



Provisional Appointment

Before you accept provisional appointment, please review this factsheet to better understand the legal framework that defines this type of service. Below we outline how provisional service can impact your promotion, transfer, tenure, and exam eligibility opportunities.

Authorized by Section 65 of Civil Service Law, provisional appointments fill a competitive class vacancy when no viable list exists to fill the position. Provisional service is non-permanent, pending the creation of a viable eligible list from which a permanent appointment can be made. If any laws, rules, or regulations outlined in this document are not followed at your work site, contact your PEF Field Representative (<https://www.pef.org/contact/>).

Appointment Process

1. An agency appointing officer nominates a person for the provisional appointment
 - i. The employee cannot be eligible for alternative mechanisms for appointment such as transfer, reinstatement, non-competitive examination, etc.
2. The nominee is certified by the Civil Service Department as qualified
 - i. Certification consists of a review and evaluation of the training, experience, and other qualifications of the nominee, without written, oral or other performance tests
3. The individual may be approved as a provisional appointee until the creation of a viable eligible list

Conditions

- Provisional appointees will not serve a probationary term
- Provisional appointees have the same salary rights as permanent employees
- When a permanent employee receives provisional appointment to another position, a leave of absence is provided for the duration of their provisional service
- Provisional service immediately preceded and followed by permanent service counts as continuous service
- A provisional employee serving in a classified traineeship program will be permitted to advance upon successful completion of each step of the traineeship
- Upon a trainee's permanent appointment, whichever is longer, a probation period of 26-52 weeks or the remainder of traineeship will be served

Limitations

- A provisional employee will not be eligible for transfer or reinstatement based upon provisional service
- A provisional employee has no tenure rights and may be removed at will at any time

Exams and Permanent Appointment

- Provisional service can be credited toward minimum qualifications for a promotion exam when:
 - Such service is in the same or a related occupational field as the title being examined for and
 - The provisional employee is on leave from a qualifying position
- Provisional service can be credited toward minimum qualifications for an open-competitive exam when:
 - Similar qualifying experience may be gained outside State service
- Provisional service can be credited toward any test that is an evaluation of training and experience when:
 - Similar training and experience of equivalent value may be gained outside State service
- *When receiving permanent appointment immediately following provisional service in the same title, all time spent as provisional shall be credited towards:
 - Required qualifications for promotional examination
 - Any probationary term required for permanent appointment
- A provisional employee who becomes eligible for permanent appointment must be appointed from the list or terminated by the appointing authority
 - If the appointing authority takes no action, the provisional employee shall be afforded permanent appointment

*PEF advocated these policies and negotiated the terms of the legislation passed to strengthen opportunities members have from provisional service

Timelines

- Provisional appointments may not exceed nine months
 - Positions held by provisional appointment for one month require the Civil Service Department to order and conduct an examination for competitive appointment
- Successive provisional appointments shall not be made to the same position after the expiration of the authorized nine-month period unless:
 - An examination fails to fill all positions held by provisional employees, a new provisional appointment may be given to a current or former provisional appointee
 - A provisional appointee becomes eligible for permanent appointment and is then to be continued in or appointed to such permanent position
- Within two months following the establishment of a viable eligible list, provisional appointment shall be terminated
 - The appointing authority may seek a waiver extending provisional service to a maximum of 4 months following the creation of a viable eligible list
 - Waivers can be sought when the appointing officer believes that terminating all provisional appointees within the two-month timeframe would disrupt or impair essential public service
 - The Department of Civil Service may authorize termination of various provisional appointees on a staggered basis