
Rules of
Office of Administration
Division 20—Personnel Advisory Board and
Division of Personnel
Chapter 3—Personnel Selection, Appointment,
Evaluation and Separation

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**Title 1—OFFICE OF
ADMINISTRATION
Division 20—Personnel Advisory
Board and Division of Personnel
Chapter 3—Personnel Selection,
Appointment, Evaluation and
Separation**

1 CSR 20-3.010 Examinations

PURPOSE: This rule prescribes procedures and practices which govern the administration of merit system examinations.

(1) Conduct of Examinations. The director from time-to-time shall conduct open competitive examinations and promotional examinations as the director considers necessary for the purpose of establishing registers of eligibles and promotional registers. The examinations shall be of such character as to determine the relative qualifications, fitness and ability of the persons tested to perform the duties of the class of position for which a register is to be established. Persons with disabilities shall be examined in such a manner as the director determines necessary to fairly test their ability to perform the duties of the class of positions or the position involved.

(2) Examinations shall be announced under the following conditions:

(A) Public Notice. The director shall give public notice of each open competitive examination and promotional examination sufficiently in advance of that examination and sufficiently widespread in scope to afford persons who are interested in participating in the examination a reasonable opportunity to apply. The time elapsing between the official announcement of an examination and the holding of an examination shall be not less than two (2) calendar weeks, except that a lesser period of advance notice may be permissible under the regulations when the examination is conducted under the provisions of section 36.320(3), RSMo, or when needs of the service pursuant to subsection 1 of section 36.260, RSMo require special notices;

(B) Content of Announcements. Each official notice of an examination shall state the title, duties, pay and qualifications of positions for which the examination is to be held; the time, place and manner of making application for admission to the examination; and any other information which the director considers pertinent and useful; and

(C) Distribution of Announcements. The official announcement of an examination shall consist of the posting of an official notice on a public bulletin board maintained

either in or near the office of the Division of Personnel. Announcements also shall be distributed to and shall be posted by appointing authorities in institutions, agencies and divisions of the service where positions in the class(es) involved occur. Announcements of open competitive examinations for other positions also will be sent to appointing authorities for the information of employees, the general public, or both. The official announcement of an examination will be given distribution necessary to inform qualified persons that the examination is being given. The director may use any means that the director considers necessary to inform qualified persons about the examination. These include, but are not limited to, paid advertisement in newspapers, periodicals, electronic media and announcements to educational institutions. The director may also publish a periodic bulletin containing information about examinations to be sent to subscribers at a price approximating the cost of publication. The director and the staff of the division will consult with representatives of appointing authorities to design announcement distribution and other informational techniques best suited to cooperate with and coordinate the recruitment and public awareness efforts of appointing authorities.

(3) Eligibility to Compete in Examinations. The standards of education and experience established in the classification plan for each class shall constitute the entrance requirements for admission to the examination for the positions classified. Appropriate standards for admission will be established for positions within broad banded management classes. Admission to examinations shall be open to all persons who possess the qualifications and who may be lawfully appointed to a position in the class for which a register is to be established.

(A) Open Competitive Examinations. Open competitive examinations shall be open to all persons who possess the qualifications and who may be lawfully appointed to a position for which the register is to be established.

(B) Promotional Examinations. Promotional examinations shall be open to all regular employees who meet the requirements described in subsection (3)(A), except that an appointing authority may request that a promotional examination be limited to employees already employed within the department or division of service involved and the director may approve the request if s/he finds that the needs of the state service will be served.

(4) Application and admission to examinations shall be subject to the following conditions:

(A) Application shall be made on forms prescribed by the director. Those forms shall require information covering experience, training and other pertinent information as may be requested on the examination announcements. To be accepted for review, applications must be delivered to the division no later than the closing date specified in the announcements. Applications shall be signed by the applicants and the truth of all statements contained in the application certified by the signature; and

(B) Persons who submit applications on or before the last date for filing and whose applications clearly show that the applicants meet the requirements for admission to the examination as specified in the official announcement shall be admitted to compete in the examination for which they applied. Each applicant whose application has been accepted for any examination shall be notified of the date, time and place of examination, and that notice shall be authorization to take the examination.

(5) Disqualification of Applicants. The director may reject the application of any person for admission to examination, strike the name of any person from a register, refuse to certify the name of any person or withdraw the certification of a person if the director finds that the person lacks any of the qualifications; or has been convicted of a crime which brings into question the qualifications of that person; or has been dismissed from the public service for delinquency; or has made a false statement of a material fact; or has practiced or attempted to practice any fraud or deception in application or examination or in attempting to secure appointment. Whenever the director disqualifies an applicant, the director shall furnish the applicant a notice of disqualification. In the case of disqualification, an appeal may be taken to the board in accordance with 1 CSR 20-4.010(1)(A).

(6) Postponement or Cancellation. In the event a sufficient number of qualified candidates has not made application for an examination, either open competitive or promotional, the director may postpone the last filing date and the date of the examination or cancel the examination and, in these cases, shall make suitable notice.

(7) The character of examinations is governed by the following provisions:

(A) Competitive Examinations. All competitive examinations for positions in the

classified service shall be of such character as to determine the relative qualifications, fitness and ability of persons tested to perform the duties of the class of positions for which a register is to be established. The various parts of the examinations may be written, oral, physical or an evaluation of experience and training, a demonstration of skill or any combination of those types. The examinations may take into consideration factors including training, experience, aptitude, capacity, knowledge, health, physical fitness and other qualifications as, in the judgment of the director, enter into the determination of the relative fitness of the applicants. No question shall be framed as to elicit information concerning the political or religious opinions or affiliations of the applicant. The examination and selection procedures for promotion shall take into consideration demonstrated capacity, and quality and length of service to the extent determined appropriate by the director;

(B) Noncompetitive Examinations. Noncompetitive examinations provided for by the law and these rules shall be administered under the conditions and following procedures as are prescribed by the director:

1. When an intern or trainee or participant in special state or federal training, rehabilitation or employment programs has successfully completed a period of training or internship of sufficient length to demonstrate job competence in the position involved, an appointing authority may request authorization to appoint that individual to a permanent position in the appropriate class subject to passing a noncompetitive qualifying examination. The director shall require proof of successful completion of an appropriate training or internship program as deemed necessary and is authorized to approve or disapprove programs for purposes of this rule based on duration and training content. Upon approval of the request of an appointing authority, the director shall provide for noncompetitive examination providing the individual possesses the qualifications required for admission to the examination for the class of positions involved. Noncompetitive original appointment following successful completion of the examination will then be allowed;

2. After consultation with appointing authorities, the Personnel Advisory Board may waive competitive examinations for classes or positions for which it determines that competitive examinations are not practicable or that the supply of qualified applicants is generally insufficient to justify competitive examinations and provide meaningful competition in the selection of employees. A request that competitive examination be

waived for a particular class or position may be made to the board by the director or an appointing authority. The board will evaluate requests, taking into consideration such criteria as actual or projected number or qualifications of available eligibles in a specific geographic location, qualifications and special requirements of a specific position, or other factors as may be determined by the board. The board shall review determinations pursuant to this provision at least annually. Upon waiving such examinations, the director will, within the parameters established by the board and consistent with information supplied by the appointing authority, determine what kind of appointment procedure is appropriate, what kind of registers or other mechanisms will be used, what evidence of qualifications will be accepted and when and how that evidence will be presented to the Division of Personnel;

3. An appointing authority may request the approval of the director to promote regular employees on the basis of a qualifying noncompetitive examination. Such noncompetitive promotions may be approved in, but are not necessarily limited to, situations in which the promotion represents a normal progression to the next higher level within an established occupational job series, or where the director determines that an employee has been an assistant, understudy or trainee for the position involved or otherwise has had such specific experience or training that a noncompetitive promotion to the position in question is in the best interests of the state service; and

4. Appointing authorities may request board approval to conduct alternative promotional procedures for positions and classes in their divisions of service. The request must be in writing and must outline in detail the procedures demonstrating how employees will be notified of the procedures, how the procedures are in keeping with merit principles and the provisions by which employees can comment on the procedures. After initial presentation to the board, the proposed procedures will be made available to employees of the affected divisions of service and employees will be given an opportunity to comment. The procedures will not go into effect until the board has determined that employees have had a reasonable opportunity to respond. The Division of Personnel will, on request, work with each agency to develop standards and provide assessment services or other needed assistance. Upon approval by the board the appointing authority shall be responsible to conduct promotional procedures in accordance with the board's approval and without favoritism, prejudice or discrim-

ination. The board may withdraw approval if it finds this responsibility has not been met;

(C) Special Examination Procedure. For positions involving unskilled or semiskilled labor or domestic, attendant, custodial or comparable 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 procedures prescribed in other provisions of these rules, the director, after consultation with the board and appointing authorities, shall authorize the use of other procedures as s/he determines to be appropriate in order to meet the needs of the service, while assuring the selection of those employees on the basis of merit and fitness. Procedures may include the testing of applicants and maintenance of registers of eligibles by localities; the testing of applicants singly or in groups, at periodic intervals, at the place of employment or elsewhere, after such notice as the director considers adequate; the registration of applicants who pass a noncompetitive examination or submit satisfactory evidence of their qualifications, and appointment of registered applicants; or any variation or combination of these procedures or other suitable methods. Tests given, certification and registration of eligibles, and appointments made in accordance with these provisions shall conform with, and utilize, such methods, forms and techniques as the director may require. When the director finds noncompetitive registration and selection procedures to be appropriate, s/he is authorized to delegate to each appointing authority the responsibility for noncompetitive registration and for selection and appointment of registered applicants. When delegation is made, the director shall establish the necessary procedures, guidelines and standards for appointing authorities and shall require reports and perform audits as deemed necessary to insure compliance with these guidelines and standards (see section 32.210, RSMo); and

(D) Open Continuous Test. In circumstances where there is a continuous need for substantial numbers of eligibles for a certain class of positions, the director, after first establishing this register, may replenish the register from time-to-time by inserting the names of additional eligibles who are found to be qualified on the basis of determinations similar to those used as the basis for establishing the original register. The closing date for any such test may be indefinite and applicants may be continuously tested in a manner and at times and places as the director may provide. An applicant may not reapply and compete in the same test again for a period of three (3) months following the date of the

examination. The closing date for any open continuous test may be set at any time by the director, but notice of this action shall be posted in accordance with subsection (2)(C), at least five (5) days prior to the effective date of the action (see section 36.320, RSMo).

(8) Administration of Examinations. Examinations shall be held at the times and places as, in the judgment of the director, most nearly meet the convenience of applicants, practicability of administration and the needs of the service. The examinations shall be conducted under conditions prescribed by the director and by persons designated by the director. When an appointing authority finds that recruitment for positions otherwise difficult to fill with competent employees may be enhanced by local administration of merit examinations, an agency subject to these rules may submit a written request to the personnel director for authority to administer examinations. If the director finds that circumstances justify delegation of authority and that the agency involved has the resources to provide professional examination administration services and appropriate test security, the director may approve that request. In the event of approval, the director shall establish the necessary standards, guidelines and instructions for test administration and security and shall audit examination programs at least annually. The director may withdraw approval for test administration by an agency for a class(es) and shall notify the appointing authority accordingly.

(9) Rating of examinations shall be subject to the following provisions:

(A) Method of Rating. Sound measurement techniques and procedures shall be used in rating the results of tests and determining the relative ranking of candidates. The director will, in consultation with appointing authorities, keep these techniques and procedures current with evolving standards. In all examinations the minimum rating by which eligibility may be achieved shall be established by the director. The minimum rating also shall apply to the ratings of any part of the test. Candidates shall be required to attain at least a minimum rating on each part of the test in order to receive a passing grade or for participation in subsequent parts of the examination. The final earned rating of the competitor shall be determined by combining the earned rating on each part of the examination in accordance with the weights established by the director for each part. The director may announce in advance of the establishment of an eligible register, the maximum number of competitors who shall have their names

placed on the register. Under this procedure, those considered as having passed or as being permitted to take the remainder of the examination shall be the set number of candidates scoring highest in the examination or part of the examinations;

(B) Rating Training and Experience. Where a rating of training and experience forms a part of the examination, the director shall develop those procedures for the evaluation of these factors as will serve to assist in the selection of qualified candidates. These procedures shall give due regard to the quality, recency and amount of experience and to the pertinency and amount of training. Any person who has been honorably discharged from the armed forces of the United States shall receive appropriate credit for any training or experience gained in military service in any examination given for the purpose of establishing a register of eligibles or a promotional register when training or experience is related to the duties of the class of positions for which the examination is given; and

(C) Verification of Qualifications. The director, appointing authorities, or both, may verify statements contained in the application of an applicant either before or after employment. If, after a register is established, information which materially affects the rating of experience and training or qualifications of the applicant is discovered, the director shall make a new rating of the applicant's examination and make the necessary adjustment in registers. The director promptly shall notify the applicant of any change made in the applicant's rating and the reasons. If a verification of the qualifications of an applicant should reveal any material misrepresentation of employment qualifications and related information as described in the application for examination or attachments, this shall be cause for removal from the register(s) involved, from employment, or both, as provided elsewhere in these rules.

(10) Veterans' Preference. In any competitive examination given for the purpose of establishing a register of eligibles, veterans, disabled veterans, surviving spouses and spouses of disabled veterans shall be given preference in appointment and examination as provided by law.

(A) Amount of Preference. A veteran or a veteran's surviving spouse whose name appears on a register of eligibles and who shall have made a passing grade shall have five (5) points added to his/her final grade, and the rank of that person on the register shall be determined on the basis of this augmented grade. The spouse of a disabled veteran whose name appears on a register of eli-

gibles and who shall have made a passing grade shall have five (5) points added to his/her final grade, and his/her rank on the register shall be determined on the basis of this augmented grade. This preference shall be given only in the event that the veteran is not already employed in the state service and that the disability renders him/her unqualified for entrance into the state service. A disabled veteran whose name appears on a register of eligibles and who shall have made a passing grade shall have ten (10) points added to his/her final grade, and the rank of that person on the register shall be determined on the basis of this augmented grade.

(B) Proof of Eligibility. Proof of eligibility for veterans' preference shall be provided by applicants in the form of their discharge papers, a certified copy, photostatic copy or other satisfactory evidence of honorable service. Applicants also shall submit on a form as may be required by the director, proof of disability certified by the appropriate federal agency responsible for the administration of veterans' affairs. Any papers submitted to establish proof service of disability, upon request, shall be returned to veterans.

(11) Parental Preference. In any competitive examination given for the purpose of establishing a register of eligibles, a parental preference shall be given to persons who were previously employed by the state but terminated such employment to care for young children. This preference shall be given only for persons who were full-time homemakers and caretakers of children under the age of ten (10) and were not otherwise gainfully employed for a period of at least two (2) years.

(A) Amount of Preference. If the name of a person eligible for a parental preference appears on a register of eligibles who made a passing grade, such person shall have five (5) points added to the final grade, and the rank of such person on the register shall be determined on the basis of this augmented grade.

(B) Proof of Eligibility. Proof of eligibility for parental preference shall be provided by applicants in the form of a signed preference claim and, upon request, other evidence such as birth certificates, income tax returns or other documents as may be required by the director.

(12) Notification of Examination Results. Each person who takes an examination shall be given written notice as to whether s/he passed or failed the examination and the notice shall include the final passing grade with which his/her name has been placed on the register. Each person competing in an

examination shall be entitled to inspect his/her rating and examination papers within thirty (30) days after the mailing of notification of examination results, but examination papers shall not be open to the general public. This inspection shall be permitted only during regular business hours and at the office of the Division of Personnel.

(13) **Error in Rating.** A manifest error in rating an examination which affects the relative ranking of persons in the examination shall be corrected if called to the attention of the director within thirty (30) days after the establishment of the register, but this correction shall not invalidate any appointments previously made from this register unless it is established that the error was made in bad faith and with intent to deprive the person of certification.

(14) **Appeals From Rating.** Any competitor may appeal to the director for reconsideration of his/her rating in any examination as provided in 1 CSR 20-4.010(1)(B).

AUTHORITY: sections 36.060 and 36.070, RSMo Supp. 1995. Original rule filed July 9, 1947, effective July 19, 1947. Amended: Filed March 25, 1948, effective April 4, 1948. Amended: Filed June 1, 1954, effective June 11, 1954. Amended: Filed Nov. 18, 1957, effective Nov. 28, 1957. Amended: Filed July 21, 1967, effective July 31, 1967. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed March 14, 1978, effective June 11, 1978. Amended: Filed Dec. 13, 1978, effective April 12, 1979. Emergency amendment filed Sept. 13, 1979, effective Sept. 28, 1979, expired Jan. 25, 1980. Amended: Filed Oct. 12, 1979, effective Jan. 15, 1980. Amended: Filed Oct. 31, 1995, effective May 30, 1996. Amended: Filed May 15, 1996, effective Nov. 30, 1996.*

**Original authority: 36.060, RSMo 1945, amended 1971, 1979, 1993, 1995 and 36.070, RSMo 1945, amended 1979, 1995.*

1 CSR 20-3.020 Registers

PURPOSE: This rule specifies the conditions under which the various types of merit system registers are established and maintained.

(1) **Establishment of Registers.** The director shall establish and maintain the registers necessary to provide an adequate supply of qualified candidates for positions in the classified service. Registers shall be by class of employment and shall be statewide in application except where these rules or action of the

director specifically makes provision for establishment of lists by geographical area or organizational unit.

(2) **Reinstatement Register.** The director shall establish and maintain reinstatement registers which shall contain the names of persons who have been regular employees in a particular class and who have been laid off in good standing or demoted in lieu of layoff, due to lack of work or funds, or the abolition of a position or material changes in duties or organization. Names shall be placed on the reinstatement registers in the order of service credits as determined by these rules and shall remain on the register for a period of three (3) years, except that the director may extend the time during which a name may remain on the register, not to exceed five (5) years, when the needs of the service so require. In the case of ties in service credits, names shall be placed on the appropriate reinstatement register in the layoff order outlined in 1 CSR 20-3.070(1)(B)3. The director may remove the name of a person from a reinstatement register or refuse to certify his/her name for a position if s/he finds, after giving him/her notice and opportunity to be heard, that the person is not qualified to perform the necessary duties satisfactorily. A regular employee who resigns in good standing is not eligible to be placed on a reinstatement register but is eligible for reemployment without competitive certification from a register as provided in 1 CSR 20-3.030(6).

(3) **Promotional Registers.** The director shall establish and maintain promotional registers for the various classes of positions as s/he deems necessary or desirable to meet the needs of the service. On each promotional register, the eligibles shall be ranked in order of their ratings earned in a test given for the purpose of establishing this register.

(4) **Registers of Eligibles.** The director shall establish and maintain such registers of eligibles for the various classes of positions subject hereto as s/he deems necessary or desirable to meet the needs of the service. Names of eligibles shall be placed on a register of eligibles in the order of their final earned rating plus veterans' preference credit and parental preference.

(5) **Ties in Final Ratings.** In the case of ties in final ratings, the names shall be placed on a promotional register or register of eligibles in the following order: disabled veterans, other persons eligible for veterans' preference and nonveterans.

(6) **Duration of Promotional Registers and Registers of Eligibles.** The time during which a promotional register or register of eligibles shall remain in force shall be one (1) year from the date on which it was officially established by the director, except that, before the expiration of a register, the director, by order, may extend the time during which the register remains in force when the needs of the service so require. In no event shall the total period during which a register is in force exceed three (3) years from the date on which the register was originally established. An order extending the period during which a register is in force shall contain a statement of the reasons for the extension and the order shall be entered in the records of the Personnel Division. The director may consolidate or cancel registers as the needs of the service require and as authorized by these rules (see section 36.320, RSMo). A register established and replenished through a continuous examination program shall remain in force in the manner provided for other registers. However, those names which have been on the register for a period less than three (3) years at the time the register expires, may with the approval of the director, be consolidated with an active register, providing that the total time during which a name may remain on one (1) or more active registers may not exceed three (3) years.

(7) **Removal of Names From Registers.** The director may remove a name from a register, permanently or temporarily, for any of the following reasons:

(A) Appointment through certification from the register to fill a permanent position;

(B) Appointment to fill a permanent position at the same or higher salary from a different register, provided that any person whose name is removed may have his/her name restored to any register other than the one from which appointment was made by making written application for action to the director;

(C) Failure to respond within seven (7) working days from the date of mailing to a written inquiry of the director or appointing authority relative to availability for appointment;

(D) Declination of appointment without good reason or under conditions which the eligible previously indicated s/he would accept, unless a waiver is granted by the director in accordance with 1 CSR 20-3.030(3)(G);

(E) Failure to report for duty within the time specified by the appointing authority;

(F) Expiration of the term during which the register remains in force;

(G) Failure to maintain a record of his/her current address with the division as evidenced by the return of postal authorities of unclaimed but properly addressed letters or other evidence;

(H) Willful violation of any of the provisions of the law or these rules;

(I) In the case of promotional registers, upon separation from the state service or the division for which the register is established;

(J) Upon a finding by the director that the applicant is not qualified to perform the necessary duties or is physically unfit to effectively perform the duties of the position in which s/he seeks appointment;

(K) Addiction to the excessive use of drugs or intoxicating liquor;

(L) Upon a finding by the director that the applicant has been convicted of a crime which brings into question the qualifications of the applicant for the class involved;

(M) Dismissal from the public service for delinquency; and

(N) Submission of false statement of any material fact or the practice or attempt to practice any fraud or deception in an application or examination or in attempting to secure appointment. Any person whose name is removed from a register under subsection (7)(C), (D), (H), (J), (K), (L), (M) or (N) shall be notified promptly by the director, indicating the reasons for removal.

(8) Restoration of Names to Registers. An eligible whose name is removed from a register as provided previously may make a written request to the director for restoration of his/her name to the register for the duration of the register. This request shall set forth the reasons for the conduct resulting in removal of the name from the list and shall further specify the reasons advanced for restoration of the name to the register. The director, after full consideration of the request, may restore the name to the register or may refuse the request. The eligible shall be notified of the director's action and may make a written appeal to the board to review the director's action. A former employee reinstated or reemployed in the state service shall have his/her name restored to any existing promotional register from which it was removed because of separation from the state service, provided the director approves the employee's written application for this action. A probationary or permanent employee whose name has been removed from divisional promotional register by transfer or original appointment with probationary or permanent status under a new appointing authority may have his/her name placed on the divisional promotional register for the same class in the new divi-

sion, provided written application, made by the employee during the duration of the register from which the name was removed, is approved by the new appointing authority and the director.

(9) Availability of Eligibles. It shall be the responsibility of eligibles to notify the Personnel Division in writing of any change in address or other changes affecting availability for employment. However, the director may circularize lists or use other methods to determine at any time the availability of eligibles. Whenever an eligible submits a written statement restricting the conditions under which s/he will be available for employment, his/her name may be withheld from all certification which does not meet the conditions which s/he has specified. An eligible may file a new written statement at any time within the duration of an eligible list modifying any prior statement as to conditions under which s/he will be available for employment.

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**Original authority: 36.060, RSMo 1945, amended 1971, 1979, 1993, 1995 and 36.070, RSMo 1945, amended 1979, 1995.*

1 CSR 20-3.030 Certification and Appointment

PURPOSE: This rule prescribes the conditions under which positions may be filled by certification and appointment from merit system registers and by other types of appointment authorized in the merit system law.

(1) Request for Certification. All vacancies in part-time or full-time positions in the classified service shall be filled as provided in the law and these rules. Whenever an appointing authority proposes to fill one (1) or more vacancies in a class of positions subject to the

law, the appointing authority shall submit to the director, as far in advance of the desired appointment date as possible, a requisition for the certification of eligible persons from an appropriate register. The requisition shall contain a statement showing the title and number of the positions to be filled and other information as may be required by the director. The appointing authority shall anticipate these actions sufficiently in advance of the desired appointment date to provide for allocation, certification, appointment and necessary payroll changes (see section 36.240, RSMo).

(2) Method of Filling Vacancies. Upon receipt of a request from an appointing authority for certification of eligibles, the director shall certify the proper number of names from the appropriate register or combination of registers. When sufficient names cannot be certified, the director may authorize a provisional appointment in accordance with the provisions of these rules. The order of precedence of registers from which eligibles are certified shall be as follows: 1) an appropriate reinstatement register; 2) an appropriate promotional register; and 3) an appropriate register of eligibles.

(A) When vacancies to be filled in a class occur in a division of service from which employees in the class have been laid off, or demoted in lieu of layoff, certification from the reinstatement register first shall be limited to previous employees of the division of service until all the available employees have been reinstated in order of rank on reinstatement register.

(B) When a register of eligibles or a promotional register contains the names of persons who are employed in the division in which the vacancy occurs, the appointing authority may request that the director certify those names in their order ahead of the names on the register. All the names on any of those registers shall be certified before any name on the register next in order of precedence, but the last names on a register may be combined with the first names on the register next in precedence in filling a requisition.

(C) If an appointing authority wishes to fill an advanced technical, scientific or professional position for which, in his/her judgment, appointment from a promotional register is not in the best interests of the service, s/he may request in writing that the personnel director give precedence to certification from a register of eligibles rather than from the promotional register. This request should specify in detail the reasons why the position cannot be satisfactorily filled by promotion.

If the director, upon review, approves the request, s/he may authorize certification from the register of eligibles for the class involved.

(3) Certification of eligibles shall be designed to provide the appointing authorities with a viable tool for efficient selection of an effective work force and shall be governed by the following provisions:

(A) Order of Names Certified. Names shall be certified in order of standing on the register from which certification is made. In filling a vacancy in a permanent position subject to this law, the appointing authority first shall reinstate in rank order from the reinstatement register all previous employees of the division of service who have been laid off or demoted in lieu of layoff, and after that shall be entitled to choose from among the top fifteen (15) ranking available eligibles or the names of available eligibles comprising the top ranking fifteen percent (15) of available eligibles, whichever is greater, plus such additional eligibles as have a final rating equal to the last eligible in the selection group. Upon request of the appointing authority, the director may also certify, for each additional vacancy to be filled from the same certification, the next five (5) ranking available eligibles plus such additional eligibles as have a final rating equal to that of the last eligible in this expanded selection group. If an eligible has been certified from a register and considered in connection with three (3) appointments by the same appointing authority and personally interviewed by that division of service at least one (1) time, the appointing authority may request that the eligible not be certified in the future from the register involved. However, exclusion shall not affect eligibility for certification to other divisions of service or from other registers. If special requirements of domicile or the possession of special skills are specified by the appointing authority in a requisition and the director finds that these requirements would contribute substantially to the effective performance of the duties involved, certification may be limited to persons on the appropriate register who meet these requirements;

(B) Order of Certification. Eligibles may be certified concurrently for vacancies occurring in the same class in different divisions of service with due regard for the rights of eligibles standing highest on the list and requirements of appointing authorities. The name of an eligible need not be included on a certification if his/her name has been included on a certification made concurrently for vacancies in the same class in another division of service, if the director finds that this action would serve to hinder the actual avail-

ability and supply of candidates certified to any one (1) appointing authority;

(C) Less Than Required Number of Eligibles. Whenever there are not sufficient names on a register to make a complete certification, the director may augment those names by a sufficient number of names from other appropriate registers to make a complete certification;

(D) Certification From Appropriate Registers. In the absence of a register established for the class, the director may certify from registers for higher classes to vacancies occurring in lower classes or from registers for one (1) class to vacancies in another class where s/he determines that the reasonably conducted examination measures the ability of the eligible to perform the duties in the class to which certification is made;

(E) Withdrawal of Certification. In the event appointment is not reported within ninety (90) days of the date of certification, the director may withdraw the certification and shall certify the names of eligibles included in the certification on the next requisition received for the appropriate class of employment;

(F) Waiver of Certification. Eligibles who are not available for appointment when offered certification shall be granted a waiver of certification for appointment for a stated period of time, at or below a specified salary, for a specific location, or for other specified reasons. Eligibles who do not respond within seven (7) working days after the notice of certification at the discretion of the director may be dropped from the eligible register (see section 36.240, RSMo);

(G) Alternative Certification Procedures. If the director finds that selection from the normal number of eligibles certified in accordance with subsection (3)(A) does not provide a reasonable range of competitive selection for a given class of position because of deficiencies in the examination process, the diverse types of positions included in the class and the large numbers of eligibles or a combination of these and related reasons, the director may adopt alternative procedures for certification and selection. These may include certification by broad category of examination rating or within a specified range of scores designed to include eligibles with broadly comparable qualifications. The use of alternative procedures and the reasons in each instance shall be reported to the board and entered into its records and those of the Division of Personnel; and

(H) Noncompetitive Certification. The director shall adopt appropriate procedures for noncompetitive certification of the names of eligible applicants for classes for which

competitive examination has been waived. The director also shall adopt appropriate procedures for the review and approval of non-competitive appointments and promotions in other classes not subject to the competitive certification process.

(4) The following types of appointment may be made in the classified service:

(A) Appointment From a Register. Except as otherwise authorized by the law and these rules, appointments to vacancies in the classified service shall be made following certification from an appropriate register in accordance with the provisions of the law and these rules. An appointment shall be effective on the date stated by the appointing authority on a written report of appointment submitted to the director;

(B) Provisional Appointment. When an appointing authority finds it essential to fill a vacancy in a position subject to these rules, and with at least thirty (30) days' notice of the vacancy the director is unable to certify the names of at least ten (10) available eligibles, the director may authorize the appointing authority to fill the vacancy by means of a provisional appointment. The appointing authority shall submit a statement containing the name of the person nominated by the appointing authority for provisional appointment to the position, this statement shall contain a description of the qualifications of training and experience possessed by that person and the other information as may be required by the director and in a form as the director shall prescribe. If the nominee is found by the director to possess experience and training which meet the qualifications for the position, the director may approve the provisional appointment. No provisional appointment shall be made without the approval of the director. The duration of a provisional appointment shall be the same as the duration of the probationary period established for the position. A provisional appointee who successfully completes the working test of the probationary period may receive a regular appointment without examination;

(C) Emergency Appointments. When an emergency makes it necessary to fill a position immediately in order to prevent stoppage of public business or loss, hazard or serious inconvenience to the public, and it is impracticable to fill the position under any other provisions of the law, an appointing authority

or a properly authorized subordinate employee may appoint any qualified person to that position without prior approval of the director. Any such person shall be employed only during that emergency and any emergency appointment shall expire automatically ninety (90) calendar days from the date of appointment. The appointing authority shall report each emergency appointment to the director as soon as possible after the date of emergency appointment and the report shall contain the name of the person appointed, the date of appointment and the reasons which made the appointment necessary. No individual may be given more than one (1) emergency appointment in any twelve (12)-month period in the same division of service (see section 36.270, RSMo); and

(D) Temporary Appointments. When a position in divisions of the service subject to the law is limited in duration, certification may be limited to the highest ranking eligible(s) who will accept employment under those conditions. No temporary appointment shall be made for more than a total of six (6) months, either continuously or intermittently, in any twelve (12)-month period. Successive temporary appointments to the same position shall not exceed a total of six (6) months in any twelve (12)-month period. A temporary appointment shall be made only after a statement describing the nature of the position and its estimated duration is submitted by the appointing authority and approved by the director. If a temporary position is limited to less than ninety (90) calendar days' duration, the appointing authority may fill the position by temporary appointment in the same manner as provided in these rules for emergency appointments. These appointments will be designated as limited temporary appointments. No individual may be given more than one (1) limited temporary appointment in any twelve (12)-month period in the same division of service, nor shall this appointment be made in succession with an emergency appointment in the same division of service in any twelve (12)-month period (see section 36.240, RSMo).

(5) Transfers. An appointing authority at any time may assign an employee from one (1) position to another position in the same class in the same division except that transfers of employees made because of a layoff or shortage of work or funds which might require a layoff shall be governed by 1 CSR 20-3.070 and the layoff procedures adopted. Upon making this assignment, the appointing authority immediately shall give written notice of the action to the director. A transfer of an employee from a position in one (1)

division in the classified service to a position in the same class in another division in the classified service may be made with the approval of the director and of the appointing authorities of both divisions.

(A) No employee shall be transferred from a position in one (1) class to a position in another class with a higher rank or for which there are substantially dissimilar requirements for appointment unless appointed to a latter position in accordance with the provisions of the law and these rules.

(B) Any change of an employee from a position in one (1) class to a position in a class of lower rank shall be considered a demotion and shall be made only in accordance with the procedure provided in 1 CSR 20-3.070(4). An employee demoted shall have the right of appeal to the board in accordance with the provisions of the law and 1 CSR 20-4.010(1)(D). Transfers from one (1) class to another class of comparable rank shall be subject to review and approval of the director.

(C) An employee who has successfully served at least one (1) year in a position covered by the uniform classification and pay system as described in section 36.031, RSMo, but not by the Merit System service as described in section 36.030.1, RSMo may be transferred to a position in the Merit System service in the same class with the approval of the director and of the appointing authorities of both divisions, provided the employee possesses the qualifications and has successfully completed a noncompetitive examination for the position involved.

(D) Change of Station. When a certification is made on an area basis, a change of station shall not be made during the probationary period, except with the approval of the director.

(E) In the case of a permanent, involuntary transfer from one (1) geographical area to another, the appointing authority shall give written notice of the action to the director and to the employee thirty (30) days prior to the effective date of the action. This notice will indicate the reason for the transfer. If the employee requests a personal explanation, the appropriate supervisor or manager, as determined by the appointing authority, will grant the affected employee a personal interview, will explain the reasons for the transfer and will provide the employee with an opportunity to ask questions. Geographical areas will be those prescribed by the director in accordance with 1 CSR 20-3.070(1)(E) Area Layoff. The affected employee may make a written request to the director asking for review of the action on the basis that, in the employee's opinion, was for arbitrary, capri-

cious or punitive reasons and not for the good of the service. The director shall conduct an appropriate investigation and shall approve or disapprove the transfer taking into consideration information received from both the employee and the appointing authority. Both the employee and the appointing authority will be notified of the director's action.

(6) Reemployment. Any person who has obtained regular status in a classified position within the Merit System service as defined in section 36.030.1, RSMo and who has resigned from state service in good standing may be reemployed without competitive certification in the same or comparable class at the discretion of any appointing authority who wishes to reemploy this person. Any person who has successfully served at least one (1) year in a covered position in the uniform classification and pay service as defined by section 36.031, RSMo and who has resigned from state service in good standing or who has accepted demotion or transfer for personal reasons, may be reemployed in a Merit Service agency without competitive certification in the same or comparable class at the discretion of the appointing authority provided the employee possesses the qualifications and has successfully completed an examination for the class involved. For purposes of this rule, a lower class for which a person qualifies in the same general occupation or job family may be approved by the director as a comparable class for purposes of reemployment. A regular employee who has been separated in good standing from a position by class transfer, promotion, long-term disability, retirement or layoff shall be considered as having resigned in good standing for the purpose of reemployment. Prior to reemployment, the appointing authority shall notify the personnel director of his/her intention to do so and provide information as may be required by the director to establish eligibility for reemployment. The director also shall determine comparability of classes and appropriate qualifications of the former employee if reemployment is proposed in a class other than the one in which s/he obtained regular status. Reemployment may be made either to a temporary or a permanent position. Reemployment to a permanent position shall be subject to a probationary period as is provided for in 1 CSR 20-3.040(2). No one shall be reemployed under this section until reinstatement first has been offered to all eligibles on the appropriate reinstatement register(s) for the class and division of service involved. The rate of pay of a former employee upon reemployment shall be governed by 1 CSR 20-2.020(4)(A).

AUTHORITY: sections 36.060 and 36.070, RSMo Supp. 1995. Original rule filed July 9, 1947, effective July 19, 1947. Amended: Filed Sept. 20, 1947, effective Sept. 30, 1947. Amended: Filed March 25, 1948, effective April 4, 1948. Amended: Filed June 1, 1954, effective June 11, 1954. Amended: Filed April 23, 1974, effective May 2, 1974. Amended: Filed Feb. 28, 1975, effective March 10, 1975. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed Dec. 13, 1978, effective April 12, 1979. Emergency amendment filed Sept. 13, 1979, effective Sept. 28, 1979, expired Jan. 25, 1980. Amended: Filed Oct. 12, 1979, effective Jan. 15, 1980. Amended: Filed June 2, 1988, effective Oct. 1, 1988. Amended: Filed Jan. 26, 1990, effective June 30, 1990. Amended: Filed March 1, 1993, effective Oct. 10, 1993. Amended: Filed July 21, 1994, effective Feb. 26, 1995. Amended: Filed May 15, 1996, effective Nov. 30, 1996.

**Original authority: 36.060, RSMo 1945, amended 1971, 1979, 1993, 1995 and 36.070, RSMo 1945, amended 1971, 1979, 1995.*

1 CSR 20-3.040 Probationary Period

PURPOSE: This rule establishes the conditions and procedures which govern the probationary period of employment.

(1) Objective. The probationary or working test period shall be utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee to his/her position and for rejecting any employee whose performance does not meet the required work standards.

(2) Duration. Every person appointed to a permanent position subject to the law shall be required to successfully complete a working test during a probationary period which shall be of sufficient length to enable the appointing authority to observe the employee's ability to perform the various principal duties pertaining to the position; however, a new probationary period shall not be required for a regular employee who is reinstated within two (2) years after layoff, or demotion in lieu of layoff, by the same division of service. The probationary period shall begin upon reemployment, noncompetitive appointment, noncompetitive promotion or appointment from a register of eligibles, a promotional register or reinstatement register. However, uninterrupted service in a position by a provisional or emergency employee which immediately precedes an appointment from the register to the same position shall be credited toward the

probationary period except that the employee must serve in probationary status at least sixty (60) days following his/her appointment. Any interruption of service during the probationary period shall not be counted as a part of the total probationary service required. Probationary service will be subject to the following provisions:

(A) The normal length of probation for employees in all medical and dental classes of positions and in classes identified by the director as having substantial supervisory or administrative responsibilities shall be twelve (12) months. The maximum length of probation shall be eighteen (18) months and the minimum length of probation shall be six (6) months for employees in those positions serving original or promotional probationary periods;

(B) The normal and the minimum length of probation for all other classes of positions shall be six (6) months for employees in those positions serving an original or promotional probationary period. The maximum length of probation for those employees shall be twelve (12) months;

(C) The minimum length of probation shall be three (3) months for employees of any class who are serving a probationary period following reemployment under these rules or following reinstatement which occurs later than two (2) years after the effective date of layoff or demotion in lieu of layoff. The normal and the maximum length of probation in these cases shall be the same as is provided in this rule for promotional and original probationary periods for the class category involved. However, a probationary period is not required for employees of any class who are reinstated within two (2) years of layoff or demotion in lieu of layoff;

(D) If an appointing authority finds that it will require more time than the normal probationary period to evaluate an employee's ability to successfully perform the various duties of a position, the appointing authority may extend the probationary period not to exceed the maximum period allowed under these rules. Prior to the expiration of a normal probationary period, the appointing authority shall notify the employee in writing of the reasons for and duration of the extension. A copy of the notice shall be filed with the director;

(E) If an appointing authority finds that a probationary employee is performing the duties of a position in an effective and fully satisfactory manner, the appointing authority may reduce the length of probation to no less than the minimum probationary period prescribed under these rules for the class and type of appointment involved. The appointing

authority shall notify the employee and the director in writing of the reduction and the reasons;

(F) The normal probationary period for the class involved shall be served by all employees unless the appointing authority takes specific action under these rules to extend or reduce the length of probation; and

(G) Probationary periods which have been entered into by an employee prior to July 19, 1947 shall be completed in accordance with the rules in effect at the beginning of the probation (see section 36.250, RSMo).

(3) Evaluation During Probationary Period. At such times during the probationary period and in such manner as the director may require, the appointing authority shall report to the director his/her observation of the employee's work and his/her judgment as to the employee's willingness and ability to perform his/her duties satisfactorily and as to his/her habits and dependability.

(4) Dismissal During Probationary Period. At any time during the probationary period the appointing authority may remove an employee if, in the opinion of the appointing authority, the working test indicates that the employee is unable or unwilling to perform the duties of the position satisfactorily or that his/her habits and dependability do not merit his/her continuance in the service. Upon removal, the appointing authority shall report to the director and to the employee removed the action and the reasons. No more than three (3) employees shall be removed successively from the same position during their probationary period without the approval of the director. An employee who is found by the director to have been appointed through fraud or error shall be removed within ten (10) days of notification to this effect by the director to the appointing authority. An employee serving a probationary period following a promotion shall be considered a regular employee with respect to the class of position held prior to promotion as defined in section 36.020(14), RSMo and shall have all the rights and privileges accorded regular employees under section 36.390.5, RSMo.

(5) Probationary Period Reports. At least ten (10) days prior to the expiration of an employee's probationary period, the appointing authority shall notify the director in writing whether the services of the employee have been satisfactory and whether s/he will continue the employee in his/her position. A copy of the notice shall be given to the employee. No employee shall be paid for work performed after the expiration of the

probationary period unless, prior to the performance of the work, the appointing authority has notified the director that the employee will be continued in his/her position. Upon successful completion of an original probationary period, an employee shall receive a regular appointment and the director shall be so notified in accordance with 1 CSR 20-1.050(2).

(6) Restoration to Appropriate Register. If an employee is removed from his/her position during or at the end of his/her probationary period and the director determines that s/he is suitable for appointment to another position, his/her name may be restored to the register from which it was certified. An employee appointed from a promotional register who does not complete the probationary period successfully shall be reinstated in a position in the class occupied by the employee immediately prior to his/her promotion or in a comparable class.

AUTHORITY: section 36.070, RSMo Supp. 1998. Original rule filed July 9, 1947, effective July 19, 1947. Amended: Filed March 25, 1948, effective April 4, 1948. Amended: Filed June 1, 1954, effective June 11, 1954. Amended: Filed Dec. 22, 1960, effective Jan. 1, 1961. Amended: Filed July 21, 1967, effective July 31, 1967. Amended: Filed June 12, 1972, effective July 1, 1972. Amended: Filed April 23, 1974, effective May 2, 1974. Amended: Filed Feb. 28, 1975, effective March 10, 1975. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed Dec. 13, 1978, effective April 12, 1979. Emergency amendment filed Sept. 13, 1979, effective Sept. 28, 1979, expired Jan. 25, 1980. Amended: Filed Oct. 12, 1979, effective Jan. 15, 1980. Amended: Filed March 11, 1999, effective Sept. 30, 1999.*

**Original authority 1945, amended 1979, 1995.*

Hedges v. Department of Social Services, 585 SW2d 170 (Mo. App. 1979). The personnel board's failure to comply with its own "directory" rule does not have the effect of changing the status of an employee from probationary to permanent.

1 CSR 20-3.050 Service Reports

PURPOSE: This rule provides for the establishment and administration of a system of service reports.

(1) Establishment and Use of Service Reports. In cooperation with appointing authorities, the director shall establish a sys-

tem of service reports which shall take into consideration, among other things, the employee's conduct, performance and output. As provided elsewhere in these rules, ratings assigned to service reports shall be considered in determining salary increases and decreases within the limits established by law and by the pay plan; as a factor in promotional examinations; as a factor in determining the order of layoff when forces must be reduced because of lack of work or funds, and the order in which names are to be placed on reinstatement registers; and as a means of discovering employees who should be demoted, transferred or dismissed (see section 36.040, RSMo).

(2) Administration of System. Service reports shall be made in writing in a form as the director after consultation with the appointing authorities may provide. Each employee shall be notified of his/her rating from period-to-period, with a view to his/her being afforded an opportunity to know how his/her work is evaluated and to enable him/her to correct any weakness. A rating report for an employee may be inspected by the employee.

AUTHORITY: section 36.070, RSMo 1986. Original rule filed July 9, 1947, effective July 19, 1947. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975.*

**Original authority 1945, amended 1979.*

1 CSR 20-3.060 Service Credit (Rescinded January 30, 1998)

AUTHORITY: section 36.070, RSMo 1986. Original rule filed July 9, 1947, effective July 19, 1947. Amended: Filed Sept. 15, 1948, effective Sept. 25, 1948. Amended: Filed June 1, 1954, effective June 11, 1954. Amended: Filed Aug. 22, 1958, effective Sept. 1, 1958. Amended: Filed April 23, 1974, effective May 2, 1974. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed Dec. 13, 1978, effective April 12, 1979. Emergency amendment filed Jan. 15, 1981, effective Jan. 25, 1981, expired May 25, 1981. Amended: Filed Jan. 7, 1981, effective April 12, 1981. Rescinded: Filed July 9, 1997, effective Jan. 30, 1998.

1 CSR 20-3.070 Separation, Suspension and Demotion

PURPOSE: This rule establishes conditions and procedures to govern various types of separations from the classified service and

personnel transactions, such as suspension and demotion.

(1) Layoffs in the classified service shall be governed by the following provisions:

(A) Method of Layoff. An appointing authority, in accordance with these rules and layoff procedures approved by the director, may lay off an employee in a position subject to the law whenever the appointing authority deems it necessary by reason of shortage of work or funds, the abolition of the position, or other material change in the duties or organization, or for other related reasons which are outside the employee's control and which do not reflect discredit on the service of the employee. The duties performed by an employee laid off may be reassigned to other employees already working who hold positions in appropriate classes. No regular employee shall be laid off while a person is employed on a provisional, temporary or probationary basis in the same class in that division. However, if no regular employee subject to layoff elects to accept a transfer to a position occupied by a provisional, temporary or probationary employee, an employee with this employment status may be retained. No temporary or permanent separation of an employee from the service as a penalty or disciplinary action shall be considered as a layoff (see section 36.360, RSMo);

(B) Order of Layoff. The order of layoff of employees in a classification affected will be as follows:

1. Emergency, provisional and temporary employees will be laid off first and selection of employees for layoff shall be at the discretion of the appointing authority and as dictated by the needs of the service;

2. Original probationary employees will be laid off next in inverse order of the date of current original appointment in the geographic location in which appointment from a merit system register occurred. However, prior to the application of the layoff procedures, promotional probationary employees in affected classes shall be reinstated to the class from which they were promoted and shall be considered for layoff in that class; and

3. Layoff of regular employees shall be made in inverse order of service credit and by class in the division or area of service involved. Reemployment and reinstatement probationary employees shall be considered as regular employees for purposes of implementing a layoff. If it is found that two (2) or more persons in the class and the division or area in which layoff is to be made have equal service credit, the order of layoff in all cases shall be in inverse order of creditable service

computed to the day as calculated using MOSERS creditable service. Remaining ties shall be broken on the basis of the last regular performance appraisal. If the performance appraisals do not establish definite differentials for all regular employees in the class involved, the further order of layoff shall be determined by the appointing authority with the approval of the director, in a manner as to conserve for the state the services of the most valuable employee and giving consideration to time in the division of service from which the layoff is being made;

(C) Notice of Layoff. An appointing authority shall give written notice to the director of every proposed layoff and reasons for them at least thirty (30) days before the effective date unless the director waives this requirement because of a fiscal emergency. The notice shall identify the proposed area of layoff, the affected classes and the impact of the proposed action on the classification plan of the agency involved. The director shall take action relating to the layoffs and prescribe procedures as the director considers necessary to secure compliance with these rules. Each employee affected shall be notified as far in advance of the layoff as is practicable but, in all cases, at least fifteen (15) days prior to the effective date of the layoff;

(D) Return of Names to Registers. The names of regular employees laid off shall be placed in order of service credit on the appropriate reinstatement register for the class in which the layoff took place. The name of any probationary employee who is laid off shall be restored to the register from which certification was made;

(E) Area Layoff. Layoff shall be statewide unless the appointing authority requests and the director approves layoff on a geographical area basis. Areas for the purpose of layoff shall be prescribed by the director after taking into consideration the geographic concentration and dispersion of employees in and the administrative organization of the division of service involved;

(F) Special Layoff Status for Employees in Limited Functions or Programs. When it is necessary to establish a function or program that is known to have a termination date, special layoff status may be established by the Personnel Advisory Board for individuals employed for such programs. Special layoff status will be identified to ensure that employees in the project are aware that the function or program will end and to protect employees and functions not in the designated function or program from undue disruptions and layoff impact when the function or program terminates. In the event of a layoff unrelated to the special project, these

employees will be treated the same as other employees under the rules. Special layoff status under this rule will be governed by the following provisions:

1. To establish special layoff status the appointing authority will present to the Personnel Advisory Board information indicating the separate nature of the function or program, the period of time the function or program is projected to exist, the positions to be included in the function or program and the probable termination date. Upon approval, the board will establish procedures to ensure that the subject positions are identified within the records of the Division of Personnel and that employees in the identified functions or programs are notified of their special layoff status;

2. The board may approve the special layoff status for an initial period not to exceed three (3) years. If extensions are necessary, agencies may request extensions annually. Agencies may ask the board to approve amendments at any time;

3. Employees will be employed in functions or programs identified as justifying special layoff status under the same rules and procedures as are employees in areas not so identified and will have the same rights and benefits as other employees in the classified service, except for the identified special layoff status;

4. At such time as the function or program which has been approved for special layoff status terminates, layoff will be limited to employees in the identified function or program, but all other layoff rules and procedures will be followed for positions identified for the project. Employees laid off will be placed on the appropriate reinstatement registers in accordance with 1 CSR 20-3.020(2);

5. Special layoff status will not apply to employees who are employed in a special layoff function or program and subsequently employed in or transferred to a position not so designated; and

6. Regular employees will not be transferred to a special project involuntarily except that the plan provided to the board may include regular employees with specialized knowledge or experience who will retain normal layoff status;

(G) Layoff Involving Special Circumstances. If situations exist whereby layoff under certain conditions of these rules would cause unnecessary disruption to the state service, would cause employees with specialized ability to perform essential remaining work to be laid off, or would result in unfair situations, the appointing authority may develop a plan for presentation to, and approval/disapproval by, the Personnel Advisory Board. This plan will describe in

detail undesirable consequences resulting from a layoff in compliance with these rules and will propose an alternative method. This plan may describe specific knowledges, skills and abilities required to perform the remaining work, or may describe situations whereby an alternative method of layoff would more accurately meet the needs of the service and prevent unfair situations. The proposed procedures will be made available to employees of the affected divisions of service and their representatives prior to the proposed procedures being presented to the board. Employees and their representatives will be given an opportunity to be heard by the board. The board may then waive existing procedures and authorize use of the alternative procedures. Employees and their representatives will be notified of the alternative procedures; and

(H) Transfer or Demotion in Lieu of Layoff. Following or in connection with a layoff, an appointing authority may find it necessary to reassign employees in the affected class(es) in order to maintain essential business. Where reassignment involves the elimination of a position at one (1) location and a transfer to another physical location of work, the employees will be selected for transfer from a given location in the same order as provided for layoff. If an employee in a position which is abolished refuses to accept this transfer, the employee may be laid off in lieu of transfer. If it is impossible to staff a necessary position by transfer, the retention of an employee otherwise subject to layoff is authorized. Regular employees whose positions are to be eliminated will first be given the opportunity, in order of service credit score, to transfer within the layoff area where employed if other vacancies exist or if other employees in the area have lower layoff scores. Regular employees who are subject to layoff also must be given the opportunity to transfer to positions in the same class in other areas occupied by probationary, provisional or temporary employees. Demotion in lieu of layoff will be governed by section (4).

(2) Causes for Suspension, Demotion and Dismissal. The following are declared to be causes for suspension, demotion or dismissal of any employee in the classified service, depending upon the seriousness of the cause; however, those actions may be based upon causes other than those enumerated in this rule, namely, that the employee:

(A) Has willfully violated any of the provisions of the State Merit System Law or of the rules of the Personnel Advisory Board;

(B) Is incompetent, inadequate, careless or inefficient in the performance of the duties of

his/her position (specific instances to be charged) or has failed to meet established minimum standards in the performance of those duties;

(C) Has been wantonly careless or negligent in the care of the property of the state;

(D) Has been guilty of abusive or improper treatment toward an inmate or patient of any state institution or to a person in custody; provided the acts committed were not necessarily or lawfully committed in self-defense, to protect the lives of others or to prevent the escape of anyone lawfully in custody;

(E) Has some permanent or chronic physical or mental ailment or defect which incapacitates him/her for the proper performance of the duties of his/her position, including unrehabilitated alcoholism or narcotics addiction;

(F) Has been habitually tardy in reporting for duty or has absented him/herself frequently from duty during the course of regular working hours; or has been completely absent from duty without prior or subsequent authorization for that absence;

(G) Has been convicted of a felony or of a misdemeanor involving moral turpitude;

(H) Has been guilty of a scandalous and disgraceful conduct while on or off duty where this conduct tends to bring the state service into public disrepute or has exhibited behavior which adversely affects the employee's job performance, the employing agency, or both;

(I) Has been guilty of abusive or improper treatment of guests or clients while on duty at any state facility or on any state land normally open to the public;

(J) Has submitted a false statement of a material fact or has practiced or attempted to practice any fraud or deception in an application or examination or in otherwise attempting to secure employment subject to the provisions of these rules;

(K) Has been guilty of insubordination or has failed to respond in a reasonable manner to his/her lawful orders or instructions of persons with duly delegated authority over the employee;

(L) Has willfully violated the lawful regulations or policies of the agency by which employed after having been made aware of the regulations and policies;

(M) Has been abusive or physically violent toward other employees while on duty or in the duty area or has willfully exhibited behavior which is disruptive of the working activities of other employees;

(N) Has been intoxicated or under the influence of a controlled substance while on duty, except as may have been required by a licensed medical physician; or

(O) Has practiced or attempted to practice fraud or deception in securing or attempting to secure benefits or grants from a state agency either for him/herself or for another applicant.

(3) Suspension. An appointing authority, for disciplinary purposes, may suspend without pay any employee in his/her division. A suspension may be made for a length of time as s/he considers appropriate, not exceeding twenty (20) working days in any twelve (12)-month period except that this limitation shall not apply in the event of a terminal suspension given in conjunction with a dismissal; a suspension given in connection with a criminal offense involving the use of a controlled substance; or, with the approval of the director, a suspension made pending the investigation or trial of any charges against the employee (see section 36.370, RSMo). Employees enumerated in 1 CSR 20-5.010(1)(C) and (D) and designated as exempt from the overtime requirements of the Fair Labor Standards Act, shall not be suspended from duty without pay for disciplinary purposes unless the said suspension is for one (1) or more full workweeks.

(A) Any employee being suspended shall be furnished with a statement in writing specifically setting forth the reasons for the suspension. A copy of the statement shall be furnished to the director. No suspension of a regular employee for a period longer than five (5) workdays shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the board prescribed in 1 CSR 20-4.010(3)(A)1., and provides the employee with an opportunity to respond to the reason prior to the effective date. Any regular employee who is suspended for more than five (5) workdays may appeal in writing to the board within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming the suspension was for political, religious or racial reasons or not for the good of the service, as provided in 1 CSR 20-4.010(1)(D) and section 36.390, RSMo. For the purpose of the appeal process, the effective date of a suspension will be the first day the employee is suspended without pay.

(B) Any employee being suspended for a period of five (5) workdays or less shall be given a statement in writing specifically setting forth the reasons for the suspension. A copy of that statement shall be furnished to the director. No suspension of a regular

employee for a period of five (5) days or less shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason and gives the employee an opportunity to respond to the reason.

(C) An employee who has been convicted, pleads guilty to, or pleads *nolo contendere* for the first time of any criminal offense involving the use of a controlled substance and who fails to satisfactorily meet the requirements of education and treatment as defined in section 105.1105, RSMo, shall be suspended for a period of no more than three (3) months. In the case of a suspension under this section of the law, the appointing authority must provide the director and the employee with a statement in writing specifically setting forth the case for suspension and the conditions the employee must meet in order to be returned from suspension.

(D) In the event that an employee's conduct or performance is such that change is required as a condition of employment, an appointing authority may issue to the employee a statement describing the necessity for change, including what needs to be changed and in what time period. A permanent record of the conditional employment period may be established in the employee's service history by notifying the personnel director in a manner prescribed by the director. This action must contain a time period that may not exceed three (3) months.

(E) In the event of an instance of unacceptable conduct by an employee that in the judgment of the appointing authority does not warrant immediate suspension, dismissal or demotion, but which requires a permanent record, the appointing authority may record such conduct in the employee's service history by notifying the personnel director in a manner prescribed by the director.

(4) Demotions. An appointing authority may demote an employee in accordance with the following:

(A) No demotion for cause of a regular employee shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the board prescribed in 1 CSR 20-4.010(3)(A)1., provides the employee with an opportunity to respond to the reason prior to the effective date, and files a copy of the statement of the reason with the director. Any regular employee who is involuntarily demoted for cause may appeal in writing to the

board within thirty (30) days after the effective date thereof setting forth in substance reasons for claiming that the demotion was for political, religious or racial reasons or not for the good of the service, as provided in 1 CSR 20-4.010(1)(D) of the rules and section 36.390, RSMo;

(B) No demotions for cause shall be made unless the employee to be demoted meets the minimum qualifications for the lower class and shall not be made if any regular employee in the lower class would be laid off by reason of the action; and

(C) An appointing authority, upon written request of the regular employee affected, shall demote such employee in lieu of layoff to a position in a lower class in the same occupational job series or in a lower class of position in which the employee previously has served and has obtained regular status in the division of service involved, even though this action may result in a layoff in the lower class. The appointing authority may also, upon written request of the regular employee affected, demote such employee in lieu of layoff to a position in a class for which the employee meets the minimum qualifications even if this action may require layoff in the lower class. In the event of demotion in lieu of layoff, an employee shall have his/her name placed on the appropriate register in accordance with the procedure outlined in subsection (1)(D) for employees actually laid off.

(5) Dismissals. An appointing authority may dismiss for cause any employee in his/her division occupying a position subject hereto when s/he considers the action is required in the interests of efficient administration and that the good of the service will be served.

(A) No dismissal of a regular employee shall take effect unless, prior to the effective date, the appointing authority gives to the employee a written statement setting forth in substance the reason, informs the employee of appeal rights, provides the employee with a copy of the form for appeal to the board prescribed in 1 CSR 20-4.010(3)(A)1., provides the employee with an opportunity to respond to the reason prior to the effective date, and files a copy of the statement of the reason with the director. Any regular employee who is dismissed shall have the right to appeal in writing to the board within thirty (30) days after the effective date setting forth in substance reasons for claiming the dismissal was for political, religious or racial reasons or not for the good of the service, as provided in 1 CSR 20-4.010(1)(D) of these rules and section 36.390, RSMo.

(B) If the director determines that the statement of reasons for the dismissal given by the appointing authority shows that the dismissal does not reflect discredit on the character or conduct of the employee, the director, upon request of the employee, may approve reemployment eligibility in an appropriate class or classes.

(6) Resignations from the classified service shall be governed by the following provisions:

(A) Method of Resignation. To resign in good standing, an employee must give the appointing authority at least fifteen (15) calendar days prior notice unless the appointing authority, because of extenuating circumstances, agrees to permit a shorter period of notice. A written resignation shall be supplied by the employee to the appointing authority. All resignations shall be finally approved by the director as a matter of record;

(B) Required Resignations. Any employee holding a position in the classified service shall resign his/her position prior to filing as a candidate for public office or seeking or accepting nomination for election or appointment as an official of a political party, club or organization or serving as a member of a committee of any such group or organization; and

(C) An employee who applies and is approved by the applicable state benefit system for long-term disability or retirement status shall be deemed to have voluntarily resigned in good standing. Employees in either of these situations retain the reemployment eligibility to which they are entitled under 1 CSR 20-3.030(6).

(7) Absence Without Leave. The following provisions apply to employees who are absent from duty without appropriate authorization:

(A) An employee who absents him/herself from duty without prior authorization and under conditions which are not subsequently found to justify the granting of leave under these rules, depending upon the reason for and length of the absence, may be subject to appropriate discipline as provided in these rules;

(B) If an employee is dismissed for a continuing period of unauthorized absence, the circumstances of which indicate that the employee does not intend to return to duty, the notice of dismissal may allow the employee the option of submitting a resignation; and

(C) If an employee requests a leave of absence without pay under these rules and the appointing authority does not find it practicable to grant leave under its normal policy in those cases, a continuing absence from duty

without leave after the denial of this request will require the separation of the employee. If the employee, after being so notified, does not elect to submit a voluntary resignation, the appointing authority may separate the employee by dismissal as provided in these rules. However, dismissals shall be without prejudice unless also based on other causes reflecting discredit on the character or conduct of the employee. If the director determines that the dismissal does not reflect discredit on the character or conduct of the employee, s/he shall approve reemployment eligibility in an appropriate class or classes for the employee so dismissed.

(8) Furloughs of Employees in the Classified Service. An appointing authority, in accordance with these rules and procedures approved by the director and the board, may place an employee in a position subject to this law on a furlough without pay for a limited period of time whenever deemed necessary by reason of shortage of funds, or for other reasons which are outside the employee's control and which do not reflect discredit on the service of the employee. When a furlough or furloughs become necessary, the appointing authority will present a plan to the director and to the board describing why a furlough of limited duration is necessary, the functional areas that are affected, the number of employees who will need to be furloughed, and a detailed plan indicating why specific employees have been designated for furlough. Furloughs need not be for a continuous period for all employees involved. No employee will be furloughed for more than thirty (30) working days in a twelve (12)-month period. The furlough plan shall be submitted to the board for approval. Whenever, in the opinion of the director, there is an urgent necessity for the immediate approval of a furlough plan, the director may approve a plan until the board has an opportunity to act on the plan. Upon approval of the plan, employees to be furloughed will be given at least five (5) working days notice and will be notified of the length of the furlough period. If the furlough can be ended earlier than the initial period, employees will be given up to forty-eight (48) hours to report. If the appointing authority determines that it is necessary to lay the employee(s) off on a permanent basis, the provisions for layoffs described in these rules shall apply.

*AUTHORITY: section 36.070, RSMo Supp. 1997. * Original rule filed July 9, 1947, effective July 19, 1947. Amended: Filed Sept. 20, 1947, effective Sept. 30, 1947. Amended: Filed Dec. 23, 1947, effective Jan. 2, 1948.*

Amended: Filed March 25, 1948, effective April 4, 1948. Amended: Filed Aug. 13, 1949, effective Aug. 23, 1949. Amended: Filed June 1, 1954, effective June 11, 1954. Amended: Filed April 23, 1974, effective May 2, 1974. Amended: Filed Dec. 8, 1975, effective Dec. 19, 1975. Amended: Filed March 14, 1978, effective June 11, 1978. Amended: Filed Dec. 13, 1978, effective April 12, 1979. Emergency amendment filed Sept. 13, 1979, effective Sept. 28, 1979, expired Jan. 25, 1980. Amended: Filed Oct. 12, 1979, effective Jan. 15, 1980. Emergency amendment filed Jan. 15, 1981, effective Jan. 25, 1981, expired May 25, 1981. Amended: Filed Jan. 7, 1981, effective April 12, 1981. Amended: Filed Jan. 11, 1982, effective April 11, 1982. Amended: Filed March 1, 1993, effective Oct. 10, 1993. Amended: Filed Nov. 16, 1993, effective July 30, 1994. Amended: Filed July 21, 1994, effective Feb. 26, 1995. Amended: Filed July 21, 1994, effective Feb. 26, 1995. Amended: Filed June 15, 1995, effective Jan. 30, 1996. Amended: Filed July 9, 1997, effective Jan. 30, 1998. Amended: Filed Sept. 15, 1998, effective March 30, 1999.

**Original authority 1945, amended 1979, 1995.*

Anderson v. Personnel Advisory Board, 586 SW2d 738 (Mo. App. 1979). *Transfer of the old Department of Corrections to the reorganized Department of Social Services does not render the director of the Department of Social Services the sole "appointing authority" for purposes of dismissal under the state merit system law.*

Mills v. Federal Soldiers Home, 549 SW2d 862 (Mo. banc 1977). *Venue of action on appeal from administrative agency's determination sustaining discharge from employment is governed by section 536.110, RSMo. This provision does not conflict with Supreme Court Rule 100.04. Because respondent failed to raise any issue with respect to the adequacy of notice before the Personnel Advisory Board, he cannot raise that point for the first time on judicial review in the circuit court.*

Holley v. Personnel Advisory Board, 536 SW2d 830 (Mo. App. 1976). *The purpose of a ruling of the Personnel Advisory Board requiring the substance of the reasons for dismissal be set forth in a written statement is so an appellant can protect him/herself under the state merit system by appeal to the board and the courts.*

1 CSR 20-3.080 General Provisions and Prohibitions

PURPOSE: This rule prohibits discrimination and influences other than merit in the various aspects of personnel administration.

(1) Influences other than merit are prohibited in examinations and employment. Every appointment or promotion to a position covered by the merit system law shall be made on the basis of merit determined by that person's eligibility ratings established by competitive examinations. Demotions in and dismissals from employment shall be made for cause under rules uniformly applicable to all positions of employment. No appointment, promotion, demotion or dismissal shall be made because of favoritism, prejudice or discrimination. Political endorsement shall not be considered in connection with any such appointment. No person shall use or promise to use, directly or indirectly, for any consideration whatsoever any official authority or influence to secure or attempt to secure for any person an appointment or advantage in appointment to any position, or an increase in pay, promotion or other advantage in employment (see section 36.150, RSMo).

(2) Political Activity. Employees covered by merit system provisions of the law may take part in the activities of political parties and political campaigns under the following conditions:

(A) No employee shall be a candidate for nomination or election to any partisan public office or to any nonpartisan office in conflict with the employee's duties unless such person resigns, or obtains a regularly granted leave of absence from such person's position. No person elected to partisan public office, while holding office, shall be appointed to any position covered by this law;

(B) Employees may not use their official authority or influence for the purpose of interfering with the results of an election;

(C) An employee may not knowingly solicit, accept or receive a political contribution, on or off the job, from any person who is a subordinate employee of the employee;

(D) An employee may not knowingly solicit or discourage the participation in any political activity of any person who has an application for any compensation, grant, contract, ruling, license, permit or certificate pending before the employing department of such employee or is the subject of, or a participant in, an ongoing audit, investigation or enforcement action being carried out by the employing department of such employee;

(E) An employee may not engage in political activity—

1. While on duty;
2. In any room or building occupied in the discharge of official duties;
3. By utilizing any state resources or facilities;
4. While wearing a uniform or official insignia identifying the office or position of the employee; or
5. When using any vehicle owned or leased by the state or any agency or instrumentality of the state;

(F) No person, in any manner, shall levy or solicit any financial assistance or subscription for any political party, candidate, political fund or publication, or for any other political purpose from any employee in a position subject to the merit system portions of the state personnel law; and no employee shall act as agent in receiving or accepting any such financial contribution, subscription or assignment of pay; and

(G) It is unlawful for any person to intimidate, threaten, command or coerce any employee of the state to engage in, or not to engage in, any political activity, including, but not limited to, voting, or refusing to vote, for any candidate or measure in any election, making, or refusing to make, any political contribution or working, or refusing to work, on behalf of any candidate. No employee of this state shall discriminate against, discipline or otherwise create a preference for or against any employee subject to such person's authority as a consequence of such employee's political belief or expression of such belief. Any person who violates the provisions of this section is guilty of a class three election offense, punishable by a term of imprisonment for not more than one (1) year and a fine of not more than two thousand five hundred dollars (\$2,500), or both such fine and imprisonment. Any person convicted of a violation of this section shall lose such person's position in the agency.

(3) Fraud or Obstruction. No person shall make any false statement, certificate, mark, rating or report with regard to any test, certification or appointment or in any matter commit or attempt to commit any fraud preventing the impartial execution of the merit system law or these rules. No person, directly or indirectly, shall give, render, pay, offer, solicit or accept any money, service or other valuable consideration for or on account of any appointment, proposed appointment, promotion or proposed promotion to, or any advantage in, a position subject to the law or these rules. No employee of the Personnel Division, examiner, or other person shall

defeat, deceive or obstruct any person in the right to examination, eligibility certification or appointment under the law, or furnish to any person any special or secret information for the purpose of affecting the rights or prospects of any person with respect to employment in a division of service subject to the law. Any person who violates any provision of this section shall be guilty of a misdemeanor (see section 36.160, RSMo).

(4) Prohibition of Discrimination.

(A) Discrimination against any person in recruitment, examination, appointment, training, promotion, retention, discipline or any other aspect of personnel administration, because of political or religious opinions or affiliations or because of race, creed, color, national origin, ancestry or any other non-merit factors is prohibited. Discrimination on the basis of age or sex or physical disability is prohibited except where specific age, sex or physical requirements constitute a bona fide occupational qualification necessary to proper and efficient administration.

(B) In any case of alleged discrimination for which a review is not provided by the Missouri Commission on Human Rights and Chapter 213, RSMo or by other provisions of these rules, an applicant or employee who feels adversely affected in an opportunity for employment, in his/her status as an employee or in his/her condition of employment because of this discrimination, under this rule, may appeal to the Personnel Advisory Board for a review of the alleged discriminatory action or practice. The request for this review shall be filed by the applicant or employee in writing with the Personnel Advisory Board within thirty (30) calendar days after the date on which the action or practice is alleged to have occurred and shall set forth in substantial detail the particulars and other information as may be required by the board. Following the general provisions of 1 CSR 20-4.010 and special procedures as may be required, the board shall conduct the investigation, hearing, or both, as is necessary to determine whether a discriminatory action or practice has occurred. If the board finds that discrimination has occurred, it shall issue an order requiring the appointing authority or the personnel director, as the case may be, to cease and desist from this practice and to take remedial action as the board may require. If the findings of the board do not support the complaint or charge of discrimination, the board shall issue an order dismissing the appeal.

AUTHORITY: sections 36.060 and 36.070, RSMo Supp. 1997. Original rule filed July*

9, 1947, effective July 19, 1947. Amended: Filed April 23, 1974, effective May 2, 1974. Amended: Filed March 14, 1978, effective June 11, 1978. Emergency amendment filed Sept. 13, 1979, effective Sept. 28, 1979, expired Jan. 25, 1980. Amended: Filed Oct. 12, 1979, effective Jan. 15, 1980. Amended: Filed Nov. 16, 1993, effective July 30, 1994. Amended: Filed July 21, 1994, effective Feb. 26, 1995. Amended: Filed Sept. 15, 1998, effective March 30, 1999.

**Original authority: 36.060, RSMo 1945, amended 1971, 1979, 1993, 1995 and 36.070, RSMo 1945, amended 1979, 1995.*

Op. Atty. Gen. No. 45, James (5-1-53). *Personnel Advisory Board Rule 15.4(b) (now 1 CSR 20-3.080(1)(B)) prohibits employees under the state merit system from being candidates for nomination or election to public office, or engaging in political activities while holding such position. A merit system employee cannot become candidate for election of director to city school board without resigning or securing leave of absence. The merit system employee may attend political mass meeting but cannot take active part except to express opinion or vote on any proposition if afforded the opportunity.*

Wilderman v. Nelson, 467 F2d 1173 (1972). *Welfare caseworker with Missouri Division of Public Welfare could not be dismissed from his job without a pretermination hearing even though employee was not formally tenured because 1) the governmental conduct was here likely to impose a stigma upon the employee that will foreclose future opportunities to practice his chosen profession; and 2) existence of tenure is immaterial (as it affects right to pretermination hearing) to a claim of dismissal in retaliation of employee's exercise of his constitutional protected right of free speech.*