



GENERAL LETTER NO. 227

TO: Agency Heads, Agency Human Resource Administrators, Affirmative Action Administrators, and Human Resources Business Center Staff

RE: PROVISIONAL APPOINTMENTS

DT: April 25, 2000 (retyped 8/1/2003)

The purpose of this General Letter is to provide clarification regarding the use of provisional appointments and to outline the procedures and documents required when processing provisional appointments. (This General Letter supersedes all previous policy statements and clarifying memoranda on this subject.)

Provisional appointments are governed by Section 5-235(a) of the Connecticut General Statutes. Section 5-235(a) states:

When a candidate list provided under section 5-215a contains fewer than five candidates, in order to facilitate the carrying on of public business or avoid inconvenience to the public, but not otherwise, the Commissioner of Administrative Services may authorize the filling of the position at once by provisional appointment, pending the establishment of a reemployment or candidate list. Any such provisional appointment shall continue only until a reemployment or candidate list for such position is established and, in no case, for a period exceeding a total of six months. No person shall receive more than one provisional appointment or serve more than six months as a provisional appointee in any one fiscal year.

Clearly, the intent of this section of the General Statutes is to limit the use of provisional appointment to those cases in which inconvenience to the public must be avoided or to facilitate the carrying on of public business. In addition, the statute limits the consideration of making a provisional appointment to situations where there are no reemployment or candidate lists or where a candidate list contains fewer than five names.

Several important legislative revisions have been enacted during the past eight years that should have resulted in almost eliminating the use of provisional appointments (original or promotional). Section 5-227a allows for the promotion of an employee without competitive examination and provisional appointment, in most cases when an employee's position has been reclassified. (Please refer to the statute and General Letter 226 for specific criteria that must be met.) Section 5-219 eliminates the requirement for competitive examinations and provisional appointments for positions requiring advanced professional degrees, certifications or licensures. Sections 5-233 and 5-234 have supported a non-competitive status for many training, entry level and other job classifications; again, eliminating the requirement for examinations and provisional appointments. In addition, DAS has reduced the average turnaround time for examination from 6.5 months to 2.5 months. All of these legislative changes along with the significant reduction in examination turnaround time should have significantly reduced the need for provisional appointments.

Although the overall number of provisional appointments has been reduced for the above reasons, as well as the hiring freeze, there are still a large number of provisional appointments being made. In many cases, the hiring agency is advertising the position, conducting interviews and making a commitment to a candidate prior to requesting and receiving approval from DAS to make a provisional appointment. This strategy not only violates the intent of Section 5-235 and merit system principles, it is costly to the state, confusing to the public and results in poor public relations. Although the hiring agency has conducted a recruitment effort, DAS is required by statute (Section 5-218 and 5-219) to advertise competitive examinations and examine all qualified applicants. In addition, when applicants respond to an examination posting they expect that the state is recruiting to fill a vacancy. When a position is filled provisionally, it is misleading to potential applicants and is perceived as a bypass of the merit system

and open competition for state jobs. It also sends the message that state jobs are filled based on “who you know” rather than on qualifications and open competition.

For the above reasons, DAS is requiring that hiring agencies receive approval to make a provisional appointment prior to advertising and/or posting the position. In addition, starting April 25, 2000, provisional appointments with retroactive dates will not be processed unless they result from the grievance or arbitration process or judicial action.

Employment Lists to Be Considered

All reemployment and SEBAC lists must be exhausted before consideration will be given for a provisional appointment. In addition, all candidate lists (agency promotional, statewide promotional and open competitive) must be exhausted before consideration will be given for a provisional appointment. If a candidate list exists with fewer than five names, agencies must contact and interview the candidates on the list. Documentation will be required explaining why the candidate(s) remaining on the list are not suited for the position. If there is adequate documentation, the agency may receive approval to appoint a qualified provisional candidate. Requests for provisional appointments will not be approved once an examination has been announced. In addition, provisional appointments will not be approved for job classes that are on continuous recruitment.

It should be noted that the SEBAC agreement allows an individual with SEBAC rights to be placed in a position provisionally even when there is a sufficient or insufficient candidate list available. As with all provisional appointments, the individual with SEBAC rights must take and pass the first examination announced in order to be appointed to the position permanently.

Provisional Request (Form PER-4)

Prior to initiating and advertising and recruitment campaign for a provisional candidate, agencies must submit a completed Form PER-4 to the Personnel Assessment and Staffing Services section of DAS for review and approval. The Form PER-4 serves as a critical document to satisfy the requirements of the statute. Agencies must check all appropriate employment lists and provide a detailed justification as to why the position must be filled provisionally and why the agency cannot wait to fill the position until a candidate list is promulgated. Upon receipt of the completed PER-4 the Personnel Assessment and Staffing Services section will determine whether or not a provisional appointment is appropriate and return the form to the hiring agency. A PER-4 must be submitted and approved for each provisional appointment, including appointments for the same individual for different time periods.

A revised copy of the Form PER-4 is attached. You can also find a copy of this revised form on the DAS Internet site (www.das.state.ct.us). Please make certain all copies of the old form are destroyed and copies of the new PER-4 form are distributed to your Human Resources staff.

In most cases, the Form PER-4 will not include the application form for the selected provisional candidate, as approval from DAS is required prior to the initiation of a recruitment effort. If a candidate has been identified as a result of a grievance or other reason, the candidate's application must be attached to the Form PER-4 when originally submitted. If the PER-4 is approved and an applicant is identified at a later date, the candidate's application must be submitted to the Personnel Assessment and Staffing Services section along with a copy of the approved PER-4. Persons appointed provisionally must meet the minimum experience and training requirements prior to appointment. **Approval of a candidate's experience and training must be obtained from the Personnel Assessment and Staffing Services section prior to making a commitment to an individual for a provisional appointment.**

To reiterate, all provisional appointments must be approved before employment commitments are made. DAS cannot and will not take responsibility for appointment and/or qualification problems if we are consulted after the fact.

Time Lines for Provisional Appointments

According to Section 5-235, provisional appointments can last for a maximum of six months. In addition, no person can receive more than one provisional appointment or serve more than six months as a provisional appointee in one fiscal year. For this reason, it is critical that an examination request (P-9) accompany a request for provisional appointment (PER-4). The required examination will be initiated as soon as possible so that the length of the provisional appointment, if approved, can be kept to a minimum.

Advising Provisional Appointees

It is critical that prospective provisional appointees be advised completely, in writing, regarding the details of their provisional status. A sample letter is attached for this purpose. It should be signed by the appointee and placed in his/her personnel file. This should aid in avoiding serious misunderstanding in the future.

This sample letter outlines several important facts about provisional appointments that candidates must know before accepting a provisional appointment. First and most importantly, a provisional candidate must be advised that s/he must apply for, take and pass the next examination for the job classification in order to be considered for permanent appointment. If s/he does not apply for, take and pass the next examination, s/he must be removed from the position. This action will occur whether or not the examination resulted in a sufficient or insufficient candidate list. Under no circumstance, will a provisional appointment be permitted to continue if the provisional appointee fails the required examination.

Second, provisional candidates must be advised that employment experience gained during provisional status cannot be credited for Experience and Training (E&T) examinations in the class in which the individual is serving provisionally. Adding provisional employment experience toward the final grade would result in unjustly weighting final ratings toward the incumbent. This is inconsistent with the intent of the merit system and fair and open competition for positions in state service.

Third, the provisional candidate must be advised that the provisional appointment can be ended at any time if a reemployment list appears prior to the individual taking and passing an examination and being appointed to the classification permanently.

Procedure for Making a Provisional Appointment

The following is a summary of the steps that must be taken when requesting a provisional appointment.

1. The requesting agency must check all appropriate candidate, reemployment and SEBAC lists to determine if a provisional appointment is permissible under Section 5-235. If any lists exist, candidates must be contacted and interviewed for the position.
2. If no employment lists exist, or candidates on the lists are not interested, or an insufficient candidate list exists (and the appropriate documentation is provided), the hiring agency completes and submits the revised Form PER-4 to the Personnel Assessment and Staffing section for review. The PER-4 must include a detailed justification for the provisional appointment including the reasons that the position must be filled provisionally and why the agency cannot wait for a candidate list to be promulgated in order to fill the position permanently. A request for examination (P9) must accompany the PER-4.
3. If DAS approves the request for provisional appointment (PER-4), the agency can begin recruiting to fill the position.
4. Once a provisional candidate is identified, the candidate must complete an application form (PLD-1). This form must be submitted by the agency to the Personnel Assessment and Staffing section for review to ensure the candidate meets the minimum experience and training requirements as stated on the job specification. The PLD-1 must be submitted with a copy of the approved PER-4.
5. The hiring agency must recheck all appropriate candidate, SEBAC and reemployment lists immediately prior to making the offer of appointment. SEBAC lists do not need to be rechecked if they have been officially checked within 21 days of the offer of appointment. Reemployment and candidate lists must always be rechecked.

Please refer to the attached pages (29 and 30) from the ATC Manual for details on processing a provisional appointment in ATC, required 301 approvals, and making the provisional appointment permanent. Please note that reemployment lists must be rechecked before a permanent appointment can be made. All new reemployment candidates must be contacted to determine their interest in the position. The provisional appointee can be appointed permanently from the candidate list only if no new reemployment candidates are interested in the position.

Please make copies of Pages 29 and 30 and place them in your ATC Manual.

Recruitment and Examinations

The Department of Administrative Services will make every effort to assist agencies in identifying qualified applicants for state positions. We are available to assist with standard and specialized recruitment efforts. We will also make every effort to reduce examination turnaround times in order to facilitate a permanent appointment and eliminate the

need for a provisional appointment. If you anticipate the need to fill a position and employment lists are not available, please contact the Personnel Assessment and Staffing Services section as soon as possible to discuss your needs and possible recruitment and examination strategies and timelines. This will reduce the need for duplicative recruitment efforts and provisional appointments.

Please make certain that this General Letter is distributed to all personnel and affirmative action staff in your agency.

If you have any questions concerning the use of provisional appointments, please contact Jeanne Gray at 860.713.5227.

Pamela L. Libby, Ph.D.
Director, Personnel Assessment and Staffing
860.713.5204

(This General Letter supercedes all prior memoranda from DAS on provisional appointments.)

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SAMPLE PROVISIONAL LETTER

Dear (Name):

I am pleased to inform you of your Provisional Appointment as a (Class Title) in the (Identify Unit and Agency), effective (Date). Your salary as a Provisional (Class Title) will be (Salary) and your Anniversary Increase Date will be (Date).

Provisional appointments, including provisional promotional appointments, serve to immediately implement or continue a specific and vital function or service of state government until such time as a permanent appointment can be made from a certified candidate list resulting from a competitive examination process.

There are several important conditions concerning Provisional Appointments which you should be aware of:

1. You are required to apply for and take the first examination announced for your job classification. You must earn a passing score on this examination in order to be considered for Permanent Appointment. Failure to apply for, take and pass the first examination will result in your separation from the position. This would result in your separation from state service if you do not have permanent status in the classified service or your return to your previously held class if you are a current state employee with permanent status in the classified service.
2. The work experience you gain while serving under a Provisional Appointment will not be credited if the required examination is in whole or part an Experience and Training examination.
3. If a reemployment list is established for this job classification, because of layoffs or other extenuating circumstances, prior to your permanent appointment from a candidate list, state law requires that this position be offered to the individual with reemployment rights.

Please sign this letter below and keep a copy for your records and return the original letter to me at the above address. If you have any questions, please contact me at (phone number).

Sincerely,
(Personnel Administrator)

I understand and agree to the conditions as outlined in this letter.

Employee Signature: _____ Date: _____