ISSUE:

Agencies are to fill established positions with one of the following types of appointments: original, promotion, demotion, reassignment, lateral action, or reinstatement. Career service employees are assigned probationary status for most types of appointments. This policy guideline provides additional clarification for certain types of appointments as indicated in the Question and Answer section.

PROCEDURE:

Upon an original appointment, promotion appointment, demotion or a reassignment appointment, a career service employee shall be given probationary status. Upon a lateral action appointment, the employee shall retain the status held in their previous position. An employee given a reinstatement appointment shall have the same employment status, pay, and benefits held by the employee at the time of separation from the agency.

QUESTION AND ANSWER:

Question 1:

A career service employee has permanent status (satisfactorily completed the required probationary period) in their current position. However, the employee and the position number are being moved to a different work unit with a different supervisor within the same agency. Although the duties and responsibilities (the work) of the position are being changed, there will
be no change in the broadband level to which the position is assigned which would constitute a reassignment. Should the employee retain permanent status in the position?

**Answer:**

No. In accordance with the provisions of Rule 60L-33.0315(1)(a), F.A.C., when the duties and responsibilities (the work) of a position are changed, the employee in the position shall be given a reassignment appointment and be placed in probationary status even though there has been no change in the broadband level.

**Question 2:**

A career service employee has permanent status in their current position but is being moved to a different position in a different work unit within the same agency. The duties and responsibilities (the work) performed by the employee are substantially the same and the broadband level has not changed. Should the employee be placed in probationary status?

**Answer:**

No. In accordance with the provisions of Rule 60L-33.00316, F.A.C., all of the following provisions are being met: the employee is permanent in their current position, there will be no change in agency, the appointment is to a position in the same occupation, the broadband level remains the same, and the duties and responsibilities (the work) to be performed by the employee in the different position are substantially the same. Therefore, the employee is to be given a lateral action appointment to the different position and will be placed in permanent status.

**Question 3:**

During an agency reorganization, a career service employee, with permanent status in their current position, received an internal demotion appointment. The employee satisfactorily completed the probationary period in the position to which demoted. Six months after becoming permanent in the position, the employee was promoted to a position within the agency that was in the same broadband level with the same duties and responsibilities (the work) as the position the employee held prior to being demoted. Would the employee be required to serve a probationary period in the position to which promoted?

**Answer:**

Yes. There are no provisions within the rules that would allow an employee to be appointed with permanent status upon receiving a promotion appointment within an agency even if the promotion is to a position in the same broadband level, with the same duties and responsibilities, as the position in which the employee previously held permanent status. Rule 60L-33.0314(2), F.A.C., directs that upon a promotion appointment the employee shall be given probationary status. Further, in accordance with the provisions of Rule 60L-33.00312, F.A.C., permanent status may only be given in instances when an employee receives a demotion appointment to a position in which the employee previously held permanent status if the demotion is within the same agency, the duties of the position have not substantially changed, and the position is assigned to the same occupation and broadband level as the position previously held by the employee.
Question 4:

A career service employee obtains permanent status in their current position and is subsequently promoted. Prior to obtaining permanent status in the promotion position, the employee accepts a demotion to a different position in the agency that is in the same class and broadband level as the position in which the employee previously obtained permanent status. The duties of the position the employee is demoted into are substantially the same as the duties of the position in which he previously obtained permanent status. Does the employee retain permanent status in the demotion position?

Answer:

Yes. Although generally, employees who are demoted are given probationary status in accordance with Rule 60L-33.00312, F.A.C., there is an exception. The rule provides that permanent status in a position shall be provided upon a demotion if all of the following conditions are met: 1) the demotion is in the same agency; 2) the employee previously held permanent status in the position; 3) the duties of such position have not substantially changed; and 4) the position is assigned to the same occupation and broadband level of the position previously held by the employee.

In the application of this rule, the term “position” [as defined in section 110.107(21), F.S.] refers to the work (duties and responsibilities) assigned to be performed; not the position number. Position numbers do not determine status upon demotion.

Whether the duties of a position are the same or have substantially changed is an agency determination. Therefore, agencies must compare the duties of the position to which the employee was previously assigned and the duties of the position to which the employee is being demoted, to determine if the work is substantially the same. The content of the position descriptions for the positions is an important consideration in making this determination.

STATUTORY AND RULE CITATIONS:

subsection 110.107(2), F.S., Definitions.

(2) “Broadband level” means all positions which are sufficiently similar in knowledge, skills, and abilities and sufficiently similar as to kind or subject matter of work, level of difficulty or responsibilities, and qualification requirements of the work to warrant the same treatment as to title, pay band, and other personnel transactions.

section 110.217, F.S., Appointment actions and status

(1) The department shall develop uniform rules regarding original appointment, promotion, demotion, reassignment, lateral action, separation, and status that must be used by state agencies.

(2) An employee appointed on probationary status shall attain permanent status in his or her current position upon successful completion of at least a 1-year probationary period. The length of the probationary period may not exceed 18 months. An employee who has not attained permanent status in his or her current position serves at the pleasure of the agency head and may be dismissed at the discretion of the agency head.
(3) If an employee who has received an internal agency promotion from a position in which the employee held permanent status is to be dismissed from the promotional position for failure to meet the established performance standards of the promotional position while in probationary status, the agency, before dismissal, shall return the employee to his or her former position, or to a position with substantially similar duties and responsibilities as the former position, if such a position is vacant. Such determinations by an agency are not appealable, and this subsection does not apply to dismissals for any other reason.

Rule 60L-33.003(4), F.A.C., Status.

(4) Permanent Status – Permanent status indicates that a career service employee has successfully completed the required probationary period and has attained notice and appeal rights pursuant to section 110.227, F.S., in the current position. Permanent status is attained on a position-only basis and must be attained for each appointment in accordance with the provisions of this rule chapter. Part-time employees and employees filling shared employment positions attain permanent status in their current positions in the same manner as full-time employees.

Rule 60L-33.00312, F.A.C., Demotion Appointments.

(1) A career service employee shall be given a demotion appointment when the appointment is to a position in a broadband level having a lower maximum salary or to a position in a broadband level having the same or higher maximum salary but a lower level of responsibility.

(2) Upon a demotion appointment the employee shall be given probationary status. However, the demotion appointment shall be with permanent status if all of the following conditions are met:

(a) The demotion is in the employee’s current agency;
(b) The employee previously held permanent status in the position and the duties of such position have not substantially changed; and
(c) The position is assigned to the same occupation and broadband level of the position previously held by the employee.

Rule 60L-33.00314(2), F.A.C., Promotion Appointments.

(2) Upon a promotion appointment the employee shall be given probationary status.

Rule 60L-33.00315, F.A.C., Reassignment Appointments.

(1) A career service employee shall be given a reassignment appointment when the appointment is either:

(a) To a position in the same broadband level and same maximum salary but with different duties;
(b) To a position in the same broadband level and same maximum salary, regardless of the duties, but to a different agency; or
(c) To a position in a different broadband level having the same maximum salary.

(2) Upon a reassignment appointment, the employee shall be given probationary status. If
the reassignment appointment is in conjunction with a legislatively mandated transfer of the position, the employee retains the status held in the position unless the legislature directs otherwise.

Rule 60L-33.00316, F.A.C., Lateral Action Appointments.

(1) A career service employee shall be given a lateral action appointment when the appointment is to another position in the same agency that is in the same occupation, same broadband level with the same maximum salary, and has substantially the same duties and responsibilities.

(2) Upon a lateral action appointment, the employee shall retain the status they held in their previous position. If probationary, time spent in the previous position shall count toward completion of the required probationary period for the new position.