

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Appeals, Discipline and Separations

General Causes for Discipline

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Residence Standards

New Jersey Residency

Adopted Amendments: N.J.A.C. 4A:2-2.3 and 2.5 and 4A:4-2.11

Proposed: November 7, 2011 at 43 N.J.R. 2691(a)

Adopted: February 8, 2012, by the Civil Service Commission, Robert M. Czech,
Chair/CEO.

Filed: _____, 2012 d. _____, **without change.**

Authority: N.J.S.A. 11A:2-6(d), 11A:2-13, and 11A:4-1 et seq.; and P.L. 2008, c. 29
and P.L. 2011, c. 70.

Effective Date: March 5, 2012.

Expiration Date: N.J.A.C. 4A:2 – July 2, 2015.

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on this rule proposal was held on November 22, 2011 in Trenton, New Jersey. Elizabeth Rosenthal served as hearing officer. No comments were received at that time. **Two written comments** were received. In accordance with administration policy, the hearing officer recommended adoption of the proposal **without change**. The record of the public hearing may be reviewed by contacting Henry Maurer, Director, Division of Merit System Practices and Labor Relations, Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendments pertain to New Jersey residency for State and local government employment and are not subject to any Federal standards or requirements.

The following is a Summary of public comments and agency responses:

COMMENT: Charles Wowkanech, President, and Laurel Brennan, Secretary-Treasurer, both of the New Jersey State AFL-CIO; and Adam Liebttag, President,

CWA Local 1036, stated that the proposed new subsection (i) of N.J.A.C. 4A:4-2.11, should not define the term “break in service,” as it pertains to the New Jersey residency requirement found in the New Jersey First Act, P.L. 2011, c. 70, to include layoffs.

The commenters protest that including layoffs in the definition of a break in service means that a nonresident employee, exempt from application of the residency requirement by virtue of being employed prior to the Act’s effective date of September 1, 2011, who is later laid off, would then be subject to the residency requirement if the period of layoff exceeds seven days.

The commenters further point out that N.J.A.C. 4A:8-2.4(f) specifically provides for a seniority “bridge” in layoff situations so that a laid-off employee who is later appointed from a special reemployment list is able to aggregate the seniority he or she accrued prior to the layoff with the seniority the employee commenced accruing following reemployment. Accordingly, the commenters urge that a similar “bridge” be utilized for a nonresident individual who was an employee in New Jersey civil service prior to September 1, 2011, but who is subsequently laid off and then, over seven days following the layoff, reappointed from a special reemployment list. The commenters suggest that a nonresident employee should be exempted from the residency requirement not only due to being an employee prior to September 1, 2011, but also upon appointment from a special reemployment list.

RESPONSE: The Civil Service Commission is sympathetic to the concerns expressed by the commenters regarding the inclusion of layoffs in the definition of the term “break in service” as the term pertains to the application of the New Jersey residency requirement. The commenters suggest that a residency “bridge” should be created for those non-residents laid off and then reemployed over seven days later, much in the way that a seniority bridge is provided for individuals appointed from a special reemployment list, so that they get credit for the seniority they have accrued prior to layoff. However, the Commission’s rulemaking authority regarding the calculation of seniority is expressly granted by N.J.S.A. 11A:8-1, which provides that the “Civil Service Commission shall adopt rules to implement employee layoff rights.” Conversely, the New Jersey First Act does not provide the Commission with authority to promulgate rules regarding exemptions from the law’s application. Therefore, the Commission believes that exempting layoffs from the definition of break in service would be contrary to its statutory authority.

It is noted that a non-resident employee who is exempt from the residency requirement by virtue of having been employed prior to September 1, 2011, who is laid off and later rehired from a special reemployment list, is not without recourse. First, the employee would have a year from his or her date of reemployment to establish a principal residence in New Jersey. Alternatively, the employee may apply for an exemption from the residency requirement to the five-member committee established by the New Jersey First Act.

Full text of the adoption follows:

CHAPTER 2

APPEALS, DISCIPLINE AND SEPARATIONS

SUBCHAPTER 2. MAJOR DISCIPLINE

4A:2-2.3 General causes

(a) An employee may be subject to discipline for:

1. Incompetency, inefficiency or failure to perform duties;
2. Insubordination;
3. Inability to perform duties;
4. Chronic or excessive absenteeism or lateness;
5. Conviction of a crime;
6. Conduct unbecoming a public employee;
7. Neglect of duty;
8. Misuse of public property, including motor vehicles;
9. Discrimination that affects equal employment opportunity (as defined in N.J.A.C. 4A:7-1.1), including sexual harassment;
10. Violation of Federal regulations concerning drug and alcohol use by and testing of employees who perform functions related to the operation of commercial motor vehicles, and State and local policies issued thereunder;
11. Violation of New Jersey residency requirements as set forth in P.L. 2011, c. 70; and

12. Other sufficient cause.

4A:2-2.5 Opportunity for hearing before the appointing authority

(a) An employee must be served with a Preliminary Notice of Disciplinary Action setting forth the charges and statement of facts supporting the charges (specifications), and afforded the opportunity for a hearing prior to imposition of major discipline, except:

1. An employee may be suspended immediately and prior to a hearing where it is determined that the employee is unfit for duty or is a hazard to any person if permitted to remain on the job, or that an immediate suspension is necessary to maintain safety, health, order or effective direction of public services. An employee who has been appointed on or after September 1, 2011, who does not have a principal residence in New Jersey and who has not received a residency exemption in accordance with P.L. 2011, c. 70, within one year of appointment, is defined by that statute as illegally holding and unqualified for employment, and therefore subject to immediate suspension as unfit for duty. However, a Preliminary Notice of Disciplinary Action with opportunity for a hearing must be served in person or by certified mail within five days following the immediate suspension.

2. An employee may be suspended immediately when the employee is formally charged with a crime of the first, second or third degree, or a crime of the fourth degree on the job or directly related to the job. See N.J.A.C. 4A:2-2.7.

(b) Where suspension is immediate under (a)1 and 2 above, and is without pay, the employee must first be apprised either orally or in writing, of why an immediate suspension is sought, the charges and general evidence in support of the charges and provided with sufficient opportunity to review the charges and the evidence in order to respond to the charges before a representative of the appointing authority. The response may be oral or in writing, at the discretion of the appointing authority.

(c) The employee may request a departmental hearing within five days of receipt of the Preliminary Notice. If no request is made within this time or such additional time as agreed to by the appointing authority or as provided in a negotiated agreement, the departmental hearing may be considered to have been waived and the appointing authority may issue a Final Notice of Disciplinary Action.

(d) A departmental hearing, if requested, shall be held within 30 days of the Preliminary Notice of Disciplinary Action unless waived by the employee or a later date as agreed to by the parties. See N.J.A.C. 4A:2-2.13 for hearings regarding removal appeals by certain law enforcement officers and firefighters.

(e) Appeals concerning violations of this section may be presented to the Civil Service Commission through a petition for interim relief. See N.J.A.C. 4A:2-1.2.

CHAPTER 4

SELECTION AND APPOINTMENT

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.11 Residence standards

(a) All open competitive examination announcements and noncompetitive job postings or announcements for State and local service shall inform applicants of the requirements for New Jersey residency in accordance with P.L. 2011, c. 70.

(b) In local service, an appointing authority shall provide the Civil Service Commission with its residency ordinance or resolution, if any, on an annual basis or as requested by an appropriate representative of the Commission, and shall provide any subsequent modifications within 20 days after adoption.

1. If the appointing authority provides the Commission with such a subsequent modification following promulgation of an eligible list, the Commission may charge it for the cost of reordering the list.

(c) Where residence requirements have been established in local service in addition to the New Jersey State residency requirement, residence with regard to local service requirements means a single legal residence. The following standards shall be used in determining local legal residence:

1. Whether the locations in question are owned or rented;
2. Whether time actually spent in the claimed residence exceeds that of other locations;
3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse,

or domestic partner (see section 4 of P.L. 2003, c. 246, a court order or other evidence of separation may be requested;

4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;

5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and

6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

(d) To establish that an applicant has a principal residence in New Jersey, the following standards, set forth in P.L. 2011, c. 70, shall be used:

1. Whether the applicant spends most of his or her nonworking time at the residence;

2. Whether the residence is most clearly the center of the applicant's domestic life. In making this determination, the factors set forth in (c)3 and 6 above may be utilized; and

3. Whether the residence is designated as the applicant's legal address and legal residence for voting. In making this determination, the factors set forth in (c)5 above may be utilized. The fact that the applicant is domiciled in the State of New Jersey shall not by itself satisfy the New Jersey residency requirement.

(e) Unless otherwise specified, residency requirements shall be met by the announced closing date for the examination.

1. When an appointing authority requires residency as of the date of appointment, residency must be continuously maintained from the closing date up to and including the date of appointment. See N.J.A.C. 4A:4-4.7(a)7.

(f) The Commission will review residence requirements that apply to examination candidates. It is the responsibility of the appointing authority to review and enforce residence requirements relating to appointment and continued employment, including the New Jersey residency requirement set forth in P.L. 2011, c. 70.

(g) When there is a requirement that an employee reside within a specific distance of the work site, a written request must be submitted by the appointing authority to the Commission for approval of such a restriction.

1. A request must be received and approved prior to the announcement of the examination.

2. However, an appropriate representative of the Commission may, in appropriate circumstances, add special residency limitations after an eligible list is promulgated.

(h) An applicant seeking to appeal a residency determination shall utilize the procedures contained in N.J.A.C. 4A:4-6.6. The applicant shall have the burden of proving his or her residence.

(i) A break in public service for purposes of P.L. 2011, c. 70 shall mean an actual separation from employment for more than seven calendar days due to such causes as resignation, retirement, layoff, or disciplinary removal. A leave of absence or a resignation/new appointment pursuant to N.J.A.C. 4A:4-7.9 shall not be considered a break in public service.