Issue:

How is subsection 110.217 (3), F.S. to be applied? Subsection 110.217 (3), F.S. states:

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.

Policy:

The following questions and answers have been developed as a means of providing guidance for agencies in administering the provisions of the statute.

1. Does this provision apply in a layoff?

   No. However, as a part of the preliminary analysis associated with a layoff, agencies may want to determine if there are any employees who could be adversely affected by layoff and to whom the provisions of the statute may be applied. The application of these provisions in such instances is solely at the agency’s discretion. Accordingly, if the employee is not removed from the position, he or she must be assessed along with other employees in the affected work unit, consistent with the agency workforce transition plan and the provisions of Rule 60L – 33.004, F.A.C.

2. Whose decision is it to remove an employee from a position?

   Only an agency can remove an employee from a position, regardless of the reason for removal. The agency may initiate the removal or approve an employee’s request for removal.
3. What happens once the agency makes the decision to remove the employee from a position to which he or she was internally promoted for failure to meet the established performance standards of the promotional position while in probationary status?

The agency shall return the employee to his or her former position, if vacant, or to a position with substantially similar duties and responsibilities if vacant. If neither of these exists, the employee may be terminated.

4. In determining what vacancies to consider, may the agency limit vacancies to certain sections or geographic regions within the agency?

No. In order to meet the intent of the statute, the agency must consider any vacant position within the agency that has substantially similar duties and responsibilities.

5. What type of action is used when the employee is removed from the position to which he or she was promoted?

Removal of an employee from the position and return to his or her former position or one with substantially similar duties and responsibilities will be considered a demotion as defined in subsection 110.107, F.S. If the agency finds another vacant position before termination, the action to place the employee in this position will be a demotion, reassignment, or promotion as defined in subsection 110.107, F.S., as applicable.

Note: If the employee is moved to an SES position, such action shall be an original appointment as provided in Rule 60L-33.002(1), F.A.C.

6. Will the employee be returned to the previous salary when removed from the position to which he or she was promoted?

The statute does not require that the employee be “held harmless” with regard to salary. Although the agency does not have to reduce the employee's salary when the employee is removed from the position, it may decide to do so based upon the appropriate pay level for the position, agency needs, or available funding. Rule 60L-32.001, F.A.C. provides that the agency can set the base rate of pay for an employee within the pay band for the broadband level. Any reduction in salary would be effective upon the employee's appointment to his or her former position or appointment to a new position.

7. What is the advantage to the agency of returning an employee to their former position as provided for in the statute?

The provisions of the statute allow the agency to return an employee to a level of work at which he or she previously had been successful. This action enables the agency to retain an employee who demonstrated performance that merited promotion and who possesses experience, skills and/or knowledge valuable to the agency. In that vein, agencies have the discretion to remove the employee who may not be performing as anticipated from the position.
to which he or she has been promoted and return the employee to his or her former position rather than losing a valuable employee.

8. Do the provisions of the statute apply when the employee has been promoted to a position in another agency?

No. The provisions of this statute apply only to internal agency promotions.

Applicable Statute/Rule Citation:

Section 110.217 (3), Florida Statutes

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.

Chapter 60L-33.003 Status Upon Appointment

(1) An employee appointed to fill a position not in the career service shall be given exempt status. If the employee is appointed to perform the duties of another employee in a filled position, the employee shall also be given overlap status.

(2) An employee appointed to fill a position in the career service shall be given status in accordance with the following:

(a) Overlap Status – An employee shall be given overlap status when appointed to perform the duties of another employee in a filled position. Time spent on overlap status shall count toward completion of a probationary period if, while on overlap status, the employee performed all of the duties of the position.

(b) Temporary Status – An employee shall be given temporary status when temporarily appointed to fill a vacant position. The appointment shall be for no more than 1040 hours during any twelve-month period, absent the Department’s approval of a written request for extension. Time spent on temporary status shall not count toward completion of a probationary period.

(c) 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. Upon successful completion of the trainee program, the employee may be
appointed to a position in the same broadband level requiring the same licensure, certification or
registration requirement and required knowledge, skills, and abilities. An agency may approve
appointments with trainee status in the following programs: cooperative education program;
vocational rehabilitation or blind services program; agency trainee program; or return to work
program. Time spent on trainee status shall not count toward completion of a probationary period.

(d) Probationary or Permanent Status – An employee shall be given probationary status or
permanent status in accordance with the following.

1. Upon original appointment, promotion or demotion to a different broadband level, or
any time an employee moves between agencies, an employee shall be given probationary status
unless a demotion is to a position in which the employee has previously held permanent status in
the agency or unless the legislature has designated that an employee shall be moved but shall not
have status as a new employee.

2. An employee appointed on probationary status shall attain permanent status in the
career service upon successful completion of the designated probationary period.

3. Time spent on military leave shall count toward completion of the employee’s
probationary period, and an employee on military leave can attain permanent status while on such
leave.

4. Part-time employees and employees filling shared employment positions shall attain
permanent status in the same manner as full-time employees.