

EXECUTIVE ORDER NO. 103 NOTICES

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Notice of Rule Waiver/Modification/Suspension Pursuant to Executive Order No. 103

(2020)

COVID-19 State of Emergency

Time Frames for Filing Certain Administrative Appeals

N.J.A.C. 4A:2-1.1, 2.5, 2.6, and 5.2; 4A:3-3.9; 4A:4-5.2, 6.4, and 6.5; 4A:6-2.5, 2.6, 2.7, and 2.8; and 4A:7-3.2

Authorized: April 9, 2020, by the Civil Service Commission, Deirdré L. Webster Cobb, Chairperson.

Authority: N.J.S.A. App.A:9-45 and App. A:9-47; and Executive Order No. 103 (2020).

Effective Date: April 9, 2020.

Expiration Date: Upon the Termination of the Emergency Declaration Made Pursuant to Executive Order No. 103 (2020).

This is an emergency adoption of temporary rule relaxations and modifications of the regulatory provisions concerning the time frames for filing certain administrative appeals (N.J.A.C. 4A:2-1.1(b), N.J.A.C. 4A:2-5.2(a), N.J.A.C. 4A:3-3.9(e), N.J.A.C. 4A:4-6.5(e)), the departmental hearing process (N.J.A.C. 4A:2-2.5(c) and N.J.A.C. 4A:2-2.6(d)), position classification review requests (N.J.A.C. 4A:3-3.9 et seq), working test period extensions (N.J.A.C.

4A:4-5.2(e), competitive examination review time (N.J.A.C.4A:4-6.4(a) and (b), inclement weather or emergency conditions (N.J.A.C. 4A:6-2.5), flexitime programs (N.J.A.C. 4A:6-2.6), alternative workweek procedures (N.J.A.C. 4A:6-2.7), adjusted hours of operations (N.J.A.C. 4A:6-2.8), and timeframes for completing investigations of State Policy Against Discrimination in the Workplace (State Policy) (N.J.A.C. 4A:7-3.2(l)). Section 6 of EO 103, issued in response to the COVID-19 pandemic, authorizes agency heads to waive/suspend/modify any existing rule, where the enforcement of the rule would be detrimental to the public welfare during the emergency, notwithstanding the provisions of the Administrative Procedure Act or any law to the contrary. Pursuant to that authority, and with the approval of the Governor and in consultation with the State Director of Emergency Management and the Commissioner of the Department of Health, the Civil Service Commission is relaxing or modifying its rules as follows:

The timeframe for filing appeals and supporting documentation of *non-disciplinary matters* pursuant to *N.J.A.C. 4A:2-1.1(b)*, *N.J.A.C. 4A:2-5.2(a)*, *N.J.A.C. 4A:3-3.9(e)*, and *N.J.A.C. 4A:4-6.5(e)* is established by regulation, not statute, and therefore, is not jurisdictional. Individuals who desire to file appeals of administrative matters pursuant to these regulations such as, among other things, examination eligibility, challenges to examination questions or test mode, list removals, bypasses, reassignments, position review actions, administrative actions, State Policy determinations, and layoff rights determinations, must file these challenges within 20 days of receiving notice. However, in light of the COVID-19 emergency, some individuals desiring to file appeals pursuant to these regulations may not be able to do so within the regulatorily required 20-day period. As the time frame for filing these types of appeals is not required by statute, the

Commission is modifying the rule so that the timeframe for filing such appeals be 60 days, which may be extended for good cause, from the action being appealed.

N.J.A.C. 4A:2-2.5(c) and *N.J.A.C. 4A:2-2.6(d)* concern the timeframes in which departmental disciplinary hearings must be requested and heard by a hearing officer and the issuance of a determination after the departmental hearing. As many appointing authorities both in State and local government service may be on significantly reduced staffing levels due to the COVID-19 emergency, hearings and determinations for employees charged with disciplinary action may not be able to be rendered within the required regulatory time frame. Therefore, the Commission is modifying the rule so that the timeframe in which an employee charged may request a departmental level hearing, the timeframe in which an appointing authority should conduct the departmental hearing, and the timeframe that the hearing officer is required to issue a recommendation regarding the charges, be relaxed to permit these actions to occur after their respective regulatory time frames, for good cause, from the request for a hearing and from the conclusion of the hearing.

N.J.A.C. 4A:3-3.9 et. seq. governs the position review process in both State and local service. These regulations require appointing authorities and this agency to provide certain information as part of the position review process to this agency within certain timeframes. As many appointing authorities both in State and local government services may be on significantly reduced staffing levels due to the COVID-19 emergency, the processing of these requests and issuance of a final recommendation of position classification within the required timeframes may not be feasible. Accordingly, the Commission is modifying the rule so that the timeframes required

of the position classification review process be relaxed to permit such actions to occur after the required regulatory time frames, if good cause is shown, from the initiation of the classification review.

N.J.A.C. 4A:4-5.2(e) requires that an individual serving in a working test period have the time they are on an approved leave of absence extend to the completion of the working test period by the time equal to that leave or voluntary furlough. Since many appointing authorities both in State and local government services may be on significantly reduced staffing levels due to the COVID-19 emergency, individuals serving in their working test period or their supervisor may not be able to report to work to permit a fair evaluation of the employee's performance. As such, the Commission is modifying the rule so that the provisions of *N.J.A.C. 4A:4-5.2(e)* be relaxed to permit the extension of the completion of the working test period by the time equal to that period of time an employee or supervisor may be out of work due to the COVID-19 emergency.

N.J.A.C. 4A:4-6.4(a) and (b) provide timeframes for an individual who has taken an assembled competitive examination to review the test materials and scoring keys. Because the employees of many appointing authorities both in State and local government services may have been exposed to COVID-19, and due to any potential reduced staffing level of this agency, individuals may not be able to schedule review of their examination materials in the regulatory timeframes. Therefore, the Commission is modifying the rule so that the provisions regarding timeframes for an individual who has competed in an assembled examination to review their testing materials be relaxed to permit such actions to occur after the required regulatory time

frames, if good cause is shown, after participating in the test, but prior to issuance of an eligible list.

N.J.A.C. 4A:6-2.5 (inclement weather or emergency conditions), *N.J.A.C. 4A:6-2.6* (flexitime programs), *N.J.A.C. 4A:6-2.7* (alternative workweek procedures), and *N.J.A.C. 4A:6-2.8* (adjusted hours of operations) concern options an appointing authority may implement to create flexible working hours for employees or hours of operations for the appointing authority. Given the need for State appointing authorities to ensure the consistent delivery of crucial public services and the potential reduced staffing levels as a result of the COVID-19 emergency, appointing authorities and employees may need to adjust work schedules and hours of operations. Therefore, the Commission is modifying the rule so that these regulatory provisions be relaxed to ensure that appointing authorities are provided with maximum ability to swiftly adjust their human resource assets to ensure the consistent delivery of public services.

N.J.A.C. 4A:7-3.2(1) specifies the timeframe in which an investigation of a complaint of a violation of the State Policy is to be completed. As staffing levels may be reduced as a result of the COVID-19 emergency, State appointing authorities may not be able to complete their investigations within the required timeframe. Therefore, the Commission is modifying the rule so that the provisions of *N.J.A.C. 4A:7-3.2(1)* be relaxed so that investigations initiated during the period of EO 103 may be completed after the required regulatory time frame if good cause is shown, provided that the complainant be notified if the investigation will take longer than the maximum time permitted under the rules.

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

CHAPTER 2

APPEALS, DISCIPLINE, AND SEPARATIONS

SUBCHAPTER 1. APPEALS

4A:2-1.1 Filing of appeals

(a) (No change.)

(b) Unless a different time period is stated, an appeal must be filed within [20 days] **60 days, which may be extended for good cause**, after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed.

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

SUBCHAPTER 2. MAJOR DISCIPLINE

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

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

(c) The employee may request a departmental hearing within five days, **which may be extended for good cause**, 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, **which may be extended for good cause**, 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) (No change.)

4A:2-2.6 Hearings before the appointing authority

(a)-(c) (No change.)

(d) Within 20 days, **which may be extended for good cause**, of the hearing, or such additional time as agreed to by the parties, the appointing authority shall make a decision on the charges and furnish the employee either by personal service or certified mail with a Final Notice of Disciplinary Action. See N.J.A.C. 4A:2-2.13 for the issuance of a Final Notice in removal appeals by certain law enforcement officers and firefighters.

SUBCHAPTER 5. EMPLOYEE PROTECTION AGAINST REPRISALS OR POLITICAL COERCION

4A:2-5.2 Appeals

(a) An employee may appeal a reprisal or political coercion action to the Civil Service Commission within [20] **60** days, **which may be extended for good cause**, of the action or the date on which the employee should reasonably have known of its occurrence.

(b)-(e) (No change.)

CHAPTER 3

CLASSIFICATION, SERVICES, AND COMPENSATION

SUBCHAPTER 3. CLASSIFICATION

4A:3-3.9 Position review request and appeal procedure

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

(c) In State service, a classification petition by an employee or union representative shall be made in writing. The petition shall include a position classification questionnaire completed by the petitioner, and shall specify the title that the 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.-2. (No change.)

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, **which may be extended for good cause**, of the employee's submission of the 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 petitioner's most recent PAR form (see N.J.A.C. 4A:6-5).

4. (No change.)

5. A representative of the Civil Service Commission shall review the petition filed pursuant to (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, **which may be extended for good cause**, of receipt of the petition and all completed documentation as required by the representative of the Civil Service Commission, and shall:

i.-ii. (No change.)

(d) In local service, 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 petition must identify the specific duties that do not conform to the specification for the title and, if the 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 petition shall also include a completed position classification questionnaire and an organizational chart. If the petitioner's supervisor has not signed the questionnaire within 15 working days, **which may be extended for good cause**, of receipt of the questionnaire from the petitioner, the 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 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, **which may be extended for good cause**, of receipt of the 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) 4 and 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] **60 days, which may be extended for good cause**, 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 that were not presented at the prior level of appeal shall not be considered. When new information and/or arguments are presented, the appeal may be remanded to the prior level.

1.-4. (No change.)

(f) (No change.)

CHAPTER 4

SELECTION AND APPOINTMENT

SUBCHAPTER 5. WORKING TEST PERIOD

4A:4-5.2 Duration

(a)-(d) (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 **or the period of time the employee is out of work due to the COVID-19 emergency.**

SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

4A:4-6.4 Review of examination items, scoring, and administration

(a) No later than five business days, **which may be extended for good cause**, after the examination has been held, candidates for multiple choice examinations may contact appropriate Civil Service Commission staff by telephone to make an appointment to review the keyed test booklet.

1. Within five business days, **which may be extended for good cause**, after the date of review, in the case of candidates who have reviewed the keyed test booklet, or five business days from the date the multiple choice examination has been held, in the case of all other candidates, candidates may file an appeal in writing against the keyed response for a given item, or with respect to the job-relatedness or appropriateness of test content. The appeal shall specify the question(s) being challenged.

2. Candidates for multiple choice examinations may review their examination papers and the scoring key 20 days, **which may be extended for good cause**, after the notice date of the examination results. However, such candidates may file appeals during this 20-day period only with respect to the scoring of their test papers.

(b) No later than five business days, **which may be extended for good cause**, after the examination has been held, candidates for tests other than multiple choice may contact Commission staff by telephone to make an appointment to review the test. These candidates may file an appeal in writing of examination items and scoring within 20 days, **which may be extended for good cause**, after the candidate's date of review. Candidates for tests other than multiple choice who do not request a review of their examination papers may file an appeal of examination items and scoring within [20 days] **60 days, which may be extended for good cause**, of the notice date of examination results.

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

4A:4-6.5 Medical and/or psychological disqualification appeals

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

(e) The appellant may submit to the Civil Service Commission a report from a New Jersey licensed physician, psychologist, or psychiatrist of his or her own choosing, which must be submitted within 90 calendar days, **which may be extended for good cause**, of the filing of his or her appeal to the Civil Service Commission. The appellant shall furnish the appointing authority with copies of all submissions to the Civil Service Commission. See (f) below for report requirements.

(f)-(h) (No change.)

CHAPTER 6

LEAVES, HOURS OF WORK, AND EMPLOYEE DEVELOPMENT

SUBCHAPTER 2. HOURS OF WORK

4A:6-2.5 Inclement weather or emergency conditions: State service

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

(c) Each State department and agency shall [annually] review its criteria for the designation of essential attendance employees **on an on-going basis during the COVID-19 emergency** and, based on these criteria, update its roster of such employees. Employees so designated shall be notified [no later than October 31 of each year] **as necessary during the duration of the COVID-19 emergency** of this designation and shall at that time be provided with a copy of the department or agency's Essential Employee Attendance Plan. The Plan shall include the responsibilities, requirements, and expectations of such employees in the event that a period of inclement weather or other adverse situation requires the curtailment of State operations or services.

1. (No change.)

(d) (No change.)

4A:6-2.6 Flexitime programs: State service

(a)-(c) (No change.)

(d) Establishment, modification, or termination of a flexitime program shall [not] become effective [without the approval of the] **upon approval of the Department head and filing with the Chairperson or designee.** [Requests for these actions shall be submitted at least 30 days in advance of the proposed effective date to the Civil Service Commission and] **Plans** shall include:

1.-9. (No change.)

(e)-(h) (No change.)

4A:6-2.7 Alternative workweek programs: State service

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

(e) Appointing authorities shall develop[, subject to approval by the Chairperson or designee,] appropriate sick, vacation, and administrative leave schedules for employees participating in an alternative workweek program.

(f) (No change.)

(g) Establishment, modification, or termination of an alternative workweek program shall [not] become effective [without the approval of the Chairperson or designee. Requests for these actions must be submitted at least 30 days in advance of the proposed effective date to the Civil Service Commission and shall include the same items listed in N.J.A.C. 4A:6-2.6(d)] **with the approval of the Department head.**

(h)-(k) (No change.)

4A:6-2.8 Adjusted hours of operation: State service

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

(c) [Except for emergency situations of limited duration, adjustments] **Adjustments** in hours of daily or shift operation shall not become effective without the approval of the [Chairperson or designee. Requests for these actions should be submitted at least 30 days in advance of the proposed effective date to the Civil Service Commission] **Department head** and shall include:

1.-6. (No change.)

(d) (No change.)

CHAPTER 7

EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

SUBCHAPTER 3. POLICY PROHIBITING DISCRIMINATION IN THE WORKPLACE;

COMPLAINT PROCEDURES, AND APPEALS

4A:7-3.2 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)-(k) (No change.)

(l) The (State agency head or designee) will issue a final letter of determination to both the complainant(s) and the person(s) against whom the complaint was filed, setting forth the results of the investigation and the right of appeal to the Civil Service Commission as set forth in subsections (m) and (n) below. To the extent possible, the privacy of all parties involved in the process shall

be maintained in the final letter of determination. The Division of EEO/AA shall be furnished with a copy of the final letter of determination.

1. (No change.)

2. The investigation of a complaint shall be completed and a final letter of determination shall be issued no later than 120 days after the initial intake of the complaint referred to in (h) above is completed.

3. The time for completion of the investigation and issuance of the final letter of determination may be extended by the State agency head for up to 60 additional days, **which may be extended for good cause**, in cases involving exceptional circumstances. The State agency head shall provide the Division of EEO/AA and all parties with written notice of any extension and shall include in the notice an explanation of the exceptional circumstances supporting the extension.

(m)-(p) (No change.)