

**TEMPORARY APPOINTMENTS
FREQUENTLY ASKED QUESTIONS (FAQ)
Revised February 9, 2011**

In general, the state's use of temporary appointments is governed by ORS 240.309 and [State HR Policy 40.025.01 Temporary Appointments](#). In question and answer form, this FAQ addresses many of the issues repeatedly raised. It reflects new rules, statutory information and case law. Please contact CHRO Policy Unit staff with any questions or concerns regarding these issues at:

http://www.oregon.gov/DAS/CHRO/pages/contact_us_directory.aspx#HR_Management_Consultation

Agencies may make temporary, non-status, non-competitive appointments to meet workload needs that are emergency, nonrecurring or short-term, and the use of existing positions or establishment of new positions is not appropriate or feasible.

1. Q: What are emergency, nonrecurring or 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 a workload less than six months in duration.

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

A: Reasons which do not correspond with those set forth in State HR Policy 40.025.01 Temporary Appointments. 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 CHRO Policy Unit staff.

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

A: Full-time temporary employees may not work more than six calendar months in a one year time period. Part-time temporary employees may not work more than 1040 hours in a one year time period.

4. Q: Is there an exception to the six month or 1040 hour maximum?

A: The agency appointing authority may grant an extension under the following conditions: 1) the temporary employee has not worked longer than 1040 hours in a one year time period and a continuing emergency exists with no other reasonable means to meet the emergency, or 2) a state temporary employee is filling in behind a permanent employee on approved leave.

Total employment of a full-time temporary employee for different workload needs may not exceed six calendar months or 1040 hours in a one year time period. The state's PPDB system automatically terminates all state temporary appointments after six calendar months unless the agency appointing authority approves an extension. 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).

5. **Q. How does an agency locate available temporary employees?**
A. An agency first offers the temporary appointment to persons on an applicable agency layoff list who meet minimum qualifications. If no qualified person exists or each person declines, the agency may hire an individual as a temporary employee in a non-competitive manner. Agencies may wish to consider persons on appropriate lists of applicants and re-employment lists referenced in OAR 105-040-0020 Types and Order of Applicant Lists. Local field offices of the Oregon Employment Department can create job listings for agencies or an agency may wish to hire a temporary employee through a QRF.
6. **Q: What are the parameters around hiring temporary employees through a 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 one year time period providing services to state agencies. This includes any time the employee worked through the QRF at different agencies, and any time the employee worked as a state temporary employee. The QRF is responsible for tracking the hours of a QRF employee, but prior to hiring a QRF employee, the agency must ensure the employee has worked no longer than six months or 1040 hours in a one year time period. OAR 125-055-0040 provides for exceptions or extensions to the six months or 1040 hour limitation.
7. **Q: When may an agency re-hire a temporary employee?**
A: A temporary employee who has worked six calendar months on a full-time basis, or the equivalent of six calendar months in a one year time period, may work again as a temporary employee during subsequent one year time periods. This one year time period, also known as the “temp year,” begins on the initial date of appointment. For example, if the employee worked as a full-time state temporary employee from January 21, 2009 through July 20, 2009, the temporary employee is eligible to start a new assignment on January 21, 2010. If the employee worked a part-time assignment from January 21, 2009 through November 30, 2009, totaling 1,040 hours, the temporary employee is not eligible to start a new assignment until January 21, 2010. To ensure compliance with ORS 240.309 and State HR State Policy 40.025.01 Temporary Appointments, an agency should check the prospective employee’s work history, including total temporary hours worked for the state and a QRF, before an appointment is made.
8. **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 six calendar months or 1040 hours in a one year time period unless one of the exceptions to the limit applies and an extension is granted. Agencies, may incur overtime liability if a temporary employee works for two or more agencies at the same time. See State HR Policy 20.005.20 Fair Labor Standards Act, for an explanation on how to handle the overtime liability).

9. Q: How should we document a temp appointment and an extension?

A: To document a temporary appointment complete Form PD 412 *Conditions of Temporary Employment* and file it in the personnel file. The Form PD 412 must be signed by the temporary employee, the supervisor and the appointing authority.

To document an extension complete Form PD 412A *Temporary Appointment Extension*, and file it in the personnel file with the original Form PD 412 *Conditions of Temporary Employment*. 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 must be signed by an appointing authority, the temporary employee, and the supervisor.

10. 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. State HR Policy 40.025.01 Temporary Appointments provides: "An agency may make a temporary appointment to fill in behind an employee on approved leave. The appointment may continue beyond six months (1040 hours) only when the state or QRF temporary employee is replacing a single employee on approved leave. The temporary appointment may not exceed the period of the approved leave."

11. Q: May a temporary employee hired to fill in behind an employee on approved leave continue his or her assignment if the regular-status employee returns from the leave and works a reduced schedule?

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.

12. 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 the temporary employee, the agency could, terminate the original appointment and initiate a new appointment, provided the temporary employee has not reached the six month or 1040 hour limitation in the current assignment. The new appointment may not exceed the period of the absent employee's approved leave.

13. Q: Is an employee on a job rotation on 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, CHRO 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 six months or longer. CHRO recommends agencies explore the possibility of backfilling with another job rotation or doing a limited duration appointment, as long as such assignments meet the criteria for a limited duration appointment 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 or her section or unit.

14. Q: May a state agency contract for temporary employees?

A: No. The state hiring process must be followed if an employer-employee relationship between the state and a temporary worker is expected. If no employer-employee relationship will be established, the agency may contract for this service in accordance with the rules for public contracting established by Procurement Services or utilize a QRF contract temporary employee. Agencies should work closely with their human resource offices to determine appropriate options. Other resources include CHRO Policy Unit and particularly on the employer-employee relationship issue, the Labor and Employment Section of the Department of Justice.

15. Q: How do state laws and policies pertaining to temporary employees affect Public Employees Retirement System (PERS) retirees?

A: Laws and policies concerning PERS retirees and temporary appointments have different and independent requirements. The state and individual employees must comply with both. According to PERS statutes a retiree is restricted in the number of hours that he or she can work in a PERS covered employer. In general, the following restriction on hours applies:

Tier 1 and Tier 2	1039 hours in a <i>calendar year</i>
OSPRP retirees	599 hours in a <i>calendar year</i>

This includes time worked as a temporary employee. Other time limitations may apply based on retirement status. Temporary employees who are PERS retirees are urged to contact PERS to discuss limitations on employment with a PERS covered employer. State temporary appointments are not based on a calendar year, but on the temp year. CHRO Policy Unit neither monitors nor regulates PERS provisions, including those concerning retirees.

16. Q: What is different when 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 State HR Policy 40.025.01 Temporary Appointments.

17. 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 State HR Policy 40.025.01 Temporary Appointments.

18. Q: When is a limited duration appointment appropriate as opposed to hiring a temporary employee?

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.

19. 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 is 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. Agencies with salaried temporary employees must take care to avoid overpayments in the event employees work less than full time for the salary period.

20. Q: Do temporary employees receive PERS contributions?

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

21. Q: What do DAS temporary appointment audits include?

A: Audits are based upon criteria in the state temporary appointments policy. For example, audits seek to verify whether the appointment was made to meet an emergency, nonrecurring or short-term workload need. Audits also focus on the total number of hours a temporary employee worked during any one year period of time and whether appointment extensions were properly documented and met the conditions listed in the Temporary Appointment policy.