

TECHNICAL GUIDANCE – EMPLOYEE STATUS WITHIN THE STATE PERSONNEL SYSTEM

Prepared by the Division of Human Resources in the Department of Personnel & Administration. Revised January 2013.

GENERAL

The purpose of this technical guidance is to address topics related to employee status. The Colorado Constitution, Colorado Revised Statutes and the State Personnel Board Rules and Personnel Director's Administrative Procedures (hereafter referred to as the Rules) identify and define these various types of status. The Rules define status as categories that determine the rights of an employee under the state personnel system.

TYPES OF STATUS

Probationary

The State Personnel Board has established a probationary period of no more than 12 months for all persons initially appointed to a position within the state personnel system. The Rules define probationary as a person who is not a current certified employee and who has been selected from a referral list for a permanent position, but has not yet been certified to the class for that position. The probationary period is intended to give the appointing authority a reasonable period of time to observe the employee's performance and determine if it is satisfactory prior to the employee becoming certified in the class. (Certified status is addressed later in this document.) Appointing authorities also have the discretion to require reinstated certified employees to serve a probationary period.

Employees in probationary status may be terminated for unsatisfactory performance at any time during the probationary period and do not have the right to appeal such termination to the State Personnel Board. Appointing authorities have the discretion to administer corrective or disciplinary action to employees in probationary status in lieu of termination. Employees in probationary status may petition the State Personnel Board for a discretionary hearing in non-disciplinary matters. However, employees in probationary status do not have the right to be granted a period of time to improve performance, the right to a pre-disciplinary meeting, the right to be placed on a reemployment list or the privilege of reinstatement.

The Rules require that an employee's probationary period be extended beyond 12 months by the number of days of any unpaid leave and allow such extensions for periods of paid leave. Note that the circumstances under which probationary periods must or may be extended are extremely limited. If the employee is at work continuously throughout the year, or uses only negligible amounts of paid leave, the probationary period should not be extended. In all other cases, including if a selection appeal is pending, the employee is certified at the end of the 12 month period.

When an employee transfers, promotes, or demotes during his or her probationary period, the probationary period continues from the date of the initial appointment, so only the remaining time in probationary status carries over to the employee's new position. For example, an employee in probationary status as an Administrative Assistant II who promotes to an

Administrative Assistant III after completing 10 months of the probationary period remains in probationary status for only two months before becoming certified to the Administrative Assistant III class.

Employees whose employment ends via resignation, termination, or layoff while in probationary status cannot be granted certified status retroactively.

Trial Service

The State Personnel Board has established a probationary period for certified employees promoted into a different position or in a position reallocated to a higher pay grade. This period is known as trial service and is limited to six months. Appointing authorities have the discretion to require a current certified employee who voluntarily transfers to serve a trial service period. The Rules define trial service as the status of a current certified employee or reemployment applicant who promotes and, unless the appointing authority requires a probationary period, a reinstated applicant. (The exception to this is when an employee is reinstated to the class in which he/she was placed on a departmental reemployment list; in such cases, the Rules mandate that the employee remains in certified status.) Similar to the intent of probationary status, the trial service period is intended to give the appointing authority a reasonable period of time to observe the employee's performance in the new position and determine if it is satisfactory prior to the employee becoming certified to the class.

An employee in trial service status who fails to perform satisfactorily may be disciplined or reverted. Reversion consists of placing the employee in a vacant position for which the employee qualifies in the previously certified class in the current department or, if there is no existing vacancy, of determining an eligible employee's retention rights, if any. Additionally, appointing authorities have the discretion to administer corrective action to an employee in trial service status who fails to perform satisfactorily, and it is recommended that appointing authorities consider administering progressive discipline in lieu of reversion (see additional note at the end of this section).

As in the case of probationary status, the Rules require an employee's trial service period be extended beyond six months by the number of days of any unpaid leave and allow such extensions for periods of paid leave. As in the case of probationary status, note that the circumstances under which trial service periods must or may be extended are extremely limited. If the employee is at work continuously throughout the year, or uses only negligible amounts of paid leave, the trial service period should not be extended. In all other cases, including if a selection appeal is pending, the employee is certified at the end of the 6 month period.

The Rules also allow trial service periods to be extended beyond six months when there is a selection appeal pending. It is recommended that departments institute this practice as a matter of course.

***A note on trial service reversion**

Administering reversion can have unintended negative consequences for the department. For example, if there is no vacancy within the department in the previously certified class of the employee being reverted, and the employee being reverted is eligible for retention rights, such rights may be to an occupied position in which the current employee is performing satisfactorily. In this example, if the employee in trial service status chose to exercise his retention right, he would ‘bump’ an employee who is likely performing satisfactorily. Thus, appointing authorities considering administering reversion should consult with the department’s professional human resources staff in order to become fully informed and understand the potential consequences.

Certified

After an employee satisfactorily completes any probationary period the employee is certified. The Rules define certified as the status of an employee who has successfully completed a probationary or trial service period. Employees in certified status have certain rights, including but not necessarily limited to the right to corrective action prior to discipline unless the act is so flagrant or serious that immediate discipline is proper, the right to a meeting to exchange information about the possible need for discipline before a decision whether or not to administer discipline is made, and the right to a mandatory hearing before the State Personnel Board when appealing an action affecting their base pay, status, or tenure. Former certified employees who left state employment in good standing and current employees previously certified in the same or similar class are eligible for the privilege of reinstatement. The department’s professional human resources staff determines similar classes for the purposes of reinstatement.

As stated earlier in this document, the Rules give appointing authorities discretion to allow a current employee in certified status who voluntarily transfers to another position to remain in certified status or to require the employee to serve a trial service period. However, the Rules require that a current employee in certified status who involuntarily transfers or who demotes, whether voluntarily or involuntarily, remains in certified status.

Conditional

The Rules define a conditional appointment as the temporary (not to exceed nine months) promotion of a qualified certified employee to a permanent position or vacancy for which no eligible list exists and outline additional parameters for employees in conditional status. (Temporary status is further addressed later in this document.)

Provisional

The Rules define a provisional appointment as the temporary (not to exceed nine months) appointment of a qualified person outside the state personnel system to a permanent position or vacancy for which no eligible list exists and outline additional parameters for provisional employees. A provisional appointment may be made only if a position cannot be filled conditionally. Provisional employees do not have the rights and benefits provided to classified employees within the state personnel system.

Temporary

The State Personnel Director has authorized temporary employment of persons for up to nine months in any 12 month period; thus, any individual who works nine months as a temporary employee have at least a three-month break before beginning to work as a temporary again. This applies to individuals working directly for the state personnel system. The Rules state that temporary employees are employed at will and do not have the rights and benefits provided to permanent employees and outline additional parameters for temporary employees. Reference the *Technical Guidance-Temporary Employees* for additional information on this topic.

EARLY CERTIFICATION

Department heads have the discretion to certify employees prior to the end of the 12-month probationary or six-month trial service period. Such early certification approval should be in writing. Early certification shall not take place if a selection appeal is pending.

One circumstance where early certification may be appropriate is when certifying an employee during his/her probationary status would result in allowing the employee to serve a full six-month trial service period in a new position. For example, when an employee earns a promotion ten months through the probationary period, the employee would serve only two months of probationary status in the higher class and then become certified in the higher class. However, if the employee were certified prior to his/her promotion, the employee would be required to serve a full six months in trial service status before becoming certified in the higher class.

NOTIFICATION

Changes in status most often occur when an employee moves to certified status after completing a probationary or trial service period, but may occur at other times as well. It is recommended that human resources professionals provide notice to supervisors a minimum of 90 days in advance of employee certification. It is recommended that departments provide written notification to employees whose status is changing, as well as to employees who will not be completing their probationary or trial service period in a class (usually due to promotion or resignation) that they will not be certified to the class they are leaving. Note that if an employee in probationary or trial service status was previously certified in the class from which they are now departing, as may be the case with an employee who reinstated or transferred, the employee is still considered certified to the class in question even though the employee did not complete the most recent probationary or trial service period in that class. In such cases, if the employee left his/her most recent employment in the class in good standing, the employee would be eligible for the privilege of reinstatement.

It is also recommended that departments provide written notification to current employees whose probationary or trial service period is being extended beyond 12 or six months, respectively.

SUMMARY

With few exceptions as noted earlier in this document, probationary and trial service periods cannot exceed 12 and six months, respectively. Departments should notify employees of changes in writing. The following chart outlines when the various types of status are, or may be, applied.

Employee Type	Status Type
New	Probationary
Former certified employee reinstating	Trial service or probationary
Current employee reinstating	Trial service
Current employee promoting	Trial service
Current employee transferring	Certified or trial service
Current employee demoting	Certified

Where departments and appointing authorities have discretion to determine employee status, they should exercise caution, remembering that such decisions may be subject to appeal and are reversible if found to be arbitrary, capricious or contrary to rule or law. Such decisions are also subject to departmental policies and procedures. These policies and procedures may not necessarily mandate how such cases are handled, but should, at a minimum, provide standards and expectations for appointing authorities and employees alike. Additionally, any such departmental policy or procedure should be developed and implemented under the guidance of the department's professional human resources staff. In the absence of written policies or procedures governing an appointing authority's action in determining employee status, appointing authorities should consult with and be guided by their department's professional human resources staff.

Every attempt is made to keep this information updated. For additional information, refer to the *State Personnel Board Rules and Director's Administrative Procedures* (rules) or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the law and rule are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

**TECHNICAL GUIDANCE
DHR APPROVAL FOR PUBLICATION**

This signature page is required for new technical guidance or when major policy revisions are made resulting from changes in law, rule, directives, or official interpretation. As of March 1, 2009, new signatures are not required for non-substantive revisions resulting from correction of errors (e.g., typographical or grammatical), or updating factual information (e.g., minimum wage, statute or rule cites) or illustrative samples. Readers should always check the date on the first page to ensure they are using the most current version.

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