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PERSONNEL SERVICES BULLETINS (PSBs)

200-10**Subject:** Rights to Former Positions for Probationary Employees**Source:** 1995 - 2001 Citywide Agreement; Personnel Rules and Regulations of the City of New York**Date:** April 17, 2000

I. Background

Rule 5.2.3 of the Personnel Rules and Regulations of the City of New York states that "upon promotion, the position formerly held by the person promoted shall be held open for the promotee, and shall not be filled, except on a temporary basis, pending completion of the probationary term." Thus, any competitive, non-competitive, or labor class employee who has completed the required probationary period and who subsequently promotes to a position in the competitive class which requires a new probationary period may return to his/her former position if such employee does not complete the probationary period in the promoted title. There is no comparable rule for employees who make lateral moves to other agencies within City government.

In recent years, many City employees have changed career paths and sought positions with the City outside of their current occupational groups or service. This has been accomplished, in part, via title changes and new appointments, some of which require the imposition of a new probationary period. There have been instances where such employees (some of whom have completed their probationary periods in their former titles) have been terminated during their probationary periods in their subsequent titles for unsatisfactory performance. Although the Personnel Rules and Regulations permit the reinstatement of employees to their former positions under certain conditions, such reinstatements are discretionary on the part of the agency head and do not apply to all jurisdictional classes.

It has been and will continue to be the City's policy to encourage its employees to seek advancement opportunities within City government. This can be accomplished, in part, by affording certain employees who take positions outside of their occupational groups or service the right to return to their former positions. Consequently, a new clause in the Citywide Agreement provides for such rights.

II. Policy

The new provision states that employees serving permanently ([footnote 1](#)) in a competitive, non-competitive, or labor class title who are covered by the Citywide Agreement and who work in an agency covered by the Personnel Rules and Regulations of the City of New York ("PRR") ("covered employees") who are appointed to another position in the competitive, non-competitive, or labor class that requires serving a new probationary period and in an agency covered by the PRR, shall have the right to return to their former title and agency if they do not satisfactorily complete the new probationary period.

Example: a permanent Civil Engineer at the Department of Environmental Protection ("DEP") is offered a probable permanent position as a Police Officer at the New York City Police Department

("NYPD"). The Police Officer does not pass probation; he has the right to return to DEP as a Civil Engineer. However, the reverse is not true. The Police Officer who accepts a position as a Civil Engineer and does not pass probation does not have the right under this policy to return to his former position of Police Officer since he was not a covered employee, i.e., as a Police Officer, he was not covered by the Citywide Agreement.

Upon receipt of their conditional resignation and request for a leave pursuant to the procedures described herein, eligible employees shall be granted a Leave of Absence for the duration of the probationary period in the subsequent position. **Unlike many leaves of absence, there is no discretion on the part of the agency for granting this type of leave.** Two new Reason Codes unique to these transactions will be established. The new Reason Codes are: L20 "Leave pending probation per PSB No. 200-10" and R71 "Conditional resignation per PSB No. 200-10." The Office of Payroll Administration will issue a User Bulletin with instructions on the use of the new Reason Codes.

When an employee granted a leave pursuant to this PSB does not satisfactorily complete the probationary period in the subsequent position, said employee shall be returned to his/her former title and agency, provided said employee continues to meet the qualification and residence requirements applicable to his/her former title. If such requirements are met, **there is no discretion on the part of the former agency with respect to this matter.**

Example: a covered employee on leave from her Motor Vehicle Operator ("MVO") position at DEP resigns from her position as a probationary Staff Analyst at NYPD. While employed as an MVO, she was required to maintain a driver's license valid in New York State. However, she allowed her license to lapse while with the NYPD. In this case, she would not be eligible to return to her former position.

Upon completion of the probationary period in the subsequent job, the employee shall submit the agreed upon letter of resignation from his/her former position to the former employer. At the close of the probationary period, the former employer will terminate the leave and the position, unless notified by the employee of any extensions of his/her probationary period. Therefore, it is the responsibility of the employee to notify the former employer of any extensions of his/her probationary period so that his/her leave under this policy is not terminated prematurely.

The leave policy set forth herein shall be effective November 26, 1999, and shall only apply to covered employees who begin their subsequent positions on or after said date. If a covered employee, in compliance with prior policy and procedures, resigned his/her former position on or after November 26, 1999, but prior to the publication of this policy, such employee shall be deemed subject to the provisions of this PSB, provided he/she meets all the requirements under this policy and was appointed to his/her subsequent position without a break in service.

Although employees who meet all the requirements for reappointment (whether on leave or not) pursuant to this policy will be reappointed to their former position, there is no guarantee of returning to their previous assignment, nor does this policy give employees on leave from their permanent titles while serving provisionally in another title the right to return to their provisional titles. However, this policy does not preclude the former employer from reappointing the employee to his/her former provisional position if the former employer so chooses.

Example: a permanent Staff Analyst on leave to serve as a provisional Associate Staff Analyst who accepts an open competitive list appointment to Computer Specialist will not be granted a leave from the provisional Associate Staff Analyst position and does not have the right to return to that position.

The purpose of this policy is to give covered employees who have a definite job offer with either the same or another City agency covered by the PRR an opportunity to return to their former position if they do not successfully complete probation. Therefore, they must have a job offer covered under this policy, be in active pay status in the former job at the time of the job offer, and be in active pay status in the

subsequent job at the time of application for reappointment.

Example: a permanent Staff Analyst at DEP accepts a position as a probable permanent plumber at NYPD. During the probationary period, the employee resigns her plumber position to accept a job in private industry. While employed in private industry, she decides to return to her Staff Analyst position at DEP. Under this policy, she is not eligible to return, and her leave must be terminated if it has not already been terminated.

Nothing in this policy shall be construed to prohibit an agency, in its sole discretion, from reinstating employees who meet the requirements under the Reinstatement Rules, but who do not meet the eligibility requirements for a leave under this policy.

Example: a permanent Carpenter at NYPD accepts a job offer as an Accountant at DEP. Under this policy, he cannot be granted a leave and has no right to return to his former position since he is not a covered employee at NYPD. However, if NYPD so desires, he can be reinstated to his Carpenter position provided he meets the requirements under the Reinstatement Rules.

III. Procedure

A. Prior to Leaving Former Position

A covered employee who is offered and accepts another position in an agency covered by the PRR where such position requires a new probationary period, must notify the former employer in writing upon acceptance of the offer. The employee must submit to his or her Personnel Director a "Conditional Resignation and Request for a Leave of Absence Pursuant to PSB No. 200-10," Form DP-2516 ([see attached](#)). To be eligible for a leave under this policy, the employee should submit the form no later than ten business days prior to the employee's last day in active status at the former agency, but in no case less than five business days prior to that date. ([footnote 2](#)) To allow the Personnel Director time to verify the information on the form and to determine whether the employee is eligible for a leave, the employee should submit this form as soon as possible.

If the employee does not meet the requirements for a leave as stated in this policy, the Personnel Director must so inform the employee in writing prior to the employee's last day of work. The written notification must include the specific reason(s) that the employee is ineligible, e.g., the employee is resigning to accept a job at OTB which is an agency not covered by the PRR. However, if the employee is eligible for a leave, the Personnel Director should inform the employee that if the employee returns to his/her former title, it will not necessarily be the same assignment and that he/she must continue to meet the qualification requirements and residence requirements applicable to his/her former title. Further, the employee must be notified about the limited leave and the termination of the leave once the probationary period is passed. All this information is included in Form DP-2516 ([see attached](#)).

B. Upon Notification of Termination

If an employee working for a City agency covered by the PRR who is on a leave of absence from another position pursuant to this policy is notified that he/she is being terminated or resigns before the completion of the probationary period, such employee may apply to the Personnel Director of his/her former agency for reappointment to his/her former title. Upon receipt of such application for reappointment, the Personnel Director of the former agency shall remove the leave and reappoint the employee to his/her former title, provided that the employee continues to meet the qualification requirements and residence requirements applicable to said former title.

Employees who left their former agencies prior to the distribution of this PSB will be required to meet the same requirements as those who were given a leave of absence. Since no predetermination was made as to eligibility for reappointment, this must be done at time of application for reappointment. Ineligible employees must be notified in writing. Eligible competitive and labor class employees will be reinstated using Form DP-71. This form must be submitted by the Personnel Director of the hiring agency to the Control and Service Division of DCAS. The hiring agency should indicate on the top of the DP-71 form "Expedited Request Pursuant to PSB No. 200-10." If waiting for receipt of approval will result in the employee being off payroll, the agency should call the Control and Service Division to obtain verbal approval. However, the agency must also submit the DP-71 form. Eligible non-competitive employees will be reappointed using the Update Personnel Document (UPD).

C. Promotion Eligibility

Employees serving probationary periods in their subsequent positions will be permitted to file for and participate in promotion examinations from their former titles provided they meet all other eligibility requirements. If reached on such promotion lists, those probationers who accept promotion will be required to resign from their subsequent position.

William J. Diamond
Commissioner

Footnote 1: For the purposes of this PSB, the term "permanent employee" shall mean an employee serving in a position in the competitive, non-competitive, or labor class who has passed probation.

Footnote 2: These time limits may be waived for a covered employee appointed to his/her subsequent position after November 26, 1999, but prior to the publication of this policy, provided he/she meets all the requirements under this policy and was appointed to his/her subsequent position without a break in service.

Inquiries: Personnel Audits and Transactions (212) 669-2315 **Issue No.** 3-2000

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