

TECHNICAL GUIDANCE – TEMPORARY EMPLOYEES

Prepared by the Division of Human Resources in the Department of Personnel & Administration. Revised February 28, 2013.

APPLICATION

This technical guidance document has been developed to describe the use of state temporary positions and employees, in a department. Department is defined as one of the principal departments or institutions of higher education in the executive branch. [research date: February 20, 2020]

UPDATE: Changes in Personnel Rules Published April 1, 2020

Rule 1-38.1. Conditional Appointments. A temporary appointment to a permanent position approved by the Appointing Authority. The appointment applies to a current certified employee who is qualified and temporarily promotes into a permanent vacancy for which no eligible list exists. (04/01/2020)

Rule 1-62.2.1. Provisional Appointment. An immediate temporary appointment to a position with a person from outside of the state personnel system for which no eligible list exists. Employees with a provisional appointment do not have the rights and benefits provided to classified employees within the state personnel system except for those mandated by law and pay range minimums. Appointees shall possess the minimum qualifications for the position. Appointees shall not retain the position as provisional longer than nine (9) months from the date of entrance of duty or one (1) month after the establishment of a referral list intended to permanently fill the position, whichever date is earlier. (04/01/2020)

1.74.1. Temporary Appointee. This refers to a qualified person who is appointed to a position or positions for a period not to exceed nine (9) months in any twelve (12) month period inclusive of all temporary appointments with any state employer. Temporary appointees include temporary, conditional, provisional, and substitute appointments. (04/01/2020)

1-74.2. Temporary Employee. A person who holds a temporary appointment in a temporary position and is employed at-will, not having the rights and benefits provided to permanent employees, except those mandated by law and pay range minimums. (04/01/2020)

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GENERAL

The following addresses the use of state temporary positions and employees while a separate technical guidance on personal services contracts addresses the use of leased workers from a multi-employee contractor, such as a temporary agency or company under a contractual arrangement. For purposes of this document, a department is one of the principal departments or institutions of higher education in the executive branch.

APPOINTMENTS

Although temporary appointments are not subject to the comparative analysis process outlined in state personnel rules, a temporary employee must be qualified to conduct the duties of the temporary position. Minimum qualifications are determined by the appointing authority based on the job requirements documented in the Temporary Position Description. The position's minimum qualifications and applicant's qualifications are verified and approved by the department human resources office.

Temporary employees do not have to meet the residency requirement mandated in Colorado constitution for positions in the state personnel system. While temporaries are state employees, they are outside the state personnel system¹.

Per Colorado constitution, a temporary employee may work for the State no more than nine months in a 12-month period. The 12-month period is not defined as a calendar or fiscal year, but a rolling 12-month period that begins with the month of the first day of work for the temporary assignment.

- For continuous or regular (including part-time) work schedules, the temporary assignment starts the actual date the temporary employee begins work and ends after nine months. For example, a temporary employee who begins working June 15th may work continuously through March 14th.
- For intermittent "on and off" work schedules, each hour worked is counted toward a total nine-month limitation within 12 months. In this case, the temporary employee can work up to a maximum of 1,560 hours intermittently within a 12 month period.

In addition, a temporary employee cannot work nine months for one department, then work an additional nine months for another department, if the additional assignment falls within the same 12-month period.

For example:

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| Person – 9 months in a 12 month period | Position – 9 months with 4 month waiting |
| Months 1-9: i.e., Jan. 1 – Sept. 30 | Months 1-9: i.e., Jan. 1 – Sept. 30 |
| Cannot work months 10-12: i.e., Oct. 1 – Dec. 31 | Cannot fill months 10-13: i.e., Oct. 1 – Jan. 31 |
| Months 13-21: i.e., Jan. 1 – Sept. 30 | Months 14-25: i.e., Feb. 1 – Oct. 31 |
| Cannot work months 22-24: i.e., Oct. 1 – Dec. 31 | Cannot fill months 26-29: i.e., Nov. 1 – Feb. 28 |
| Months 25-33: i.e., Jan. 1 – Sept. 30 | Months 30-38: i.e., March 1 – Nov. 30 |

¹ 24-50-114(2), C.R.S.

POSITIONS

A permanent ongoing labor need cannot be filled with a succession of multiple temporary appointments. An appointing authority must wait at least four months between temporary appointments for the same position.

All temporary positions must be created and placed in the Temporary Aide (P1A1) class. This class was expressly created to accommodate temporary positions of any type of work, in any principal department, regardless of the appropriate salary. Placing all temporary positions in this class also provides a needed distinction between permanent and temporary positions. The class description for this class contains no factor levels, so placing positions in this class is simple. This also allows departments the flexibility to create their own informal structure of multiple levels of work in the range, e.g., multiple levels of lifeguards or summer parks workers.

COMPENSATION

The pay range minimum for the Temporary Aide class is set at the federal or Colorado minimum wage, whichever is applicable, and the range maximum is set at the statutory salary lid for the general pay plan. The appropriate salary level may be obtained by cross-reference to a similar class of work in the state personnel system. However, temporary employees do not have the same rights and privileges as permanent employees and constitutional pay equity requirements do not apply. Therefore, appointing authorities may select any salary between the range minimum and maximum as deemed appropriate for the job. Temporary employees are not eligible to receive the same salary adjustments as employees in the state personnel system, such as across the board increases or merit pay. Appointing authorities may grant a salary increase when justified by unusual situations.

Temporary employees are not eligible for benefits or leave except as provided by law, such as workers' compensation and potentially Family and Medical Leave. Temporary employees must contribute to one of the retirement plans administered by PERA. Other wage withholding will be in accordance with state and federal laws.

DISCLAIMER

Subsequent revisions to rule or law could cause conflicts in this information. If a rule or law conflicts with the technical guidance information, the law and rules are the official source upon which to base a ruling or interpretation. This document is an interpretation, not a contract or legal advice. If you need advice or further interpretation, please contact the AG's office at: EmploymentAdvice@coag.gov. (04-01-2020)