# 18 DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES

389 BUREAU OF HUMAN RESOURCES

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 Director of Human Resources; 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.

 When a required class register is not available or is incomplete, the provisions of Section 2C or 3A of this chapter shall apply.

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

 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 Director of Human Resources 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 Director 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 Director of Human Resources 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 have examination and referral preference for promotion in the career-service;

 Second, employees of other state agencies who have examination and referral preference for promotion in the career-service;

 Third, persons seeking reemployment; and

 Fourth, non-state employees, unclassified service employees, project employees and other state employees who are not provided examination and referral preference for promotion in the career service.

 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 Promotional Method

 Only persons on the class register who are employed by the agency where the vacancy occurs and who have examination and referral preference for promotion in the career-service. 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 Promotional Method

 All persons on the class register who are employed by an agency of State government and who have examination and referral preference for promotion in the career-service. 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 qualifications particular to the given vacancy. These necessary special qualifications, 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 Director of Human Resources. A selective certification shall be made by the Director only when such action is justified by unique and compelling circumstances.

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

 An agency request for agency promotional, statewide promotional or standard certification shall be reviewed by the Director of Human Resources and, when in the best interest of State Service, the Director 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.

 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 Director of Human Resources 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 be eligible for referral to other vacancies in that agency or a different agency for a maximum of three referrals concurrently. This maximum of three concurrent referrals will be waived by the Director of Human Resources when this maximum referral would exclude any person from consideration for a promotional vacancy in his or her own agency or when persons at maximum referral must be included with others on the register in order to fill a vacancy requisition.

 Referral to more than one vacancy concurrently 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 Director of Human Resources 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 Director of Human Resources, and this reason satisfies the Director 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 Director. 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:

 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 Bureau of Human Resources qualifications may be appointed.

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

 Except for acting appointments that are made under the Special Appointment and Supported Employment Programs, 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 "l" above; however, during the three-month period a register will be established and the register appointment procedures will be followed to fill the position for the remainder of time necessary. Acting appointments made under the Special Appointment and Supported Employment Programs are subject to the provisions of Section 6 of this Chapter.

 This requirement to establish and use a register may be waived by the Director of Human Resources 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 Director of Human Resources 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 Director of Human Resources 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 refusal.

 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. Telephone, uniform maintenance or other, special allowance which may be applicable to a position shall be provided the employee who holds that position on an acting capacity basis.

 d. Acting capacity appointments of persons selected from reemployment or open competitive sources shall be non-status with respect to tenured service (seniority credits), layoff rights and eligibility for career-service examinations. 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.

 e. 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 or nomination procedure).

 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, rate of overtime compensation and holiday pay 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 to 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 Director of Human Resources 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.

5. AFFIRMATIVE ACTION

 A. Authority and Purpose

 The Director of Human Resources shall have authority to take any available and appropriate form of affirmative action when making a certification from a class register. The purpose of this affirmative action shall be to assure that members of particular groups who are underutilized, underrepresented or adversely affected by selection procedures, but who have qualified for placement on a class register, shall be included with the pool of persons from which the selection is made.

 B. Basis for Affirmative Action

 Such authority may be exercised when:

 1. Statistical disparities between the work force representation and the labor market representation of groups historically excluded from or limited in employment due to sex, handicap or minority status are identified and documented; or

 2. Analysis of testing procedures for placement on a class register documents an adverse effect on a particular group identified by sex, handicap, age, national origin or minority status.

 C. Procedure

 1. Requests by Appointing Authority:

 When an agency's request to fill a vacancy indicates an underutilization or underrepresentation, the Director of Human Resources shall make an affirmative action certification, subject to the following conditions:

(a) If the normal certification procedure includes members of groups so affected, an affirmative action certification will not be made.

(b) If the normal certification procedure does not include members of the group so affected, the normal certification will be supplemented to include a member of this group whenever such person is available on the class register used.

(c) In no instance will an affirmative action certification exclude any person who would be certified normally. Members of groups which are underrepresented or underutilized shall be added to the normal certification in accordance with their qualifying score.

(d) Affirmative action certification shall be consistent with the type of certification requested or made, regardless of underutilization or underrepresentation.

(e) Approval may be contingent upon presentation of evidence of underutilization or underrepresentation in a format prescribed by the Director of Human Resources.

 2. Adverse Impact of Testing Procedure:

 When there is sufficient evidence that a selection procedure has an adverse impact on a particular group identifiable by sex, age, handicap, minority status or national origin, the Director of Human Resources shall make an affirmative action certification, subject to the following conditions:

(a) If the normal certification procedure includes members of the groups so affected, an affirmative action certification will not be made.

(b) If the normal certification procedure does not include members of the group so affected, the normal certification will be supplemented to include a member of this group whenever such person is available from the class register used.

(c) In no instance will an affirmative action certification exclude any person who would be certified normally. Members of groups which are adversely affected by testing procedures shall be added to the normal certification in accordance with their qualifying score.

(d) Affirmative action certification shall be consistent with the type of certification requested or made.

(e) Evidence of adverse impact shall be provided by statistical analysis of the testing procedure followed.

(f) An affirmative action certification will not be made to address adverse impact if the testing procedure has been validated.

 3. Authority Reserved:

 The Director of Human Resources reserves the right to make an affirmative action certification independently whenever this action is deemed to be in the best interest of State service.

 In addition, where agency hiring practices show a pattern of adverse impact, the Director may take any available affirmative action to ensure non-discriminatory treatment of persons referred for appointment.

6. SPECIAL APPOINTMENT AND SUPPORTED EMPLOYMENT PROGRAMS

 A. Purpose and Objective

 The purpose of the Special Appointment and Supported Employment Programs is to provide persons with severe disabilities increased access to positions in the classified service. Persons who are selected for these programs will be matched to job classifications that they have the potential to learn and appointed to these classifications on an acting capacity basis for a trial employment period. The trial employment period will be in lieu of the established examination. Participants will be provided support services and training on an as needed basis during the trial employment period, and those who satisfactorily complete this alternative examination will be transferred from acting appointment to Civil Service appointment status.

 B. Definition of Programs

 1. Special Appointment

 Participants in the Special Appointment Program will be appointed to standard State of Maine job classifications and will be required to meet the minimum qualification requirements for these classifications. Participants must be certified by a qualified vocational rehabilitation professional to have the capability to attain or exceed the entrance-level productivity requirement of the classification used for their employment.

 Participants in the Special Appointment Program will require less support and training during the trial employment period than participants in the Supported Employment Program and, with only few exceptions, support services will not be needed once the trial employment period is completed.

 2. Supported Employment

 Participants in the Supported Employment Program will be appointed to special job classifications that will be established for the specific purpose of this program. A special pay scale will be established for each Supported Employment classification. Participants must be certified by a qualified vocational rehabilitation professional to have the capability to attain an acceptable level of productivity for the special classification used for their employment. Participants in the Supported Employment Program will require more support, and support for a longer period, than is needed for participants in the Special Appointment Program. Some participants may require support and/or training throughout their employment.

 C. Acting Capacity Appointment

 Persons who are selected to participate in the Special Appointment and Supported Employment Programs will be appointed on an acting capacity basis for a trial employment period. Normally, the trial employment period will not exceed one year.

 D. Extensions to Acting Capacity Appointment

 Acting Capacity appointments for the Special Appointment and Supported Employment Programs may be extended beyond the normal one-year period when the final evaluation indicates that the participant has not quite attained a level of job productivity that is acceptable by the appointing authority but is expected to reach this level of productivity within a reasonable extension period. The length of the extension will be the joint decision of those providing support services, the appointing authority and the Director of Human Resources.

 E. Program Selection and Placement Requirements

 The following conditions shall be required for each acting appointment to the Special Appointment and Supported Employment Programs:

 1. The person to be appointed has been determined by a qualified professional to have a severe disability.

 2. The person to be appointed has been evaluated by a qualified professional and the professional has certified that the person to be appointed has the capability to learn or achieve the knowledge and skills required to perform the work required at a level of productivity that is acceptable for the type of program involved.

 3. The environment where the work will be performed has been evaluated by a qualified professional and the professional has certified that the person to be appointed can, with proper support and training, learn to perform the required work in this environment without injury to self or others.

 4. The person to be appointed has been interviewed by the employing agency and found to be acceptable.

 F. On-the-Job Support Services

 Participants in the Special Appointment and Supported Employment Programs will be provided ongoing or as-needed support services during the trial employment period to guide them toward their maximum productivity level. The need and extent of support services that are provided during the trial employment period will be decided by a qualified professional or a team of qualified professionals. Examples of support services include counseling, job coaching and on-the-job instruction. Decisions with respect to the support services that are needed will be made at time of appointment and at regular intervals during the trial employment period. Support services for participants in the Supported Employment Program will be continued after transfer to Civil Service status for as long as these services are needed.

 G. Evaluation Requirements for Participants

 The performance of participants shall be evaluated 30 days after the initial acting capacity appointment, with additional evaluations at 90 days, 180 days, 270 days and the end of the appointment year. If participants are appointed to their positions with Civil Service status prior to any of these review dates, the remaining review dates will be voided and the standard probationary review process will apply.

 H. Transition From Acting Appointment to Civil Service

 Participants who attain the level of productivity that is acceptable for their program type will be transferred from acting appointment to Civil Service appointment status as soon as this level of productivity is reached. The transfer to Civil Service appointment status may occur at any time during the trial employment period. Each transition to Civil Service appointment status must be supported by a written performance evaluation that states that the level of productivity that has been attained is acceptable by the appointing authority. Participants who are transferred to Civil Service appointment status will be required to serve a six-month probationary period, starting with the date that the Civil Service appointment is made. This six-month probationary period may be extended up to a maximum of one year.

 I. Termination of Acting Appointment and Trial Employment

 The participant's acting appointment will be terminated and a Civil Service appointment will not be made if the participant is unable to attain a level of productivity that is acceptable by the appointing authority.

 J. Compensation

 1. Special Appointment Program

 a. Trial Employment Period. During the trial employment period, participants will be compensated at the minimum step rate of the Civil Service pay grade and salary schedule in effect for their job classification.

 b. Civil Service Appointment. Participants who are granted Civil Service appointment status will continue to be compensated at the minimum step rate of the Civil Service pay grade and salary schedule unless the level of productivity attained warrants the next higher rate. Evaluations of productivity at time of Civil Service appointment will be made by a qualified professional and the starting rate of pay will be jointly determined by the professional and the Director of Human Resources. Subsequent annual step increases will be the responsibility of the appointing authority.

 2. Supported Employment Program

 a. During the trial employment period, participants will be appointed to a special job classification and compensated from a special pay scale that is established for that classification. The special pay scale will have minimum, maximum and intermediate step rates. Participants will be paid the step rate that is commensurate with their capability in relation to the job to be learned. Evaluations of capability will be made by a qualified professional, and the step rate of pay for the trial employment period will be jointly determined by the professional and the Director of Human Resources. The determined rate of pay will remain in effect for the duration of the trial employment period.

 b. Participants who transfer to Civil Service status will continue to be compensated from the special pay scale established for their trial employment period. The step rate of pay selected for Civil Service appointment will be commensurate with the level of productivity attained. Evaluations of productivity will be made by a qualified professional and the starting rate of pay will be jointly determined by the professional and the Director of Human Resources. The special pay scale will continue to be used for subsequent annual step increases as long as the employee's productivity level remains below the entrance-level productivity requirement of a standard State of Maine job classification. Annual step increases will be the responsibility of the appointing authority. If an employee in the Supported Employment Program attains the entrance-level productivity requirement of a standard State of Maine job classification after Civil Service appointment, the employee must be transferred to the Special Appointment Program and compensated accordingly.

STATUTORY AUTHORITY: 5 M.R.S.A. Chapter 65, c. 372 §§ 7034, 7036, 7051, 7052, 7053, 7054, 7055, 7062 and 7064.

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