

HB 187: Civil Service Reform Bill

On December 29, 2006, House Bill 187 was signed into law. HB 187 makes significant changes to Ohio's civil service laws, particularly in the areas of employee civil service status, layoffs, and employee discipline, and serves as the last of a series of bills designed to make advances in civil service reform over the course of the past year. The bill makes clear that nothing in its provisions is intended to impact any collective bargaining agreement that was entered into prior to July 1, 2007. Due to the size of the bill, we have summarized only those changes with the greatest impact on state agencies. For a more comprehensive review, we encourage you to read through the bill in its entirety, which is available online at: http://www.legislature.state.oh.us/bills.cfm?ID=126_HB_187. The new language becomes effective on **July 1, 2007**.

"Provisional" Appointment Category—(RC 124.26, 124.27, 124.271, 124.30, RC 124.324)

The bill eliminates the "provisional" employee appointment category. Currently, a state employee can be hired on a "provisional" basis without taking a formal civil service examination when there is an urgent reason for filling a vacancy and the Director of DAS is unable to certify a list of persons eligible for appointment to such a position after a competitive exam. If the provisional employee spends two years in the same classification series, the employee becomes a "certified" employee. Certified employees have various protections and rights that provisional employees do not have.

Under HB 187, an employee can still be appointed if the Director of DAS is unable to certify an eligible list. However, the distinction between an employee hired from an eligible list and one who is not only relates to how an employee received the appointment, and not to how rights are afforded to that employee. While there are still classified and unclassified employees, all classified employees who are not on probation are treated the same. If an employee is not on probation, the employee is permanent and receives the same rights as a certified employee received under the old law, regardless of how the employee was originally appointed.

The removal of this appointment category also eliminates the need for the provisions in section 124.311 of the Revised Code that relate to an employee's retention of certified status following a classification change. Under House Bill 187, when a permanent employee (i.e. one who has successfully completed an initial probationary period or one who has remained in a position for six months of continuous service) receives a classification change, that employee retains the status of a "permanent employee" in the new classification. The same is true for employees who receive a promotion. While promoted employees will be required to serve a probationary period for the new position, they retain their permanent status upon their promotion, as well as the rights and privileges that accompany such status. However, if the employee accepts an intra-agency promotion and is found to be unsatisfactory during the probationary period in the advanced position, the employee can be demoted to the position from which the employee was promoted or to a similar position. If the employee accepts an inter-agency promotion and is found to be unsatisfactory during the probationary period in the advanced position, the receiving agency may remove or demote the employee to a position within the receiving agency that is the same or similar to the position the employee held at the releasing agency prior to promotion.

The elimination of "provisional" appointments also impacts the appointment types that will be recognized for layoff purposes. Prior law contained a detailed hierarchy setting forth approximately 17 ordered categories for layoffs. Section 124.323 of the Revised Code has significantly reduced those categories so that employees are now laid off in the following order: (1) part-time probationary, (2) part-time permanent, (3) full-time probationary, and (4) full-time permanent.

Non-Permanent Appointment Categories—(RC 124.30)

House Bill 187 also consolidates a number of the non-permanent appointment categories (i.e. interim, temporary, etc.) and eliminates some of the statutory restrictions that limit temporary appointments. Currently, interim employees work when another employee is absent for an indefinite period of time. In cases of an emergency, a “temporary” appointment may be made without regard to the civil service rules, but in no case to continue longer than thirty days, and in no case can successive appointments be made.

The bill maintains that an appointing authority may fill a vacancy in a position in the classified service by noncompetitive examination when there is an urgent reason to fill the vacancy and DAS is unable to certify a list of persons eligible for appointment, but changes the length of a temporary appointment from 30 to 120 days. It also allows for temporary appointments longer than 120 days if the appointment is during a period of sickness, disability or approved leave or absence of a regular officer or employee. The justifications for extending a temporary appointment mirror the current law governing the extension of an interim or temporary appointment.

House Bill 187 also limits the length of time the Director of DAS may assign a job classification to a pay range on a temporary basis to six months. The previous language allows the Director to assign the classification to a pay range for a time period designated in rules adopted by the Director.

Unclassified Appointments—(RC 124.03, 124.11, 124.12)

House Bill 187 requires appointing authorities to provide unclassified employees with notice of the distinguishing characteristics of the unclassified service as it relates to matters of selection, promotion, retention and discipline. Specifically, the new language requires appointing authorities to provide an unclassified employee, on the date of the employee’s appointment, written information describing the nature of the employment in the unclassified civil service. Appointing authorities are also required, within 30 days after the date of the appointment, to provide the employee with written information describing the duties of the unclassified position. This information is considered to be an informational advisory for the employee, and the failure to provide it to an employee does not confer any additional rights to the employee. Finally, within 90 days after the employee’s appointment, the appointing authority is required to notify DAS of the appointment of the employee to an unclassified position in the service of the state.

The State Personnel Board of Review (SPBR) is the entity charged with determining whether an employee is properly placed in the unclassified civil service. In determining whether an employee is properly in the unclassified civil service, the board considers the inherent nature of the duties of the employee’s classification. House Bill 187 limits SPBR to examining the nature of those duties to two years immediately preceding the action. Additionally, the bill allows SPBR to proclaim that an employee is “unclassified” even if the appointing authority has failed or is late to file a statement with DAS indicating that the employee is in the unclassified civil service.

Layoff Procedures—(RC 124.321, 124.323, 124.324, 124.325, 124.327)

Employees may be laid off because of a lack of funds, lack of work, or the abolishment of positions. In the context of layoffs resulting from a lack of funds, HB 187 provides that OBM is not required to transfer money between funds in order to offset a deficiency in funding for programs funded by the federal government, special revenue accounts, or proprietary accounts. Under the current law, a shortfall in federal funding was the only event that justified not transferring the money. The bill also states that, whenever a program receives funding through a grant or similar mechanism, a lack of funds will be presumed for those positions assigned to and those employees who work under the grant or similar mechanism, if the funding is reduced or withdrawn. Finally, in the context of layoffs resulting from a lack of work, the act changes the definition of “lack of work” to mean that an appointing authority has a current or projected decrease in workload that requires a reduction of current or projected staffing levels in its organization or structure. Under the current law, the decrease in workload had to be “temporary” and “expected to last less than one year.”

Currently, a laid-off employee may displace an employee with the fewest retention points in the classification from which the employee was laid off, in a lower classification within the series, in a same or similar classification, or in a classification in which they were certified within the past five years. House Bill 187 removes the employee's ability to displace an employee in a classification with same or similar duties and allows the employee to "bump" an employee in a classification in which the employee was certified in only if the laid-off employee was certified in that position within the past three years. It is important to note that because House Bill 187 eliminates the distinction between "certified" and "provisional," the positions to which the employee will have "bumping rights" are those permanent positions the employee held within the past three years. It is also important to remember that "permanent positions" includes promoted positions despite the fact that the employee is still serving a probationary period for the advanced position, since employees retain their permanent status upon their promotion. The new language also prevents an employee from displacing another employee for whose position or classification there are certain "position-specific minimum qualifications" (PSMQs) established by the agency unless the laid-off employee possesses those PSMQs. Finally, the bill eliminates performance evaluations as one of the factors used in determining an employee's retention points.

The bill also sets forth that the recall jurisdictions for exempt employees who have reinstatement rights into a bargaining unit are those counties that the exempt employee indicates a willingness to accept reinstatement as determined by the applicable collective bargaining agreement. Additionally, HB 187 sets forth that an employee who accepts or declines reemployment to the same classification and appointment type from which the employee was laid off or displaced shall be removed from the layoff list for the jurisdiction in which the employee accepted or denied reemployment. Together, these provisions limit the affected employees' ability to select available positions in several civil service districts. Finally, the bill retains the provision that an employee who denies reinstatement to a classification lower in the series than the classification from which the employee was laid off is only entitled to reinstatement to a classification higher in the series than the classification that was declined. However, the new language adds an exception if the employee refused part-time employment and was laid off as a full-time employee.

Civil Service Testing—(RC 124.22, 124.23, 124.27, 124.45, 124.48)

The bill sets forth several modifications to the current testing procedures. First, under the current law, the Director of Administrative Services must give reasonable notice of the time, place and general scope of every competitive examination for appointment to a position in the civil service. HB 187 requires specified agencies, clerks and DAS to post those notices in conspicuous public places for at least two weeks preceding the examination. Second, the current law states that a civil service examination may include an evaluation of a variety of factors. To aid in the evaluation of those factors, HB 187 clarifies that classified service exams may include structured interviews, assessment centers, work simulations, examinations of knowledge, skills and abilities, and any other acceptable testing methods. Finally, the bill revises the veteran's preference to apply to any person who has completed service in the uniformed services, who has been honorably discharged from the uniformed services or transferred to the reserve with evidence of satisfactory service, and who is a resident of Ohio. The bill defines "service in the uniformed services" and "uniform services" to have the same meanings as under the Uniformed Services Employment and Reemployment Rights Act (USERRA).

Alternative Benefits—(RC 124.141)

The bill creates section 124.141 of the Revised Code, which authorizes DAS to establish a program which allows an appointing authority to pay certain employees a salary and benefits package that vary from the state model. The following employees are eligible for the alternative benefit packages:

- Employees appointed to administrative staff positions
- Legislative employees
- Employees of the Legislative Service Commission
- Employees of the office of the Governor

- Unclassified exempt employees in the office of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General
- Employees of the Ohio Supreme Court
- Select other employees and officers in the unclassified civil service

The bill does not create the authority to provide health care benefits to a covered officer or employee that are different from the health care benefits provided by law for that officer or employee.

Disability—(RC 124.32, 124.385, 4112.01)

House Bill 187 excludes from the definition of a “physical or mental impairment” psychoactive substance use disorders resulting from the current use of a controlled substance or the current use of alcoholic beverages. This language clarifies that current drug and alcohol abusers are not disabled and cannot claim protection under state disability status.

Currently, the ability to approve an employee’s request for disability leave benefits rests with the Director of Administrative Services, upon the recommendation by the appointing authority. Under the new language, the Director may delegate to any appointing authority the authority to approve disability benefits for a standard recovery period.

Under the current law, a person holding an office or position under the classified service who has been disability separated is entitled to be reinstated to the same or similar position the employee held prior to the separation if that person files a written application for reinstatement, passes a physical examination showing that the person has recovered from the disability, and applies for reinstatement within three years from the date of the separation. HB 187 modifies this provision by reducing the time within which the person must apply for reinstatement from three years to two years, and requiring employees suffering from a psychiatric disability to pass a psychiatric examination prior to their reinstatement.

Discipline—(RC 119.12, 124.34, RC 124.388)

Currently, as a form of discipline, an appointing authority may reduce, suspend or remove the employee. In an attempt to give appointing authorities more flexibility in disciplining employees who are exempt from a collective bargaining agreement, HB 187 allows for other forms of reduction for disciplinary reasons, including decreasing or eliminating an exempt employee’s longevity. The new language also states that a denial of a one-time pay supplement or bonus is not considered a “reduction in pay,” and allows an appointing authority to take disciplinary action against an employee who is found to violate the appointing authority’s policy or work rules.

Under the current law, an appointing authority that reduces, fines, suspends or removes an employee is required to serve a copy of the order upon the affected employee, DAS, and SPBR. HB 187 modifies the list of orders that require an appointing authority serve a copy upon the affected employee and eliminates the requirement that those orders must be filed with the Director of DAS and SPBR. Additionally, the bill changes the measurement of suspensions and fines from work days to work hours in an attempt to accommodate those employees with less conventional work schedules. The new language now only requires an appointing authority to serve a copy of the order upon the employee in cases where the appointing authority imposes:

- A reduction
- A suspension of 40+ hours for an employee exempt from overtime compensation
- A suspension of 24+ hours for an employee eligible for overtime compensation
- A fine of 40+ hours pay for an employee exempt from overtime compensation
- A fine of 24+ hours pay for an employee required to be paid overtime compensation
- A removal

Currently, if an employee is removed, the employee has the right to appeal the removal to SPBR. The board may then affirm, disaffirm, or modify the judgment of the appointing authority. HB 187 limits SPBR's authority, however, for an alleged violation of a last chance agreement to only determining if the last chance agreement was violated by the employee. For purposes of the new language, a "last chance agreement" is defined as an agreement signed by both an appointing authority and an employee that describes the type of behavior or circumstances that, if it occurs, will automatically lead to removal of the employee without appeal rights. Additionally, the new language requires that appeals from a SPBR decision concerning a discipline order be taken to the court of common pleas of the county in which the appointing authority is located. The bill carves out an exception, however, and states that appeals where the Department of Rehabilitation and Correction is a party must be taken to the Court of Common Pleas of Franklin County.

House Bill 187 also allows employees, who have been charged with a felony, to be placed on *unpaid* administrative leave. The current law allow and appointing authority to place an employee on administrative leave *with pay* in such circumstances, but the new language gives agencies a temporary reprieve from the expenses associated with placing an employee on paid leave during a lengthy investigation. Under the new language, the unpaid leave cannot last longer than two months while the investigation is being conducted, and if the employee is not found guilty of the felony, the employee must be paid for the leave period at the employee's base rate of pay, plus interest.

Right to Counsel at a Hearing—(RC 9.84)

House Bill 187 eliminates the right of an appointing authority's employee to be accompanied, represented, or advised by an attorney when appearing solely as a witness in an employment interview, investigation, or proceeding conducted by or for the appointing authority.

Duties of the Director—(RC 124.14, 124.20)

Currently, the Director of Administrative Services has the authority and is charged with the responsibility of adopting rules, providing oversight, and maintaining documents for a number of different areas impacting civil service. Under House Bill 187, the Director's responsibilities in these areas have been reduced and limited for positions in state-supported colleges and universities, counties, cities, city health districts, general health districts, and civil service townships.

The bill expands the duties of the Director to include developing and conducting supervisory training programs and best practices plans, developing merit hiring processes, and assisting appointing authorities in recruiting qualified applicants for positions in the state service.

Although they fall outside the general purview of state services, please see the attached document for a brief synopsis of the bill's changes on the following topics: state colleges and universities, counties and municipalities, and firefighter examinations.

If you have any additional questions or concerns about House Bill 187, please contact the Office of Policy Development at DASHRD.HRPolicy@das.state.oh.us or (614) 752-5393.

HB 187: ATTACHMENT

State Colleges and Universities, Counties and Municipalities, and Firefighters

State colleges and universities

- Eliminates DAS' authority and responsibility for auditing the human resource functions of state-supported colleges and universities.
- Grants the board of trustees of state-supported colleges and universities the authority to adopt rules to carry out human resources functions, but makes state-supported colleges and universities subject to DAS rules until such time as the board of trustees adopts such rules.
- Requires the Executive Director of the Inter-University Council to coordinate a committee that shall consult with DAS and develop guidelines that are to be used in adopting rules addressing, at a minimum, classification and compensation plans, recruitment, selection, appointments, performance, discipline and termination, layoff and reduction-in-workforce, paid leave, holiday leave, benefits, and appeals processes for the officers and employees of their college or university.
- Allows a state-supported college or university or municipal corporation to use services and facilities furnished by DAS that are necessary to provide and maintain payroll services and state merit standards, and requires that they pay the cost of the services and facilities that DAS furnishes.

Counties and Municipalities

- Removes the requirement that the Director of DAS adopt rules for appointment, promotions, transfers, layoffs, suspensions, reductions, reinstatements, and removals in counties.
- Sets forth that only appointing authorities with officers or employees in the civil service of the state must submit personnel action information to DAS under the bill.
- Allows a county appointing authority to establish a paper layoff process.
- Removes the population requirement currently required before a board of county commissioners may appoint administrators to oversee services provided by county department of job and family services.
- Limits the number of county department administrators that a board of county commissioners may appoint in accordance with the county's population.
- Sets forth that any currently-filled administrator position that is in the classified service on July 1, 2007 shall not be unclassified until the current person holding the position vacates the position.
- Establishes certain limited fall-back rights for a person holding a certified position in the classified service within the county department of job and family services that accepts an appointment as an administrator from the board of county commissioners, and defines the term "administrator" for purposes of this section.
- Limits the requirement that an appointing authority file with DAS a statement of rationale and supporting documentation when deciding to abolish a position, and a notice of a position's abolishment to positions in the service of the state.
- Limits the notice requirement to the Director of DAS of the reasons for a probationary removal to only those positions in the service of the state.
- Requires a municipal civil service commission to authorize each appointing authority within its jurisdiction to develop and administer an evaluation system for appointed employees in a manner that the municipal civil service commission devises
- Requires the Director of DAS to adopt rules authorizing each appointing authority of a county to develop and administer an evaluation system for employees it appoints.
- Allows a board of county commissioner to establish a county personnel department to carry out the powers, duties and functions of DAS with respect to employees for whom the board of county commissioners is the appointing or co-appointing authority.
- Establishes the manner in which a board of county commissioner must give DAS notice of its decision to establish a county personnel department, and requires that, once created, the county personnel department must exist for at least two years before these responsibilities can be returned to DAS.

- Allows an elected official, board, agency, or other appointing authority of a county to opt to use the services and facilities of the county personnel department, rather than DAS, and establishes the mechanism for giving DAS notice of such a change.
- Requires that once an authority opts to use a county personnel department, it must remain with the county department for at least two years before these responsibilities can be returned to DAS.
- Eliminates the rule that the number of hours worked by a county employee in any one workweek is deemed to include, in addition to hours actually worked, all periods in an active pay status.
- Allows an appointing authority of a county office, department, commission, board, or body to establish alternative schedules of sick, vacation, or holiday leave, so long as those schedules aren't inconsistent with at least one collective bargaining agreement that covers the employees.
- Clarifies that vacancies in the unskilled labor class in the service of the state must be filled from applicants lists registered and maintained by DAS, while vacancies for positions not in the service of the state must be filled from applicant lists registered and maintained by a civil service commission.
- Allows a municipal civil service commission to require a period of service of longer than 12 months for promotion to the rank immediately above the rank of patrol officer in a police department.
- Provides that temporary transfers of an employee in the classified service that occur more than once during any six-month period, or permanent transfers of an employee in the classified service must be approved by the appropriate civil service commission.
- Permits DAS to enter into an agreement with municipal corporations or other political subdivisions to furnish services and facilities for the administration of human resources-related functions.
- DAS maintains the role of auditing county human resources
- Adds the following individuals to the list of unclassified employees:
 - The heads of all departments appointed by a board of county commissioners
 - Not more than five deputy county auditors (no limit in current law)
 - Four clerical and administrative support employees for board of county commissioners
 - One clerical or administrative support employee for each county commissioner
 - Four (instead of three as under current law) clerical and administrative support employees for non-state elective officers, and for each of the appointive executive officers, boards, or non-civil service commissions authorized to appoint such employees
 - Not more than five specified administrative positions within a county department of job and family services
 - The superintendent or administrator of a county home

Firefighters

- Requires a person to have served 48 months (up from 24 months), in order to be eligible to take a competitive promotional examination for the rank immediately above the rank of regular firefighter.
- Eliminates the right of a participant in a firefighter promotional exam to inspect the exam's questions, rating keys, or answers and to file a protest. However, a participant maintains a right to appeal on the basis that the participant's examination papers were erroneously graded.