RULES OF THE DEPARTMENT OF MANAGEMENT SERVICES PERSONNEL MANAGEMENT SYSTEM

CHAPTER 60L-33
APPOINTMENTS AND STATUS

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60L-33.001 Scope.

Rulemaking Authority 110.1055, 110.131(3), 110.201(1), 110.21(2), 110.217(1)(a), 110.217(5), 110.403(1), 110.503(2), 110.605(1) FS. Law Implemented 110.131, 110.201, 110.21, 110.213, 110.2135, 110.217, 110.227, 110.403, 110.503, 110.605 FS. History—New 1-1-02, Repealed 1-26-14.

60L-33.002 General Principles.

(1) Agencies shall fill established positions with one of the following types of appointments: original, promotion, demotion, reassignment, lateral action, or reinstatement.

(2) A person appointed to a position must meet licensure, certification or registration requirements established for the position, and required knowledge, skills, abilities, and other requirements the agency establishes for the position, unless the appointment is with trainee status in accordance with subsection 60L-33.003(3), F.A.C.

(3) Employees on military leave shall be treated as if they had been continuously employed for purposes of status, pay, and other benefits pursuant to the terms of the type of authorized leave they have been granted and in accordance with Title 38, United States Code, Chapter 43, the Uniformed Services Employment and Reemployment Rights Act (USERRA).
(4) The duties of a vacant position, or of a filled position when the incumbent is on an extended leave of absence, may be temporarily assigned to a current employee. During the temporary assignment of duties, the employee shall remain in and retain the status and benefits of their current position. In accordance with Chapter 60L-32, F.A.C., an agency may grant a selected exempt service or senior management service employee a temporary salary increase, or a career service employee the appropriate pay additive, while performing the duties of the other position. Such temporary increases and additives shall be removed when the employee ceases to perform the temporarily assigned duties. If a career service employee who is temporarily assigned the duties of another position is subsequently appointed to fill the position, time spent performing the temporary duties shall count toward the completion of the probationary period only if the employee performed all the duties of the position.

(5) Every career service employee not permanent in their current position shall serve at the pleasure of the agency head and shall be subject to any personnel action, including but not limited to suspension, dismissal, reduction in pay, demotion, lateral action or reassignment, at the discretion of the agency head. Except when taken with respect to a career service employees permanent in their current position, such personnel actions are exempt from the provisions of Section 110.227, and Chapter 120, F.S.

(6) Any employee appointed for less than full-time employment shall have the salary, leave credits and other benefits prorated based on the full-time equivalency (FTE) of the position. Health insurance benefits are not prorated if a position is .75 FTE or greater.

Rulemaking Authority 110.1055, 110.201(1), 110.2035(1), 110.2035(7) 110.217(1), 110.227(2), 110.403(1), 110.605(1) FS. Law Implemented 110.131, 110.201, 110.2035, 110.217, 110.227, 110.403, 110.605 FS. History–New 1-22-02, Amended 4-3-03, 1-26-14.

60L-33.003 Status.

(1) Exempt Status – indicates that an employee is exempt from the Career Service as provided in Section 110.205, F.S.

(a) Employees appointed to fill positions in the Selected Exempt Service, Senior Management Service, or Other Personal Services shall be given exempt status.

(b) Employees with exempt status shall serve at the pleasure of the agency head and shall be subject to personnel actions at the discretion of the agency head. Such personnel actions tantamount to suspension, dismissal, reduction in pay, demotion, or transfer are exempt from the provisions of Section 110.227, and Chapter 120, F.S.

(2) Probationary Status – indicates that a career service employee is serving a required probationary period of at least one year. While in probationary status the employee serves at the pleasure of the agency head and has no notice or appeal rights pursuant to Section 110.227, and Chapter 120, F.S.

(a) The probationary period may be extended at the discretion of the agency head or designee if there is a documented business reason for the extension. Probationary periods may not be extended for:

1. Employees on military leave. Time spent on any form of military leave shall count toward completion of the probationary period, and an employee on military leave may attain permanent status in the position while on such leave.

2. Employees on leave pursuant to the Family and Medical Leave Act (FMLA). If the probationary
period expires while on such leave, the employee shall obtain permanent status in the current position. However, if there are time-limited conditions, tests or any other requirements in place prior to beginning FMLA leave that the employee is required to fulfill in order to maintain employment, the employee’s probationary period may be extended to allow the employee an opportunity to fulfill those requirements.

(b) The duration of a probationary period may not exceed 18 months.

(c) The probationary period shall be the same for both part-time and full-time employment.

(3) Trainee Status – An employee appointed to a position as a trainee shall be given trainee status in accordance with the trainee program developed by the agency. The program shall include an outline of the proposed pay schedule for the training period, including justification for the proposed schedule. An employee may not become permanent in a position while in trainee status. Time spent on trainee status shall not count toward completion of a probationary period.

(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.

(5) In the case of a legislatively mandated transfer, an employee retains the status held in the position prior to the time of transfer unless the legislature directs otherwise.

Rulemaking Authority 110.1055, 110.201(1), 110.217(1), 110.403(1), 110.503(2), 110.605(1) FS. Law Implemented 110.131, 110.213, 110.2135, 110.217, 110.403, 110.503, 110.605 FS. History—New 1-22-02, Amended 4-3-03, 1-26-14.

60L-33.0031 Reinstatement.

Rulemaking Authority 110.1055, 110.201(1), 110.217(1), (5) FS. Law Implemented 110.201, 110.217 FS. History—New 1-1-02, Amended 4-3-03, Repealed 1-26-14.

60L-33.00311 Appointments.

(1) Appointments shall be made only to authorized positions that have been established in accordance with the provisions of Section 216.262, F.S.

(2) Appointments shall be made in accordance with the non-discrimination provisions of Section 110.105(2)(a), F.S., and other applicable federal or state non-discrimination laws.

(3) Agencies may appoint a current employee or an individual from outside the agency to a filled position for the purpose of:

(a) Training when the position’s incumbent will be exiting the position. The training period shall not exceed 1040 hours during any twelve-month period unless the Department has approved a written request for an extension of the training period.

(b) Performing the duties of an incumbent who is on an extended leave of absence for active military
service, when the leave of absence is expected to be for a minimum of 1040 hours.

(4) Employees performing duties pursuant to paragraphs (3)(a) and (b), shall be designated as overlapped in the State Personnel System’s human resource information system and shall receive the benefits, employee rights, appropriate appointment type and associated status of the position for which such employee is appointed to overlap. In addition, such employee may receive an increase in pay in accordance with Chapter 60L-32, F.A.C.

(5) An employee designated as overlapped with an employee on a leave of absence due to active military duty shall be returned to his or her former position or to a position with substantially similar duties and responsibilities as the former position upon the return of the employee from active military duty if such position is available.

(a) In such case, the employee shall resume the same status and the same rate of pay previously held in the former position, including any across-the-board pay increases that would have been granted under the former position during the assignment.

(b) A return to the former or comparable position and resumption of the former rate of pay shall not constitute a demotion action or reduction in pay for the purpose of Section 110.227, F.S.

Rulemaking Authority 110.1055, 110.201(1), 110.2035(1), 110.217(1), 110.403(1), 110.605(1) FS. Law Implemented 110.105, 110.2035, 110.217, 110.403, 110.605, 216.262 FS. History—New 1-26-14.

60L-33.00312 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.


60L-33.00313 Original Appointments.

(1) An employee shall be given an original appointment upon:

(a) Initial placement in an established career service position; or

(b) Placement with trainee status in the following programs: cooperative education program;
vocational rehabilitation or blind services program; agency trainee program; or return to work program. Upon successful completion of a trainee program, the employee may be appointed to a position in the same occupation and broadband level requiring the same licensure, certification or registration requirement and required knowledge, skills, and abilities. Following the successful completion of a training program if the employee remains assigned to the position used for trainee purposes, the employee's status shall be changed from trainee to probationary, or

(c) Placement in an established career service position from a selected exempt service or senior management service position, or

(d) Appointment to a selected exempt service or senior management service position.

(2) Upon an original appointment, a career service employee shall be given probationary status.

(3) Upon an original appointment, a selected exempt service or senior management service employee shall be given exempt status.

Rulemaking Authority 110.1055, 110.201(1), 110.217(1), 110.403(1), 110.605(1) FS. Law Implemented 110.105, 110.201, 110.217, 110.403, 110.605 FS. History—New 1-26-14.

60L-33.00314 Promotion Appointments.

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

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

Rulemaking Authority 110.1055, 110.201(1), 110.217(1) FS. Law Implemented 110.105, 110.217 FS. History—New 1-26-14.

60L-33.00315 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.

Rulemaking Authority 110.1055, 110.201(1), 110.217(1) FS. Law Implemented 110.105, 110.217 FS. History—New 1-26-14.
60L-33.00316 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.

Rulemaking Authority 110.1055, 110.201(1), 110.217(1) FS. Law Implemented 110.105, 110.217 FS. History—New 1-26-14.

60L-33.00317 Reinstatement Appointments.

(1) A career service employee who separates and is not on the payroll of any State Personnel System entity at any time during the interim period may, upon approval by the agency head or designee, be given a reinstatement appointment if the employee returns to the same position within the same agency within 31 calendar days from the effective date of the separation. Such employee shall be:

(a) Appointed with the same employment status, pay, and benefits held by the employee at the time of separation from the agency.

(b) Treated as if they have been continuously employed. However, the employee shall be placed on leave without pay for any portion of the interim period.

(2) A selected exempt service or senior management service employee may be reinstated as provided in subsection (1), but shall be given an original appointment.

Rulemaking Authority 110.1055, 110.201(1), 110.217(1), 110.403(1), 110.605(1) FS. Law Implemented 110.105, 110.217, 110.403, 110.605 FS. History—New 1-26-14.

60L-33.0032 Shared Employment.

(1) Agencies shall identify a shared employment position as a single position, which will retain its unity for purposes of classification, assignment to a pay band, and other personnel transactions that apply to the position.

(2) An agency may designate a position for shared employment under the following circumstances.

(a) When a new position is established or an existing position becomes vacant, the agency shall review the position to determine whether two or more employees could perform the responsibilities of the position as adequately, or more adequately, than a single employee.

(b) Upon the written request or consent of an incumbent, the agency shall evaluate the incumbent’s position for suitability for shared employment and, upon a favorable evaluation, the agency may appoint the incumbent to the shared employment position with the same status as was held in the full-time
position.

(3) Once a position is designated as a shared position, the agency shall not designate it as full-time unless it becomes vacant, the incumbent(s) is given a minimum of ninety calendar days notice, or the incumbent(s) agrees to the action in writing.

(4) Employees filling shared employment positions are subject to the provisions of the personnel rules governing part-time employees.

*Rulemaking Authority* 110.1055, 110.201(1), 110.21(5) FS. *Law Implemented* 110.201, 110.21 FS. *History*–New 1-1-02, Amended 4-3-03, 1-26-14.

**60L-33.0033 Appointment of Veterans.**

An honorably discharged veteran seeking preference under Section 295.08 or 295.085, F.S., must furnish documentation of the following in accordance with Rule 55A-7.013, F.A.C., and the following:

(1) Proof of Florida residence.

(2) Proof of possession of the required licensure, certification or registration, any required knowledge, skills, and abilities, and any other requirements the agency establishes for the position, as indicated on the position description.

*Rulemaking Authority* 110.1055, 110.201(1), 110.217(1) FS. *Law Implemented* 110.2135, 295.08, 295.085 FS. *History*–New 1-1-02, Amended 4-3-03, 1-26-14.

**60L-33.0034 Criteria for Executive Search Firms.**

If an agency has not succeeded with an in-house search for a person to appoint to a senior management service position, the agency may contract with a person or firm to conduct a multistate executive search, provided the person or firm satisfies the following criteria:

(1) Willingness to accept contingency contracts with fees not to exceed thirty percent of the annual salary of the applicant, to be paid upon employment of an applicant produced by the search.

(2) Demonstrated capacity to perform effectively at competitive industry prices.

(3) Evidence of successful placements in the public sector by level and type of placement.

(4) Agreement for the delivery of services within ninety calendar days from the date of the requested search by the employing agency, unless an extension is granted by the agency.

(5) Evidence of ability to attract minorities and women into applicant pools generated for previous clients.

*Rulemaking Authority* 110.1055, 110.403(3)(c) FS. *Law Implemented* 110.105(1), 110.403 FS. *History*–New 1-8-02.
60L-33.004 Layoff and Employee Transition.

(1) Agencies may effect a layoff for a variety of reasons, including budget cuts, program reductions resulting from outsourcing or privatization efforts, or program phase-outs. Agencies shall accomplish a layoff in an orderly, systematic, and uniform manner in accordance with this rule.

(2) Each agency shall have a Department-approved workforce transition plan. The goal of the plan is to ensure that the agency makes reasonable efforts to provide a smooth transition for the career service employees adversely affected by the layoff. The plan shall identify the steps the agency will take during the layoff to advance this goal. The following steps shall be included in any plan, unless the plan justifies in writing why they are not included:

(a) Appoint a workforce transition team responsible for overseeing and administering the layoff.

(b) Develop a communications plan, designed to ensure open, honest, and frequent communication regarding staffing changes. Provide clear avenues for employees to seek and obtain information and assistance. Address necessary communications with the Department, the Department of Economic Opportunity, and unions.

(c) Assess the positions to be deleted and the mission and goals of the residual program (that is, the program area that will remain after the deletion of functions and positions). Identify the employees and programs or services that will be affected by the layoff. Identify the knowledge, skills, and abilities that employees will need to carry out the residual program.

(d) Assess employees.

1. If the layoff affects law enforcement or correctional officers, firefighters, or professional health care providers, develop procedures to establish the relative merit and fitness of these employees. Include a formula for uniform application within a competitive area, taking into consideration the type of appointment, the length of service, and the evaluation of the employee’s performance within the last five years of employment. The Department may authorize selective competition within the competitive area, based upon specific qualifications deemed necessary for a position, if the duties and responsibilities requiring such qualifications are clearly reflected in the official position description on file with the agency.

2. If the layoff affects any other career service employee, develop assessment procedures on objective measures that include comparative merit, demonstrated skills, experience and length of service in the State Personnel System. In determining which employees to retain, consider which employees will best enable the agency to advance its mission; in this context, consider how each employee fares with respect to the following factors: commitment, cooperation, excellence, fairness, honesty/integrity, initiative, respect, and teamwork.

(3) A career service employee with permanent status in their current position facing layoff shall have an opportunity for first interview within any agency for a vacancy for which the employee is qualified and has applied.

(4) Before laying off a career service employee with permanent status in their current position, an agency shall provide the employee reasonable notice of the intended action. Where possible, the agency shall provide at least thirty days notice, and in all cases the agency shall provide at least ten days notice or, in lieu thereof, pay or a combination of notice and pay.

(5) The Department of Economic Opportunity through its existing programs shall make available
placement assistance to affected agencies and employees.

(6) Agencies shall prepare and maintain a workforce transition spreadsheet of adversely affected employees and provide the spreadsheet to the Department and to the Department of Economic Opportunity to assist in the job placement of such employees.

(7) A layoff is not a disciplinary action therefore, it may not be appealed to the Public Employees Relations Commission.

Rulemaking Authority 110.1055, 110.201(1), 110.227(2) FS. Law Implemented 110.227 FS. History—New 1-1-02, Amended 4-3-03, 1-20-09, 1-26-14.

60L-33.005 Other Personal Services Employment.

(1) Other personal services ("OPS") employment is an employer/employee relationship used solely for the completion of short term or intermittent tasks. OPS employees:

(a) Do not fill established positions.

(b) Are not eligible for any paid leave, holiday or personal holiday, retirement or any other employee benefit program unless provided by law.

(c) May be eligible for state group insurance subject to the provisions of Section 110.123, F.S.

(d) May participate in an agency’s recognition and rewards or telework program.

(e) May participate in the state’s deferred compensation program as provided in Section 112.215, F.S.

(f) May participate in the Employee Assistance Program (EAP).

(g) Shall participate in the State of Florida 401(a) FICA Alternative Plan (social security alternative plan), Workers Compensation and Reemployment Assistance (unemployment compensation) programs, unless otherwise exempted by law.

(2) Each agency that employs OPS employees shall:

(a) Maintain employee records which shall include the name, hire date, the type of OPS employment, and the number of hours worked during the fiscal year.

(b) By June 30 of each year, review and document that the continuation of each OPS employment is necessary to the mission of the agency. This review does not apply to the OPS categories specifically exempt in Section 110.131(2)(c), F.S.

(c) By August 15 of each year, prepare and submit to the Executive Office of the Governor and to the chairs of the legislative appropriations committees a report for the previous fiscal year which includes the total number of OPS employees employed during the period, the type of OPS employment, the total number of hours worked by each employee, and average rate of pay for each employee during the fiscal year.

60L-33.006 Volunteers.

(1) Agencies shall determine appropriate duties, if any, for volunteers. Agencies may conduct programs to increase agency and public awareness regarding the importance of volunteers to the goals and operation of the agency. Such programs may include awards and other forms of recognition to demonstrate appreciation for volunteer service.

(2) A state employee whose primary employment consists of duties and responsibilities similar to those associated with the volunteer activities may not be considered for volunteer work if such work would require payment for overtime in accordance with the FLSA.

(3) Agencies may conduct recruitment campaigns to attract suitable volunteers to meet agency needs. Agencies shall conduct screening appropriate to the needs of the volunteer position.

(4) Agencies shall make available to volunteers information regarding the duties and responsibilities of the volunteer position. Agencies shall supervise volunteers toward accomplishing the needs of the unit to which they are assigned.

Rulemaking Authority 110.1055, 110.201(1), 110.503(2) FS. Law Implemented 110.503 FS. History – New 1-1-02.

60L-33.0065 Separations.

(1) Separation is the act of removing an employee from an established position due to severance of employment from the agency, or removing an employee from Other Personal Services employment.

(2) Agencies are responsible for processing employee separations on a timely basis through the State Personnel System’s human resource information system and shall use one of the following separation types and corresponding reason:

(a) Voluntary Separations:

1. Move to Private Sector – this reason shall be used when the employee communicates to the agency that the reason for the separation is to accept employment with a non-government entity.

2. Move within State of Florida Government – this reason shall be used when the employee communicates to the agency that the reason for the separation is to accept employment with another state government entity.

3. Other – this shall be used when any reason other than those indicated in this rule or no reason is given by the employee. This reason shall also be used when the employee retires under the Public Employees Optional Retirement Plan (investment plan).

4. Retirement – this reason shall be used when the employee retires under a state pension plan or completes their Deferred Retirement Option Program (DROP) participation.

5. End of Appointment Period – this reason shall be used when the agency separates an employee at the end of a time-limited appointment.

6. Move to non-State of Florida Government – this reason shall be used when the employee
communicates to the agency that the reason for the separation is to accept employment with a local government entity.

7. Abandonment – this reason shall be used when an agency separates an employee due to an employee’s absence from the job without approved leave for a minimum of five consecutive work days and the employee’s conduct or circumstances imply no intent to return. Abandonment is deemed to be an unwritten resignation.

(b) Involuntary Separations:

1. Failed Probationary Period – this reason shall be used when the agency dismisses the career service employee for failure to successfully complete the required probationary period for the position.

2. Layoff – this reason shall be used when the agency separates a career service employee due to a shortage of funds or work, or a material change in the duties or organization of an agency, including the outsourcing or privatization of an activity or function.

3. Dismissal – this reason shall be used when the agency dismisses a career service employee pursuant to Section 110.227, F.S., or when the agency dismisses a selected exempt service or senior management service employee pursuant to Sections 110.604 and 110.403, F.S.

4. Death of the Employee – this reason shall be used when the agency separates an employee due to the employee’s death.

5. Death of Employee in the Line of Duty – this reason shall be used when the agency separates an employee due to death arising out of and in the actual performance of duties required by the employee’s position.

6. Legislative Directed Transfer – this reason shall be used when the agency separates an employee due to a legislatively mandated action resulting in the employee moving to another State Personnel System agency.

7. Dismissal-Employee also Retires – this reason shall be used when the agency dismisses a career service employee pursuant to Section 110.227, F.S., or when the agency dismisses a selected exempt service or senior management service employee pursuant to Sections 110.604 and 110.403, F.S., and the employee also retires from the Florida Retirement System.

Rulemaking Authority 110.1055(1), 110.201(1), 110.227(2)(a), 110.403(1), 110.605(1) FS. Law Implemented 110.105, 110.227, 110.403, 110.604 FS. History–New 1-26-14.

60L-33.007 Equal Employment Opportunity and Affirmative Action.

Rulemaking Authority 110.1055, 110.112(2), 110.112(2)(a), 110.1221, 110.201(1)(a) FS. Law Implemented 110.105(2), 110.112(1), 110.1221, 110.233(1), 110.403(1)(h), 110.605(1)(d) FS. History–New 1-1-02, Amended 4-3-03, Transferred to 60L-40.002.