

Change in Promotional Testing Requirement and General Guidelines on Promotion Procedures and Records Maintenance April 12, 2012

The Division of Personnel takes its general responsibility to oversee agency merit system procedural compliance very seriously. We support the need for developing a more flexible partnership, shared responsibility approach in meeting merit system goals.

Merit system organizations have long recognized that there are many opportunities for hiring process abuse. Unfortunately, this abuse can be insidious and may seem like a convenient way to speed the appointment process or reward loyalty. At the same time, we fully understand that state agencies face many recruitment and hiring challenges. As a true partner in the hiring process, the Division of Personnel must strike a balance between compliance oversight and procedural flexibility that better enables agencies to attract, build and retain a quality workforce. As such, we are implementing an important change in the promotional selection process.

We are replacing the current promotional examination requirement with more position specific procedures which recognize the responsibility individual agencies already have to ensure that all personnel actions, including promotions, are documented, transparent, and in full compliance with merit principles and fair competition. Formal promotional testing will remain a valuable option which can be an integral part of a comprehensive candidate evaluation process. The revised procedure requires agencies to maintain certain promotion records by which the process used in candidate evaluation and selection can be independently reviewed. It is very likely that many agencies already maintain such records. In a sense, this change will require nothing that is not already expected under existing law, various regulations and court rulings.

Effective **April 12, 2012**, the Division of Personnel will no longer require persons nominated for promotion to pass, or have a record of passing, the competitive written and/or performance examination. As specified in Section 11 of the Division of Personnel *Administrative Rule*, the appointing authority may request that the selected candidate or all candidates be tested as part of the overall agency promotional decision process. The Division of Personnel will continue to make final determinations of the minimum qualifications for promotional appointment and for appointment above the minimum salary. The Division may require agencies to provide detailed information on promotional candidates, selection criteria, and any assessment procedures used. This change has no effect on open competitive hiring procedures.

General Agency Responsibility

Agencies are directed to ensure that all promotion procedures and decisions are based on merit and the documented requirement of the job. Promotion selection must be made without regard to any non-merit factor such as race, color, sex, religion, national origin, political affiliation, marital status, cultural identification, disability, age, or personal connection. Compliance with these requirements need not be complicated. It simply requires the careful and fair consideration of all classified service applicants for promotional opportunities based on job-related criteria. Each state agency is responsible for documenting and following job-related and consistent internal

promotion procedures. Agencies are fully accountable under both state and federal law for compliance with merit standards, equal employment opportunity, merit system rules, and decision transparency. As such, any and all promotional hiring records must be complete and available to the Division of Personnel upon request.

The Division of Personnel has the legal obligation to deny approval of any promotion transaction that is clearly not in compliance with accepted merit procedures. The exact method of promotional selection is not specified. Hiring agencies are free to research selection methodologies, consult with Division of Personnel staff, and seek outside assistance in developing procedures that will be both fair and effective. While specific procedures do not require prior approval, the Division of Personnel will not support or defend procedures which do not meet legal or professional standards. Ultimately, the agency bears full responsibility for any adverse outcome or promotion challenge.

Promotion Records Maintenance

Agencies must maintain records, or a promotion file, on each internal promotion action. In fact, many agencies already have highly structured and well documented promotional procedures. Files should be maintained for a minimum of **one year** after the effective date of the personnel action.

Title VII of the Civil Rights Act of 1964 and the American with Disabilities Act of 1990 both require employers to retain all hiring records, including application files, for **one** year from the date the records were made or the personnel action was taken, whichever is later. Agencies receiving federal funds and subject to certain federal funding regulations may be required to maintain the records for a period of **two** years. When a discrimination charge is filed, all records relevant to the charge must be kept until "final disposition" of the charge.

Agency human resources staff is responsible for assisting hiring managers in understanding merit procedures, conducting job-related applicant evaluations, and assembling promotion records. These records are retained in the agency but must be made available to the Division of Personnel upon request. Promotion files may include both paper or electronic documents. The source of documents maintained in other system should be referenced.

At a minimum, the promotion file should contain or reference the following:

- Copy of the Position Description, if available
- Copy of the Job Vacancy Posting.
- Description of knowledge, skills, abilities or other factors used in evaluating candidates
- Description of any evaluation criteria, rating factors, tests, assessment procedures, or scoring plans used. Example procedures might include: work sample exercises, written tests, online assessments, training and experience evaluations, skills checklists, rating guides, oral exam, interviews, performance tests, appraisal records, etc. (The Division of Personnel may provide professional consultation on these assessment procedures.)
- Applications and any other documents used in evaluating candidates.

- Voluntary Equal Employment Opportunity (EEO data) should be collected or available and maintained separate from the applications and evaluation materials.
- Names of candidate evaluators and interview panel members.
- Candidate scores or numerical ratings. Formal numerical scoring is not required.
- A list of the names of all candidates who applied and were considered.
- Name of candidate or candidates selected.
- Any other documents or information the agency deems relevant to the appointment decision.

It is the responsibility of the agency to provide timely notifications to all applicants. Notification documents need not be included in the promotion file.

It is not the intention of the Division of Personnel to supplant the legitimate promotional decision making authority of the agency. The Division of Personnel does **not** prescribe any specific form or format for promotion records. The extent of required documentation may depend on many factors, including: agency practice, the complexity of the position, the effective level of internal competition, challenge risk, specific EEO issues, and candidate expectations. In any case, the agency should provide sufficient material so that someone not involved directly in the process can reasonably determine that the promotion decision was not arbitrary, and was based on job-related criteria and the consideration of all qualified candidates.

We anticipate that additional guideline and instructional material will be made available to assist agencies in designing and documenting promotion procedures. Certainly, a wealth of material on these topics is readily available on the Web. Agencies with questions about this change in promotional examination requirements or promotion records maintenance, should contact Mike Campbell, Assistant Director for Staffing Services, at (304) 558-3950 Ext. 57260.