

STATE OF MAINE
DEPARTMENT OF PERSONNEL

P O S T

May 20, 1980

PERSONNEL MEMORANDUM 11-80

TO: All Agency/Department Heads

SUBJECT: NOTICE OF HEARING ON CHAPTER 8 OF PERSONNEL RULES

TO BE CONDUCTED BY: Maine State Department of Personnel

UNDER AUTHORITY OF: 5 MRSA, Section 631, Sub-section 1

ON: Monday, June 9, 1980 from 9:00 a.m. to 1:00 p.m.

AT: Room 107, State Office Building, Augusta

SUMMARY: Chapter 8 of Personnel Rules (Certification and Appointment) is being repealed and replaced. The new chapter covers the same subject areas, with changes made to better define well-established practices and policy. Two new rules have been added: An "Acting Capacity" rule to replace substitute, temporary, emergency and provisional appointment rules; and a "Concurrent Certification" rule to allow referral to multiple vacancies at the same time.

FULL TEXT of the new Chapter 8 has been provided each agency/department head for posting. Additional copies are available upon written request to:

Robert W. Maxwell
Department of Personnel
State Office Building
State House Station #4
Augusta, Maine 04333

WRITTEN TESTIMONY WELCOMED. All written testimony must:

- a) Reference: Chapter 8, Personnel Rules
- b) Clearly state desired change and/or other recommendation;
- c) Provide brief rationale for this change/recommendation; and,
- d) Be submitted to above address on or before June 19, 1980.

JADINE R. O'BRIEN
COMMISSIONER

PLEASE REPRODUCE AND POST IN PROMINENT LOCATIONS

Chapter 8: CERTIFICATION AND APPOINTMENT

SUMMARY: This chapter presents rules which govern appointments made to position vacancies in the competitive and non-competitive divisions of the classified service. It includes procedures for appointments made by certification from class registers and for appointments resulting from nominations submitted by appointing authorities. Provisions are also included for: Apprentice/Trainee and Conditional Appointment referrals which may be authorized by the Commissioner; Acting Capacity assignments; and the reemployment of retired persons.

1. FILLING OF VACANCIES

A. Appointment Procedure - Competitive Division

Provided layoff and recall provisions are met and satisfied, appointments to position vacancies shall be made from the following sources:

1. Class Registers

Except for appointments to project or intermittent position vacancies, appointments which require the service of an employee for a period of time in excess of three months shall be accomplished by certification from class registers.

2. Nominations by Appointing Authority

The appointing authority may submit a name in nomination when the appointment is to a project or intermittent position vacancy or when the appointment involves an acting capacity assignment for three months or less. The qualifications of persons so nominated will be reviewed by the Commissioner and persons found qualified will be authorized appointment to State Service under the conditions specified.

Nominations may also be made to reappoint an agency employee who voluntarily transfers from one position to another position of that agency which is assigned to the same class or to reappoint an agency employee who voluntarily demotes to a lower-level class within that agency. A transfer or demotion action will be reviewed by the Commissioner and, provided it is not prejudicial or unfairly detrimental to the employee, reappointment will be authorized under the conditions specified.

3. Apprentice/Trainee Referrals

When names are not available from a class register, the Commissioner may refer persons found eligible to participate in agency-sponsored training programs which have been established and authorized for this purpose.

4. Conditional Appointment Referrals

When permitted by law, the Commissioner may waive a particular license, certification, registration or degree which is required for register certification and/or appointment to a given position vacancy. Such waiver shall be made only when deemed necessary to achieve the results intended by the application of the Personnel Law and these rules. Persons who are referred and/or appointed as a result of such waiver shall be required to obtain and provide evidence of full qualification within a time period specified by the Commissioner.

B. Appointment Procedure - Non-Competitive Division

Recruitment, examination and selection activities directed to position vacancies in the non-competitive division shall be the delegated responsibility of the individual appointing authority. These delegated activities shall be reviewed by the Commissioner to ensure compliance with merit standards and affirmative action/equal employment opportunity objectives. The qualifications of persons nominated to non-competitive vacancies will also be reviewed by the Commissioner and persons found qualified will be authorized appointment to State Service under the conditions specified.

C. Requisition Form - Competitive and Non-Competitive Divisions.

When an agency desires to make an appointment to a position vacancy, the agency shall notify the Commissioner by means of a prescribed requisition form. Appointments to vacancies which involve the acting capacity assignment of an agency or State employee for three months or less will be excepted from this requirement.

2. USE OF CLASS REGISTERS

A. Methods of Certification

Methods of certification shall identify which persons on the class register are eligible for referral as follows:

1. Standard Method

Persons on the class register, as available, and progressively in this order:

First, persons who are employed by the agency where the vacancy occurs and who are eligible to participate in career-service examinations;

Second, employees of other state agencies who are eligible to participate in career-service examinations;

Third, persons seeking reemployment; and

Fourth, non-state employees and state employees not eligible to participate in career-service examinations.

Progression from the first source to the second, third or fourth source will not take place unless necessary to reach a full complement of persons to be certified. Any agency, state or non-state employee who, by written statement, does not desire the location and/or hours of work requirement (less than full-time, shift, etc.) for the given vacancy will be excluded.

2. Agency Method

Only persons on the class register who are employed by the agency where the vacancy occurs and who are eligible to participate in career-service examinations. Of these persons, those who, by written statement, do not desire the location and/or hours of work requirement of the given vacancy will be excluded.

3. Statewide Method

All persons on the class register who are employed by an agency of State government and who are eligible to participate in career-service examinations. Of these persons, those who, by written statement, do not desire the location and/or hours of work requirement of the given vacancy will be excluded.

4. Open Competitive Method

All persons on the class register (by score) except those who do not desire the location and/or hours of work requirement of the given vacancy.

5. Selective Method

Only persons on the class register who evidence the necessary special qualification(s) particular to the given vacancy. These necessary special qualification(s), together with justification thereof, must be reported in writing by the agency (at the time the requisition form is filed) for review and approval by the Commissioner. A selective certification shall be made by the Commissioner only when such action is justified by unique and compelling circumstances.

The selective method may be used in combination with the standard, agency, statewide or open competitive method as defined above.

An agency request for agency, statewide or standard certification shall be reviewed by the Commissioner and, when in the best interest of State Service, the Commissioner may recommend or require an alternative to the method requested.

An agency request for open-competitive or selective certification shall require written justification and approval before a certification is made.

When a method of certification is not specified by the agency, a standard certification will be made.

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B. Complete Certification

1. Rule of Six

Whenever register size and composition permit, a certification to a given vacancy shall include six persons. These six persons shall be selected by score, in accordance with the method of certification being made. If a full complement of six persons is not available, a certification shall include that number of persons as close to six as possible.

Should this certification contain or result in at least three persons who wish to be considered for the given vacancy, it shall be considered a complete certification. Provided additional names are available on the class register, replacements for persons who voluntarily decline appointment will be made until this minimum of three is reached.

2. Tie Scores

In cases where more than one person has the same examination score, this complement of six persons may be based on fewer than six different scores. When the "sixth" or end score repeats, the "sixth" shall consist of all persons who have this common score.

C. Incomplete Certification or Register

Whenever, in accordance with the method of certification, location and hours of work involved, the number of persons on a class register who are available and interested in the position vacancy is less than three, the agency may:

1. Make its selection from this number;
2. Request an alternative method of certification; or
3. Be recommended or required to withdraw and hold its requisition until more names are added.

When requested to make a certification from an incomplete register, the Commissioner may consider the certification of fully qualified persons who may be available on other class registers.

D. Referrals to Multiple Vacancies

One certification may be made to service multiple vacancies in a given class provided all of these vacancies are at the same work location and involve the same working conditions. When register size and composition permit, the complement of persons normally certified to a singular vacancy will be supplemented by one additional referral for each additional vacancy so reported.

E. Order of Certification

Certification from a class register shall be made in the same order as requisitions are received.

F. Concurrent Certification

Any person certified to a position vacancy in one agency shall continue eligibility for referral to other vacancies in that agency or a different agency which may occur while any prior certification is outstanding.

Referral to more than one vacancy at the same time shall be dependent upon the methods of certification requested, the location and hours of work requirements of the vacancies involved and examination scores.

G. Extra Names

If requested by the appointing authority, a regular certification may be supplemented by referral of employees on the given register who have notified the Commissioner of a desire to transfer to another agency; or by referral of employees on the given register for whom appointment would mean voluntary demotion. Such employees need not be contacted for interview but if any one of these employees is contacted for interview, the others shall be contacted as well.

H. Removal of names

Any person included on a certification may be removed from that certification by the appointing authority involved, provided the appointing authority forwards written reason for this action to the Commissioner, and this reason satisfies the Commissioner that removal is warranted.

When removal is warranted, the appointing authority shall notify the person of this removal and the reasons thereof. A copy of this notice shall be provided to the Commissioner. An additional person shall be certified, if available, to replace any person so removed.

I. Selection Procedure

When names are certified from class registers, the appointing authority shall, within 21 days from the date such certification is made:

1. Contact and interview each person so certified;
2. Make a selection from among those who are interested and available; and
3. Make written notification to persons selected and not selected.

The requirement to contact and interview each eligible shall be waived when certification is made to accomplish an acting capacity assignment; and the requirement to make a selection shall be waived when the number of persons interested/available is less than three.

3. ACTING CAPACITY ASSIGNMENT:

Temporary/emergency employment needs and the replacement of employees on authorized leave of absence shall be accomplished by means of acting capacity assignments made and authorized as follows:

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A. Appointment Procedure (Competitive Division)

1. Open Appointment (duration of three months or less)

The appointing authority may appoint any State employee deemed capable of performing the full duties and assuming the full responsibilities of the vacant position. In the absence of such employee, a non-state employee who meets Department of Personnel qualifications may be appointed.

2. Register Appointment (duration of more than three months)

Established register and certification procedures shall apply, but all persons certified need not be contacted for interview. In the absence of a suitable register, an open appointment may be made as in "1" above; however, during the three-month period a register will be established and the register appointment procedure will be followed to fill the position for the remainder of time necessary.

This requirement to establish and use a register may be waived by the Commissioner in situations where such a register would be difficult to establish.

Persons who specify interest in either permanent or temporary employment will be certified to full-time vacancies to be filled by acting capacity appointment. Refusal will carry no penalty.

Only persons who specify interest in temporary or less than full-time employment will be certified to part-time vacancies to be filled by acting capacity appointment.

3. Maximum Duration

Acting capacity assignment shall not exceed one [1] year; except that individual extensions may be granted by the Commissioner when unusual circumstances warrant such extension.

4. Authorization for Release

Approval of and authorization for the release of a career-service employee to accept an acting capacity assignment shall be the decision of the employee's appointing authority. Record of this decision shall be maintained by the appointing authority and a copy of the approved release shall be provided to the employee and the Commissioner when acting capacity appointment is made.

5. Rights

a. Register and recall provisions for persons on layoff who serve on an acting capacity basis will be unaffected by such service.

b. The register status of persons selected from a class register to serve on an acting capacity basis will be unaffected by such service. Names will be retained on

that register and referred to fill vacancies in accordance with established certification policy and procedures, including penalty for denial.

- c. In no event may an agency or State employee acquire or earn benefits, status or seniority in the class held on an acting capacity basis. Tenured service (seniority) of an agency or State employee on acting capacity assignment will be credited to the official career-service position and class from which release is made, and the benefits realized by this position will be continued.
- d. Acting capacity appointments of persons selected from reemployment or open competitive sources shall be non-status with respect to tenured service (seniority credits) and eligibility for career-service examinations.
- e. Holiday, vacation and sick leave benefits shall be provided only if employment in acting capacity exceeds three months. Effective date for these benefits shall be the first work day following this three-month period.
- f. Persons appointed to acting capacity assignment who are on layoff registers shall resume accrual of leave credits, eligibility for holidays and other benefits, effective the date acting capacity appointment is made.

6. Completion of Assignment

An acting capacity assignment will be completed:

- a. On the ending date specified or reported, if made to address a temporary/emergency employment need;
- b. With the return of the employee, if made to replace an employee on authorized leave of absence, or at an earlier time determined by the appointing authority; or
- c. Separation of the incumbent. (Position will then be filled through normal certification procedures).

When an acting capacity assignment is completed, the agency or state employee shall be returned to his/her career-service position, and persons appointed from other sources shall be terminated.

7. Compensation

- a. If to a class in a higher pay range, as if promoted.
- b. If to a class in the same, or lower pay range, continue at regular position rate.
- c. If from reemployment or open competitive registers, as if an original appointment.
- d. The rules and regulations governing eligibility for overtime compensation and rate of overtime compensation

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shall be those in effect for the class to which acting capacity appointment is made.

8. Merit Evaluation

Agency or state employees on release from a career-service position and class to serve on an acting capacity basis will continue their established anniversary dates. Any merit increase awarded shall be applicable to both the position and class from which release is made and the position and class to which acting capacity appointment is made.

9. Records

- a. No changes to official employee work records will be necessary or made when acting capacity assignment involves a career-service employee.
- b. Requisition, certification and/or appointment procedure shall apply when a non-career service employee is to be appointed, or when certification from a class register is required.
- c. Record of the acting capacity assignment of career-service employees shall be reported to the Commissioner on a form prescribed for this purpose.

B. Appointment Procedure (Non-Competitive Division)

All provisions for Acting Capacity appointments to the competitive division shall apply to the non-competitive division, except those which set forth procedure for certification from a class register.

4. Reemployment of Retired Persons

Persons receiving retired pay benefits through or from the Maine State Retirement System shall be eligible for further state employment on a temporary, emergency or project basis only, and such employment shall not exceed 90 working days in any calendar year.

Persons receiving benefits through or from the Maine State Retirement System as the surviving spouse of a retired person are exempted from these restrictions, and may be placed upon any register for which they are eligible in accordance with provisions of Chapter 7.