

**RULES
OF
THE TENNESSEE DEPARTMENT OF HUMAN RESOURCES**

**CHAPTER 1120-02
EMPLOYMENT PRACTICES**

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1120-02-.01 RESPONSIBILITY. The Commissioner is responsible for administering the Act, these Rules, and establishing policies and procedures.

Authority: T.C.A. §§ 8-30-104, 8-30-105, and 8-30-107. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

1120-02-.02 DIVISIONS OF STATE SERVICE. The state service is divided into the preferred service and the executive service.

Authority: T.C.A. § 8-30-201. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012.

1120-02-.03 APPLICATION FOR EMPLOYMENT.

- (1) Applying for Positions in the State Service. All open positions, regardless of their classification, must be posted in the applicant tracking system currently approved by the Department of Human Resources prior to filling the positions. For positions that are considered non-competitive, executive service, or internships, agencies must enter the relevant data in the applicant tracking system, even if the position has already been filled. All applications for employment in state service positions shall be made in a manner prescribed by the Commissioner, as applicable.
- (2) Disqualification of Applicants. The Commissioner may strike the name of a person from the pool of candidates, if the Department determines that the applicant:
 - (a) Lacks any of the required minimum qualification requirements established for the position;
 - (b) Has previously been dismissed from state service for cause or gross misconduct;
 - (c) Has willfully or intentionally submitted false information or documents in support of any application or has intentionally omitted information in any application which materially affects eligibility for employment consideration;

(Rule 1120-02-.03, continued)

- (d) Has committed or attempted to commit a fraud or deception in connection with submitting an application or attempting to secure an appointment to state service;
 - (e) Has used or attempted to use political pressure or bribery to secure an advantage in assessment or appointment;
 - (f) Has directly or indirectly obtained information regarding an assessment to which the applicant was not entitled;
 - (g) Has failed to submit an application correctly or within the prescribed time limit;
 - (h) Has taken part in the compilation, administration, or correction of the assessment; or
 - (i) Has otherwise violated provisions of this Rule or related policies established and distributed by the Commissioner.
- (3) Notice of Removal from a Pool of Candidates. An applicant who is removed from a pool of candidates for any reason shall be notified in writing within ten (10) business days of removal. An applicant may submit additional information and/or documentation to clarify any discrepancies within a time prescribed by the Commissioner to avoid removal from a pool of candidates. However, any correction or clarification on an application will not invalidate any subsequent appointment for a position.
- (4) Equal Employment Opportunities. The provisions of this section shall be administered consistent with the State's equal employment opportunities policies and obligations. All actions taken pursuant to this chapter shall be in strict compliance with all applicable state and federal civil rights laws.

Authority: T.C.A. §§ 8-30-101, 8-30-104, 8-30-105, 8-30-301, 8-30-303, 8-30-304, and 8-30-305.
Administrative History: (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.04 ASSESSMENTS.

- (1) Notice of Assessments. The Commissioner shall give public notice of all assessments, at least five (5) calendar days in advance of the closing date for receipt of applications, by posting notices throughout the State. Public notice of assessments shall specify the job title, minimum salary for the position, the minimum or preferred qualifications, the final date on which applications will be received, and other conditions of assessment necessary for the position.
- (2) Evaluating Assessments. The Commissioner shall determine whether an applicant meets the minimum qualifications for the position. Applicants who meet the minimum qualifications shall be approved for placement in a pool of candidates.
- (3) Determining Qualifications. The Commissioner shall establish a procedure for the evaluation of the education, training, and experience qualifications, including licenses, certifications, approved continuing education credits, and other factors as deemed appropriate by the Commissioner.
- (4) Admission to Assessments. Assessments shall be open to all persons who meet the minimum qualifications and requirements specified in the respective public notices. Each applicant admitted to an assessment shall be notified of the time, date and place of the

(Rule 1120-02-.04, continued)

assessment. The Commissioner may request additional documentation from the applicant prior to the assessment.

- (5) **Written Assessments.** A written assessment will be approved by the Appointing Authority with every precaution taken to prevent unauthorized persons from gaining knowledge of the nature or content of the tests. Written assessments shall be conducted in locations that are practical for proper administration. All applicants admitted to a written assessment shall adhere to the respective Department's established testing rules and procedures. The Appointing Authority may take any appropriate action, up to and including criminal prosecution, against applicants who do not adhere to these established rules and procedures.
- (6) **Employees in Positions Added to the Preferred Service.** If an executive service position is reassigned to the preferred service, the incumbent employee may, within one (1) year, be given an assessment in a manner prescribed by the Commissioner.
- (7) **Oral Assessments.** When an oral evaluation is part of the assessment method for a position or class of positions, the Commissioner shall work with the Appointing Authority in establishing the examiners as needed.
- (8) **Notice of Assessment Results.** The Commissioner shall notify each applicant in writing of the results of the assessment as soon as practicable. A manifest error in the assessment shall be corrected, if called to the attention of the Commissioner no later than one (1) month after the establishment of the pool of candidates. The correction, however, will not invalidate any appointment previously made from such pool of candidates.
- (9) **Rescheduling Assessments.** When an applicant is unable to appear for a written assessment, the applicant may, upon satisfactorily showing the cause of his failure to appear, be granted permission by the Commissioner to take the written assessment at a later date.
- (10) **Working Test Period.** With input from the Division of Rehabilitation Services, Department of Human Services, the Commissioner may substitute a working test period in lieu of a written assessment for an applicant with a disability. The test period shall not exceed one (1) year. The work test period runs concurrently with the employee's probationary period as defined in 1120-02-.11.
- (11) **Investigations.** The Commissioner or any Appointing Authority may investigate an applicant's education, credentials, training, and experience to verify the statements contained in the application form or to verify statements regarding the applicant's character and fitness. If this investigation shows any falsification, including false information or documents submitted in support of any application or intentionally omitted information in any application which materially affects eligibility for employment consideration, the applicant may be removed from consideration for employment or, if employed, may be dismissed and disqualified from future positions. Lesser discrepancies in applicant information may result in a reevaluation of the assessment if necessary.
- (12) **Assessment Records.** The Commissioner shall maintain all records pertinent to an assessment program. The retention of applications and other necessary assessment records shall be maintained as prescribed by law.

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-301, 8-30-302, 8-30-303, 8-30-304, and 10-7-504.
Administrative History: (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Rule was previously numbered 1120-02-.05

(Rule 1120-02-.04, continued)

but was renumbered 1120-02-.04 with the deletion of original rule 1120-02-.04 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.05 POOLS OF CANDIDATES.

- (1) Establishment of Pools of Candidates. Upon request by the Appointing Authority, the Commissioner shall establish a pool of candidates for all job classifications within a time prescribed by the Commissioner. The Commissioner shall establish and maintain pools of candidates to meet the needs of the service.
- (2) Supplementing Pools of Candidates. The Commissioner shall routinely review existing pools of candidates to determine whether there are an adequate number of applicants available to meet the needs of the service. When the Commissioner determines that a particular pool of candidates is inadequate or is likely to become inadequate, the Commissioner may order a supplemental assessment for the class of positions. The public announcement for supplemental assessments shall give notice of the dates when applications will be accepted and, when applicable, when written assessments will be administered.
- (3) Duration of Pools of Candidates. At the time a pool of candidates is established, the Commissioner shall determine the period during which such pool shall remain in force. Subject to the limitations of the Act and these Rules, the Commissioner may consolidate or cancel a pool of candidates at any time after it has been established.
- (4) Removal and Notification of Names from a Pool of Candidates. Any applicant whose name is removed from a pool of candidates for any reason shall receive written notice of such action within ten (10) business days of the date of removal.
 - (a) The name of an applicant may be removed or made inactive in a pool of candidates for a class of positions for any of the following:
 1. An applicant receives a regular appointment to a vacancy in that class of positions;
 2. An applicant declines an employment offer for the announced position;
 3. An applicant fails to respond within four (4) calendar days of the date of an invitation to interview;
 4. An applicant cannot be located;
 5. An applicant falsifies any material fact;
 6. An applicant has been convicted of a crime related to the position or class of positions for which he or she has applied; or
 7. Any cause occurs as specified in the Act or Rules regarding the rejection or disqualification of applicants.

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-305, and 8-30-306. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Rule was previously numbered 1120-02-.06 but was renumbered 1120-02-.05 with the deletion of original rule 1120-02-.04 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.06 CERTIFICATION AND USE OF POOLS OF CANDIDATES.

- (1) Certification of a Pool of Candidates. The Commissioner shall certify a pool of candidates containing applicants meeting the minimum qualifications for the position to be filled by the requesting agency.
- (2) Referred Pool of Candidates. Upon the request of the Appointing Authority, the Commissioner may establish employment, promotional, statewide, departmental, divisional, unit or any other pool of candidates deemed necessary or appropriate. The Commissioner shall issue a policy that agencies may use in establishing referred pools of candidates.
- (3) Request for Certification. When a vacancy occurs in one (1) or more established positions in a classification in the preferred service, the Appointing Authority may request a pool of candidates to fill the position(s) in a manner prescribed by the Commissioner.
- (4) Methods of Certification. The Commissioner shall certify to the Appointing Authority the names of applicants from the appropriate referred pool of candidates for the classification. When requesting a referred pool of candidates for a position with specified progression requirements, the Appointing Authority may request a referred pool of candidates for the entry/trainee level, intermediate/working level, or advanced working level.
- (5) Interviewing Applicants from a Referred Pool of Candidates. If three (3) or more applicants are in the pool of candidates, the Appointing Authority shall offer an invitation to interview a minimum of three (3) applicants from the referred pool of candidates. If less than three (3) applicants are in the pool of candidates, the Appointing Authority shall invite each person in the pool of candidates to interview.
- (6) Veterans' Preference. When invitations to interview candidates are extended, whether for appointment or promotion, and the pool of candidates contains eligible Veterans or Veteran spouses in compliance with T.C.A. § 8-30-307, such persons shall be invited to interview. If a Veteran is in the pool of candidates, and if the minimum qualifications and the skills, abilities, competencies and knowledge of the Veteran and any another applicant being interviewed for the position are equal, preference shall be given to the Veteran for the position, consistent with the Department of Human Resources' policy pertaining to Veterans' Preference.
- (7) Appointment from a Referred Pool of Candidates. Within thirty (30) calendar days after being referred a pool of candidates, the Appointing Authority shall appoint one (1) of the applicants in the pool of candidates. If no appointment is made from a referred pool of candidates, the pool of candidates shall expire upon the thirty-first (31st) day.

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-305, 8-30-306, and 8-30-307. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Rule was previously numbered 1120-02-.07 but was renumbered 1120-02-.06 with the deletion of original rule 1120-02-.04 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.07 OTHER LISTS.

- (1) Layoff List. The Department shall maintain a list of all Preferred Service Employees affected by a reduction in force for a period of one (1) year following the employee's date of layoff. Employees so listed shall be notified of any job openings in the same job classification that the employee served immediately prior to layoff, shall be extended an invitation to apply for the job, and shall be granted an interview by the hiring agency upon application.

(Rule 1120-02-.07, continued)

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-305, and 8-30-306. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Rule was previously numbered 1120-02-.08 but was renumbered 1120-02-.07 with the deletion of original rule 1120-02-.04 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.08 FILLING POSITIONS.

- (1) Preferred Service Positions. All preferred service positions are regular full-time positions which may be filled by persons who are among the available applicants in a referred pool of candidates.

Preferred service positions may be filled on a full-time temporary basis outside the competitive process by qualified persons as determined by the Commissioner by temporary appointment, emergency appointment, or interim appointment. Preferred service positions may also be filled on a part-time basis with a seasonal appointment.

- (2) Request to Fill Position. Whenever an Appointing Authority proposes to fill a preferred service position, executive service position, non-competitive position, or an internship position, the authority shall submit to the Commissioner a statement showing the position to be filled, the duties for such position, the official duty station, the minimum qualifications, and preferred skills, abilities, competencies and knowledge of the person to be appointed. The statement shall also specify whether the position will be filled by an internal state candidate, and, if so, justifying the reason(s) for posting the vacancy as promotional.
- (3) Executive Service Positions. All executive service positions are regular full-time positions, which may be filled by eligible applicants. The agency is not required to hire an applicant from a referred pool of candidates. However, all postings and candidates for executive service positions shall be recorded in the current enterprise applicant tracking system authorized by the Department. The posting of the position and the application process for executive service positions must be completed through the applicant tracking system. Executive service employees are at-will and serve at the pleasure of the Appointing Authority.
- (4) Non-Competitive Positions. For positions involving certain clerical, unskilled or semi-skilled labor, domestic, attendant, or custodial work, when the character or place of the work makes it impracticable to supply the needs of the service by appointments made in accordance with the provisions of the Act, the Commissioner may adopt, or authorize the use of, such other procedures as the Commissioner determines to be appropriate in order to meet the needs of the service.
- (5) Overlap. An Appointing Authority may place more than one (1) employee in a single position in an overlap status subject to budgetary limitations and the approval of the Commissioner.
- (6) Job Sharing. An Appointing Authority may place more than one (1) part-time employee in a single full-time position in a job sharing status subject to budgetary limitations and the approval of the Commissioner. Agencies are responsible for ensuring that the number of hours worked by all employees assigned to the position number do not exceed the maximum number of full-time hours assigned to that position in a fiscal year. Positions used for job sharing and employees who job share are not classified as preferred service.
- (7) Mismatch. An Appointing Authority may request approval from the Commissioner to appoint an employee to a classification different from the classification of the position, provided the employee's classification is not higher than the classification of the position.

(Rule 1120-02-.08, continued)

For preferred service appointments, the mismatch should be in the same or related classification series. The employee appointed should be able to meet the qualifications for the classification of the position upon attainment of additional education, experience, or credentials. Preferred service mismatches should not exceed one (1) year except for employees in a lower level position with a specified probationary period longer than one (1) year, or who have not otherwise met specified performance standards to progress to the next level.

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-201, 8-30-305, and 8-30-309. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Rule was previously numbered 1120-02-.10 but was renumbered 1120-02-.08 with the deletion of original rules 1120-02-.04 and 1120-02-.09 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.09 APPOINTMENTS.

- (1) Regular Appointment. A regular appointment is an appointment to either a preferred, non-preferred or executive service position for an indeterminate period of time. A regular appointment is expected to continue contingent upon satisfactory performance and conduct by the employee and upon continued funding, classification and utilization of the position by the State. In the executive service, a regular appointment is at-will and continues at the pleasure of the Appointing Authority.
- (2) Emergency Appointment. An emergency appointment is an appointment to a full-time preferred service position for a period of service not to exceed one hundred twenty (120) days and may be made when conditions exist that necessitate an immediate short-term appointment. An emergency appointment may not be renewed, and no person may receive more than one (1) emergency appointment in a twelve (12) month period. Emergency appointments do not require the use of pools of candidates; however, emergency appointees shall meet the minimum qualifications for the class of positions appointed. Time served in an emergency appointment does not constitute creditable service for sick and annual leave accrual or service credit except for the purpose of longevity payments. Emergency appointments are not eligible for participation in the state insurance plan, but may be eligible for participation in the Tennessee Consolidated Retirement System (TCRS) as outlined in TCRS rules and policies.
- (3) Interim Appointment. Based on written justification submitted by an Appointing Authority, the Commissioner may approve an interim appointment for a period not to exceed one (1) year. Based on written justification submitted by an Appointing Authority, the Commissioner may approve an extension, up to one (1) year, if the Commissioner determines that such an extension is in the best interest of the State.

To be eligible for an interim appointment, the employee shall meet the minimum qualifications for the job classification to which the employee is appointed. If the interim appointment is made using a referred pool of candidates, the Appointing Authority may grant the employee a regular appointment in the position using the referred pool from which the interim appointment was made. Interim employees accrue leave under T.C.A. §§ 8-50-101, et seq. Interim employees are not considered to be in the preferred service.

- (4) Seasonal Appointment. Seasonal appointments do not require the use of pools of candidates. Seasonal employees are not considered to be in the preferred service.

(Rule 1120-02-.09, continued)

- (5) **Temporary Appointment.** A temporary appointment is the appointment of a person to a preferred service position for a temporary period until an appropriate pool of candidates has been established. The term of a temporary appointment shall not to exceed six (6) months. Temporary employees accrue leave under T.C.A. §§ 8-50-101, et seq. Temporary employees are not considered to be in the preferred service.
- (6) **Limited Term Appointment.** The governor, the governor's cabinet, and members of boards, commissions, agencies and authorities receive limited term appointments pursuant to statute. Limited term appointments do not require the use of pools of candidates and are classified as executive service. Limited term appointments do not accrue sick or annual leave.
- (7) **Temporary Employment of Retired State Employees.** Retired State employees may temporarily return under certain conditions as outlined in the temporary employment form obtained from the Retirement Division of the Treasury Department. The retired employee may accept employment with a covered employer for up to one hundred twenty (120) days during a twelve (12) month period. These employees accrue leave under T.C.A. §§ 8-50-101, et seq., but are not considered to be in the preferred service.
- (8) **Appointments to Positions with Specified Progression Requirements.** To fill the vacancy of a position with specified progression requirements, the Appointing Authority shall request from the Commissioner a referred pool of candidates for the entry/trainee level, intermediate/working level, or advanced working level classification. Any applicant appointed to a position from the referred pool of candidates shall serve a period of probationary employment as prescribed by the Commissioner for the classification. During the last month of the probationary period, the Appointing Authority shall certify to the Commissioner whether the employee has successfully completed the period of probationary employment and should, therefore, become a Preferred Service Employee in the position in the approved level classification without further assessment or certification. The employee shall be removed from the position if the probationary period is not successfully completed. Such notification should be made in the same manner as prescribed for any other period of probationary employment.

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-201, 8-30-202, 8-30-305, 8-30-308, 8-30-309, and 8-30-310. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed May 17, 2019; effective August 15, 2019. Rule was previously numbered 1120-02-.11 but was renumbered 1120-02-.09 with the deletion of original rules 1120-02-.04 and 1120-02-.09 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.10 PROBATIONARY PERIOD.

- (1) **Purpose of the Probationary Period.** The probationary period is an essential part of the employment process used for the adjustment of an employee to a new position and to provide an employee with the opportunity to demonstrate to the Appointing Authority the employee's ability to perform the defined work outcomes and behavior expectations.
- (2) **Probationary Period for the Preferred Service.**
 - (a) For preferred service positions, a probationary period of at least one (1) year is required for all employees who receive regular appointments from a referred pool of candidates.
 - (b) The probationary period for a regular appointment may be reduced by the amount of time served in an emergency or interim appointment provided the appointment is for

(Rule 1120-02-.10, continued)

- the same Appointing Authority in the same classification of positions and there is no break in service.
- (c) Non-Preferred Service Employees do not serve a probationary period.
 - (d) Successful completion of a probationary period in a trainee or intermediate level classification satisfies the probationary period requirement necessary for a Preferred Service Employee when the position is deemed to be the working level classification.
- (3) Duration of the Probationary Period. A period of probation is completed at the close of business or shift on the day the employee completes the number of months of probation required.
- (4) Initial Probationary Period.
- (a) Every person appointed to a position in the preferred service shall be subject to a probationary period of employment. The probationary period shall commence immediately upon appointment and shall continue for such time, not less than one (1) year, as shall be established by the Commissioner. At any time during the employee's probationary period the Appointing Authority may remove the employee if, in the opinion of the Appointing Authority, the employee's performance or conduct during the probationary period indicates that such employee is unable or unwilling to satisfactorily perform or is not satisfactorily performing the defined work outcomes and behavior expectations, or that the employee's habits, dependability, or conduct do not merit continuance in the service.
 - (b) Consistent with Rule 1120-11, during the initial probationary period, employees do not have the right to appeal disciplinary actions.
 - (c) During the last month of an employee's probationary period, the Appointing Authority shall notify the Commissioner in writing whether the performance and conduct of the employee have been satisfactory and whether continued employment is recommended.
 - (d) After successful completion of a probationary period, an employee becomes a Preferred Service Employee.
- (5) Promotion During Probation. An employee promoted during the employee's initial probation will begin a new probationary period with no appeal rights for not less than one (1) year.
- (6) Subsequent Probationary Period.
- (a) A Preferred Service Employee who accepts another preferred service position within the same agency shall serve a subsequent probation for a time period of not less than one (1) year.
 - (b) Preferred Service Employees serving a subsequent probation retain their ability to appeal an involuntary demotion, suspension, or termination from service; however, the employee may not appeal an involuntary demotion returning the employee to the immediately preceding former position.
- (7) Working Test Period. The probationary period for an employee with a disability who is granted a substitution of the written and/or performance assessment shall run concurrently with the working test period as defined in Rule 1120-02-.05.

(Rule 1120-02-.10, continued)

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-201, 8-30-303, 8-30-308, and 8-30-312. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed May 17, 2019; effective August 15, 2019. Rule was previously numbered 1120-02-.12 but was renumbered 1120-02-.10 with the deletion of original rules 1120-02-.04 and 1120-02-.09 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.11 PROMOTIONS.

- (1) **Methods of Making Promotions.** A vacancy may be filled by the promotion of a qualified employee with the approval of the Commissioner. Promotions between departments or agencies shall be approved by the respective Appointing Authority in the individual departments and/or agencies. Promotions of employees to preferred service appointments shall be made by a process as determined by the Commissioner. If it is an open position, they must also be posted in the applicant tracking system as approved by the Department of Human Resources. Any employee who has been demoted may be promoted, at the discretion of the Appointing Authority and with the approval of the Commissioner, to a preferred service position in a classification without additional assessment or certification if the employee was a Preferred Service Employee in that classification in that agency.
- (2) **Promotion by Competitive Assessment.** The Commissioner and the Appointing Authority may fill a vacancy by a promotional assessment. The promotional pool of candidates resulting from such assessment shall be established in accordance with the applicable provisions of this chapter.

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-303, and 8-30-306. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Amendment filed August 25, 1994; effective December 29, 1994. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed May 17, 2019; effective August 15, 2019. Rule was previously numbered 1120-02-.13 but was renumbered 1120-02-.11 with the deletion of original rules 1120-02-.04 and 1120-02-.09 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.12 EMPLOYEE TRANSFER, LATERAL RECLASSIFICATION, INVOLUNTARY DEMOTION, AND VOLUNTARY DEMOTION.

- (1) **Transfer.** A transfer is authorized in accordance with the following:
 - (a) An Appointing Authority may transfer an employee from one position to another position in the same classification or rank in the same agency.
 - (b) An employee may be transferred from a position in one agency to a position in the same classification in another agency with the approval of both appointing authorities and the Commissioner.
- (2) **Lateral Reclassification.** A lateral reclassification is authorized in accordance with the following:
 - (a) An Appointing Authority may laterally reclassify any employee who meets the minimum qualifications from one position to another position in another classification in the same agency with the approval of the Commissioner.

(Rule 1120-02-.12, continued)

- (b) A qualified employee may be laterally reclassified from a position in one agency to a position in another classification in another agency with the approval of both appointing authorities and the Commissioner.
- (3) Involuntary Demotion. With the approval of the Commissioner, an agency may involuntarily demote an employee who has failed to render satisfactory service in the current position held but is considered worthy of employment. The agency shall notify the employee in writing of the effective date of the involuntary demotion and the appeal process, if applicable. The change of an employee from a position in one classification to a position in another classification is not considered an involuntary demotion if the change is the result of:
- (a) The employee's request, with the concurrence of the department or agency;
 - (b) A change in the organizational structure of the government entity;
 - (c) Because of the abolishment of a position;
 - (d) A reduction in force;
 - (e) Organizational necessity; or
 - (f) Compliance with T.C.A. § 8-30-205.
- (4) Voluntary Demotion. A voluntary demotion occurs when an employee requests assignment to a lower classification and the Appointing Authority concurs. A voluntary demotion may require a salary reduction and the completion of an initial or subsequent probationary period, not to exceed twelve (12) months. A voluntary demotion cannot be appealed.

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-312, and 8-30-313. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Rule was previously numbered 1120-02-.14 but was renumbered 1120-02-.12 with the deletion of original rules 1120-02-.04 and 1120-02-.09 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.13 TENURE, EMPLOYEE RECLASSIFICATION, SUSPENSION, AND SEPARATION.

- (1) Tenure of Office. The continued employment of Preferred Service Employees is contingent on both satisfactory performance and satisfactory conduct. Satisfactory performance is evidenced by the employee's record of performance. This provision, however, does not prevent the layoff of an employee in accordance with a reduction in force plan approved by the Commissioner.
- (2) Suspension. An Appointing Authority shall provide written notice upon suspending a Preferred Service Employee without pay for disciplinary purposes. Cumulative suspensions without pay shall not exceed thirty (30) work days in a twelve (12) month period. With approval from the Commissioner, an Appointing Authority may suspend an employee without pay for a period greater than thirty (30) work days, pending the appeal or the processing of an appeal or investigation. The agency shall place a copy of the written notice of the suspension in the employee's human resources file.
- (3) Reduction in Force. After written notice to the Commissioner, an Appointing Authority may implement a reduction in force, in accordance with the provisions of the Act. The Commissioner shall establish policies pertaining to reduction in force procedures.

(Rule 1120-02-.13, continued)

- (4) Resignations. An employee who resigns shall state the reasons in writing to the Appointing Authority. To resign in good standing, the employee shall provide the resignation at least ten (10) business days prior to the effective date of separation, unless such period is waived by the Appointing Authority or Commissioner, who shall notify the Commissioner in writing. Any employee who does not provide such notice may be designated as having resigned not in good standing. A copy of the resignation shall be placed in the employee's human resources file.
- (5) Job Abandonment. Any employee who is absent from duty for more than three (3) consecutive work days without giving prior written or electronic notice to the Appointing Authority or appropriate manager that specifies the reason for such absence, and without securing permission to be on leave, or who fails to report for duty or to the immediate supervisor or the Appointing Authority within two (2) work days after the expiration of any authorized leave of absence, is considered as having resigned not in good standing, absent extenuating circumstances beyond the control of the employee causing the employee's absence or preventing the employee's return. An employee deemed to have resigned in accordance with these circumstances shall have the ability to appeal such action through the appeal procedure described herein.
- (6) Dismissal. An Appointing Authority may dismiss a Preferred Service Employee for either unsatisfactory performance or unsatisfactory conduct. Executive service employees are at-will employees who serve at the pleasure of the Appointing Authority and do not have the ability to appeal a dismissal.
- (7) Designation of Rehire Eligibility. When an employee separates from the state service through retirement, resignation, or dismissal, the Appointing Authority shall make a designation concerning the employee's eligibility to be rehired by the agency or statewide, depending on the nature of the separation. All separating employees designated as ineligible for rehire statewide shall be informed in writing by the Appointing Authority of the designation and its effect on future employment in the state service.

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-313, 8-30-315, and 8-30-316. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2010. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Amendments filed February 7, 2017; effective May 8, 2017. Amendments filed May 17, 2019; effective August 15, 2019. Rule was previously numbered 1120-02-.15 but was renumbered 1120-02-.13 with the deletion of original rules 1120-02-.04 and 1120-02-.09 filed January 18, 2023; effective April 18, 2023. Amendments filed January 18, 2023; effective April 18, 2023.

1120-02-.14 CERTIFICATION OF PAYROLLS.

- (1) Certification of Payrolls. All payments for personal service to any person holding a position in the state service shall be submitted by the Appointing Authority to the Commissioner in a manner prescribed by the Commissioner and the Commissioner of Finance and Administration. The Commissioner shall certify the payroll before it may be honored by the Department of Finance and Administration. The Commissioner shall determine that the persons named on the payroll have been appointed or employed in accordance with the Act and applicable rules and that the salary rate is in accordance with the compensation plan before certification of that payroll for payment.
- (2) Refusal to Certify. If the Commissioner determines that a person on the payroll has not been appointed or paid in conformity with the provisions of the Act and these Rules, the Commissioner shall refuse to certify payment for that employee. The removal of a name or item from the payroll shall serve as official notification to the Department of Finance and

(Rule 1120-02-.14, continued)

Administration that the drawing, signing, or issuing of any warrant by any disbursing officer of the State for the payment of salary or compensation to such person is unlawful.

- (3) Illegal Payments. The Commissioner may bring an action to recover any sum paid contrary to any provisions of the Act or of any rule, regulation or order thereunder from:
 - (a) Any employee who made, approved or authorized such payment or who signed or countersigned a voucher, payroll, check or warrant for such payment;
 - (b) The sureties on the official bond of any such officer; or
 - (c) Any employee who incorrectly or improperly received any payment from the State.

All moneys recovered in any such action shall be paid into the state treasury.

Authority: T.C.A. §§ 8-30-104, 8-30-105, 8-30-210, and 8-30-211. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Rule was previously numbered 1120-02-.16 but was renumbered 1120-02-.14 with the deletion of original rules 1120-02-.04 and 1120-02-.09 filed January 18, 2023; effective April 18, 2023.

1120-02-.15 RECORDS AND REPORTS.

- (1) Employee Records. The Commissioner shall maintain employee records as necessary to carry out the intent and purpose of the Act and these Rules and shall cause to be maintained in each agency a human resources file on each active employee. These files shall be maintained in accordance with policy established by the Commissioner. The Commissioner may audit these files as necessary.
- (2) Reports from Appointing Authorities. The appointing authorities shall report to the Commissioner in a manner prescribed by the Commissioner all changes in the employment status of employees under their jurisdiction. Upon request, the appointing authorities may also be required to make other reports regarding their employees to the Commissioner.
- (3) Investigations. The Commissioner has the right to access, and if necessary, subpoena, the records, books, papers and other documents of any organizational unit pertinent to any investigation, which may be necessary.

Authority: T.C.A. §§ 8-30-104, 8-30-105, and 10-7-504. **Administrative History:** (For history prior to January 2, 1988, see pages 1-2 of the Introduction at the beginning of the chapters.) Repeal and new rule filed November 18, 1987; effective January 2, 1988. Repeal and new rule filed December 14, 2010; effective May 31, 2011. Repeal and new rule filed July 5, 2012; effective October 3, 2012. Rule was previously numbered 1120-02-.17 but was renumbered 1120-02-.15 with the deletion of original rules 1120-02-.04 and 1120-02-.09 filed January 18, 2023; effective April 18, 2023.

1120-02-.16 REPEALED.

Authority: T.C.A. §§ 8-30-104 and 8-30-105. **Administrative History:** Original rule filed December 14, 2010; effective May 31, 2011. Repeal filed July 5, 2012; effective October 3, 2012. Rule was previously numbered 1120-02-.18 but was renumbered 1120-02-.16 with the deletion of original rules 1120-02-.04 and 1120-02-.09 filed January 18, 2023; effective April 18, 2023.

1120-02-.17 INTERNSHIPS AND AGENCY RESPONSIBILITIES.

- (1) Agencies who host interns must comply with all requirements as provided in the Department's policy related to the State of Tennessee Internship Program.
 - (a) Agencies shall not discriminate against an applicant for an internship or intern based on race, color, national origin, age (40 and over), sex, religion, creed, disability, pregnancy, and Veteran's status or any other category protected by state and/or federal civil rights law. Internships may be terminated at any time at the discretion of the agency's Appointing Authority. There is no appeal procedure for termination of an internship.
 - (b) Agencies must ensure that interns meet all eligibility requirements and be authorized by the Appointing Authority, as listed in the policy.
 - (c) The internship, even though it includes actual operation of the facilities of the agency, must be similar to training which would be given in an educational environment.
 - (d) The internship experience must be for the benefit of the intern.
 - (e) The intern shall not displace regular employees but shall work under close supervision of their mentor.
 - (f) The agency that provides the internship shall derive no immediate advantage from the activities of the intern, and on occasion its operations may actually be impeded.
 - (g) The intern shall not be entitled to a job at the conclusion of the internship.
- (2) Agencies who plan to hire an intern (paid or unpaid) shall notify the Department's Executive Director of Recruitment at least ninety (90) business days in advance of the start of the internship. Agencies shall also comply with the Department's requirements regarding posting and performance metrics and other reporting requirements throughout the internship. Any openings must be reported in the designated applicant tracking system.

Authority: T.C.A. §§ 4-3-1703 and 8-30-104. **Administrative History:** New rule filed January 18, 2023; effective April 18, 2023