

HB 187: Civil Service Reform
Clarification and Guidance

Non-Permanent Appointment Categories

1. **QUESTION:** Since HB 187 deleted the references to “interim appointments,” will all of the interim positions in OAKS be changed to “temporary?” If so, who will make the change in the system and on the PA? Will there be different codes for interims within the bargaining units?

ANSWER: At this time, there are no plans to retroactively change the terms used in the current system. Employees who are exempt from collective bargaining who were in interim positions as of June 30, 2007 will continue to be listed as “interim employees” until they conclude their interim appointment. However, no new exempt appointments should be made using the “interim” terminology after June 30, 2007. Instead, exempt employees who are hired on a temporary basis on or after July 1, 2007 should be processed using one of the action/reason codes outlined in the chart below.

HB 187 is not intended to modify any of the collective bargaining agreements already in place. Therefore, interim employees who are covered by a collective bargaining unit will continue to be listed as “interim employees” in the system, and the “interim” action reason codes will remain active in both the system and on the PA in order to accommodate these bargaining unit employees.

2. **QUESTION:** What are the OAKS action/reason codes for temporary appointments? Will the OAKS code be the same regardless of whether the appointment is an internal or external appointment?

ANSWER: The action/reason codes for temporary appointments will be as follows:*

Title	Description	Action Reason Code	Cancel/Terminate
Temporary Appointments for 120 days or Less	This code should be used for both exempt and bargaining unit employees when a temporary appointment is made for a reason other than for sickness, disability or other approved leave of absence	HIR ETT: TEMP EXT ≤ 120	TER TMP: END TEMP EXT
Temporary Internal Appointments that continue for longer than 120 days	This code should be used for exempt employees when a temporary appointment is necessitated by reason of sickness, disability or other approved leave of absence and the temporary employee is an internal employee.	DTA TIA: TEMP INT > 120	DTA EIT: END INT TEMP
Temporary External Appointments that continue for longer than 120 days	This code should be used for exempt employees when a temporary appointment is necessitated by reason of sickness, disability or other approved leave of absence and the temporary employee is an external employee.	HIR EXT: TEMP EXT > 120	TER TMP: END TEMP EXT

NOTE: Seasonal and intermittent appointment types were not impacted by HB 187.

3. **QUESTION:** In the past, an interim appointment could begin 30 days before or end 30 days after the qualifying condition as a transitional time. Will the transition time be allowed under this new provision?

ANSWER: The 30-day transitional time is authorized under some collective bargaining agreements for bargaining unit employees only. This transitional time is not currently authorized for exempt employees. Nothing in HB 187 modifies any collective bargaining agreement, nor does the language add the 30-day transitional period for exempt employees.

*If you believe the proposed OAKS changes will have a significant negative impact on your agency, please contact us at DASHRD.HRPolicy@das.state.oh.us or (614) 752-5393 as soon as possible to discuss your concerns.

“Provisional” Appointment Category

4. QUESTION: What changes will be made in OAKS as a result of the removal of “provisional” employees?

ANSWER: Currently the “Certification Status” field on the *Ohio Job* tab in OAKS is a required field on the job record that describes whether an employee is certified or provisional. Prior to July 1, the options for this field included: Certified, Provisional, Unclassified, and Career Professional (*ODOT*). As of July 1, the “Certified” and “Provisional” field options were removed and a “Permanent” field option was added, so that now the current options for this field include: Unclassified, Permanent, and Career Professional (*ODOT*). There are also plans to rename the “Certification Status” field to “Employee Status,” although this change has not yet been made in the system.

Over the next few weeks, DAS will run a mass update to change all “Certified” employees in OAKS to “Permanent” employees. DAS will also update and utilize data field box 10 so that one of the following three options appears for all permanent employees:

<i>HB 187</i>	HB 187 will be entered in box 10 for those employees who were listed as “certified” employees in OAKS prior to July 1, 2007.
Certification Number (ex. 12345)	After July 1, if an employee is hired from an eligibility list, DAS will pull the certification number from the employee’s personnel action form, and will place that number into box 10.
Blank Space	If box 10 has been left blank, this indicates that the employee was not listed as a “certified” employee in OAKS prior to July 1, 2007, nor was the employee hired from an eligibility list after July 1, 2007. If there is a date listed in the employee’s probationary field, then the employee is still a probationary permanent employee who has not obtained the protections of civil service. If no date is listed, then the employee is a permanent employee who has obtained the protections of civil service.

5. QUESTION: If there will no longer be “provisional” employees, what happens to provisional employees on July 1st? Will they be changed to permanent? Who will make the change? (ORC 124.26(B))

ANSWER: Provisional employees who have satisfactorily completed a probationary period of six months or longer will become permanent employees on July 1, and will receive the same rights as certified employees received under the old law. When OAKS removes the “certified” and “provisional” fields, these employees will automatically be placed into the “permanent” field option.

However, HB 187 is silent on the status of provisional employees who have satisfactorily completed a probationary period of less than six months (i.e. 120 days), but who have not yet remained in their position for six months of continuous service. Our proposed administrative rules have been amended so that no exempt employee will have a probationary period of less than 6 months, so we don’t believe this will be an issue for employees appointed to positions after July 1, 2007. However, our rules don’t impact those employees currently serving probationary periods of less than six months, so if you are considering impacting the rights of employees who may fall into this category, please contact the Office of Policy Development at DASHRD.HRPolicy@das.state.oh.us or (614) 752-5393 for further guidance.

6. QUESTION: What happens to employees who are currently “certified”? After July 1, will we continue to distinguish or identify employees who have taken the civil service tests? Will there still be a cert list? (ORC 124.26)

ANSWER: Employees who are currently certified remain permanent employees. Over the next few weeks, DAS will place certified employees into the “permanent” field option and *HB 187* will be entered into data field box 10 for these employees. Going forward, we will continue to distinguish or identify employees who have taken the civil service tests, and DAS will place the certification number in data field Box 10 in OAKS to accomplish this. Civil service tests are one way to demonstrate an employee’s merit and fitness, which is required to be shown before an appointment or promotion can be made in the civil service. Additionally, the language in OAC 123:1-17-02 continues to require the director to provide a cert list to an appointing authority.

7. **QUESTION:** When a new employee completes the probationary period and is eligible to become a permanent employee, what action will be needed in OAKS to change the record from probationary to permanent?
- ANSWER:** No change is necessary in OAKS to change the record from probationary to permanent. This action will continue to be an automatic process after July 1, 2007.
8. **QUESTION:** Will there be a list similar to the former "auto cert" to prompt Payroll to change the record from probationary to permanent?
- ANSWER:** No, employees will no longer be "automatically certified" after July 1, 2007. Going forward, "certified" only means "hired off of a certification list," so there is no longer a need for an auto cert list since employees are no longer automatically certified.
9. **QUESTION:** Will a PA be necessary to change the record from probationary to permanent?
- ANSWER:** No, a PA is not necessary to change the record from probationary to permanent. This action will continue to be an automatic process after July 1, 2007.
10. **QUESTION:** Since certification is a civil service issue and not specifically referred to in the collective bargaining agreements, will the changes to provision/certified status apply to ALL state employees, and not just exempt employees?
- ANSWER:** Yes, the changes to provision/certified status apply to ALL state employees and not just exempt employees. Civil service issues are not appropriate subjects for collective bargaining, and the statutory and regulatory language governs both exempts and bargaining union employees in this area as a result.
11. **QUESTION:** Will there still be "auto cert" for bargaining unit employees?
- ANSWER:** No. HB 187 removes the ability to become "automatically certified" for both exempt and bargaining unit employees.
12. **QUESTION:** Will we follow the current procedure to request eligible lists? Or must the request be in writing?
- ANSWER:** Nothing in HB 187 requires the request to be in writing. So long as your agency's current procedures comply with section 124.27 of the Revised Code, you can continue to follow your current procedures for requesting eligible lists.
13. **QUESTION:** OAC 123:1-21-01 states that an appointing authority may fill a position for which no appropriate eligible list is available "provided the appointment is made within thirty days of the appointing authority receiving approval from the director of administrative services." When is it considered that "the appointment is made?"
- ANSWER:** For purposes of OAC 123:1-21-01, the "appointment" date is the date that DAS receives notification of the appointing authority's selection of a candidate. If the appointing authority fails to timely fill the position within the 30-day timeline, the appointing authority will be required to re-request a certification list from the Director.
14. **QUESTION:** How will fallback rights operate now? Will current provisional employees become certified under the new law and have fallback rights if promoted in July 2007?
- ANSWER:** If the provisional employee has completed their probationary period and has remained in the position for a period of six months of continuous service, the employee will become permanent employee on July 1, and will have fallback rights if promoted in July 2007. For purposes of fallback rights, employees who have satisfactorily completed their probationary period (i.e. permanent employees) are treated the same as certified employees.
15. **QUESTION:** Will there be a meaning to "same or similar" job classifications after July 1, 2007?
- ANSWER:** Although there is no longer a meaning to "same or similar" job classifications with regards to the retention of certified status or an employee's displacement rights following a lay-off, there are still several provisions that continue to rely on the meaning of this language. For example, the "same or similar" language is still used to determine the position to which an employee demoted from an inter-agency promotion has

rights. Additionally, nearly every reinstatement provision in the code grants an employee to right to return to the "same or similar position within the employee's former classification." Finally, the lists of "same or similar" classifications will continue to exist in sections 123:1-24-06 and 123:1-24-08 of the Administrative Code. Therefore, there will continue to be meaning to "same or similar" job classifications after July 1, 2007.

Transfers and Separations

16. QUESTION: The language states an employee can't transfer without consent of DAS and an employee can only be reinstated with the consent of DAS. Does this apply to decentralized agencies? What will the process be? (ORC 123.32(A)(2) and (B))

ANSWER: This is not a new requirement, so agencies should continue to follow the legal process they had in place to comply with the old language set forth in ORC 123.32 and OAC 123:1-25-01.

17. QUESTION: If DAS approval is required to hire someone back who resigned or was separated within one year, is DAS consent also required to approve employees being reinstated from a disability separation? What will the process be?

ANSWER: The new language does not require DAS approval before an employee is reinstated from a disability separation, because there is separate language in RC 124.32 that governs separations due to injury or physical or psychiatric disabilities.

Unclassified Appointments

18. QUESTION: ORC 124.12 now requires DAS to provide each appointing authority with written information that describes the nature of employment in the unclassified civil service that appointing authorities are now required to share with unclassified employees. Will DAS provide the sample packet of information that will meet the requirements of the statute?

ANSWER: Yes, DAS will email agencies a document that will meet the requirements of the statute. Going forward, this document will be available at the HRD Forms hub at <http://www.das.ohio.gov/hrd/forms.htm>. Under the statute, the appointing authority is also required to provide the employee with written information that describes the duties of the employee's position. The employee's position description (PD) can be used to satisfy this second requirement.

19. QUESTION: ORC 124.12 now requires an appointing authority to notify DAS of an employee's appointment to an unclassified position within 90 days of the appointment. What happens if an agency is late in its notification?

ANSWER: HB 187 doesn't outline what happens if an agency is late in its notification. However, unclassified employees currently sign an unclassified service consent form to acknowledge their position placement in the unclassified service, so we do not anticipate that this requirement will impose any substantial additional burdens on agencies.

20. QUESTION: ORC 124.11(A)(8) increases from three to four the number of unclassified clerical and administrative support appointments for elective officers and each of the principal appointive executive officers, boards and commissions. Can an appointing authority make such a designation now or does it have to wait until a new appointing authority takes office?

ANSWER: Within 60 days of taking office, elective officers, boards and commissions are asked to designate those unclassified positions for which the exemption from classified service is claimed under the provisions of 124.11(A)(8). Generally, once an officer, board or commission makes this designation, they are precluded from changing that designation during the incumbency of the officer, board or commission. However, there is an exception for agency reorganizations that occur as a result of legislative action, and DAS is viewing the additional unclassified employee designation as an agency reorganization that occurred as a result of legislative action. As such, one additional designation can now be made by an appointing authority entitled to make such designations pursuant to ORC 124.11(A)(8). To be considered timely, any such additional designation shall be made by the appointing authority and properly communicated to DAS on or before August 31, 2007.

Alternative Benefits

21. QUESTION: What kinds of benefits were contemplated in ORC 124.141? Leave benefits?

ANSWER: ORC 124.141 allows the director of administrative services to establish a program that allows an appointing authority to offer an alternative salary and benefits package to its employees, but does not require DAS to establish such a program. The statute does not authorize the director to provide health care benefits to a covered officer or employee that are different from health care benefits otherwise provided by law for that officer or employee. At this time, DAS has not established an alternative benefits program.

Disability

22. QUESTION: What responsibilities will be delegated to the agencies to approve disability benefits under ORC 124.385?

ANSWER: The statute allows the director to delegate only the director's authority to approve disability benefits for a standard recovery period. However, at this time, the director has not delegated this authority to any appointing authority, and the ultimate authority to approve disability leave benefits continues to remain with the director.

Discipline

23. QUESTION: ORC 124.34(B) deleted the requirement that discipline orders be filed with the director of administrative services and the state personnel board of review. What does this mean? When does the employer have to notify DAS and SPBR now? Should the ADM 4055s still be attached to PAs when sent to state services?

ANSWER: The removal of this statutory requirement means that DAS and SPBR are no longer required to be served legal notice of an agency's disciplinary orders. Although similar language still appears in chapter 124-3 of the Administrative Code, SPBR is in the process of conducting a comprehensive rule review to bring its rules into conformance with HB 187, and has plans to strike this requirement from their administrative rules as well.

However, although DAS is no longer required to be legally notified of the orders, there are still some circumstances where DAS *should* receive notification of the order. If the employee is being disciplined, agencies should continue to fill out a personnel action form for the discipline, but this form should be kept by the agency and does not need to be sent to DAS. However, if the employee is being removed, the agency should complete both the personal action form and the ADM 4055 form and send both to DAS.

24. QUESTION: Do we now need to specify discipline (fines, suspensions) in terms of hours instead of days on the ADM 4055? (ORC 124.34(B))

ANSWER: Yes, we would advise you to complete the ADM 4055 form in hours now instead of days.

25. QUESTION: How long will the employee's longevity be eliminated for? What happens on the employee's next anniversary date? How will this be done through OAKS? Does the employer need to specify an amount to reduce it by? Will it be reduced by dollars/cents, the whole amount, years or a percent? Will this be considered a reduction and thus, appealable to SPBR? Do we mark it as a reduction on the ADM 4055? (ORC 123.34(A))

ANSWER: Currently, the OAKS system is not programmed to administer this language. If you are considering implementing this language at your agency, please contact the Office of Policy Development at DASHRD.HRPolicy@das.state.oh.us or (614) 752-5393.

26. QUESTION: Can we fine OT exempt employees in less than 40 hour increments? Under what authority in the Fair Labor Standards Act (FLSA)?

ANSWER: HB 187 doesn't deviate from the current law in this area. The situations in which an employer can fine an exempt employee in less than 40 hours increments are severely limited since issuing a disciplinary fine that is less than a full week runs the risk of destroying the employee's exemption. The FLSA regulations only allow fines for less than one full week for "infractions of safety rules of major significance," and a few other exceptions that are outlined in 29 CFR 541.118(a)(5).

27. QUESTION: The language now states "40 or more hours" and "24 or more hours"- now this means that a 3 day (24 hour) suspension is appealable to SPBR, where it did not used to be. Is our understanding correct that now the most we can do and avoid SPBR's jurisdiction is to give a 2 day? The old language stated "more than 3 days" so we were able to give a 3 day and not have it go to SPBR. This actually expands SPBR's jurisdiction.

ANSWER: The transition to hours instead of days was designed to accommodate those employees with flexible work schedules who might work more than an 8-hour day. The most you can do to avoid SPBR's jurisdiction now is to give a 23-hour suspension. There have been discussions to amend this language so that it would read "more than 24 hours," but for now, the "24 or more hours" language remains the law.

Miscellaneous

28. QUESTION: ORC 124.04 now requires DAS to develop "merit hiring processes." What is the definition of a "merit hiring process?"

ANSWER: The Ohio Constitution requires appointments and promotions in the civil service to be made according to "merit and fitness." While there is no statutory definition of a "merit hiring process," we presume that a "merit hiring process" is a process that conforms to the language of the Constitution and appoints and promotes employees based on their merit and fitness.

29. QUESTION: Will there be a contact person if we need further interpretation of HB 187?

ANSWER: If you have additional questions or concerns, or need further interpretation of HB 187, please feel free to contact the Office of Policy Development at (614) 752-5393 or DASHRD.HRPolicy@das.state.oh.us.