

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-02  
EMPLOYMENT PRACTICES**

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**1120-02-01 RESPONSIBILITY.** The Commissioner is responsible for administering the Act, these Rules, and establishing policies and procedures.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 8-30-107. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

**1120-02-02 DIVISIONS OF STATE SERVICE.** The state service is divided into the preferred service and the executive service.

**Authority:** T.C.A. § 8-30-201. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

**1120-02-03 APPLICATION FOR EMPLOYMENT.**

- (1) Applying for Positions in the Preferred Service. All applications for employment in preferred service positions shall be made in a manner prescribed by the Commissioner.
- (2) Disqualification of Applicants. The Commissioner may strike the name of a person from the list, if the Department determines that the applicant:
  - (a) is found to lack any of the required minimum qualification requirements established for the position;
  - (b) has previously been dismissed from state service for cause or gross misconduct;
  - (c) has willfully or intentionally submitted false information or documents in support of any application or has intentionally omitted information in any application which materially affects eligibility for employment consideration;
  - (d) has committed or attempted to commit a fraud or deception in connection with submitting an application or attempting to secure an appointment to state service;

(Rule 1120-02-.03, continued)

- (e) has used or attempted to use political pressure or bribery to secure an advantage in assessment or appointment;
  - (f) has directly or indirectly obtained information regarding an assessment to which the applicant was not entitled;
  - (g) has failed to submit an application correctly or within the prescribed time limit;
  - (h) has taken part in the compilation, administration, or correction of the assessment; or
  - (i) has otherwise violated provisions of this Rule or related policies established and distributed by the Commissioner.
- (3) Notice of Removal from Eligible List. An applicant who is removed from a list for any reason shall be notified in writing. An applicant may submit additional information and/or documentation to clarify any discrepancies within a time prescribed by the Commissioner to avoid removal from an eligible list.
- (4) Equal Employment Opportunities. The provisions of this section shall be administered consistent with the State's equal employment opportunities policies and obligations. All actions taken pursuant to this chapter shall be in strict compliance with all applicable state and federal civil rights laws.

**Authority:** T.C.A. §§ 8-30-101, 8-30-104, 8-30-105, 8-30-301, 8-30-303, 8-30-304, and 8-30-305.  
**Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

**1120-02-04 REQUEST TO FILL A POSITION.** Whenever an Appointing Authority proposes to fill a position in the preferred service, the authority shall submit to the Commissioner a statement showing the position to be filled, the duties for such position, the official station, the minimum qualifications, and preferred skills, abilities, competencies and knowledge of the person to be appointed.

**Authority:** T.C.A. §§ 8-30-306. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### **1120-02-05 ASSESSMENTS.**

- (1) Notice of Assessments. The Commissioner shall give public notice of all assessments, at least one (1) week in advance of the closing date for receipt of applications, by posting notices throughout the State. Public notice of assessments shall specify the job title, minimum salary for the position, the minimum or preferred qualifications, the final date on which applications will be received, and other conditions of assessment necessary for the position.
- (2) Evaluating Assessments. The Commissioner shall determine whether an applicant meets the minimum qualifications for the position. Applicants who meet the minimum qualifications shall be approved for placement on an eligible list.
- (3) Determining Minimum Qualifications. The Commissioner shall establish a procedure for the evaluation of the education, training, and experience qualifications, including licenses,

(Rule 1120-02-.05, continued)

certifications, approved Continuing Education Units (CEU's), and other factors as deemed appropriate by the Commissioner.

- (4) Admission to Assessments. Assessments shall be open to all persons who meet the minimum qualifications and requirements specified in the respective public notices. Each applicant admitted to an assessment shall be notified of the time, date and place of the assessment. The Commissioner may request additional documentation from the applicant prior to the assessment.
- (5) Conducting Written Assessments. A written assessment will be approved by the Commissioner with every precaution taken to prevent unauthorized persons from gaining knowledge of the nature or content of the tests. Written assessments shall be conducted in locations that are practical for proper administration. All applicants admitted to a written assessment shall adhere to the Department's established testing rules and procedures. The Commissioner may take any appropriate action, up to and including criminal prosecution, against applicants who do not adhere to these established rules and procedures.
- (6) Employees in Positions Added to the Preferred Service. If an executive service position is reassigned to the preferred service, the incumbent employee may, within one (1) year, be given an assessment in a manner prescribed by the Commissioner.
- (7) Oral Assessments. When an oral evaluation is part of the assessment method for a position or class of positions, the Commissioner shall work with the Appointing Authority in establishing the examiners as needed.
- (8) Notice of Assessment Results. The Commissioner shall notify each applicant in writing of the results of the assessment as soon as practicable. A manifest error in the assessment shall be corrected, if called to the attention of the Commissioner no later than one (1) month after the establishment of the list of eligibles. The correction, however, will not invalidate any appointment previously made from such list.
- (9) Rescheduling Assessments. When an applicant is unable to appear for a written assessment, the applicant may, upon satisfactorily showing the cause of his failure to appear, be granted permission by the Commissioner to take the written assessment at a later date.
- (10) Working Test Period. With input from the Division of Rehabilitation Services, Department of Human Services, the Commissioner may substitute a working test period in lieu of a written assessment for an applicant with a disability. The test period shall not exceed one (1) year. The work test period runs concurrently with the employee's probationary period as defined in 1120-02-.11.
- (11) Investigations. The Commissioner or any Appointing Authority may investigate an applicant's education, credentials, training, and experience to verify the statements contained in the application form or to verify statements regarding the applicant's character and fitness. If this investigation shows any falsification, including false information or documents submitted in support of any application or intentionally omitted information in any application which materially affects eligibility for employment consideration, the applicant may be removed from consideration for employment or, if employed, may be dismissed and disqualified from future assessments. Lesser discrepancies in applicant information may result in a reevaluation of the assessment if necessary.
- (12) Assessment Records. The Commissioner shall maintain all records pertinent to an assessment program. The retention of applications and other necessary assessment records shall be maintained as prescribed by law.

(Rule 1120-02-.05, continued)

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-301, 8-30-302, 8-30-303, 8-30-304, and 10-7-504.

**Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### 1120-02-.06 ELIGIBLE LIST.

- (1) Establishment of Eligible List. Upon request by the Appointing Authority, the Commissioner shall establish an eligible list for preferred service job classifications within a time prescribed by the Commissioner. The Commissioner shall establish and maintain lists of eligibles to meet the needs of the service.
- (2) Supplementing Eligible Lists. The Commissioner shall routinely review existing eligible lists to determine whether there are an adequate number of eligibles available to meet the needs of the service. When the Commissioner determines that a particular eligible list is inadequate or is likely to become inadequate, the Commissioner may order a supplemental assessment for the class of positions. The public announcement for supplemental assessments shall give notice of the dates when applications will be accepted and, when applicable, when written assessments will be administered.

Eligible lists for job classifications assessed on a continuous basis are supplemented as applicants are evaluated.

- (3) Duration of Eligible Lists. At the time a list of eligibles is established, the Commissioner shall determine the period during which such list shall remain in force. Subject to the limitations of the Act and these Rules, the Commissioner may consolidate or cancel an eligible list at any time after it has been established.
- (4) Removal and Notification of Names from an Eligible List. Any applicant whose name is removed from an eligible list for any reason shall receive written notice of such action within ten (10) days of the date of removal.
  - (a) The name of an eligible may be removed or made inactive on an eligible list for a class of positions for any of the following:
    - (1) an eligible receives a regular appointment to a vacancy in that class of positions;
    - (2) an eligible declines an employment offer for the announced position;
    - (3) an eligible fails to respond within five (5) days of the date of an invitation to interview;
    - (4) an eligible cannot be located;
    - (5) an eligible falsifies his legal residence;
    - (6) An eligible has been convicted of a crime related to the position or class of positions for which he or she has applied; or
    - (7) any cause occurs as specified in the Act or Rules regarding the rejection or disqualification of applicants.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-305, and 8-30-306. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25,

(Rule 1120-02-.06, continued)

1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### **1120-02-.07 CERTIFICATION AND USE OF ELIGIBLE LISTS.**

- (1) Certification of an Eligible List. The Commissioner shall certify an eligible list containing applicants meeting the minimum qualifications for the position to be filled by the requesting agency.
- (2) Referred List. Upon the request of the Appointing Authority, the Commissioner may establish employment, promotional, statewide, departmental, divisional, unit or any other list of eligibles deemed necessary or appropriate. The Commissioner shall issue a policy that agencies may use in establishing referred lists.
- (3) Request for Certification. When a vacancy occurs in one (1) or more established positions in a classification in the preferred service, the Appointing Authority may request a list to fill the position(s) in a manner prescribed by the Commissioner.
- (4) Methods of Certification. The Commissioner shall certify to the Appointing Authority the names of eligibles from the appropriate referred list for the classification. When requesting a referred list for a flex-classification position, the Appointing Authority may request a referred list for the trainee, intermediate or working level classifications.
- (5) Interviewing Candidates from a Referred List. If three (3) or more applicants are on the list of eligibles, the Appointing Authority shall offer an invitation to interview a minimum of three (3) applicants from the referred list of eligible. If less than three (3) applicants are on the list of eligibles, the Appointing Authority shall invite each person on the list to interview.
- (6) Veterans' Preference. When invitations to interview candidates are extended, whether for appointment or promotion, and the list contains eligible Veterans or Veteran spouses in compliance with T.C.A. § 8-30-307, such persons shall be invited to interview. If a Veteran is on the list of eligibles, and if the minimum qualifications and the skills, abilities, competencies and knowledge of the Veteran and any another applicant being interviewed for the position are equal, preference shall be given to the Veteran for the position. The Department shall adopt policy pertaining to Veterans' preference.
- (7) Appointment from a Referred List. Within thirty (30) days after being referred a list of eligibles, the Appointing Authority may appoint one (1) of the applicants on the list of eligibles. If no appointment is made from a referred list, the list shall expire upon the thirty-first (31<sup>st</sup>) day.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-306, and 8-30-307. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### **1120-02-.08 OTHER LISTS.**

- (1) Layoff List. The Department shall maintain a list of all preferred service employees affected by a reduction in force for a period of one (1) year following the employee's date of layoff. Employees so listed shall be notified of any job openings in the same job classification that the employee served immediately prior to layoff, shall be extended an invitation to apply for the job, and shall be granted an interview by the hiring agency upon application.
- (2) Selective Certification. An individual position or group of positions in a classification may, under special circumstances, be placed into a sub-classification because the group requires

(Rule 1120-02-.08, continued)

unique or special qualifications. Requests for selective certification shall be made in writing and approved by the Commissioner.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-305, 8-30-306, and 8-30-314. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

**1120-02-.09 NON-COMPETITIVE CLASSIFICATIONS.** For positions involving basic clerical, unskilled or semi-skilled labor, domestic, attendant or custodial work, when the character or place of the work makes it impracticable to supply the needs of the service by appointments made in accordance with the provisions of the Act, the Commissioner may adopt, or authorize the use of, such other procedures as the Commissioner determines to be appropriate in order to meet the needs of the service.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 8-30-311. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### **1120-02-.10 FILLING POSITIONS.**

- (1) Preferred Service Positions. All preferred service positions are regular full-time positions which may be filled by persons who are among the available eligibles on a referred list.

Preferred service positions may be filled on a full-time temporary basis outside the competitive process by qualified persons as determined by the Commissioner by temporary appointment, emergency appointment, or interim appointment. Preferred service positions may also be filled on a part-time basis with a seasonal appointment.

- (2) Executive Service Positions. Referred lists are not required to fill executive service positions. Executive service employees are at-will employees and serve at the pleasure of the Appointing Authority.
- (3) Overlap. An Appointing Authority may place more than one (1) employee in a single position in an overlap status subject to budgetary limitations and the approval of the Commissioner.
- (4) Job Sharing. An Appointing Authority may place more than one (1) part-time employee in a single full-time position in a job sharing status subject to budgetary limitations and the approval of the Commissioner. Agencies are responsible for ensuring that the number of hours worked by all employees assigned to the position number do not exceed the maximum number of full-time hours assigned to that position in a fiscal year. Positions used for job sharing and employees who job share are not classified as preferred service.
- (5) Mismatch. An Appointing Authority may request approval from the Commissioner to appoint an employee to a classification different from the classification of the position, provided the employee's classification is not higher than the classification of the position.

For preferred service appointments, the mismatch should be in the same or related classification series. The employee appointed should be able to meet the qualifications for the classification of the position upon attainment of additional education, experience or credentials. Preferred service mismatches should not exceed one (1) year except for employees in a lower level flex-classification position with a probationary period longer than one (1) year.

(Rule 1120-02-.10, continued)

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-201, and 8-30-309. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

### 1120-02-.11 APPOINTMENTS.

- (1) Regular Appointment. A regular appointment is an appointment to either a preferred, non-preferred or executive service position for an indeterminate period of time. A regular appointment is expected to continue contingent upon satisfactory performance and behavior by the employee and upon continued funding, classification and utilization of the position by the State. In the executive service, a regular appointment is at-will and continues at the pleasure of the Appointing Authority.
- (2) Emergency Appointment. An emergency appointment is an appointment to a full-time preferred service position for a period of service not to exceed one hundred twenty (120) days and may be made when conditions exist that necessitate an immediate short term appointment. An emergency appointment may not be renewed, and no person may receive more than one (1) emergency appointment in a twelve (12) month period. Emergency appointments do not require the use of eligible lists, however, emergency appointees shall meet the minimum qualifications for the class of positions appointed. Time served in an emergency appointment does not constitute creditable service for sick and annual leave accrual or service credit except for the purpose of longevity payments. Emergency appointments are not eligible for participation in the state insurance plan, but may be eligible for participation in the Tennessee Consolidated Retirement System (TCRS) as outlined in TCRS rules and policies.
- (3) Interim Appointment. Based on written justification submitted by an Appointing Authority, the Commissioner may approve an interim appointment for a period not to exceed one (1) year. Based on written justification submitted by an Appointing Authority, the Commissioner may approve an extension, up to one (1) year, if the Commissioner determines that such an extension is in the best interest of the State.

To be eligible for an interim appointment, the employee shall meet the minimum qualifications for the job classification to which the employee is appointed. If the interim appointment is made using a referred list, the Appointing Authority may grant the employee a regular appointment in the position using the referred list from which the interim appointment was made. Interim employees accrue leave under T.C.A. § 8-50-101, et seq. Interim employees are not considered to be in the preferred service.

- (4) Seasonal Appointment. Seasonal appointments do not require the use of eligible lists. Seasonal employees are not considered to be in the preferred service.
- (5) Temporary Appointment. A temporary appointment is the appointment of a person to a preferred service position for a temporary period until an appropriate list has been established. The term of a temporary appointment shall not to exceed six (6) months. Temporary employees accrue leave under T.C.A. § 8-50-101, et seq. Temporary employees are not considered to be in the preferred service.
- (6) Limited Term Appointment. The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited-term appointments pursuant to statute. Limited term appointments do not require the use of eligible lists and are classified as executive service.

(Rule 1120-02-.11, continued)

- (7) **Temporary Employment of Retired State Employees.** Retired State employees may temporarily return under certain conditions as outlined in the temporary employment form obtained from the Retirement Division of the Treasury Department. The retired employee may accept employment with a covered employer for up to one hundred twenty (120) days during a twelve (12) month period. These employees accrue leave under T.C.A. § 8-50-101, et seq., but are not considered to be in the preferred service.
- (8) **Appointments to Flex-Classification Positions.** To fill the vacancy of a flex-classification position, the Appointing Authority shall request from the Commissioner a referred list of applicants for either the trainee level classifications or the working level classification. Any eligible appointed to a flex-classification position from the referred list for either the trainee or working level classification shall serve a period of probationary employment as prescribed by the Commissioner for the classification. During the last month of the probationary period, the Appointing Authority shall certify to the Commissioner whether the employee has successfully completed the period of probationary employment and should, therefore, become a preferred employee in the position in the working level classification without further assessment or certification. The employee shall be removed from the position if the probationary period is not successfully completed. Such notification should be made in the same manner as prescribed for any other period of probationary employment.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-201, 8-30-202, 8-30-308, 8-30-309, and 8-30-310.

**Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### **1120-02-.12 PROBATIONARY PERIOD.**

- (1) **Purpose of the Probationary Period.** The probationary period is an essential part of the employment process used for the adjustment of an employee to a new position and to provide an employee with the opportunity to demonstrate to the appointing authority the employee's ability to perform the defined work outcomes and behavior expectations.
- (2) **Probationary Period for the Preferred Service.**
  - (a) For preferred service positions, a probationary period of at least twelve (12) months is required for all employees who receive regular appointments from a referred list. An Appointing Authority also has discretion to impose a probationary period for employees who receive regular appointments through demotion, voluntary reduction in rank, or interdepartmental transfers.
  - (b) The probationary period for a regular appointment may be reduced by the amount of time served in an emergency or interim appointment provided the appointment is for the same Appointing Authority in the same classification of positions and there is no break in service.
  - (c) Non-preferred employees do not serve a probationary period.
  - (d) Successful completion of a probationary period in a trainee or intermediate level classification satisfies the probationary period requirement necessary for a preferred employee when the position is deemed to be the working level classification.
- (3) **Duration of the Probationary Period.** A period of probation is completed at the close of business or shift on the day the employee completes the number of months of probation required.

(Rule 1120-02-.12, continued)

- (4) Initial Probationary Period.
  - (a) Every person appointed to a position in the preferred service shall be subject to a probationary period of employment. The probationary period shall commence immediately upon appointment and shall continue for such time, not less than one (1) year, as shall be established by the Commissioner. At any time during the employee's probationary period the Appointing Authority may remove the employee if, in the opinion of the Appointing Authority, the employee's performance or conduct during the probationary period indicates that such employee is unable or unwilling to satisfactorily perform or is not satisfactorily performing the defined work outcomes and behavior expectations, or that the employee's habits, dependability, or conduct do not merit continuance in the service.
  - (b) During the last month of an employee's probationary period, the Appointing Authority shall notify the Commissioner in writing whether the performance and conduct of the employee have been satisfactory and whether continued employment is recommended.
- (5) Subsequent Probationary Period. A preferred service employee who accepts another preferred service position in the same agency shall serve a subsequent probationary period for a period of time, not less than one (1) year. Employees serving a subsequent probationary period have the ability to appeal a suspension, demotion, or separation as described herein, except when a demotion returns to the employee to his or her former classification.
- (6) Promotion During Probation. The probationary period for the classification of positions to which an employee on probation is promoted begins with the date of appointment to such higher classification.
- (7) Working Test Period. The probationary period for an employee with a disability who is granted a substitution of the written and/or performance assessment shall run concurrently with the working test period as defined in Rule 1120-02-.04.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-201, 8-30-303, and 8-30-308. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### 1120-02-.13 PROMOTIONS.

- (1) Methods of Making Promotions. A vacancy may be filled by the promotion of a qualified employee with the approval of the Commissioner. Promotions between departments or agencies shall be approved by the respective appointing authorities. Promotions of employees to preferred service appointments shall be made by a process as determined by the Commissioner. Any employee who has been demoted or reduced in rank may be promoted, at the discretion of the Appointing Authority and with the approval of the Commissioner, to a preferred service position in a classification without additional assessment or certification if the employee was a preferred employee in that classification in that agency.
- (2) Promotion by Competitive Assessment. The Commissioner and the Appointing Authority may fill a vacancy by a promotional assessment. The promotional list resulting from such assessment shall be established in accordance with the applicable provisions of this chapter.

(Rule 1120-02-.13, continued)

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-303, and 8-30-306. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### **1120-02-.14 EMPLOYEE TRANSFER, LATERAL RECLASSIFICATION, DEMOTION, AND REDUCTION IN RANK.**

- (1) Transfer. A transfer is authorized in accordance with the following:
  - (a) An Appointing Authority may transfer an employee from one position to another position in the same classification or rank in the same agency.
  - (b) An employee may be transferred from a position in one agency to a position in the same classification in another agency with the approval of both appointing authorities and the Commissioner.
- (2) Lateral Reclassification. A lateral reclassification is authorized in accordance with the following:
  - (a) An Appointing Authority may laterally reclassify any qualified employee from one position to another position in another classification in the same agency with the approval of the Commissioner.
  - (b) A qualified employee may be laterally reclassified from a position in one agency to a position in another classification in another agency with the approval of both appointing authorities and the Commissioner.
- (3) Demotion. With the approval of the Commissioner, an agency may demote an employee who has failed to render satisfactory service in a position held but is considered worthy of employment. The agency shall notify the employee in writing of the effective date of the demotion and the appeal process, if applicable. The change of an employee from a position in one classification to a position in another classification is not considered a demotion if the change is the result of:
  - (a) the employee's request, with the concurrence of the department or agency;
  - (b) a change in the organizational structure of the government entity;
  - (c) because of the abolishment of a position;
  - (d) a reduction in force;
  - (e) organizational necessity; or
  - (f) compliance with T.C.A. § 8-30-205.
- (4) Involuntary Reduction in Rank. An involuntary reduction in rank occurs when the position occupied by an employee is affected by a reduction in force or in compliance with T.C.A. § 8-30-312. An involuntary reduction in rank is not a demotion.

Employees receiving an involuntary reduction in rank shall not serve an additional probationary period. Under an involuntary reduction in rank, an employee's salary may be reduced pursuant to policy.

(Rule 1120-02-.14, continued)

- (5) **Voluntary Reduction in Rank.** A voluntary reduction in rank occurs when an employee requests assignment to a position at a lower salary grade and the Appointing Authority concurs. A voluntary reduction in rank may require a salary reduction and the completion of an initial or subsequent probationary period. A voluntary reduction in rank is not considered a demotion and cannot be appealed.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-312, and 8-30-313. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### **1120-02-.15 TENURE, EMPLOYEE RECLASSIFICATION, SUSPENSION, AND SEPARATION.**

- (1) **Tenure of Office.** The service of preferred employees is contingent on both satisfactory performance and satisfactory conduct. Satisfactory performance is evidenced by the employee's record of performance. This provision, however, does not prevent the layoff of an employee in accordance with a reduction in force plan approved by the Commissioner.
- (2) **Suspension.** An Appointing Authority shall provide written notice upon suspending a preferred employee without pay for disciplinary purposes. Cumulative suspensions without pay shall not exceed thirty (30) work days in a twelve (12) month period. With approval from the Commissioner, an Appointing Authority may suspend an employee without pay for a period greater than thirty (30) work days, pending the appeal or the processing of an appeal or investigation. The agency shall place a copy of the written notice of the suspension in the employee's human resources file.
- (3) **Reduction in Force.** After written notice to the Commissioner, an Appointing Authority may implement a reduction in force, in accordance with the provisions of the Act. The Commissioner shall establish policies pertaining to reduction in force procedures.
- (4) **Resignations.** An employee who resigns shall state the reasons in writing to the Appointing Authority. To resign in good standing, the employee shall provide the resignation at least ten (10) days prior to the effective date of separation, unless such period is waived by the Appointing Authority or Commissioner, who shall notify the Commissioner in writing. Any employee who does not provide such notice may be designated as not eligible for rehire within that agency. A copy of the resignation shall be placed in the employee's human resources file.
- (5) **Job Abandonment.** Any employee who is absent from duty for more than three (3) consecutive work days without giving prior written or electronic notice to the appointing authority or appropriate manager that specifies the reason for such absence, and without securing permission to be on leave, or who fails to report for duty or to the immediate supervisor or the appointing authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent extenuating circumstances beyond the control of the employee causing the employee's absence or preventing the employee's return. An employee deemed to have resigned in accordance with these circumstances shall have the right to appeal such action through the appeal procedure described herein.
- (6) **Dismissal.** An Appointing Authority may dismiss a preferred employee for either unsatisfactory performance or unsatisfactory conduct. Executive service employees are at-will employees who serve at the pleasure of the Appointing Authority and do not have the ability to appeal a dismissal.

(Rule 1120-02-.15, continued)

- (7) Re-employment Recommendation. When an employee leaves State government, the Appointing Authority may make a recommendation concerning re-employment. All separating employees not recommended for re-employment shall be informed in writing by the Appointing Authority of the recommendation and its effect on future employment in the state service.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-313, 8-30-314, 8-30-315, and 8-30-316. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2010. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### 1120-02-.16 CERTIFICATION OF PAYROLLS.

- (1) Certification of Payrolls. All payments for personal service to any person holding a position in the state service shall be submitted by the Appointing Authority to the Commissioner in a manner prescribed by the Commissioner and the Commissioner of Finance and Administration. The Commissioner shall certify the payroll before it may be honored by the Department of Finance and Administration. The Commissioner shall determine that the persons named on the payroll have been appointed or employed in accordance with the Act and applicable rules and that the salary rate is in accordance with the compensation plan before certification of that payroll for payment.
- (2) Refusal to Certify. If the Commissioner determines that a person on the payroll has not been appointed or paid in conformity with the provisions of the Act and these Rules, the Commissioner shall refuse to certify payment for that employee. The removal of a name or item from the payroll shall serve as official notification to the Department of Finance and Administration that the drawing, signing, or issuing of any warrant by any disbursing officer of the State for the payment of salary or compensation to such person is unlawful.
- (3) Illegal Payments. The Commissioner may bring an action to recover any sum paid contrary to any provisions of the Act or of any rule, regulation or order thereunder from:
  - (a) Any employee who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment;
  - (b) The sureties on the official bond of any such officer; or
  - (c) Any employee who incorrectly or improperly received any payment from the state.

All moneys recovered in any such action shall be paid into the state treasury.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, 8-30-210, and 8-30-211. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

#### 1120-02-.17 RECORDS AND REPORTS.

- (1) Employee Records. The Commissioner shall maintain employee records as necessary to carry out the intent and purpose of the Act and these Rules and shall cause to be maintained in each agency a human resources file on each active employee. These files shall be maintained in accordance with policy established by the Commissioner. The Commissioner may audit these files as necessary.

(Rule 1120-02-.17, continued)

- (2) Reports from Appointing Authorities. The appointing authorities shall report to the Commissioner in a manner prescribed by the Commissioner all changes in the employment status of employees under their jurisdiction. Upon request, the appointing authorities may also be required to make other reports regarding their employees to the Commissioner.
- (3) Investigations. The Commissioner has the right to access, and if necessary, subpoena, the records, books, papers and other documents of any organizational unit pertinent to any investigation, which may be necessary.

**Authority:** T.C.A. §§ 8-30-104, 8-30-105, and 10-7-504. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

**1120-02-.18 REPEALED.**

**Authority:** T.C.A. §§ 8-30-104 and 8-30-105. **Administrative History:** Original rule filed December 14, 2010; effective May 31, 2011. Repeal filed July 5, 2012; effective October 3, 2012.