

RESTORATION FAQs

This FAQ was created as a guide to assist in the amendments made to state employee restoration rights; however, agencies should not rely solely on this document. Unless otherwise noted, the questions/answers assume the employee is subject to ORS 240. Make sure to also refer to the State HR Policy 50.030.01 Restoration of Removed Management Service Employees, other relevant policies, and if appropriate, any applicable collective bargaining agreement for specific information on restoring employees. Contact the Department of Administrative Services, Chief Human Resources Office (DAS or CHRO) or the Department of Justice's (DOJ) Labor & Employment Section with any additional questions or guidance.

NOTE: If an employee is removed for reasons specified in ORS 240.555, the employee has NO restoration rights.

1. What are restoration rights?

Restoration rights are rights back to a classified position when an employee moves from classified service (regular status, immediate prior) into management service and is then removed from management service for reasons other than those specified in ORS 240.555. A management service employee may still have rights back to a prior position if it is a trial service removal (see State HR Policy 40.065.01 Trial Service Removal).

2. Does every employee have restoration rights?

No. A case-by-case review is necessary. It depends on whether or not the employee's prior classified service was in the executive branch, the agency was subject to ORS 240, the employee's appointment date and the reason for removal.

3. If the agency where the employee worked immediately prior in classified service is not subject to ORS 240, does the employee have restoration rights?

You will need to review the agency's policy and/or collective bargaining agreement, if any. Agencies not subject to ORS 240 (to include public corporations) may have an Inter-Governmental Agreement (IGA) with DAS citing the applicability of specific State HR policies and rules to their agency.

4. Do employees have any restoration rights to positions in the Oregon University System, Portland State University, Oregon State University or University of Oregon?

No.

5. What does "immediate prior classified service" mean in relation to restoration rights?

Immediate prior classified service means the employee attained regular status in classified service position and is subsequently appointed into management service with no break in service. NOTE: State HR Policy 10.000.01 Definitions, defines a break in service as "a separation from employment of more than 15 calendar days."

6. Do classified employees appointed into management service on or after January 1, 2015 have restoration rights?

No. A management service employee may still have rights back to a prior position if it is a trial service removal (see State HR Policy 40.065.01 Trial Service Removal).

7. When does a management service employee's restoration rights expire?

Restoration rights are on a rolling forward expiration beginning on January 1, 2015. Eligible employees appointed three years from the date moving forward after January 1, 2015 have restoration rights. For example: Employee A is appointed from the classified service (regular status) into management service on January 12, 2012. On January 13, 2015, their restoration rights expire. **Note:** An eligible employee is defined as one who meets the criteria outlined in question 1 above and was appointed into management service prior to January 1, 2015.

8. What if a management service employee's position is abolished due to budgetary reasons?

If the employee's restoration rights have expired, the agency must follow the agency's layoff procedures and State HR Policy 50.025.01 Layoff/Removal.

9. If a management service employee has no restoration rights, does the agency have the ability to demote an employee to a vacant position (including classified service positions) in their agency?

Yes, if the employee is qualified for the position and the agency can demonstrate the employee is unable or unwilling to fully and faithfully perform the duties of the employee's management service position satisfactorily (as required by ORS 240.570(3)). The agency will also need to follow State HR Policy 70.000.02 Management Service Discipline and Dismissal/Removal, as well as any collective bargaining agreement, if applicable.

10. What if an employee worked in an unclassified (defined in ORS 240.205) or exempt (defined in ORS 240.200) position prior to their appointment into management service?

In some instances they may have restoration rights. Contact the assigned Labor Relations Manager.

11. What if we are terminating an employee from unclassified (defined in ORS 240.205) or exempt (defined in ORS 240.200) service and the employee had prior classified service?

Contact the assigned Labor Relations Manager.

12. What if an employee is removed from management service but they did not finish their trial service period in classified service?

An employee must have attained regular status in classified service AND their appointment to management service must be prior to January 1, 2015 and within the specified three year timeframe in order to have restoration rights.

13. What if an employee achieved regular status in a prior classified service position but not in their immediate prior classified service position and is removed from management service?

If the employee meets the eligibility test for restoration rights, they may have rights back to their former regular status classified service position. Contact the assigned Labor Relations Manager.

14. Does the new law take away a management service employee's ability to have rights back to a position if they are removed from trial service?

No. If the agency removes a management service employee from trial service, they must follow the State HR Policy 40.065.01 Trial Service Removal. If a management service employee in trial service is removed for reasons specified in ORS 240.555, they do not have return rights from either the restoration or the trial service removal processes.

15. What if an employee resigns their regular status classified service position on a Friday and begins their management service appointment position on Monday? Does that constitute a break in service for the purposes of restoration rights?

No.

16. What if an employee resigns their regular status classified position on a Friday, takes three weeks off (unpaid) between positions and begins their management service position directly after? Does that constitute a break in service for the purposes of restoration rights?

Yes. Employees will need to be advised if they are taking over 15 calendar days off between jobs they either need to use vacation or approved leave without pay from either the former, current or new agency.