welfare (Department) as according to the county furlough unit set up by Department of which only two people had the same job title and the furloughed employee's performance evaluation review which was then "due" was the lower evaluation of the two. *Valence v. Department of Public Welfare*, 641 A.2d 644 (Pa. Cmwlth. 1994).

The Department of Environmental Resources proved that the furlough of a Civil Service employee was justified by showing that the furlough resulted from a lack of work as the employee's main duty no longer existed. A non-civil service employee assumed only some of the employee's duties, and that change was part of a re-organizational streamlining by the Department to achieve greater efficiency. *Haskins v. Department of Environmental Resources*, 636 A.2d 1228 (Pa. Cmwlth. 1994).

Where a corrections officer challenged his demotion which was based on alleged unsatisfactory performance under the Civil Service Act (71 P.S. §§ 741.1—741.1005), the appointing authority of the State Correctional Institute at Muncy proved that the officer did not satisfactorily perform the duties of the position to which he was appointed by showing that the officer misused his authority, performed an inadequate investigation which constituted a negligent discharge of his duties and treated his superiors with disrespect. *Bennett v. State Correction Institute at Muncy*, 637 A.2d 753 (Pa. Cmwlth. 1994).

A furlough, which was actually implemented prior to the date of approval for reorganization, entitled appellant to reimbursement of wages and emoluments for the period, but did not entitle him to have the furlough procedure declared void *ab initio*. *Pronko v. Department of Revenue*, 539 A.2d 456 (Pa. Cmwlth. 1988).

It is not necessary to prove intent in cases brought under section 951(b) of the Civil Service Act (71 P.S. § 741.951(b)) where a technical violation of the act constitutes the alleged discrimination. *Pronko v. Department of Revenue*, 539 A.2d 456 (Pa. Cmwlth. 1988).

Where a regular status employee appeals a furlough, alleging what is in essence a statutory violation of section 802 of the Civil Service Act (71 P.S. § 741.802) and where the employee is harmed or it is impossible to determine whether he could have been harmed, the violation is best analyzed under section 951(a) of the Civil Service Act (71 P.S. § 951(a)). *Pronko v. Department of Revenue*, 539 A.2d 456 (Pa. Cmwlth. 1988).

In appeals under section 951(a) of the Civil Service Act (71 P.S. § 741.951) the burden is on the appointing authority to set forth a *prima facie* case demonstrating compliance with the act, as opposed to section 951(b) which places the burden on the complaining individual. *Pronko v. Department of Revenue*, 539 A.2d 456 (Pa. Cmwlth. 1988).

A furlough of a State civil servant may only be validly implemented on the basis of a lack of work or a lack of funds and when the furlough is of a regular status employee, the Appointing Authority bears the burden of demonstrating the lack of work or lack of funds. *Dougherty v. Department of Health*, 538 A.2d 91 (Pa. Cmwlth. 1988).

The Commission must set forth its findings and reasons in an adjudication in order to conform with this section and the omission of findings and reasons is a denial of due process. *Henderson v. Office of Budget*, 537 A.2d 85 (Pa. Cmwlth. 1988).

The Commission is empowered to make a credibility determination regarding an appointing authority's evidence of lack of work to support a furlough and may refuse to weigh evidence if it determines that no *prima facie* case exists. *Pennsylvania Public Utility Commission v. Taylor*, 537 A.2d 45 (Pa. Cmwlth. 1988).

Appointing authority bears the burden of establishing a *prima facie* case to support an action for dismissal of a civil service employee for just cause, after which the employee may present his case in rebuttal. Where an employee has failed to disclose his financial interests, as required by State Ethics Act and Governor's Code of Conduct, and instructions for disclosure are unambiguously provided on Code of Conduct form, *prima facie* case has been established. *Department of Community Affairs v. Colston*, 521 A.2d 509 (Pa. Cmwlth. 1987).

Even though this section states that the Commission shall rule promptly on an oral motion to dismiss for failure to state a *prima facie* case, a ruling was properly deferred when only one of the three appointed Commissioners was present at the time the motion was made. *Turzai v. Liquor Control Board*, 495 A.2d 639 (Pa. Cmwlth. 1985).

Where county presented only general statements about the county's prior-year deficit and testimony showing policy decision to limit personnel costs, the county failed to meet its burden of proof to present a *prima facie* case in establishing a lack of funds. *Beaver County Children and Youth Services v. Funk*, 492 A.2d 118 (Pa. Cmwlth. 1985).

When there has been called into question the validity of furlough, the appointing authority has the burden of going forward with proofs to establish a *prima facie* case justifying the furlough, viz. that the furlough resulted from a lack of funds or a lack of work. *Department of State v. Stecher*, 484 A.2d 755 (Pa. Cmwlth. 1984); 459 A.2d 851 (Pa. Cmwlth. 1983).

This section places the burden on the appointing authority to establish a *prima facie* case justifying employees' furloughs. *Pavia v. Department of Transportation*, 466 A.2d 735 (Pa. Cmwlth. 1983).

The Insurance Department had the burden to go forward with evidence to show that a furlough was not in violation of the Civil Service Act, as charged under 71 P.S. § 951(a). *Insurance Department v. Tracz*, 466 A.2d 269 (Pa. Cmwlth. 1983).

In upholding a dismissal of a Health Department official for just cause, the Court noted that this section imposes a burden on the employing authority to establish a *prima facie* case to support its action with the burden of production then shifting to the employee to present his case to rebut the employer's case. *Hoffman v. Department of Health*, 458 A.2d 303 (Pa. Cmwlth. 1983).

When someone other than the final decision maker conducts a hearing, due process is not breached as long as the decision maker appraises and considers the evidence prior to reaching a determination. *Kakas v. Department of Public Welfare*, 442 A.2d 1243 (Pa. Cmwlth. 1982).

The appointing authority has the duty to go forward in the establishment of the charges upon which its personnel action is based and in so doing establish a *prima facie* case in justification of that action, and if the party with the burden of proof prevails in a Commission hearing, the reviewing court is limited to a determination of whether constitutional rights were violated, an error of law was committed, or a necessary finding of fact was unsupported by substantial evidence. *Laws v. Philadelphia County Board of Assistance*, 412 A.2d 1377 (Pa. Cmwlth. 1980).

The Commission should be particularly astute to exclude hearsay evidence where the State is attempting to remove a veteran employee from a well-paid position of great responsibility requiring difficult decisions on sensitive public matters. *Bleilevens v. Civil Service Commission*, 312 A.2d 109 (Pa. Cmwlth. 1973).

Burden of Proof

The Commonwealth Court properly allocated the burden to the city employee to demonstrate that her termination was not for economic reasons, where the city had presented substantial evidence that the city employee's dismissal had been based on economic considerations. *Sadowski v. City of Pittsburgh*, 741 A.2d 180 (Pa. 1999).

Cross References

This section cited in 4 Pa. Code § 105.16 (relating to procedure under section 951(b) of the act (71 P.S. § 741.951(b))).

§ 105.16. Procedure under section 951(b) of the act (71 P.S. § 741.951(b)).

(a) The appellant shall go forward to establish the charge or charges of discrimination. If at the conclusion of this presentation, the appellant has, in the opinion of the Commission, established a *prima facie* case, the appointing authority shall then be afforded the opportunity to reply to the charges.

(b) Apart from the order of going forward, the remainder of the procedure shall follow that prescribed in § 105.15(c) (relating to procedure under section 951(a) of the act (71 P.S. § 741.951(a))). If an appellant fails to attend the hearing, the appeal may be immediately dismissed for failure to prosecute.

Source

The provisions of this § 105.16 adopted October 18, 1961; amended October 15, 1964 and April 16, 1970; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (142740) and (153411).

Notes of Decisions*Burden of Proceeding*

An employee who appeals a non-selection for promotion may do so only on the basis of discrimination as provided by section 905.1 of the Civil Service Act (71 P.S. § 741.905.1). The burden of prosecuting a discrimination appeal under the Act rests with the employee and discrimination cannot be inferred. There must be affirmative factual support to sustain the allegations. *Price v. Luzerne/Wyoming Counties Area Agency on Aging*, 672 A.2d 409 (Pa. Cmwlth. 1996).

A correctional officer trainee met his burden of proving discrimination on the basis of a non-merit factor by demonstrating the Department of Corrections' mistake of fact which served as the grounds for his dismissal. *Department of Corrections v. Morse*, 596 A.2d 897 (Pa. Cmwlth. 1991).

Applicant, who claims his name was removed from the list of persons eligible for position of corrections officer trainee for discriminatory reasons due to family connections, carries the burden of presenting evidence to support the charge. *Department of Corrections v. Colyer*, 576 A.2d 416 (Pa. Cmwlth. 1990).

A probationary civil servant may appeal a personnel action before the Commission only by alleging discrimination and that employee bears the burden of proof. *Department of Public Welfare v. Sanders*, 518 A.2d 878 (Pa. Cmwlth. 1986).

A letter setting forth details of alleged discrimination following an appeal request from which lacked sufficient facts may provide information sufficient to entitle a civil service employee to a hearing. *Pannacci v. Civil Service Commission*, 516 A.2d 1327 (Pa. Cmwlth. 1986).

In any action challenging non-selection, the party seeking to prove discrimination has the burden of proof. *Liquor Control Board v. Venesky*, 516 A.2d 445 (Pa. Cmwlth. 1986).

Employee who presented evidence of county's financial state and testimony to establish improper motive met burden to go forward in establishing discrimination. *Beaver County Children and Youth Services, v. Funk*, 492 A.2d 118 (Pa. Cmwlth. 1985).

Three instances of falsification of training records constituted substantial evidence in support of the Commission's findings of good cause for suspension under this section. *Wagner v. Department of Transportation*, 463 A.2d 492 (Pa. Cmwlth. 1983).

The furloughed employee bears the burden of going forward and of proving a discriminatory basis for the furlough. *Insurance Department v. Tracz*, 466 A.2d 269 (Pa. Cmwlth. 1983).

If a petitioner fails to sustain her burden of proving charges of discrimination before the Commission, court review is limited to a determination of whether the Commission capriciously disregarded competent evidence in its resolution of that issue. The burden of proving a discriminatory basis for suspension and removal from employment rests with the petitioner. *Laws v. Philadelphia County Board of Assistance*, 412 A.2d 1377 (Pa. Cmwlth. 1980).

Law Reviews

Selected Agency Decisions: Civil Service: Lawrence v. New Castle Youth Development Center, Dep't of Pub. Welfare, 4 Widener J. Public L. 863 (1995).

§ 105.17. Petition for reconsideration.

(a) *Form*. Petitions for rescission or modification of an adjudication shall be in writing and shall set forth in numbered paragraphs the findings or orders alleged to be erroneous and the points relied upon by the petitioner, with appropriate record references and specific requests for the findings or orders desired.

(b) *Specification of errors*. Petitions for reconsideration shall state concisely the alleged errors in the adjudication or other order of the Commission. If an adjudication or other order of the Commission is sought to be vacated, reversed, or modified by reason of matters that have arisen since the hearing and decision or order, or by reason of a consequence that would result from compliance therewith, the matters relied upon by the petitioner shall be set forth in the petition.

(c) *Filing and service*. Every petition for reconsideration shall be filed within 15 calendar days after issuance of the Commission order involved.

(d) The requirements of this provision supersede those set forth in 1 Pa. Code § 35.241 (relating to application for rehearing or reconsideration).

(e) The procedure for reconsideration contained in this subsection does not alter or replace any procedures provided elsewhere for the timely filing of appeals of Commission adjudications to appellate courts.

Source

The provisions of this § 105.17 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (153411) to (153412).

Notes of Decisions

The Commission lacks subject matter jurisdiction to consider a petition for reconsideration of its own decision where the Commission fails to file an order granting reconsideration within 30 days of its original decision. *Pannacci v. Civil Service Commission*, 516 A.2d 1327 (Pa. Cmwlth. 1986).

§ 105.18. Procedure under section 951(d) of the act (71 P.S. § 741.951(d)).

(a) Investigative hearings shall be convened at the sole discretion of the Commission. The burden of going forward to present the matters to be reviewed shall be assessed upon the moving party but may be modified at hearing at the discretion of the presiding Commissioner.

(b) When a properly notified party fails to appear at a hearing, the Commission may impose the fullest penalty available under section 906 of the act (71 P.S. § 741.906), or other statutory provision as appropriate, unless the matter is withdrawn.

Source

The provisions of this § 105.18 adopted November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334.

CIVIL SERVICE COMMISSION

Subpart B. EXECUTIVE DIRECTOR OF CIVIL SERVICE

Chap.	Sec.
109. PROCEEDINGS.....	109.1
110. DOCUMENTARY FILINGS AND REPRODUCTION OF RECORDS.....	110.1

Source

The provisions of this Subpart B adopted November 14, 1975, effective November 15, 1975, 5 Pa. B. 2980, unless otherwise noted.

CHAPTER 109. PROCEEDINGS

Sec.

109.1. Mechanical and electronic records.

§ 109.1. Mechanical and electronic records.

The Commission may prohibit the use of mechanical and electronic recording devices if the use of the devices will disrupt or otherwise interfere with the proceedings.

Source

The provisions of this § 109.1 adopted November 14, 1975, effective November 15, 1975, 5 Pa. B. 2980; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96809).

CHAPTER 110. DOCUMENTARY FILINGS AND REPRODUCTION OF RECORDS

Subch.	Sec.
A. DOCUMENTARY FILINGS	110.1
B. REPRODUCTION OF RECORDS	110.21

Source

The provisions of this Chapter 110 adopted December 19, 1980, effective December 20, 1980, 10 Pa. B. 4721, unless otherwise noted.

Subchapter A. DOCUMENTARY FILINGS

Sec.

- 110.1. Praecept of appearance.
- 110.2. Exhibits.
- 110.3. Briefs.
- 110.4. Transcripts.
- 110.5. Form of documents.

§ 110.1. Praecept of appearance.

(a) Legal representatives for appointing authorities or appellants in appeals or hearings held under the act shall file a Notice of Appearance with the Commission, prior to the time of the hearing, if possible.

(b) Subsection (a) supplements 1 Pa. Code § 31.24 (a) and (b) (relating to notice of appearance).

Source

The provisions of this § 110.1 adopted December 19, 1980, effective December 20, 1980, 10 Pa. B. 4721; amended March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151. Immediately preceding text appears at serial page (86321).

§ 110.2. Exhibits.

- (a) Parties presenting exhibits shall bring six copies to the hearing.
- (b) Subsection (a) supersedes 1 Pa. Code § 33.15 (relating to number of copies).

Source

The provisions of this § 110.2 adopted December 19, 1980, effective December 20, 1980, 10 Pa. B. 4721; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96811).

§ 110.3. Briefs.

(a) The parties will be notified of the procedure and schedule for the submission of briefs. Parties submitting briefs shall submit the original and five copies to the Commission’s Appeals Office. Briefs filed outside of the time period or sequence specified will be considered only at the discretion of the Commission.

(b) This section supplements as to acceptance and filing and supersedes as to number of copies 1 Pa. Code § 35.193 (relating to filing and service of briefs).

Source

The provisions of this § 110.3 adopted December 19, 1980, effective December 20, 1980, 10 Pa. B. 4721; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial pages (96811) to (96812).

§ 110.4. Transcripts.

(a) Parties shall make arrangements to purchase copies of the transcript directly with the reporting service. The Commission's copy of transcripts may be reviewed at the Commission offices in Harrisburg, Philadelphia or Pittsburgh. Arrangements for this review service may be made by contacting the Appeals Office of the Commission in Harrisburg.

(b) Subsection (a) supplements 1 Pa. Code § 35.133 (relating to copies of transcripts).

Source

The provisions of this § 110.4 adopted December 19, 1980, effective December 20, 1980, 10 Pa. B. 4721; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334. Immediately preceding text appears at serial page (96812).

§ 110.5. Form of documents.

(a) *Typewritten.* Pleadings, submittals, briefs, or other hearing-related documents filed with the Commission, if not printed, shall be typewritten on letter size paper, 8 1/2 inches wide and 11 inches long, with left hand margin not less than 1 1/2 inches wide and other margins not less than 1 inch. The impression shall be on only one side of the paper unless there are more than four pages and shall be double spaced except that quotations in excess of five lines shall be single spaced and indented not less than four spaces. Mimeographed, multi-graphed, hectographed, or Plano graphed copies will be accepted as typewritten, provided all copies are legible.

(b) *Printed.* Printed documents shall not be less than 10-point type on unglazed paper 8 1/2 inches wide and 11 inches long, with inside margin not less than 1 inch wide and with double-leaded text and single-leaded, indented quotations.

(c) *Binding.* Pleadings, submittals, briefs, and other hearing-related documents other than correspondence shall be bound at the left side only.

(d) *Paper color.* Pleadings, submittals, briefs, and other hearing-related documents other than correspondence shall be on white paper.

(e) The provisions of subsections (a)—(d) supersede the provisions of 1 Pa. Code § 33.2 (relating to form).

Source

The provisions of this § 110.5 adopted December 19, 1980, effective December 20, 1980, 10 Pa. B. 4721.

Subchapter B. REPRODUCTION OF RECORDS

Sec.

- 110.21. Scope.
- 110.22. Determination of need.
- 110.23. Method of reproduction and format.
- 110.24. Documents which may be furnished without charge.
- 110.25. Documents which may not be furnished without charge.
- 110.26. Requests for reproductions of records.
- 110.27. Payment for reproductions and postage.
- 110.28. Records retention.

§ 110.21. Scope.

This subchapter pertains to the reproduction of papers, records, and furnishing such documents to requesting parties. It excludes blank forms, publications, and other documents furnished by the Commission in the normal course of business.

Source

The provisions of this § 110.21 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 110.22. Determination of need.

The Director shall identify the types of papers, records, and the quantity thereof which may be reproduced and made available for public use.

Source

The provisions of this § 110.22 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 110.23. Method of reproduction and format.

- (a) *Reproduction.* The method of reproduction will be determined by the Director.
- (b) *Format.* Unless compelling reasons dictate otherwise, reproduced documents shall be in black print on white paper, 8-1/2 inches wide by 11 or 13 inches long.

Source

The provisions of this § 110.23 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 110.24. Documents which may be furnished without charge.

- (a) Reproductions of applications and attendant papers and records of employees or candidates, excluding test material, may be furnished to appointing authorities to which the names of the employees or eligibles are furnished for classified service personnel actions.
- (b) Reproductions of required papers and records may be furnished to court or law enforcement personnel in the conduct of official business. Test materials will be furnished only by Commission or court order.

Source

The provisions of this § 110.24 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (257152).

Cross References

This section cited in 4 Pa. Code § 110.25 (relating to documents which may not be furnished without charge).

§ 110.25. Documents which may not be furnished without charge.

Reproductions of records not included in § 110.24 (relating to documents which may be furnished without charge) may be furnished to a requestor upon payment to the Commission of an amount equal to the prevailing cost of reproduction, as determined by the Director. Test material will not be furnished.

Source

The provisions of this § 110.25 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (257152).

Cross References

This section cited in 4 Pa. Code § 110.27 (relating to payment for reproductions and postage).

§ 110.26. Requests for reproductions of records.

Requests for reproductions of records under this chapter shall be in writing, and submitted to the Director. Each shall contain the business telephone number of the requestor, and shall provide sufficient detail to permit ease in retrieval. The Director reserves the right to disapprove any request or part thereof.

Source

The provisions of this § 110.26 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 110.27. Payment for reproductions and postage.

Payment for reproductions furnished under § 110.25 (relating to documents which may not be furnished without charge) shall be by check or money order. Cash or any other object of value shall not be accepted. For reproductions mailed to requestors, postage costs will be added to the cost of reproduction. The method of transmittal shall be determined by the Director.

Source

The provisions of this § 110.27 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151.

§ 110.28. Records retention.

The Director will prepare and maintain a comprehensive records retention schedule. This schedule will identify those records required for retention by the act and satisfy the act regarding open access under reasonable conditions.

- (1) Minutes of Commission meetings shall be permanent.
- (2) Records may be kept either electronically or mechanically.

Source

The provisions of this § 110.28 adopted March 29, 1985, effective March 30, 1985, 15 Pa. B. 1151; amended November 15, 1991, effective November 16, 1991, 21 Pa. B. 5334; amended March 12, 2004, effective March 13, 2004, 34 Pa. B. 1442. Immediately preceding text appears at serial page (257153).