

SUBJECT: Temporary Appointments **NUMBER:** 40.025.01

DIVISION: Chief Human Resources Office **EFFECTIVE DATE:** 2/01/2019

APPROVED: Signature on file with the Chief Human Resources Office

POLICY STATEMENT: Agencies may make temporary non-status, noncompetitive appointments to meet workload needs that are emergency, nonrecurring, or short-term when the use of existing positions, or establishing new positions, is not appropriate or feasible.

AUTHORITY: ORS 180.140(3), 240.307 and 240.309; OAR 115-045-0017 and OAR 839-006-0146

APPLICABILITY: All temporary employees where not in conflict with an applicable collective bargaining agreement.

ATTACHMENTS: PD 412 - Conditions of Temporary Appointment
PD 412A - Temporary Appointment Extension

DEFINITIONS: **Emergency need:** a sudden and unanticipated workload need.

Nonrecurring need: a special one-time project that requires additional staff.

Short-term workload need: covering workload for less than six months.

Temporary year: January 1 through December 31

Also refer to State HR Policy 10.000.01 Definitions

POLICY:

- (1) An appointing authority may make a temporary appointment in the following situations:
 - (a) A workload need exists that is an emergency, nonrecurring or short-term.
 - (b) Using an existing position, or establishing a new position, is not appropriate or feasible.
- (2) An appointing authority or designee first offers the appointment to persons who meet minimum qualifications, and whose names appear on applicable agency layoff lists. If no qualified person's name appears on the layoff list(s), the appointing authority or designee may use other recruitment sources consistent with affirmative action practices.
- (3) Beyond an agency's requirement to offer the appointment to persons on applicable agency layoff lists, agencies should consider persons on the reemployment list and other appropriate lists referenced in State HR Policy 40.010.02 Recruitment and Selection.

- (4) Agencies must pay temporary employees at an hourly rate (for FLSA non-exempt work) or a salary rate (for FLSA exempt work). Refer to State HR Policy 20.005.10 Pay Practices to determine the appropriate pay upon hire.
- (5) A temporary employee, other than one filling in behind an employee on approved leave, may not work beyond six calendar months for the same workload need. An appointing authority may extend a temporary appointment beyond six calendar months (not to exceed 1,040 hours) for the same emergency workload need when all of the following conditions are met:
 - (a) The original emergency continues to exist.
 - (b) No other reasonable means exists to meet the emergency.
 - (c) Using an existing position or establishing a new position is not appropriate or feasible.
 - (d) A limited duration appointment in a permanent position is not appropriate or feasible.
- (6) If an extension is necessary, the appointing authority must approve it in a timely manner to ensure uninterrupted continuation of the appointment.
- (7) Employment of a temporary employee for different workload needs may not exceed the equivalent of six calendar months (1,040 hours) in a calendar year.
- (8) An agency may make a temporary appointment to fill behind an employee on approved leave. Such an appointment may continue beyond six months (1,040 hours) only when the temporary employee replaces an employee on approved leave. The temporary appointment may not exceed the period of the approved leave.
- (9) The Department of Justice, the Office of Administrative Hearings, and the Public Utilities Commission may use a temporary appointment for a student law clerk for a period not to exceed 24 months.
- (10) The Department of Justice may use a temporary appointment for assistants trained in the law for a period not to exceed 15 months.
- (11) A state agency may use temporary appointments for a period not to exceed 48 months for student interns who are either enrolled in high school or under 19 years of age and training to receive a General Educational Development (GED) certificate. (Student interns are not eligible for benefits under ORS 240.309.)
- (12) The Oregon Military Department appoints temporary status to members of the organized militia who are ordered to active state duty. These appointments are not subject to ORS 240 or ORS 243.650 to ORS 243.782 (Collective Bargaining). The limitation on employment imposed by ORS 238.082 (2) does not apply to a retired member of PERS who attained normal retirement age and is on active state duty.
- (13) The appointing authority or designee provides proper documentation to temporary employees for every temporary appointment and extension. Complete form PD 412, Conditions of Temporary Appointment, and PD 412A, Temporary Appointment Extension for every temporary appointment and extension (see applicable collective bargaining agreement). The agency provides a copy of the

completed and signed forms to the employee and maintains originals in the employee's personnel file.

- (14) At the time of appointment, the appointing authority or designee provides written notice to the employee of the right to file a complaint alleging violations of ORS 240.309. Written notice is contained on the PD 412. Providing the employee a copy of PD 412 fulfills the employer's written notice requirements.
- (15) An employee who believes the terms and conditions of the temporary employment in any way violate the provisions of ORS 240.309 may file a written complaint with the Employment Relations Board within 30 days after the employee knew or should have known of the alleged violation. For SEIU-represented temporary employees, the Union files grievances alleging violations of ORS 240.309 directly with the Department of Administrative Services for full and final review.
- (16) Policy Clarification:
 - (a) For purposes of temporary appointments, state government is one employer. A temporary employee may not work more than the equivalent of six calendar months in a calendar year for any single or combination of state agencies except for temporary appointments made to fill in behind an employee on approved leave.
 - (b) A temporary employee who suffers an injury on the job, files for worker's compensation and seeks to return to temporary employment upon release, has return rights that extend only to the period of appointment remaining on the written notice provided at the time of appointment.
 - (c) An employer found to be in violation of ORS 240.309 by the Employment Relations Board may be required to pay an affected employee damages for any lost wages, benefits and rights.
 - (d) For purposes of retirement, generally, Tier 1 and Tier 2 retirees (ORS 238.082) are limited to 1,039 hours and Oregon Public Service Retirement Plan (OPSRP) retirees are limited to 599 hours (ORS 238A.245) of temporary employment per calendar year. ORS 238.082 provides exceptions to this general rule, including: state work in a correctional institution; State Police work located in a county with less than 75,000 inhabitants; or where the retired member is employed to temporarily replace an employee called to active federal duty in the National Guard or in a reserve unit of the United States Armed Forces. However, temporary appointments of retirees made pursuant to ORS 238.082 and ORS 238A.245 still must comply with ORS 240.309, this policy, and may not exceed the equivalent of six calendar months (1,040 hours) in a 12-month period unless filling in behind an employee on approved leave.