

FREQUENTLY ASKED QUESTIONS REGARDING TEMPORARY APPOINTMENTS

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In general, the state's use of temporary appointments is governed by ORS 240.309 and HRSD State Policy 40.025.01. This article, in question and answer form, addresses many of the issues repeatedly raised. It has been revised and updated to reflect new rules, statutory information and recent case law. Please contact HR Management and Consultation staff with any questions or concerns regarding these issues.

Pursuant to the state policy and statute, a temporary appointment may be made to meet emergency, nonrecurring or short-term workload demands in situations where the establishment of a permanently funded position is not appropriate or feasible.

Q: What are emergency, nonrecurring and short-term workload needs?

A: Emergency need means a sudden and unanticipated program or workload need. Nonrecurring need means a special one-time project that requires additional staff. Short-term workload need refers to covering workload for a duration of less than six months.

Q: What reasons are not appropriate for hiring a temporary employee?

A: Reasons which do not correspond with those set forth in HRSD State Policy 40.025.01. For example, an agency may not hire a temporary worker for on-call duty to cover for agency employees who may be absent intermittently for sick leave. Sick leave is a regular occurrence and considered routine in nature; it is neither an emergency nor is it nonrecurring. If otherwise appropriate, agencies with a high incidence of sick leave may hire employees into limited duration or part-time positions to cover on-call shifts. Questions regarding available alternatives may be directed to the HR Management and Consultation Section.

Q: How long may an agency employ a temporary employee?

A: Full-time state temporary employees may not work for more than six calendar months for the same workload need unless an extension is granted by DAS HRSD based on one of two exceptions: 1) a continuing emergency situation (where no other reasonable means exist to meet the emergency), or 2) filling in behind a permanent employee whose leave lasts longer than six months. For state temporary employees working less than full-time schedules, length of employment may not exceed the equivalent of six calendar months (1040 regular hours) in a 12-month period. Employment of a full-time temporary employee for *different* workload needs also may not exceed the equivalent of six calendar months in a 12-month period. *The state's PPDB system automatically terminates all temporary appointments after six calendar months unless an extension is obtained through the HR Management and Consultation Section.* Extensions do not increase the 1040 hours but instead increase time frame during which a temporary employee may work the equivalent of six calendar months (1040 hours).

Q: What are the parameters around hiring temporary employees through a Qualified Rehabilitation Facility (QRF)?

A: Contracts with QRFs are monitored and regulated by the State Procurement Office (SPO). Pursuant to Oregon Administrative Rule (OAR) 125-055-0040(3), temporary employees hired through a QRF may not work more than 1040 hours in a 12 month period providing services to state agencies. This includes any time the employee may have worked through the QRF at different agencies, and any time the employee may have worked as a state temporary employee. Temporary employees may only be hired through a QRF to meet emergency, nonrecurring or short-term work load needs. State agencies are not responsible for tracking the time temporary employees work while employed by a QRF, however they are

responsible for requesting this information prior to hiring a temporary employee. OAR 125-055-0040 does not provide for exceptions or extensions to the 1040 hour limitation.

Q: When may an agency re-hire a temporary employee?

A: A state or QRF temporary employee who has worked six calendar months on a full-time basis, or the equivalent of six calendar months in a 12-month period, may work again as a state or QRF temporary employee during subsequent 12-month periods. This 12-month period, also known as the “temp year,” begins on the initial date of appointment. For example, if the employee worked a full-time state temp assignment from January 21 through July 20, 2001, the temporary employee would be eligible to start a new assignment on January 21, 2002. If the employee worked a part-time assignment from January 21 through November 30, 2001, totaling 1,040 hours, the temporary employee would again only be eligible to start a new assignment on January 21, 2002. To ensure compliance with ORS 240.309 and HRSD State Policy 40.025.01, an agency should check the prospective employee’s work history, including total temporary hours worked for the state and/or a QRF, *before* an appointment is made.

Q: May a temporary employee work for more than one agency in a year?

A: Yes, however the temporary employee may not work more than the equivalent of six calendar months in a 12-month period unless one of the exceptions to that limit applies and an extension has been granted by DAS HRSD (for state temps). Agencies, may incur overtime liability if a temporary employee works for two or more agencies at the same time (see, HRSD State Policy 20.005.20, Fair Labor Standards Act, for an explanation how such overtime liability is handled).

Q: What documents need to accompany an extension request?

A: A completed Form PD 412A (*Request to Extend a Temporary Appointment*), the 412A’s requested documentation regarding hours worked, and the original Form PD 412 (*Conditions of Temporary Appointment*). When completing the PD 412A, the employee’s new separation date and, if applicable, the number of hours worked during the employee’s temp year must be included. Also essential are explanations regarding the reason for the initial appointment and why the extension is being requested. The Form PD 412A will not be processed unless signed by an appointing authority.

Q: How long may a temporary employee fill in behind an employee on approved leave?

A: For the period of time that the person is on approved leave. HRSD State Policy 40.025.01 provides: “A temporary appointment made to fill in behind an employee on approved leave shall not exceed the period of the approved leave. Such an appointment may exist beyond six months only when the temporary employee is replacing a single employee on approved leave.”

Q: May a temporary employee hired to fill in behind an employee on approved leave continue his or her assignment after the regular-status employee returns from the leave to work *part-time*?

A: Yes, on a reduced basis. The temporary employee may be used to cover the difference between the regular-status employee’s part-time hours and a full-time schedule until the regular-status employee returns to work full-time.

Q: May a temporary employee hired for a workload need be reassigned to fill in behind an employee on approved leave?

A: While an agency may not reassign such a temporary employee, the agency could, instead, terminate the original appointment and initiate a new appointment, provided the temporary

employee has not reached the 6 month/1040 hour limitation in the current assignment. The new appointment may not exceed the period of the absent employee's approved leave.

Q: Is an employee on a job rotation a form of approved leave?

A: Current advice from the Department of Justice, Labor and Employment Section indicates a job rotation may be considered a form of leave, however, HRSD urges agencies to look at each situation on a case-by-case basis and use temporaries to back fill only when absolutely necessary for assignments the agency knows will last 6 months or longer. HRSD's recommendation for such assignments is to explore the possibility of backfilling with another job rotation; or doing a limited duration appointment, as long as such assignments meets the criteria for a limited duration appointment as set forth in OAR 105-040-0040, as well as parameters set forth in applicable bargaining agreements. When utilizing a temporary employee to back fill behind a job rotation, it is preferred that the rotation of the employee be to a job outside his/her section/unit.

Q: May a state agency contract for temporary employees?

A: No. If an employer-employee relationship between the state and a temporary worker is expected, then the state hiring process must be followed. If no employer-employee relationship will be established, the agency is free to contract for this service in accordance with the rules for public contracting established by SPO (or to utilize a QRF contract temporary employee). Agencies should work closely with their human resource offices to determine appropriate options. Other resources include HR Management and Consultation and—particularly on the employer-employee relationship issue—the Labor and Employment Section of the Department of Justice.

Q: How do state laws and policies pertaining to temporary employees affect PERS retirees?

A: Laws and policies concerning PERS retirees and temporary appointments establish independent requirements. The state and individual employees must comply with both. PERS statutes provide that, in general, a PERS retiree may not exceed 1,039 hours as a public employee in a *calendar* year with-out affecting his or her PERS retired status. (Other time limitations may apply based on retirement status. Temporary employees who are PERS retirees are urged to contact PERS to discuss limitations on reemployment.) This would include time worked as a state temporary employee. State temporary appointments are not based on a calendar year, but on the temp year. HR Management and Consultation neither monitors nor regulates PERS provisions, including those concerning retirees. More information on employing PERS retirees can be found at <http://egov.oregon.gov/DAS/HR/docs/advice/persretirees.pdf>.

Q: What is different now that some state temporary employees are represented by SEIU?

A: Some direct-hire temporary employees are represented by SEIU. The state's collective bargaining agreement with SEIU sets forth the terms and conditions of employment which apply to these employees. *All* direct-hire state temporary employees, including those represented by SEIU, are governed by ORS 240.309 and HRSD State Policy 40.025.01.

Q: What rules govern student workers and interns?

A: In accordance with ORS 240.309, agencies may use temporary status appointments for a period not to exceed 48 months for student interns who are enrolled in high school or who are under 19 years of age and are training to receive a General Educational Development (GED) certificate. Department of Justice student law clerks may work up to 24 months. The length of appointment of a student worker or intern who does not meet these criteria is governed by HRSD State Policy 40.025.01.

Q: When is a limited duration appointment appropriate?

A: When it meets the criteria set forth in OAR 105-40-040, Types of Appointments (and any applicable collective bargaining agreement). Generally, limited duration appointments are for a study, a project or when position reduction is anticipated. The emergency, nonrecurring and short-term workload criteria which apply to temporary appointments do not pertain to limited duration appointments. With prior approval of the DAS Budget and Management Division, an agency may establish a limited duration position and fill it with more than one part-time employee if necessary.

Q: Can a temporary employee be Exempt under the FLSA?

A: FLSA status depends on the pay status and type of work the employee is performing. Most temporary appointments will be non-exempt due to the nature of the work. However, if the work meets the criteria for exemption, the appointment may be FLSA exempt and not eligible to receive overtime IF the employee is paid on a salary basis. If the employee is paid on an hourly basis, regardless of the level of work, the temporary employee will be non-exempt and eligible for overtime. For example, an agency who hires a temporary employee to do management level work, but who pays the employee an hourly rate, may not treat the employee as exempt. Unless the agency establishes the temporary employee as a salaried employee in PPDB, the employee will be eligible for overtime payments. One note of caution, agencies wishing to avoid overtime liability by establishing a salaried temporary employee must take care to avoid overpayments in the event the employee works less than full time for the salary period.

Q: Do temporary employees receive PERS contributions?

A: Yes, once they meet the eligibility requirements for PERS.

Q: What will agencies be audited on?

A: Audits will be based upon criteria in the state temporary appointments policy. For example, audits will seek to verify whether the appointment was made to meet an emergency, nonrecurring or short-term workload need. Audits will also focus on the total number of hours a temporary employee worked during any 12-month period of time.