

CIVIL SERVICE

CIVIL SERVICE COMMISSION

Violations and Penalties

Proposed Readoption with Amendments: N.J.A.C. 4A:10

Proposed: July 6, 2015 at 47 N.J.R. 1377(a).

Adopted: November 5, 2015 by the Civil Service Commission, Robert M. Czech, Chairperson.

Filed: November 5, 2015 as d. , without change.

Authority: N.J.S.A. 11A:2-6, 11A:2-11.e, 11A:2-23, 11A:4-5, 11A:10-1 through 10-5, and 11A:11-2; P.L. 2008, c. 29; and 5 U.S.C. §§ 1501 et seq.

Effective Date: November 5, 2015

Expiration Date: November 5, 2022

Summary of Hearing Officer Recommendations and Agency Responses:

A public hearing on this readoption with amendments was held on August 19, 2015 in Trenton, New Jersey. Walker Ristau served as hearing

officer. No comments were received on the readoption with amendments at that time, and no recommendations were made by the hearing officer. No written comments were received. The record of the public hearing may be reviewed by contacting Henry Maurer, Director, Division of Appeals and Regulatory Affairs, Civil Service Commission, P.O. Box 312, Trenton, New Jersey 08625-0312.

Federal Standards Statement

With the exception of N.J.A.C. 4A:10-1.2(b), which concerns the Hatch Act (5 U.S.C. 1501 §§ et seq.), N.J.A.C. 4A:10 is not subject to any Federal requirements or standards.

The proposed amendment to N.J.A.C. 4A:10-1.2(b) would meet, but not exceed, Federal standards established by the Hatch Act with respect to the political activity of public officers and employees in the State of New Jersey where Federal monies are implicated. The Hatch Act, as amended by Pub. L. 112-230, prohibits certain types of political activity where the officer or employee's employment has been financed at least in part by Federal grants or loans. Also, where the individual's employment is completely funded by Federal monies, that individual may not run for public office, unless he or she is a Governor, Lieutenant Governor, mayor of a city, a duly elected head of a State or municipal executive department not falling under the New Jersey Civil Service system, or other person holding elective office. The proposed

amendment to N.J.A.C. 4A:10-1.2 would comply with these Federal standards but not go beyond them.

Additionally, the proposed change to N.J.A.C. 4A:10-1.2(c), which would simply correct a reference to the name of a Federal agency, is not subject to Federal standards.

Finally, the other proposed technical amendments to N.J.A.C. 4A:10 would ensure that all users of the rules are aware of the current name of this agency and its statutory powers and the current title and statutory powers of the Chairperson of the Civil Service Commission, and are not subject to any Federal standards or requirements.

Accordingly, a Federal standards analysis is not necessary.

Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 4A:10.

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

SUBCHAPTER 1. VIOLATIONS

4A:10-1.2 Political activity

(a) No employee in the career or senior executive service shall directly or indirectly use or seek to use his or her position to control or affect the political action of another person or engage in political activity during working hours. See N.J.S.A. 11A:2-23.

(b) No employee in the career, senior executive, or unclassified services whose principal employment is in connection with a program financed in whole or in part by Federal [funds] **grants** or loans, shall engage in any of the following prohibited activities under the Hatch Act (5 U.S.C. **§§** 1501 et seq.):

[1. Be a candidate for public office in a partisan election. This provision does not apply to the Governor, the mayor of a city, the elected head of an executive department or an individual holding elective office, where that office is the sole employment connection to federally funded programs;

2. Use official authority or influence that interferes with or affects the results of an election or a nomination for office; or

3. Directly or indirectly coerce contributions from subordinates in support of a political party or candidate.]

1. Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;

2. Directly or indirectly coerce, attempt to coerce, command, or advise a State, county, or municipal officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or

3. Be a candidate for elective office, if the salary of the employee is paid completely, directly or indirectly, by Federal grants or loans, except that this prohibition shall not apply to:

i. The Governor or Lieutenant Governor or an individual authorized by law to act as Governor ;

ii. The mayor of a city;

iii. A duly elected head of an executive department of the State or a municipality, which office does not fall under the Civil Service Act at Title 11A, New Jersey Statutes; or

iv. An individual holding elective office.

(c) The office of the Special Counsel of the United States Merit Systems Protection Board has responsibility for the investigation of Hatch Act matters.

SUBCHAPTER 2. ENFORCEMENT

4A:10-2.1 General provisions

(a) Where there is evidence of a violation of or noncompliance with Title 11A, New Jersey Statutes, or Title 4A, N.J.A.C., the [Department of Personnel,

Commissioner or Board] **Civil Service Commission** shall conduct an investigatory hearing or other review, as appropriate. If a violation or noncompliance is found, the [Commissioner or Board] **Commission** may:

1. Issue an order of compliance;
2. Assess costs, charges, and fines not to exceed \$10,000;
3. Order the appointment of an eligible from an outstanding list;
4. In State service, consolidate personnel functions;
5. Initiate a civil action in the Superior Court;
6. Recommend criminal prosecution; or
7. Take other appropriate action pursuant to law or rule.

(b) See N.J.A.C. 4A:10-3.1 and 3.2 for salary disapproval procedures.

4A:10-2.2 Failure to appoint from complete certification

(a) When the examination process has been initiated due to the appointment of a provisional or at an appointing authority's request, the appointing authority shall make an appointment from a resulting complete certification.

1. When an appointing authority has notified the [Department of Personnel] **Chairperson or designee**, either by the date of the examination or within 30 days after the initial date of the examination announcement, whichever date is earlier, that it has vacated the position and terminated the provisional appointee, the [Commissioner] **Chairperson or designee** may cancel the examination, permit the appointing authority not to make a

permanent appointment, or take other appropriate action.

2. Following the period set forth in (a)1 above, an appointing authority may, for valid reasons such as fiscal constraints, petition the [Commissioner] **Commission** for permission not to make a permanent appointment. The [Commissioner] **Commission** may grant such petition, but may order the appointing authority to reimburse the [Department] **Commission** for the costs of the selection process, provided, however, that when the jurisdiction in which the appointing authority is situated has agreed to the intergovernmental transfer pursuant to N.J.A.C. 4A:4-7.1A of an employee into a title for which an open competitive or promotional list exists, the appointing authority may petition the [Commissioner] **Commission** for a waiver of the costs of the selection process. The [Commissioner] **Commission** shall notify the appointing authority of the amount of the reimbursement and provide an opportunity to respond to the assessment within 20 days of such notice.

(b) In addition to the actions which the [Commissioner] **Commission** may take in (a) above, the [Commissioner or Board] **Commission** may take any action set forth in N.J.A.C. 4A:10-2.1. Prior to any such action being taken, the appointing authority shall be given notice and an opportunity to respond.

4A:10-2.3 Enforcement action

The [Commissioner, the Board,] **Commission** or any resident or other party in interest may bring an action in the Superior Court for the enforcement of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the [Commissioner or the Board] **Chairperson or the Commission**. The [Commissioner] **Commission** may join in any pending action.

4A:10-2.4 Criminal violation

It is a crime of the fourth degree for any person to purposefully or knowingly violate or conspire to violate any provision of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the [Commissioner or Board] **Chairperson or Commission**.

SUBCHAPTER 3. SALARY DISAPPROVAL

4A:10-3.1 General provisions

(a) The [Commissioner, the Board or an authorized representative of the Department of Personnel] **Chairperson of the Civil Service Commission or designee, or the Commission**, may disapprove and order the payment stopped of the salaries of any person employed in violation of Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., or an order of the [Commissioner or Board] **Chairperson or Commission**, the individual with employment authority over such person, and the person who authorizes payment of a disapproved salary.

(b) A notice of salary disapproval shall be given to the appointing authority, the affected employee, and other persons whose salaries are to be disapproved.

1. The notice shall state the nature of the violation and provide the appointing authority, the affected employee, and other affected persons 10 days to respond to the notice of salary disapproval.

2. A review conference may also be held at a time and location specified by the [Department of Personnel] **Chairperson or designee**.

(c) If the issue which required the notice of salary disapproval has not been resolved, a salary disapproval order shall be issued.

1. The order shall state the nature of the violation and require payment stopped to the affected employee.

2. The order may also require payment stopped to the individual with employment authority over such employee and the person who authorized payment of the disapproved salary.

3. The order shall be mailed to the appointing authority, the affected employee, the persons whose salaries have been disapproved, and in State service, the Department of the Treasury.

4. The appointing authority, the affected employee, and other persons whose salaries have been disapproved may appeal the order to the [Merit System Board] **Civil Service Commission** within 20 days of receipt of the order. See N.J.A.C. 4A:2-1[.1 et seq.], for appeal procedures.

5. If the violation has not been corrected and no appeal has been timely filed, the matter shall be referred to the [Board] **Commission** for review and any appropriate action pursuant to law or rule.

4A:10-3.2 Penalties and remedies

(a) In salary disapproval matters, the [Commissioner or the Board] **Commission** may:

1. Disapprove the payment of salary to an employee hired in violation of Title 11A, New Jersey Statutes, and Title 4A, N.J.A.C.;

2. Disapprove the payment of salary to persons who have approved or continued the payment of a disapproved salary or persons who have employment authority over an employee whose salary has been disapproved;

3. Order the appointment of an eligible from an outstanding certification;

4. Revoke an employment list;

5. Assess costs, charges, or fines pursuant to N.J.S.A. 11A:10-3;

6. Initiate a civil action in the Superior Court; and

7. Take other appropriate actions pursuant to law or rule.