

RULE PROPOSALS

INTERESTED PERSONS

Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until the date indicated in the proposal. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

The required minimum period for comment concerning a proposal is 30 days. A proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. Most notices of proposal include a 60-day comment period, in order to qualify the notice for an exception to the rulemaking calendar requirements of N.J.S.A. 52:14B-3. An extended comment deadline will be noted in the heading of a proposal or appear in subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-6.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Notice of Extension of Comment Periods for Certain Notices of Proposal Published in the January 22, 2019, New Jersey Register

Take notice that, with the permission and on behalf of the State agencies affected, the Office of Administrative Law announces that the comment periods for the notices of proposal from the Department of Children and Families; and the Department of Military and Veterans' Affairs, published in the January 22, 2019, New Jersey Register are hereby extended an additional 13 days. The extension of these comment periods is necessitated by a disruption in the mail delivery of that issue of the New Jersey Register, in order to provide the public with the amount of time to comment set forth in the notices of proposal.

The affected notices of proposal, in Code title order, are as follows, with the new comment deadlines and comment addresses included:

Department of Children and Families, Proposed Readoption with Amendments: N.J.A.C. 3A:10, 51 N.J.R. 125(a). Submit comments by April 5, 2019, to: Pamela Wentworth, M.S.W., L.S.W., Department of Children and Families, PO Box 717, Trenton, NJ 08625 or e-mail: rules@dcf.nj.gov.

Department of Children and Families, Proposed Readoption with Amendments: N.J.A.C. 3A:23, 51 N.J.R. 131(a). Submit comments by April 5, 2019, to: Debra A. Hayes, Department of Children and Families, PO Box 717, Trenton, NJ 08625 or e-mail: rules@dcf.nj.gov.

Department of Military and Veterans' Affairs, Proposed Amendments: N.J.A.C. 5A:3-2.1 and 2.3, 51 N.J.R. 132(a). Submit comments by April 5, 2019, to: Mr. Mark Preston, Chief, Administrative Services Bureau, IASD, New Jersey Department of Military and Veterans' Affairs, PO Box 340, Trenton, NJ 08625-0340, or mark.preston@dmava.nj.gov.

CIVIL SERVICE

(b)

CIVIL SERVICE COMMISSION

Job Banding Program

Proposed Amendments: N.J.A.C. 4A:1-1.3; 4A:3-2.3, 2.9, 3.3, 3.5, 3.6, 3.7, 3.7B, 3.9, and 4.9; 4A:4-1.9, 2.3, 2.5, 2.9, 3.2, 4.7, 5.1, 5.2, 5.3, 7.1, 7.1A, 7.6, and 7.8; 4A:6-1.2, 1.5, 4.2, 4.4, 4.5, and 4.10; 4A:7-3.1 and 3.2; and 4A:8-1.1 and 2.2

Proposed Repeal: N.J.A.C. 4A:3-3.2A

Authorized By: Civil Service Commission, Diedre Webster Cobb, Chairperson.

Authority: N.J.S.A. 11A:2-6.d, 11A:2-11.h, 11A:2-11.1, 11A:3-1 through 7, 11A:4-1 through 16, 11A:6-1 through 28, and 11A:7-1-13; and P.L. 2018, c. 10.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2019-021.

A **public hearing** concerning the proposed amendments will be held on:

March 27, 2019, at 3:00 P.M.
Civil Service Commission Room
44 South Clinton Avenue
Trenton, New Jersey

Please call Walker Ristau at (609) 777-0910 if you wish to be included on the list of speakers.

Submit written comments by April 20, 2019, to:

Christopher Myers, Director
Division of Appeals and Regulatory Affairs
Civil Service Commission
PO Box 312
Trenton, New Jersey 08625-0312
E-mail: Rule.comments@csc.nj.gov

The agency proposal follows:

Summary

In light of P.L. 2018, c. 10, the Civil Service Commission (Commission) has reviewed the definition of "immediate family" in N.J.A.C. 4A:1-1.3 and proposes an amendment that would broaden the definition to other individuals with whom the employee has a significant personal bond, including step-parents, step-children, and step-siblings that is, or is like, a family relationship. It is anticipated that the proposed amendment will principally affect requests for sick leave and make-up examinations.

Existing N.J.A.C. 4A:3-3.9(c)8i and ii permit the Commission to issue an abbreviated decision letter when the Commission representative, agency representative, and appellant agree with the proposed title in a classification review. A proposed amendment will additionally require the agreement of a program manager or division director. The Commission also proposes an amendment to N.J.A.C. 4A:3-3.9(d) to allow a classification appeal filed by a local service employee to be forwarded to the Commission without a supervisor's signature from five days after the supervisor's receipt to 15 days, which will standardize the timeline between State and local appointing authorities. It is further proposed that "appeal" and "appellant," as used in subsections (a) through (d), be changed to "petition" and "petitioner," respectively. This amendment will reduce confusion, as "appeal" is defined differently in subsections (a) through (d) than in subsection (e).

A proposed amendment to N.J.A.C. 4A:4-2.3(b) would make the rule consistent with N.J.A.C. 4A:4-2.6(a)2, by clarifying that if an announcement for an open-competitive examination is amended, all requirements must be met by the announced closing date whether or not the application filing date is changed.

N.J.A.C. 4A:6-1.2(c)2 is proposed for amendment to provide that a leave of absence while an employee is receiving Workers' Compensation benefits should not be deducted from an employee's "continuous service" or seniority for the calculation of vacation leave accrual. The proposed amendment would implement the Commission's decision in *In the Matter of Thomas M Jardine and Karriem Beyah, Department of Corrections* (CSC, decided August 13, 2014), where it was determined that a leave of absence while a State service employee is receiving Workers' Compensation benefits should not be deducted from an employee's "continuous service" or seniority for the calculation of vacation leave increments. However, proration of leave entitlements during a Workers' Compensation leave will continue. Thus, employees who are receiving Workers' Compensation benefits will not accrue vacation leave while they are out of work, but will retain their continuous service for purposes of determining when the vacation increment is increased, that is, when the annual vacation leave allotment changes from 12 to 15 days, from 15 to 20 days, and from 20 to 25 days. See, *In the Matter of Richard Latham, et al.* (CSC, decided August 16, 2017).

N.J.A.C. 4A:6-1.5 provides instances in which an employee's vacation, administrative, and sick leave entitlements must be adjusted due to an unpaid leave of absence, workweek changes, and other similar circumstances. Currently, subsection (b) provides that an employee earns one-half month's allowance if he or she is on the payroll from the 9th through the 23rd day of the month. Subsection (b) is proposed for amendment to state that an employee earns one-half month's allowance if he or she is on the payroll for greater than 14 calendar days in a month, but less than 23 calendar days in a month. The Commission has received appeals regarding the equity of the application of this rule in instances where an employee was in a pay status for more than 15 days in a month, but the employee was not in pay status on the 9th or 23rd of the month, and he or she was not entitled to leave time for that month. This proposed amendment corrects this problem as it will ensure that employees who are on the payroll for at least 15 calendar days in a month will receive one-half month's allowance of leave. See, for example, *In the Matter of Maryellen Marnier* (CSC, decided March 27, 2018).

N.J.A.C. 4A:6-4.10 provides for counseling, rehabilitative, and/or community services for employees who meet certain criteria involving job performance or who have personal problems that affect job performance. N.J.A.C. 4A:6-4.10(f) is proposed for amendment to modify the requirement that an appointing authority "must" consult with the supervisor of the Employee Advisory Program (EAS) program to a recommendation that an appointing authority "should" consult with the EAS program staff, rather than the supervisor of the EAS program, seeking removal of an employee receiving service from the EAS program.

Several amendments are proposed at N.J.A.C. 4A:7-3.1 and 3.2 to reflect current practice. For example, the Commission has determined that discriminatory comments made on social media or outside of work may violate the State Policy Prohibiting Discrimination in the Work Place (State Policy). See, *In the Matter of N.J.* (CSC, decided September 17, 2014); and *In the Matter of L.N.* (CSC, decided March 27, 2018). Additionally, a proposed amendment would specify that sexual physical

contact that involves any form of coercion, force, or lack of consent is an example of a violation of the State Policy and would advise that victims of such behavior may file a criminal complaint with law enforcement and/or report the conduct to his or her supervisor and/or EEO/AA officer. Similarly, proposed amendments clarify that the complainant has the burden to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy, that the State Policy applies to gubernatorial transition office staff members, that employees are required to comply with investigations and are subject to administrative or disciplinary action for violating confidentiality directives, and, when a violation of the State Policy is found and disciplinary action is recommended, only employees in the career service may appeal using the disciplinary procedures set forth in N.J.A.C. 4A:2-2 and 3. More substantially, proposed amendments to N.J.A.C. 4A:7-3.1 (g)4 and (j) requires State departments and agencies to retain written records of discrimination and harassment complaints as confidential records indefinitely.

In order to standardize the intake of complaints, a proposed amendment to N.J.A.C. 4A:7-3.2(i) establishes criteria for EEO/AA officers to consider when determining whether an investigation is warranted. A proposed amendment to N.J.A.C. 4A:7-3.2(h) lists the types of interim corrective actions that may be taken while an investigation is pending. Currently, complainants are encouraged to promptly report their complaints. Proposed amendments to N.J.A.C. 4A:7-3.1 and 3.2 will empathize that complainants shall promptly report their complaints. Complaints that are promptly reported can be remedied faster and prevent continued violations and investigations of alleged violations of the State Policy can be investigated more effectively. Nevertheless, there would be no penalty for failing to promptly report a complaint. Further, N.J.A.C. 4A:7-3.2(b) is proposed for amendment to include language indicating that a Discrimination Complaint Processing Form (DPF-481) can be found on an appointing authority's intranet or the Commission's website. Additionally, N.J.A.C. 4A:7-3.2(n)3 is proposed for amendment to clarify that when disciplinary action is recommended, only employees in the career service may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3, since those subchapters only apply to permanent employees in the career service or persons serving in a working test period.

In response to the New Jersey Supreme Court's decision in *Communication Workers of America, AFL-CIO v. New Jersey Civil Service Commission*, 234 N.J. 483 (2018), which invalidated the Job Banding program, all references to the Job Banding program in Title 4A of the New Jersey Administrative Code are proposed for deletion.

Technical amendments are proposed to N.J.A.C. 4A:6-4.2, 4.4, and 4.5 in response to the renaming of the Office of Training as the Center for Learning and Improving Performance (CLIP). Likewise, technical amendments are proposed to N.J.A.C. 4A:3-3.7B and 4A:4-2.9, 4.7, 5.2, and 5.3 to reflect a recent amendment to N.J.S.A. 11A:2-11.1, which renamed the State service title of Correction Officer Recruit to Correctional Police Officer. It is finally proposed that "Correction Officer Apprentice" at N.J.A.C. 4A:3-3.7B be amended to "Correctional Police Officer Apprentice" for consistency.

As the Commission has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

A positive social impact is expected from the proposed amendment to N.J.A.C. 4A:1-1.3, as, for example, an employee will be able to utilize sick leave to care for a step-relative, whereas under the current definition of "immediate family," he or she could not. The amendments to N.J.A.C. 4A:3-3.9 are expected to have a positive social impact. First, requiring a project manager's or division director's agreement with a proposed title will ensure the most accurate position classification and document that all stakeholder input was considered during the process. Second, providing 15 days to a supervisor in local service to review and sign a classification appeal, rather than five days will improve the position classification review process by ensuring greater participation from supervisors, which will in turn result in more accurate position classification. Third, distinguishing position classification reviews in N.J.A.C. 4A:3-3.9(a) through (d) from appeals of a determination made in a position

classification review in N.J.A.C. 4A:3-3.9(e) will provide greater clarity in the rule.

A positive social impact is expected from the proposed amendment to N.J.A.C. 4A:4-2.3(b), as applicants for employment will be provided with greater clarity regarding open-competitive examinations when eligibility requirements in an announcement are amended. The proposed amendment to N.J.A.C. 4A:6-1.2 will be beneficial to employees who are on a leave of absence and receiving Workers Compensation, since it correlates with rules governing other Civil Service security-based programs. See, N.J.A.C. 4A:8-2.4(d)3, 4A:4-2.15(d), and 4A:3-4.6(a) and (b)6. The proposed amendment to N.J.A.C. 4A:6-1.5 would make the rule more equitable to affected employees and reduce appeals to the Civil Service Commission. The proposed amendment to N.J.A.C. 4A:6-4.10(f) is expected to encourage dialogue with the EAS prior to seeking disciplinary action, but to clarify that such consultation is not required before an appointing authority can seek disciplinary action. The proposed amendments to N.J.A.C. 4A:7-3.1 and 3.2 are expected to have a positive social impact by clarifying the State Policy and its model procedures and facilitating the prompt reporting of alleged violations and standardizing complaint intake across State departments and agencies. No social impact is expected from the proposed technical amendments and repeal related to job banding, as the amendments do not affect the application of the chapters.

Economic Impact

No appreciable economic impact is anticipated from the amendment to N.J.A.C. 4A:1-1.3, as the amendment will principally affect sick leave and make-up examination rules. The proposed amendments to N.J.A.C. 4A:3-3.9 will likely have a positive economic impact by ensuring that employees' positions are properly classified. Classifying positions with a higher-level title than warranted by the assigned duties could negatively impact taxpayers by overcompensating employees for the work they perform. Conversely, misclassification of positions could also result in employees being undercompensated, which may adversely impact delivery of public services, recruitment, and employee retention. No appreciable economic impact is expected from the proposed amendment to N.J.A.C. 4A:6-1.2. The amendment to N.J.A.C. 4A:6-1.5 is expected to have a positive economic impact on civil service employees affected by this rule by ensuring that they receive the proper amount of leave time to which they are entitled. Requiring the prompt reporting of alleged violations of the State Policy and standardizing the process for determining whether an investigation is appropriate will result in more efficient utilization of State resources when initially reviewing allegations. No economic impact is expected from the amendments to N.J.A.C. 4A:4-2.3(b) and 4A:6-4.10(f). Likewise, no economic impact is expected from the proposed amendments and repeal pertaining to the job banding program, as the changes are mostly technical in nature and do not affect the application of the chapters.

Federal Standards Statement

The proposed amendments and repeal are not subject to any Federal requirements or standards. Therefore, a Federal standards analysis is not necessary.

Jobs Impact

It is not anticipated that any jobs will be generated or lost if the proposed amendments and repeal are adopted. The proposed amendments and repeal concern the existing classification and compensation program, as well as selection and appointment, and leaves and hours of work in the Civil Service System.

Agriculture Industry Impact

The proposed amendments and repeal concern the existing classification and compensation program, as well as selection and appointment, and leaves and hours of work in the Civil Service System.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required as the proposed amendments and repeal will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules will regulate employment in the public sector.

Housing Affordability Impact Analysis

Since the proposed amendments and repeal concern job classification, compensation, selection and appointment, and leaves and hours of work under the Civil Service System, they would have no impact on the affordability of housing or the average cost of housing in New Jersey.

Smart Growth Development Impact Analysis

Since the proposed amendments and repeal concern job classification, compensation, selection and appointing, and leaves and hours of work under the Civil Service System, they would have no impact on smart growth or on new construction within Planning Areas 1 and 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The Commission has evaluated this rulemaking and determined that it will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the rule proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4A:3-3.2A.

Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 1
GENERAL RULES AND AGENCY ORGANIZATION

SUBCHAPTER 1. PURPOSE, SCOPE, AND DEFINITIONS

4A:1-1.3 Definitions

The following words and terms, when used in any Commission rule, shall have the following meanings unless the context clearly indicates otherwise:

["Advancement appointment" means a movement within a job band, upon achievement of a specific number of predetermined competencies, to a higher title level and, where applicable, associated higher class code, which does not require competitive examination.]

...

"Class code" means a designation assigned to job titles in State and local service with ranking based upon an evaluation of job content. [In the case of job bands, all references to class code shall mean a designation assigned to title levels, unless a job band class code is specifically stated.]

...

["Competency" means the minimum level of training and orientation needed to successfully perform at a particular title level within a job band.]

...

"Immediate family" means an employee's spouse, domestic partner (see section 4 of P.L. 2003, [c.246] **c. 246**), **civil union partner**, child, legal ward, grandchild, foster child, father, mother, legal guardian, grandfather, grandmother, brother, sister, father-in-law, mother-in-law, and other relatives residing in the employee's household **or any other individual whose close association with the employee is the equivalent of a family relationship, such as a step-relative.**

["Job band" means a grouping of titles or title series into a single broad band consisting of title levels with similar duties, responsibilities, and qualifications.]

"Lateral movement" means an employee movement from one position to another with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code. [In the case of job bands, a lateral movement means a movement to a title level in another job band with a similar salary and level of duties, responsibilities, and qualifications and, where applicable, the same class code.]

...

"Promotion" means, in local service, an advancement in title, and in State service, an advancement to a title having a higher class code than the former permanent title. [In the case of job bands, a promotion means a movement to a title with a higher class code not in the employee's current job band.]

...

“Title” means a descriptive name that identifies a position or group of positions with similar duties, responsibilities, and qualifications. [In the case of those titles approved for inclusion in job bands (see N.J.A.C. 4A:3-3.2A), any references to such titles in any Commission rule shall mean the title level within the job band, and, where applicable, the level’s associated class code, unless otherwise stated, or the context clearly suggests otherwise.]

...

CHAPTER 3 CLASSIFICATION, SERVICES, AND COMPENSATION

SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE

4A:3-2.3 SES appointments: State service

(a) (No change.)

(b) A permanent employee holding a position allocated to the SES who is not selected to join the SES or chooses not to join the SES (referred to as a “non-appointed incumbent”), shall be placed in a career service position in the same organizational unit for which he or she is qualified at the same class code.

1.-3. (No change.)

4. The organizational unit and the non-appointed incumbent may agree to use the following optional procedures:

i. The non-appointed incumbent may accept an appointment to another title at the same or lower class code, in the same or different title series [or job band, as the case may be,] for which the employee is qualified in the same or another organizational unit.

ii.-iv. (No change.)

5.-6. (No change.)

(c) (No change.)

4A:3-2.9 Separation from the SES: State service

(a)-(b) (No change.)

(c) An employee with underlying career status who is separated from the SES shall have the right to return to his or her highest held class code permanent title in the same organizational unit.

1.-3. (No change.)

4. The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee:

i. The employee may accept appointment to other titles at the same or lower class code, in the same or a different title series [or job band, as the case may be,] for which the employee is qualified in the same or another organizational unit.

ii.-iv. (No change.)

5.-7. (No change.)

(d)-(e) (No change.)

SUBCHAPTER 3. CLASSIFICATION

4A:3-3.2A (Reserved)

4A:3-3.3 Administration of classification plans

(a) The Chairperson or designee shall implement and administer the classification plans and, in this regard, shall:

1.-2. (No change.)

3. Modify specifications for existing titles[,] or series[, or job bands, as the case may be,] to ensure their accuracy; and

4. (No change.)

(b)-(f) (No change.)

4A:3-3.5 Reclassification of positions

(a)-(b) (No change.)

(c) No reclassification of any position shall become effective until notice is given to affected permanent employees and approval is given by an appropriate Commission representative.

1. (No change.)

2. Should an employee in the career or unclassified service in State or local service, or an appointing authority in local service, disagree with a reclassification determination, an appeal to the Civil Service Commission may be filed in accordance with N.J.A.C. 4A:3-3.9. [In State service,

appeals pertaining to an employee’s title level within his or her particular job band are governed by N.J.A.C. 4A:3-3.9(c)4, 5, and 6.]

4A:3-3.6 New titles

(a) The Civil Service Commission may determine that a new title[,] or title series[, or job band] is necessary, when it is found that a new set of functions is assigned to the position(s) being reviewed and these new functions are not appropriately described by an existing title[,] or title series[, or job band].

(b) Requests for new titles[,] or title series[, or job bands] must be submitted in writing by the appointing authority to an appropriate representative of the Civil Service Commission on a designated form. In State service, such requests shall be submitted by the agency representative. The request must include:

1.-3. (No change.)

(c) If the Commission representative determines that there is a need for a new title[,] or title series[, or job band], new job specification(s) will be prepared and in State service the title[,] or series[, or band] will be evaluated for compensation purposes.

(d) Pending approval by the appropriate Commission representative of a new title[,] or title series[, or job band], the designation “Tentative Title” may be used for affected positions. See N.J.A.C. 4A:3-4.15 for compensation procedures in State service.

(e)-(f) (No change.)

4A:3-3.7 Trainee, apprentice, recruit, and intern titles

(a) Trainee, apprentice, recruit, and intern titles may be established in State and local service to provide for entry level employment.

1. (No change.)

2. A single trainee title may provide entry level employment for more than one title[,] or title series[, or job band], under appropriate circumstances.

3. (No change.)

(b)-(k) (No change.)

4A:3-3.7B [Correction] **Correctional Police** Officer Apprentice title: State service

(a) The appointment of an employee to the title of [Correction] **Correctional Police** Officer Apprentice shall be a temporary appointment from a certification of [Correction] **Correctional Police** Officer [Recruit] eligibles on an entry-level law enforcement eligible list. The purpose of this temporary appointment is to ensure that individuals so appointed shall receive training appropriate to the duties of a [Correction] **Correctional Police** Officer [Recruit] in accordance with the Police Training Act. See N.J.S.A. 52:17B-66 et seq.

(b) Notwithstanding the employee’s temporary appointment in State service, the employee shall not accrue seniority for purposes of layoffs (N.J.A.C. 4A:8-2.4) or vacation leave accruals (N.J.A.C. 4A:6-1.2) while serving in the title of [Correction] **Correctional Police** Officer Apprentice.

(c) The length of the period of temporary appointment to the title of [Correction] **Correctional Police** Officer Apprentice shall be established by the Department of Corrections; provided, however, that the length of this period shall be the same for all employees receiving the appointment from the same certification, but in no case longer than six months.

(d) Upon successful completion of the residential training program required by the Police Training Act, and in-service training provided by the Department of Corrections under the authority of the Police Training Commission, the employee serving in the title of [Correction] **Correctional Police** Officer Apprentice shall receive a regular appointment to the title of [Correction] **Correctional Police** Officer [Recruit].

(e) An individual who receives a regular appointment to the title of [Correction] **Correctional Police** Officer [Recruit] in accordance with (d) above but who had permanent status in another title in State service as of the time of temporary appointment shall be considered to have been on an unpaid leave of absence from his or her original State position during the period of temporary appointment. Such permanent service prior to the leave of absence shall be aggregated to calculate the employee’s seniority for layoff purposes, as well as to determine his or her vacation benefit at

the time of the employee's regular appointment to the title of [Correction] **Correctional Police Officer** [Recruit].

(f) Notwithstanding any provisions in Title 4A of the New Jersey Administrative Code to the contrary, employees receiving a temporary appointment to the title of [Correction] **Correctional Police Officer** Apprentice shall not have any appeal rights to the Civil Service Commission during the period of temporary appointment. Such employees' sole right of appeal shall be to the Police Training Commission. See N.J.A.C. 13:1-11.

4A:3-3.9 [Appeal] **Position review request and appeal** procedure

(a) [An appeal] **A position review request is a petition for a review** from the classification or reclassification of a position [is a request for review], or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position.

(b) (No change.)

(c) In State service, a classification [appeal] **petition** by an employee or union representative shall be made in writing. The [appeal] **petition** shall include a position classification questionnaire completed by the [appellant] **petitioner**, and shall specify the title [which] **that** the [appellant] **petitioner** believes is appropriate to the duties performed by the employee and explain how the duties at issue are more appropriate to the requested title than to the title in which the employee is currently serving.

1. The employee's immediate supervisor shall indicate on the position classification questionnaire the supervisor's agreement or disagreement with the [appellant's] **petitioner's** description of job duties, the [appellant's] **petitioner's** cited percentage of time spent on each duty, and the title proposed by the [appellant] **petitioner** as appropriate to the duties performed. To the extent that the supervisor disagrees with information on the questionnaire, the supervisor shall explain in writing the nature of the disagreement. The supervisor shall also sign the position classification questionnaire.

2. The employee's immediate supervisor shall forward the completed position classification questionnaire to the program manager/division director, as applicable, who shall indicate on the questionnaire agreement or disagreement with the [appellant's] **petitioner's** description of job duties, the [appellant's] **petitioner's** cited percentage of time spent on each duty, and the title proposed by the [appellant] **petitioner** as appropriate to the duties performed. To the extent that the program manager/division director disagrees with information on the questionnaire, he or she shall explain in writing the nature of the disagreement. The program manager/division director shall also sign the questionnaire.

3. The supervisor and program manager/division director shall complete their portions of the questionnaire and provide their signatures on the form in accordance with (c)1 and 2 above within 15 days of the employee's submission of the [appeal] **petition** to the immediate supervisor. By no later than the end of this period, the program manager/division director shall submit to the agency representative the completed questionnaire, along with the [appellant's] **petitioner's** most recent PAR form (see N.J.A.C. 4A:6-5).

[4. In the case of an employee challenging his or her title level within a job band, the agency representative shall review the appeal and determine one of the following:

- i. The position is properly placed at the existing title level;
- ii. The position is properly placed at the existing title level, but that duties of a different title level are being performed, in which case the appointing authority shall immediately remove all inappropriate duties; or
- iii. The position should be placed at a different title level.

5. If an employee serving in a job band title is found to be performing duties at a higher level in the band, the appointing authority:

- i. May post a notice of advancement appointment opportunity for the position and select the employee who has demonstrated the attainment of the required competencies for that level (see N.J.A.C. 4A:3-3.2A(d)); or
- ii. If the incumbent employee has not demonstrated the attainment of the required competencies, shall remove the higher level duties.

6. If an appellant challenging his or her title level disagrees with the determination rendered by the agency representative, the appellant may

file a grievance appeal regarding job band title level issues. See N.J.A.C. 4A:2-3.

i. The appointing authority shall notify the appropriate representative of the Civil Service Commission of the determination for recordkeeping purposes.]

[7.] **4.** [In the case of an appeal not pertaining to a title level within the employee's particular job band, the] **The** agency representative shall review the [appeal] **petition**, affix to it an organizational chart, and ensure that the information set forth in (c)1, 2, and 3 above has been included. Within 10 days of receipt of the [appeal] **petition**, the agency representative shall either notify the [appellant] **petitioner** that specific additional information is required, or forward the [appeal] **petition** with organizational chart to the appropriate representative of the Civil Service Commission. The agency representative may, in writing, indicate with the submitted [appeal] **petition** a recommended approval or rejection of the [appeal] **petition** for specified reasons. The agency representative shall notify the [appellant] **petitioner** of the submission to the Commission representative. If additional information is required of the [appellant] **petitioner**, the agency representative shall forward the [appeal] **petition** with organizational chart and the additional information to the appropriate representative of the Civil Service Commission within 10 days of receipt of the [appellant's] **petitioner's** response to the request for additional information.

[8.] **5.** A representative of the Civil Service Commission shall review the [appeal] **petition** filed pursuant to [(c)7] **(c)4** above, request additional information, if needed, order a desk audit, where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the [appeal] **petition** and all completed documentation as required by the representative of the Civil Service Commission, and shall:

i. Where the agency representative, Commission representative, **program manager/division director**, and [appellant] **petitioner** are in agreement with the proposed title, issue an abbreviated decision letter; or

ii. Where the agency representative, Commission representative, **program manager/division director**, and [appellant] **petitioner** are not in agreement with the proposed title, include a summary of the duties of the position, findings of fact, conclusions, a notice to an employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

(1)-(3) (No change.)

(d) In local service, [an appeal] **a petition** from an employee, union representative, or appointing authority shall be submitted, in writing, to the appropriate representative of the Civil Service Commission. The [appeal] **petition** must identify the specific duties that do not conform to the specification for the title and, if the [appellant] **petitioner** proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title. If requested by a representative of the Commission, the [appeal] **petition** shall also include a completed position classification questionnaire and an organizational chart. If the [appellant's] **petitioner's** supervisor has not signed the questionnaire within [five] **15** working days of receipt of the questionnaire from the [appellant] **petitioner**, the [appellant] **petitioner** may forward the questionnaire to the appropriate representative of the Commission without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the Civil Service Commission shall review the [appeal] **petition**, request additional information if needed, order a desk audit where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the [appeal] **petition** and of all completed documentation as required by the Commission representative, and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to the employee or authorized employee representative of appeal rights to the Civil Service Commission, and a determination that:

i.-iii. (No change.)

(e) Appeals from the decision of the Commission representative to the Civil Service Commission pursuant to [(c)7] **(c)4** and [8] **5** or (d) above may be made by an employee, authorized employee representative, or local appointing authority. The appeal shall be submitted in writing within 20 days of receipt of the decision letter and include copies of all materials submitted, the determination received from the lower level, statements as

to which portions of the determination are being disputed, and the basis for appeal. Information and/or arguments [which was] **that were** not presented at the prior level of appeal shall not be considered. When new information and/or arguments [is] **are** presented, the appeal may be remanded to the prior level.

- 1.-4. (No change.)
- (f) (No change.)

SUBCHAPTER 4. COMPENSATION

4A:3-4.9 Advancement pay adjustments: State service

(a) (No change.)
 (b) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determinations. (See (g) below). This subsection shall apply when the following conditions are met:

- 1. (No change.)
- 2. Employees are serving in a title which is reevaluated to a higher class code; **or**
- [3. Employees receive an advancement appointment to a higher title level with a higher class code in a job band; or]
- [4.] **3.** (No change in text.)
- (c)-(h) (No change.)

CHAPTER 4 SELECTION AND APPOINTMENT

SUBCHAPTER 1. TYPES OF APPOINTMENTS

4A:4-1.9 Return of employees to their permanent titles

(a)-(f) (No change.)
 [(g) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.]

SUBCHAPTER 2. COMPETITIVE EXAMINATIONS

4A:4-2.3 Open competitive examinations

(a) (No change.)
 (b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:
 1.-2. (No change.)
 3. File an application with all supporting documents or proofs by the announced filing date and time. **If an announcement for an open-competitive examination is amended, all requirements must be met by the announced closing date, whether or not the application filing date is changed.**
 (c)-(d) (No change.)

4A:4-2.5 Promotional title scope: State service

(a) (No change.)
 (b) When a promotion is within the same category as listed in (a) above, the examination, with or without all or part of the open competitive requirements, as appropriate, shall be open to permanent competitive division employees serving in one of the following:
 1.-4. (No change.)
 [5. When open to a job band, to the highest level within the band.]
 [6.] **5.** (No change in text.)
 (c) When a promotion is between categories as listed in (a) above, the examination shall be open to permanent competitive division employees currently serving in the announced unit scope and who meet one of the following criteria:
 1.-2. (No change.)
 3. All titles that are in the same category as the announced title and that are in specified class codes below the announced title, including the next lower in-series title, if one exists, with or without all or part of the open competitive requirements, as appropriate, and all applicants as described in (c)2 above; **or**
 [4. When open to a job band, to the highest level within the band; or]

[5.] **4.** (No change in text.)
 (d)-(e) (No change.)

4A:4-2.9 Make-up examinations

(a) (No change.)
 (b) For professional level engineering, police, fire, correction officer, **correctional police officer**, sheriff's officer, juvenile detention officer, and other public safety promotional examinations, make-up examinations may be authorized only in cases of:
 1.-5. (No change.)
 (c)-(i) (No change.)

SUBCHAPTER 3. ELIGIBLE LISTS

4A:4-3.2 Order of names on eligible lists

(a)-(b) (No change.)
 (c) Eligibles on special reemployment lists shall be ranked in descending order of the class code or class level of the title from which the eligible was displaced. [In the case of special reemployment lists containing the names of eligibles laid off from a job band, the eligibles shall be ranked in descending order of the class code or class level of the job band, as applicable.] Within each class code or class level, eligibles shall be ranked in accordance with N.J.A.C. 4A:8-2.3(c)1.

EXAMPLE 1.-2. (No change.)
 (d)-(e) (No change.)

SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS

4A:4-4.7 Removal of names

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:
 1.-3. (No change.)
 4. The eligible has a criminal record [which] **that** adversely relates to the employment sought.
 i. (No change.)
 ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer, **correctional police officer**, juvenile detention officer, firefighter, or judiciary titles and other titles as the Chairperson or designee may determine.
 5.-11. (No change.)
 (b)-(h) (No change.)

SUBCHAPTER 5. WORKING TEST PERIOD

4A:4-5.1 General provisions

(a)-(d) (No change.)
 [(e) Advancement appointments to a higher title level in a job band are subject to a developmental period. See N.J.A.C. 4A:3-3.2A.]

4A:4-5.2 Duration

(a)-(c) (No change.)
 (d) Persons appointed to entry level law enforcement, correction officer, **correctional police officer**, juvenile detention officer, and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers, but shall not include the local service competitive title of [Police Assistant] **police assistant**. See N.J.A.C. 4A:3-3.7A. Persons appointed in local service to the competitive title of [Police Assistant] **police assistant** shall serve a three-month working test period.
 1.-2. (No change.)
 (e) An approved leave of absence, including a furlough extension leave or a voluntary furlough shall extend the completion of the working test period for a period of time equal to that leave or voluntary furlough.
 1. When a paid leave of absence is granted to a correction officer or juvenile detention officer for the purpose of training required by N.J.S.A. 52:17B-68.1, such leave shall not extend the length of the working test period, unless the course in which the appointee is enrolled is scheduled to end after the one-year period. Regarding appointments to the title of [Correction Officer Apprentice] **correctional police officer apprentice**, see N.J.A.C. 4A:3-3.7B.

4A:4-5.3 Progress reports

(a) (No change.)

(b) For entry level law enforcement, correction officer, **correctional police officer**, and firefighter titles, the appointing authority shall prepare a progress report on the employee at the end of six months and a final report at the conclusion of the working test period.

(c)-(e) (No change.)

SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS

4A:4-7.1 Transfers within the same governmental jurisdiction

(a) (No change.)

(b) If the transferred employee is concurrently appointed to a title [or job band, as applicable.] other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change, or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 through 2.7, 7.6, and 7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title [or job band] with the recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title [or job band] within this organizational unit pursuant to N.J.A.C. 4A:4-1.9, unless the employee has been disqualified for further employment.

(c)-(f) (No change.)

4A:4-7.1A Intergovernmental transfers

(a)-(d) (No change.)

[(e) For purposes of this section, in the case of a position within a job band in State service, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.]

[(f)] (e) (No change in text.)

4A:4-7.6 Lateral title change

(a)-(d) (No change.)

[(e) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.]

4A:4-7.8 Voluntary demotion

(a) A voluntary demotion is:

1. The voluntary movement of a permanent employee from his or her permanent title to a lower title in local service; **or**

2. In State service, the voluntary movement to another title with a lower class code, within the same organizational unit[; or].

[3. In the case of a job band, the voluntary movement to:

i. A lower title level within the same band; or

ii. Another job band with a lower level of duties, responsibilities, and qualifications and, where applicable, a lower class code.]

(b)-(f) (No change.)

[(g) For purposes of this section, in the case of a position within a job band, "title" shall mean the entire job band. See N.J.A.C. 4A:3-3.2A.]

CHAPTER 6

LEAVES, HOURS OF WORK, AND EMPLOYEE DEVELOPMENT

SUBCHAPTER 1. LEAVES OF ABSENCE

4A:6-1.2 Vacation leave

(a)-(b) (No change.)

(c) Continuous service, for purposes of this section, shall mean employment for the same jurisdiction, or, if the requirements of N.J.A.C. 4A:4-7.1A are met, employment for different jurisdictions (except as provided in (d) below), without actual interruption due to resignation, retirement, or removal.

1. (No change.)

2. Periods of employment before and after a suspension or leave without pay shall be considered continuous service. However, the period of time on a suspension or leave without pay, except for military leave, furlough extension leave, **leave for a job-related injury under the**

Worker's Compensation Statute, N.J.S.A. 34:15-1 et seq., and voluntary furlough, shall not be included in calculating years of continuous service.

3. (No change.)

(d)-(k) (No change.)

4A:6-1.5 Vacation, administrative, and sick leave adjustments: State service

(a) (No change.)

(b) An employee who leaves State service or goes on a leave of absence without pay before the end of the calendar year shall have his or her leave prorated based on time earned, except that the leave of an employee on a voluntary furlough or furlough extension leave shall not be affected. An employee who is on the payroll for greater than 23 days shall earn a full month's allowance, and earn one-half month's allowance if he or she is on the payroll [from the 9th through the 23rd day of the month] **for greater than 14 calendar days, but less than 23 calendar days in a month.**

1.-2. (No change.)

(c)-(g) (No change.)

SUBCHAPTER 4. HUMAN RESOURCE DEVELOPMENT: TRAINING, EDUCATION, CAREER DEVELOPMENT, AND EMPLOYEE ASSISTANCE PROGRAMS

4A:6-4.2 Civil Service Commission functions: State service

(a) The Chairperson or designee shall administer [an Office of Training] **a Center for Learning and Improving Performance (CLIP)**, which is responsible for the following functions:

1. Planning, development, and delivery of all training and education programs for State employees, except for programs exempted by Executive Order No. 12 (1990) or by the Chairperson through a written delegation order. The [Office of Training] **CLIP** shall also be responsible for the planning, development, and delivery of all evaluations (see, for example, N.J.A.C. 4A:6-4.5) and assistance programs (see, for example, N.J.A.C. 4A:6-4.3 and 4.6) for State employees.

i. Delivery of training and education programs, evaluation programs, and assistance programs shall be provided by the New Jersey Community College Consortium for Workforce and Economic Development. If the New Jersey Community College Consortium for Workforce and Economic Development is available to deliver a specific program, the [Office of Training] **CLIP** shall negotiate the most cost-effective contract with an outside vendor or consultant to deliver the program. Under limited circumstances, [Office of Training] **CLIP** staff shall deliver training.

2.-3. (No change.)

(b) In cooperation with State agencies, the [Office of Training] **CLIP** shall assess State government Human Resource Development (HRD) needs and develop training and education plans and programs for each agency and for the State government as a whole. The [Office of Training] **CLIP** shall deliver or, consistent with (a)1i above, arrange the delivery of these programs, as appropriate.

1. Neither agency employees nor outside vendors or consultants may develop or deliver training and education programs that the [Office of Training] **CLIP** is capable of developing or delivering, as provided in (a)1i above, without the prior written approval of the designated [Office of Training] **CLIP** representative. If the [Office of Training] **CLIP** is not capable of developing or delivering, as provided in (a)1i above, a program of instruction that an agency needs, the [Office of Training] **CLIP** [director] **manager** may authorize the agency to assign employees temporarily to develop or deliver the program, or to hire a pre-approved vendor or consultant for the same purpose. The [Office of Training] **CLIP** staff shall supervise and direct the delivery of any such program.

2. No State agency, except the [Office of Training] **CLIP**, may employ or retain any person whose primary duty is staff training or human resource development, except as specifically permitted by Executive Order No. 12 (1990) or by the Chairperson or designee through a written delegation order.

(c) The [Institute] **CLIP** shall establish guidelines and procedures for career development programs, help State agencies develop these

programs, and review and approve career development plans and programs.

(d) The [Office of Training] **CLIP** shall evaluate the results and effects of all State government HRD programs based on the following criteria:

1.-4. (No change.)

(e) The [Office of Training] **CLIP** shall maintain a comprehensive system to record the training and education experiences of its clients, including all State government employees.

(f) Each State agency may designate a customer liaison to the [Office of Training] **CLIP**, whose responsibilities, which shall be in addition to his or her other job assignments in the agency, shall be the following:

1. Review and approve the designation of members of the agency to participate in HRD programs, subject to eligibility criteria established by the [Office of Training] **CLIP**.

2. Assist the [Office of Training] **CLIP** in setting HRD priorities related to the agency’s mission and goals.

4A:6-4.4 Certified Public Manager Program: State service

(a) The [Office of Training] **CLIP** shall develop and administer the Certified Public Manager Program (CPM) for supervisors and managers. The program shall meet criteria established by the National Certified Public Managers Consortium. The Chairperson or designee shall be Chief Administrative Officer of the program. The Director of the [Office of Training] **CLIP** shall be the Program Director.

(b) The Program shall consist of progressive levels of instruction delivered jointly by the [Office of Training] **CLIP** and an institution of higher education selected by the Civil Service Commission.

4A:6-4.5 Career Development Programs: State service

(a) Departments or agencies may, with the written approval of the [Office of Training Director] **CLIP manager** and consistent with their goals, workforce planning, and technological changes, implement programs that prepare employees to move to new assignments or career opportunities.

1. A department or agency shall seek written approval from the [Office of Training Director] **CLIP manager** for a program referred to in (a) above by submitting a written plan. This plan shall include the program’s goals, objectives, target population, projected outcome, and evaluation criteria for the program’s success.

(b) (No change.)

4A:6-4.10 Employee Advisory Service: State service

(a)-(e) (No change.)

(f) An appointing authority that is informed that an employee is receiving services through EAS, [shall] **should** consult with [the supervisor of] the EAS [program] prior to seeking removal of the employee.

(g) (No change.)

CHAPTER 7

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

SUBCHAPTER 3. POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE; COMPLAINT PROCEDURES, AND APPEALS

4A:7-3.1 **State Policy [prohibiting discrimination] Prohibiting Discrimination in the [workplace] Workplace (State Policy)**

(a) The State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, forms of employment discrimination or harassment based upon the following protected categories are prohibited and will not be tolerated: race, creed, color, national origin, nationality, ancestry, age, sex/gender, [(including) pregnancy]), marital status, civil union status, domestic partnership status, familial status, religion, affectional or sexual orientation, gender identity or expression, atypical hereditary cellular or blood trait, genetic information, liability for service in the Armed Forces of the United States, or disability. To achieve the goal of maintaining a work environment free from discrimination and harassment, the State of New Jersey strictly

prohibits the conduct that is described in this policy. This is a zero tolerance policy. This means that the State and its agencies reserve the right to take either disciplinary action, if appropriate, or other corrective action, to address any unacceptable conduct that violates this policy, regardless of whether the conduct satisfies the legal definition of discrimination or harassment.

1. Prohibited discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. Thus, this policy applies to all employees and applicants for employment in State departments, commissions, State colleges or universities, agencies, and authorities (hereafter referred to in this section as “State agencies” or “State agency”). The State of New Jersey will not tolerate harassment or discrimination by anyone in the workplace including supervisors, co-workers, **employees of Gubernatorial Transition Offices**, or persons doing business with the State. This policy also applies to [both] conduct that occurs in the workplace and conduct that occurs at any location [which] **that** can be reasonably regarded as an extension of the workplace (any field location, any off-site business-related social function, or any facility where State business is being conducted and discussed). **This policy also applies to posts on any social media site and/or electronic device, personal or business, that adversely affects the work environment defined by the State Policy.**

2.-3. (No change.)

(b) It is a violation of this policy to use derogatory or demeaning references regarding a person’s race, gender, age, religion, disability, affectional or sexual orientation, ethnic background, or any other protected category set forth in (a) above. A violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

1. Examples of behaviors that may constitute a violation of this policy include, but are not limited to:

i.-vi. (No change.)

vii. Displaying or distributing materials, [(including electronic communications)] in the workplace **or outside of the workplace that has an adverse impact on the work environment, including electronic communications**, that contains derogatory or demeaning language or images pertaining to any of the protected categories.

(c) It is a violation of this policy to engage in sexual (or gender-based) harassment of any kind, including hostile work environment harassment, quid pro quo harassment, or same-sex harassment.

1. (No change.)

2. Examples of prohibited behaviors that may constitute sexual harassment and are, therefore, a violation of this policy include, but are not limited to:

i. (No change.)

ii. Unwanted physical contact, such as intentional touching, grabbing, pinching, brushing against another’s body, or impeding or blocking movement;

iii. Sexual physical contact that involves any form of coercion, force, or lack of consent, such as sexual assault;

[(iii.) iv. Verbal, written, or electronic sexually suggestive or obscene comments, jokes, or propositions, including letters, notes, e-mail, text messages, invitations, gestures, or inappropriate comments about a person’s clothing;

Recodify existing iv.-vii. as v.-viii. (No change in text.)

(d) Any employee who believes that she or he has been subjected to any form of prohibited discrimination/harassment, or who witnesses others being subjected to such discrimination/harassment, [is encouraged to] **should** promptly report the incident(s) to a supervisor or directly to the State agency’s Equal Employment Opportunity/Affirmative Action Officer or to any other persons designated by the State agency to receive workplace discrimination complaints. **Victims of prohibited sexual physical contact can file a criminal complaint with law enforcement of the municipality where the incident occurred. Victims can also make a criminal report and a report to his or her supervisor/manager and/or Equal Employment Opportunity/Affirmative Action Officer; one does not have to choose one or the other.** All employees [are expected to] **shall** cooperate with investigations undertaken pursuant to (g) below. Failure to cooperate in an investigation may result in

administrative and/or disciplinary action, up to and including termination of employment.

(e)-(f) (No change.)

(g) Each State agency shall follow the State of New Jersey Model Procedures for Processing Internal Complaints Alleging Discrimination in the Workplace with regard to reporting, investigating, and where appropriate, remediating claims of discrimination/harassment. See N.J.A.C. 4A:7-3.2. Each State agency is responsible for designating an individual, or individuals, to receive complaints of discrimination/harassment, investigating such complaints, and recommending appropriate remediation of such complaints. In addition to the Equal Employment Opportunity/Affirmative Action Officer, each State agency shall designate an alternate person to receive claims of discrimination/harassment.

1.-3. (No change.)

4. Each State agency shall maintain a written record of the discrimination/harassment complaints received. Written records, **consisting of the investigative report and any attachments, including witness statements**, shall be maintained as confidential records to the extent practicable and appropriate **and will remain so indefinitely**.

(h) (No change.)

(i) **The burden is on the complainant to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy.** An employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complaint, [may] **will** be subjected to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

(j) All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances, confidentiality shall be maintained throughout **and after** the investigative process **has been completed**. In the course of an investigation, it may be necessary to discuss the claims with the person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. All persons interviewed, including witnesses, shall be directed not to discuss any aspect of the investigation with others in light of the important privacy interests of all concerned. Failure to comply with this confidentiality directive [may] **will** result in administrative and/or disciplinary action, up to and including termination of employment.

(k)-(l) (No change.)

4A:7-3.2 Model procedures for internal complaints alleging discrimination in the workplace

Each State department, commission, State college or university, agency, and authority (hereafter referred to in this section as "State agency") is responsible for implementing this model procedure, completing it to reflect the structure of the organization, and filing a copy of the completed procedure with the Division of EEO/AA.

"(a) All employees and applicants for employment [have the right and are encouraged to immediately] **shall promptly** report suspected violations of the State Policy Prohibiting Discrimination in the Workplace, N.J.A.C. 4A:7-3.1 (**State Policy**). **The complainant shall have the burden to articulate a sufficient nexus between the alleged conduct to a protected category pursuant to the State Policy.**

(b) Complaints of prohibited discrimination/harassment can be reported to either (name of Officer), the EEO/AA Officer, or to any supervisory employee of the State agency. Complaints may also be reported to (Authorized Designee). **To facilitate the reporting of a complaint, Discrimination Complaint Processing Forms (DPF-481) can be found on the Appointing Authorities' Intranet or the Civil Service Commission's website.**

(c) [Every effort should be made to report complaints promptly.] **Complaints and allegations of discrimination/harassment should be reported promptly.** Delays in reporting may not only hinder a proper investigation, but may also unnecessarily subject the victim to continued prohibited conduct.

(d)-(g) (No change.)

(h) During the initial intake of a complaint, the EEO/AA Officer or authorized designee will obtain information regarding the complaint, and determine if interim corrective measures are necessary to prevent continued violations of the State's Policy Prohibiting Discrimination in the Workplace. **Interim corrective actions include, but are not limited to:**

1. Separation of parties;
2. Removal of parties from the workplace; and
3. Involvement of law enforcement, when appropriate, for instances involving bodily harm or serious bodily harm.

(i) At the EEO/AA Officer's discretion, a prompt, thorough, and impartial investigation into the alleged harassment or discrimination will take place. **In determining whether or not a thorough and impartial investigation is warranted, the EEO/AA Officer when reviewing complaints shall consider, but is not limited to considering, the following factors: the facts presented, whether the complainant articulated a sufficient nexus between the alleged conduct to a protected category as set forth in N.J.A.C. 4A:7-3.1(a), the time the incident(s) occurred, the time the incident was reported, and whether the complainant and/or respondent is a current State employee (regardless of when the incident occurred).**

(j)-(m) (No change.)

(n) In a case where a violation has been substantiated, and no disciplinary action recommended, the party(ies) against whom the complaint was filed may appeal the determination to the Civil Service Commission at the address indicated in (m) above within 20 days of receipt of the final letter of determination by the State agency head or designee.

1.-2. (No change.)

3. If disciplinary action has been recommended in the final letter of determination, [the] **any party[(ies)] charged who is in the career service** may appeal using the procedures set forth in N.J.A.C. 4A:2-2 and 3.

(o)-(p) (No change.)

CHAPTER 8
LAYOFFS

SUBCHAPTER 1. PROCEDURES

4A:8-1.1 General

(a) (No change.)

[(b) In the case of those titles approved for inclusion in job bands (see N.J.A.C. 4A:3-3.2A), all layoff rights, including lateral, demotional, and special reemployment rights, shall be based on the job band, not the title level within the band.

1. All references to titles in this chapter shall mean the job band in the case of those titles approved for inclusion in job bands.

2. All references to class codes in this chapter shall mean the class code of the lowest title level in the band in the case of those titles approved for inclusion in a job band.]

Recodify existing (c)-(d) as **(b)-(c)** (No change in text.)

SUBCHAPTER 2. EMPLOYEE LAYOFF RIGHTS

4A:8-2.2 Exercise of lateral and demotional rights

(a)-(f) (No change.)

(g) Employees who are placed in trainee titles shall serve a complete training period if the trainee title is outside of either the specialized or generalized title series [or job band] from which they were laid off.

(h) (No change.)