



State of Idaho  
**DIVISION OF HUMAN RESOURCES**  
 Executive Office of the Governor

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 Acting Administrator

Idaho Personnel Commission  
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February 9, 2010

**MEMORANDUM**

TO: Agency Directors

CC: Human Resources and Fiscal Staff

FROM: Wayne Hammon, Acting Administrator  
 Division of Human Resources

SUBJECT: **Rule Waivers and New Separation Codes**



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Division of Human Resources Rule 15.04.01.006 states: "The administrator reserves the right to waive any rule in specific instances when, in his/her opinion, such waivers are legal, warranted and justified in the interests of a more effective and responsive system of personnel administration."

In accordance with this Rule, as Acting Administrator of the Division of Human Resources (DHR), I am waiving or delegating the rule(s) or the portion of the rule(s) that requires the DHR Administrator's approval of the following: Acting Appointments, Limited Service Appointments, Provisional Appointments, Reinstatements, Transfers, Extensions of Probations, Holiday Pay Calculation, and Interviews for Prospective Layoffs. Agencies are responsible for insuring compliance with the rules listed below. The portion of the rule that is waived or delegated is underlined.

**DHR Rule 15.04.01.073 Calculation of Pay**

To provide consistency in the treatment of employees in regards to holiday pay, as DHR Acting Administrator, I am waiving the underlined portions of Rule 15.04.01.073.04.b. and Rule 15.04.01.073.04.f. which state:

**04.b. Holiday Pay Calculation:** A full-time employee will receive holiday pay in accordance with the number of hours the employee works on a regular workday. If the employee's schedule is so irregular that a regular workday cannot be determined, the employee will receive eight (8) hours of holiday pay. An employee must receive some paid leave, wages or salary for the pay period in which the holiday occurs to receive the holiday benefit.

**04.f. Holiday Pay Calculation:** Schedules resulting in holiday time off in excess of eight (8) hours may be approved by the appointing authority if included in the agency compensation plan. Appointing authorities may also suspend flex schedules during holiday weeks or otherwise adjust work schedules to ensure internal consistency.

As a result, agencies are to:

- Allow no more than eight (8) hours holiday pay for full-time employees for any holiday defined in Idaho Code 67-5302(15).
- Review policies on holiday pay and revise as necessary to conform to these rule waivers.
- Suspend flex schedules during holiday weeks, as necessary, or otherwise adjust work schedules to ensure internal consistency.

#### **DHR Rule 15.04.01.119.04 Provisional Appointment**

As DHR Acting Administrator, I am waiving the underlined portion of Rule 15.04.01.119.04.b. which states: “In nominating a person for provisional appointment, the appointing authority will transmit to the administrator an application for employment of the nominee...”

...“Successive provisional appointments of the same individual or successive provisional appointments to the same position will not be permitted unless specifically authorized by the administrator”.

In its entirety, Rule 15.04.01.119.04 reads:

**a.** A provisional appointment may be authorized in the absence of an adequate register. (Ref. Section 67-5309(k), Idaho Code)

**b.** In nominating a person for provisional appointment, the appointing authority will transmit to the administrator an application for employment of the nominee. If the applicant meets the minimum qualifications established for the classification, the nominee may be provisionally appointed to fill an existing vacancy in a position for no longer than thirty (30) calendar days after establishment of an adequate register. Successive provisional appointments of the same individual or successive provisional appointments to the same position will not be permitted unless specifically authorized by the administrator.

**c.** Provisional incumbents will be given opportunity to take the examination for the classification of position. Any provisional employee who fails to pass such an examination within certifiable range or who has an opportunity to take such an examination and has not done so will be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles.

As a result, agencies will be expected to:

- apply intent of Rule 119 and related rules,
- have the appropriate signature (Appointing Authority’s signature or someone with delegated signature authority for the Appointing Authority),

- maintain related documentation.

### **DHR Rule 15.04.01.120.03 Limited Service Agreement**

As DHR Acting Administrator, I am waiving the underlined portion of rule 15.04.01.120.03 which states: “A copy of the agreement must be submitted to the administrator.”

In its entirety Rule 15.04.01.120.03 reads: “Appointing authorities making limited-service appointments must prepare, no later than the date of appointment, a written agreement for signature of both the employee and appointing authority describing the non-career nature of the appointment, potential for layoff, and the duration the employee may expect to work. Renewals and updated agreements are required every two (2) years. A copy of the agreement must be submitted to the administrator”.

As a result, agencies will be expected to:

- apply intent of Rule 120 and related rules,
- inform applicants on the recruiting announcement that the position is limited service,
- have the appropriate signature (Appointing Authority’s signature or someone with delegated signature authority for the Appointing Authority),
- maintain related documentation.

### **DHR Rule 15.04.01.124.01 Reinstatements**

As DHR Acting Administrator, I am delegating to state agencies the determination if a current or former employee is eligible for reinstatement as stated in Rule 15.04.01.124.01: “As determined by the administrator, a current or former employee will be eligible for reinstatement to a classification in which he held permanent status, or if deleted its successor, or to another classification of equal or lower pay grade under the following conditions (salary treatment is covered by Subsection 072.06 of these rules).”

As DHR Acting Administrator, I am delegating to state agencies the decision if a current or former employee will be required to pass an examination as stated in Rule 15.04.01.124.03: “The administrator may require a current or former employee to pass an examination for the classification to which reinstatement is desired.”

In its entirety, Rule 15.04.01.124 reads:

**01. Eligibility.** “As determined by the administrator, a current or former employee will be eligible for reinstatement to a classification in which he held permanent status, or if deleted its successor, or to another classification of equal or lower pay grade under the following conditions (salary treatment is covered by Subsection 072.06 of these rules).”

**a.** Reinstatement is limited to a period equal to the length of the employee’s probationary and permanent employment combined.

**b.** The current or former employee must have separated from the classification for which reinstatement is desired without prejudice. A former employee must also have separated from state classified service without prejudice.

**c.** The current or former employee must meet the current minimum qualifications of the classification to which reinstatement is desired.

**02. Reinstatement Prohibited.** Reinstatement of a current or former employee is not permissible as long as there is an agency register (Ref. Rule Subsection 101.01) for that classification with names of eligibles that have reemployment preference status.

**03. Examination.** “The administrator may require a current or former employee to pass an examination for the classification to which reinstatement is desired.”

**04. Probationary Period.** An appointing authority may negotiate for a probationary period as a condition of reinstatement except where prohibited. (Ref. Rule Subsections 124.05 and 145.01).

**05. Return from Military Duty.** An employee returning from military leave without pay (Ref. Rule Subsection 250.05) who is relieved or discharged from military duty under conditions other than dishonorable will be, upon application, reinstated in his former position, or one of comparable classification, without loss of credited state service, status, or pay as prescribed by Sections 46-216, 65-508, 65-511, Idaho Code, USERRA, or the Military Selective Service Act, Title 38, Chapter 43, U.S. Code. Application for reemployment must be made in accordance with the provisions of USERRA. Salary treatment is covered by Subsection 072.08 of these rules.

As a result, agencies will be expected to:

- apply intent of Rule 124 and related rules,
- have the appropriate signature (Appointing Authority’s signature or someone with delegated signature authority for the Appointing Authority),
- maintain related documentation.

#### **DHR Rule 15.04.01.125.07 Transfers – Examination**

As DHR Acting Administrator, I am delegating to state agencies the decision if an employee transferring between classifications will be required to pass an examination for the classification to which transfer is desired as stated in Rule 15.04.01.125.07: “The administrator may require an employee transferring between classifications to pass an examination for the classification to which transfer is desired.”

In its entirety, Rule 15.04.01.125 reads:

**01. Authority to Transfer.** An appointing authority may transfer an employee at any time from one position to another in the same classification.

**02. Transfer Within Pay Grade.** An appointing authority may transfer an employee from a classification in which he holds permanent status to another classification allocated to the same pay grade for which the employee meets the minimum qualifications.

**03. Probationary Period.** An appointing authority may negotiate with an employee for a probationary period as a condition for a voluntary transfer. Voluntary probation is not allowed for intra agency transfers. (Ref. Rule Section 150)

**04. Limitation.** Transfers will not be used to abridge an employee's rights in reduction in force prescribed by Rules 140 through 147 of these rules.

**05. Transfer Between Agencies.** An employee is eligible for transfer between agencies in the same classification in which he holds permanent status or to another classification in the same or lower pay grade for which the employee meets the minimum qualifications. Accrued vacation and sick leave will be transferred in accordance with Subsections 230.04 and 240.02 of these rules. Salary treatment is covered by Subsection 072.04 of these rules.

**06. Restriction.** Transfer of an employee between agencies is not permissible as long as there is a agency register with reemployment preference status (Ref. Rule Subsection 101.01) for the classification in the agency to which transfer is desired with names of eligibles who are willing to accept reemployment.

**07. Examination.** “The administrator may require an employee transferring between classifications to pass an examination for the classification to which transfer is desired.”

**08. Involuntary Transfer.** Notice and an opportunity to be heard must be given to any employee subject to an involuntary transfer.

As a result, agencies will be expected to:

- apply intent of Rule 125 and related rules,
- have the appropriate signature (Appointing Authority's signature or someone with delegated signature authority for the Appointing Authority),
- maintain related documentation.

#### **DHR Rule 15.04.01.129.03 Acting Appointment To A Position – Notification**

#### **DHR Rule 15.04.01.130 Limitation on Length of Appointment**

As DHR Acting Administrator, I am waiving the underlined portion of rule 15.04.01.129.03 Acting Appointment which states: “Appointing authorities must notify the administrator of each acting appointment no later than the effective date of the appointment unless an exception is specifically authorized by the administrator.”

In addition, I am delegating to state agencies the decision to extend the period of time for the acting appointment as stated in Rule 15.04.01.130: “Acting appointments shall be limited to the period of time necessary to fill the vacancy pursuant to procedures prescribed in these rules but

in no case shall continue beyond one thousand forty (1,040) hours of credited state service unless specifically extended by the administrator.”

In their entirety Rules 129 and 130 read:

### **129. Acting Appointment To A Position**

**01. Conditions for Acting Appointment.** At the discretion of an appointing authority, a classified employee with permanent status may be appointed to a position in a classification of higher pay grade within his own department in an acting capacity whenever:

- a. The incumbent of the position in the higher classification is on authorized leave of absence; or
- b. A vacancy exists and there is no departmental register with reemployment preference status (Ref. Rule Subsection 101.01) with names of eligibles who are willing to accept reemployment, nor adequate departmental register for the classification.

**02. Minimum Qualifications.** To be eligible for an acting appointment, an employee must meet the minimum qualifications of the class.

**03. Notification.** Appointing authorities must notify the administrator of each acting appointment no later than the effective date of the appointment unless an exception is specifically authorized by the administrator.

**04. Effective Date.** The effective date of each acting appointment may be retroactive to the beginning of the pay period during which approval is granted.

### **130. Limitation on Length of Appointment.**

Acting appointments shall be limited to the period of time necessary to fill the vacancy pursuant to procedures prescribed in these rules but in no case shall continue beyond one thousand forty (1,040) hours of credited state service unless specifically extended by the administrator.

As a result, agencies will be expected to:

- inform applicants of the conditions of the acting appointment,
- apply intent of Rules 129 through 132 and related rules,
- have the appropriate signature (Appointing Authority’s signature or someone with delegated signature authority for the Appointing Authority),
- maintain related documentation.

### **DHR Rule 15.04.01.146. Interviews for Prospective Layoffs**

As DHR Acting Administrator, I am waiving Rule 15.04.01.146 which states:

Any employee who has been notified or identified as likely to be affected by a layoff may request to be placed on a register for the classification from which the layoff will occur.

(Ref. Rule 145.01.a.) All agencies shall offer an interview to these individuals when attempting to fill such vacancies through statewide promotion or open competitive recruitments. (Ref. Rule 145.02)

Result of this waiver: This rule conflicts with Rule 144 Placement on Register with Reemployment Preference which provides that permanent employees who are laid off will be placed on a reemployment preference register for one year from the effective date of layoff. For consistency, employees will be placed on the reemployment preference register the effective date of layoff.

### **DHR Rule 15.04.01.150.03 Probationary Periods -- Extension of Probationary Period**

As DHR Acting Administrator, I am delegating to state agencies the decision to extend the probationary period as stated in Rule 15.04.01.150.03: “Upon written request demonstrating good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Extensions must occur before an employee has worked one thousand forty (1040) hours or two thousand eighty (2080) hours for peace officers. (Ref. Section 67-5309(j), Idaho Code)”

As a result, agencies will be expected to:

- apply intent of Rule 150 and related rules
- Voluntary Probation Agreements are initially negotiated with the employee and may not be extended,
- communicate the extension of probation with the employee before the employee receives notification of the probation extension,
- extension must be communicated before the employee has reached 1,040 hours or 2080 for peace officers,
- have the appropriate signature (Appointing Authority’s signature or someone with delegated signature authority for the Appointing Authority),
- Submit IPOPS “EP-Extension of Probation” action,
- maintain related documentation.

### **New Separation Codes:**

In response to agencies’ requests, we have added two new separation codes to provide more specific descriptions of why employees were separated. Use of these codes by agencies will provide more accurate reporting information.

SJ – Separation – Entrance Probation/RIF (This layoff code is to be used for employees on entrance probation who are involved in a reduction in force rather than coding the employee as failure to complete entry probation).

SK – Separation – Layoff/Budget restrictions (To be used for layoff of classified and nonclassified employees due specifically to budget restrictions or shortage of funds.)

For your convenience, we have attached forms for Limited Service, Voluntary Probation, and a sample letter to extend entrance and promotional probationary periods.

If you have questions or concerns, please feel free to contact:

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