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Commonwealth of Puerto Rico
CENTRAL PERSONNEL ADMINISTRATION OFFICE
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August 25, 1989

Special Normative Rules No. 1-89

To: Government Secretaries, Heads of Agencies, Public Corporation Directors and Mayors, Personnel System

From: Enrique A. Rosas López
Director

Object: Rules for Changing the Status of Transitory Employees and for Hiring Transitory Employees by Virtue of Act No. 56 of August 16, 1989.

I. INTRODUCTION

Act No. 5 of October 14, 1975, as amended, known as Puerto Rico Public Service Personnel Act, creates a personnel administration system based on the merit principle. Its fundamental purpose is to attract and retain the best human resources in the public service. Thus it ensures the excellence of public services and the successful development of government programs.

In order to attain the objectives of the permanent programs, positions are created in the career and the confidential services. Permanent positions in the career service are filled through recruitment and selection procedures based on merit and free competition as prescribed by law and regulations. The persons so appointed to such permanent positions, once they acquire their status of regular career employees, provide the continuity convenient and necessary to public administration.

When government programs are implemented and developed, there are temporary activities that it is necessary to perform by assigning work to transitory employees. This generally occurs under circumstances such as periodical increases in the amount of work, development of special projects of determined duration, short-term activities, or beginning of public service programs. These situations

justify the existence of transitory employment in our Personnel System; transitory employment constitutes a mechanism of exception to make possible the rendering of services requiring immediate attention for a determined period of time. Since it is an exceptional mechanism, the appointing authority shall make a wise and restricted use of the same. Nevertheless, along the years, this mechanism has been used to fulfill permanent functions of the agencies, resulting in the creation of a parallel system of personnel recruitment, contrary to the purposes and spirit of the Personnel Act, supra. This creates an unfair and detrimental situation for both the employees who remain in a state of insecurity and instability with regard to their employment, and the State which is responsible for establishing and maintaining a Personnel System based on the merit principle.

For the purpose of resolving that situation in a definitive manner and of dealing with the claims of the employees who have been affected by said situation for prolonged periods of time, Act No. 56 was approved on August 16, 1989, and its main objectives are the following:

1. To eliminate the parallel structure in the public service and the use of transitory employment to cover the permanent necessities of the agencies that are part of the Personnel System, and to establish the conditions for transitory employment.

2. To ensure that recruitment in the public service be performed through procedures compatible with the merit system.

3. To provide employment security and uniformity of rights for transitory employees who perform permanent functions in positions of fixed duration, granting them regular status in the career service, subject to the conditions and exceptions prescribed by the Act.

These normative rules establish the rules that shall govern the compliance with this Act and its implementation.

II. LEGAL BASIS

These rules are adopted in harmony with Section 3.3 of Act No. 5 of October 14, 1975, as amended, and Article 7 of Act No. 56 of August 16, 1989.

III. SCOPE

The rules for the change of status of transitory employees shall apply to the agencies which are under the Central Administration and to Individual Administrators, except Municipalities and the State Election Board. As of August 16, 1989, the rules for the employment of transitory personnel shall apply to all agencies within the Personnel System, except to the State Election Board.

IV. RULES FOR THE GRANTING OF REGULAR STATUS IN THE CAREER SERVICE TO TRANSITORY EMPLOYEES

A. General Provisions

Articles 4 and 5 of Act No. 56, supra. intend to eliminate the parallel structure in the public service and to provide employment security and uniformity of rights for transitory employees performing permanent functions in the career service, through appointments to positions of fixed duration. The provisions of these Articles shall be liberally interpreted so that their purposes be achieved. Any reasonable doubt about the eligibility or ineligibility of employees shall be resolved in favor of the granting of the regular career status.

The refusal to grant regular career status to transitory employees with positions of fixed duration who comply with the requirements of time

of service shall require prior evaluation on the merits conducted by the Central Personnel Administration Office.

Since the present situation is of exceptional nature, the rules herein established for the change of status shall not be construed as a precedent for transitory employment situations that may arise in the future.

B. Exclusions

The provisions on the change of status shall not apply to the following transitory employees of the agencies covered by the Personnel System:

1. Those holding permanent positions by virtue of Section 7.9 of the Personnel Regulations: Areas Essential to the Merit Principle, or of the Special Normative Rules No. 1-81 of May 29, 1981 with respect to the employment of retired persons.
2. Transitory employees of Municipalities and employees of the State Election Board designated by the political parties.
3. Transitory employees holding positions of fixed durations in programs of determined duration. Only programs created to attend to functions of temporary nature, regardless of the origin of the funds financing them, shall be considered as programs of determined duration. Government programs of recurrent nature, financed with federal, state, or combined funds, shall not be considered as programs of determined duration, although the preparation of a petition or budget proposal may be required every year with the corresponding justifications.

C. Requirements for the Change of Status

Transitory employees shall acquire regular career status which shall be effective on July 1, 1989, provided the following conditions are satisfied:

1. They must be occupying on June 30, 1989 a position of fixed duration with permanent functions of the career service in agencies of the Executive Branch covered by the Personnel System.

2. They must have rendered services in a continuous manner in positions of fixed duration for a period of time not shorter than a year. Employees whose class of position and/or ranks are created by special laws requiring a probationary period longer than a year, shall have rendered services for a term not shorter that the one established for the probationary period.

It shall be considered that the employee has rendered services during all the time he has been employed by the government and subject to the direction and control of his employer, including periods of leaves of absence with or without pay authorized by the appointing authority. The periods during which the employee has not been working in a government position or employment shall not be considered as time of service.

In order to compute the time of continuous services rendered by a transitory employee, the periods immediately preceding the transitory appointment served under a non-regular appointment or under contract, during

which the employee has performed permanent career service functions, shall be accredited.

3. The services must have been rendered in government programs as listed in the General Expenses Budget of the Government of the Commonwealth of Puerto Rico, or in the expenses budget of the agency, regardless if the funds used to finance the positions are of state, federal, or combined origin.

   For the purpose of this item all the services rendered in government agencies shall be accredited, according to the definition of this term in the Puerto Rico Public Service Personnel Act, including Municipalities and Excluded Agencies. Services rendered by participants in training and employment programs where there is no employer-employee relation with the government shall not be considered.

4. They must satisfy the minimum requirements of preparation and experience for the class of position in which their functions are assigned.

5. They must meet the general conditions for entrance in the Public Service as established in Section 4.3, Item (3) of the Puerto Rico Public Service Personnel Act.

6. In the case of transitory employees with less than three (3) years of service, the appointing Authority shall evaluate the employee and certify that his services have been satisfactory. This last determination shall be made considering the evaluations of the employee and the corrective actions, if

any, imposed by the Appointing Authority as arising from the employee's record.

D. Procedure for the Change of Status of Transitory Employees Who Occupied Positions of Fixed Duration on June 30, 1989

I. General Instructions

The appointing Authority may take any personnel action that may be necessary to grant regular career status to transitory employees with the same classification, salary, and fringe benefits they have enjoyed until June 30, 1989 in the positions of fixed duration that they have occupied.

Any determination of the Appointing Authority to the effect that a transitory employee does not acquire regular career status because he does not meet the conditions of Act No. 56, supra, shall be preliminary. It shall not be final until the Director of the Central Personnel Administration Office makes a decision on the merits of the issues presented by the agency.

The changes of status from transitory status to regular career status of employees shall be registered in the forms Report on Special Change hereby attached, in accordance with the following:

a) Report on Special Change A (OCAP-15-A)- shall be used in the case of employees with three (3) or more years of service.

b) Report on Special Change B (OCAP-15-B)- shall be used in the case of employees with less than three (3) years of

service. This form contains the certification of satisfactory services required by the Act.

The agencies shall reproduce said forms according to their needs. The distribution of the same by the Agencies of the Central Administration shall be governed by the rules contained in Circular No. 1-83 of May 2, 1983, on the Delegation of the Processing of Personnel Appointments and Changes. In the case of employees whose required duration of service is completed by services rendered as non-regular personnel or under contract, copies of the documents evidencing the appointment or contract, the functions they performed and the duration of the rendered services shall be submitted together with the Reports on Special Changes. The agencies that are Individual Administrators shall register the changes of status in accordance with the rules applicable to their respective cases.

The processing of the changes of status shall have been completed before December 31, 1989. As of January 1, 1990, the Agencies shall not retain transitory employees in positions of fixed duration to perform permanent functions of the career service or confidential service, except when authorized by Act No. 56, supra.

All the transitory appointments existing at the moment may be renewed for additional periods that shall not exceed December 31, 1989, while the situation of each case is being determined.

The agencies shall take measures in order to avoid that the retroactive effect of the changes of status results excessively expensive for the employees with respect to the deduction of contributions to the Retirement System and Savings and Loans Funds of the Employees Association of the Commonwealth of Puerto Rico. For this purpose reasonable plans of payment shall be established according to the rules established by the Department of the Treasury.

The Agencies shall refrain from taking other personnel actions simultaneously with the change of status of transitory employees.

2. Identification, Classification, and Creation of Positions

a) The agencies shall identify the vacant permanent positions with a classification similar or equal to the ones occupied by transitory employees. Said vacancies may be reclassified or transferred to the corresponding budget item for the purpose of assigning them to transitory employees who have been occupying positions of fixed duration with the same classification as that assigned to the position. The agencies of the Central Administration will be able to take these personnel actions without prior intervention of the Central Personnel Administration Office.

b) If there are no vacant permanent positions the same shall be created according to the current procedures, except that the classification of said positions is delegated to the agencies of the Central Administration. In the case of positions of fixed duration on a part-time basis, the permanent positions shall be created with the same working time as the position of fixed duration.

The agencies shall submit to the Budget and Management Office (BMO) the form "General Information about Transitory Employees" that was distributed by said Office through Memorandum of June 2, 1989. The Budget and Management Office shall evaluate the information provided by the agencies and shall create the positions that may be necessary to make the changes of status of transitory employees charging these changes to the corresponding budgetary item.

c) Once the change of status is completed, as provided later on, the agencies shall submit the following information to the Budget and Management Office:

1. Changes to the Annex to the Executive Budget.
2. Copy of the forms Position Description (OCAP-16) of all the positions created or reclassified to place transitory employees.

3. Copy of all the forms Report on Special Change that shall be used to register the changes of status.

4. A list of all the positions of fixed duration that used to be occupied by transitory employees and that shall be eliminated as a result of this measure, for which the form "Report on Positions of Fixed Duration to Be Eliminated - Act No. 56 of August 16, 1989" hereto attached, shall be used.

d) Likewise, they shall submit to the Central Personnel Administration Office a copy of the Changes to the Annex to the Executive Budget and of the Report on Positions of Fixed Duration to Be Eliminated. The agencies of the Central Administration shall submit to this Office together with said reports the originals of the Position Descriptions Forms (OCAP-16).

3) Change of Status

The agencies shall determine which of the employees that used to occupy positions of fixed duration performing permanent career service functions on June 30, 1989, fulfill the conditions to acquire career regular status without being previously evaluated by the Central Personnel Administration Office.

Transitory employees who acquire career regular status on July 1, 1989 shall keep the salary and fringe benefits they had acquired during the discharge of their career functions before the change of status.

Since it is a remedial legislation, the agencies shall resolve all the reasonable doubts in favor of the acquisition of a regular career status for the employee.

a) Time of Service

In case it is necessary, the agencies shall request their transitory employees to produce written evidence of the services they have previously rendered and that may be accredited in accordance with this Act.

1. In order to be accredited, services must have been rendered for the time provided by the Act in a continuous and uninterrupted form. It shall be considered that services have been interrupted if the employee stopped to work for the public service. It shall be considered that the employee rendered continuous services during all the time he maintained an employer-employee relation with the government, including periods of leaves of absence with or without pay, during which he retained his right to reintegrate his position.

2. Prior services rendered to any agency of the "Public Service" may be accredited, according to the definition of this phrase in Act No. 5 of October 14, 1975, as amended, provided that there had not been any interruption between the prior appointment and the

appointment in the agency in which the employee worked on June 30, 1989.

3. The periods immediately preceding the transitory appointment, during which services were rendered under an appointment as non-regular personnel, and the actual functions performed by the employee corresponded to permanent functions of the career service that are not included in the Guide of Classification of Functions for Groups of Non-Regular Works approved by the Central Personnel Administration Office in accordance with Act No. 110 of June 26, 1958, as amended, shall be accredited.

4. The periods immediately preceding the transitory appointment during which the services were rendered under a contract of services, and the actual functions of the employee corresponded to permanent functions of the career service shall be accredited if the established relation was one of employer-employee and not one of independent contractor and principal. It shall be considered that the relation established in a contract is that of employee-employer, if the agency recruited the person to perform permanent functions of the career service, in

consideration of a salary, and had the authority to control and direct the work.

b) Minimum Requirements and General Conditions for Entrance in the Public Service

The agencies shall verify that the employees meet the minimum requirements for the class of position whose functions they have performed, and the general conditions for entrance in the public service, using therefor Form OCAP-29 "Certification of Requirements Verifications" or the equivalent form in the case of Individual Administrators. When it is necessary, the agencies shall request from the employees that they submit evidence to demonstrate they satisfy the requisites for the permanent positions they will occupy and the general conditions for entrance in the public service.

c) Satisfactory Services

The employees with three (3) or more years of service shall not be subject to an evaluation of satisfactory services. Employees with less than three (3) years of service shall be evaluated using the forms approved by the Central Personnel Administration Office as part of the Employees Evaluation and Motivation System or the evaluation forms that the agency uses. Said evaluations shall be made considering the totality of the employee's record,

including prior evaluations and the corresponding corrective actions, if any.

The evaluations shall be discussed with the employees. A term of not less than ten (10) days shall be granted in order that the employee feeling negatively affected by an evaluation may exercise his right to be heard before the Appointing Authority or its authorized representative. Said term shall be notified to the employee, together with the copy of the evaluation. The Appointing Authority shall make the final decision at the level of the agency considering if there is substantial evidence to support the finding that the employee's services have not been satisfactory. Any reasonable doubt shall be resolved in favor of the granting of the regular status to the employee.

4. Handling of Situations Requiring Prior Evaluation of the Central Personnel Administration Office

Whenever the agency is convinced that the employee does not meet the conditions of Act No. 56, supra, it shall refer these cases to the Central Personnel Administration Office for evaluation on the merits. In addition to the evidence hereinafter indicated, the agency shall submit a true and exact copy of the personnel record of the employee and of all the documents related to his employment and position in the agency,

certified by the Appointing Authority or its authorized representative. For this purpose it shall use the form "Application for Evaluation on the Merits for Change of Status of Transitory Employees."

The agency shall appoint any transitory employee whose case is referred for evaluation of the Central Personnel Administration Office until the Office issues its decision. In the event that the Central Personnel Administration Office determines that the change of status to the career regular one is relevant, the agency shall proceed to make this change effective on July 1, 1989, following the previously established procedures.

In case the Central Personnel Administration Office determines that the change of status should be denied, it shall officially inform the agency thereof. The Agencies shall notify their employees of the determination made by the Central Personnel Administration Office, including a copy of the corresponding notice, and shall inform the employee of his right to appeal that decision before the Board of Appeals of the Personnel Administration System within thirty (30) days from said notice.

While evaluating the cases in their merits, the Central Personnel Administration Office shall require from the agency, the employee, or other sources, any additional written or oral evidence, that it deems necessary. If the agency or the employee does not submit the requested additional evidence,

it shall be assumed that the same, if submitted, would adversely affect the party from whom it was requested.

The Central Personnel Administration Office shall request the advice and evaluation of the Secretary of Justice in any case it understands that the public interest so requires.

The matters requiring evaluation on the merits of the Central Personnel Administration Office shall be the following:

a. <u>If the Employee Performs Temporary Functions in a Program of Determined Duration</u>

It shall be assumed that all the employees with one year or more of service perform functions in permanent programs. Only the programs created for a fixed period of effectiveness to fulfill functions of temporary nature shall be considered as programs of determined duration.

In order for the corresponding evaluation to be conducted, the agencies shall submit copies of the following documents:

1. Act and Regulations governing the creation and operation of the program.
2. Certification of the Appointing Authority or its authorized representative of the date on which the implementation of said program in Puerto Rico began and of the date since the agency has

administered the same and/or received funds to create the corresponding positions.

3. Last budget proposal submitted by the agency with respect to this program.

4. List of the positions assigned to the program and date on which positions of fixed duration were created to fulfill said functions for the first time.

5. Contracts, agreements, or any other documents evidencing the real nature of the program.

6. Any adjudication made by a competent entity on the permanent or temporary nature of the program, including the determinations related to the rights of the employees.

A committee composed of officials of the Central Personnel Administration Office and the Budget and Management Office shall evaluate said programs and functions in order to determine their real nature.

The Central Personnel Administration Office shall prepare a report containing its conclusions on the nature of the program.

The Director of the Central Personnel Administration Office shall inform the Appointing Authority of the final determina-

tion with respect thereto, which then shall notify the employee thereof following the previously established procedure. If it is determined that the functions are temporary in programs of determined duration, the employee shall acquire a preferential right, as indicated later on.

b. <u>If the employee does not meet the minimum requirements for the class of position he has been occupying and whose functions he has been performing</u>

It shall be assumed that all the transitory employees have been originally appointed after it had been checked that they met all the minimum requirements of the position. The agencies shall submit, together with the personnel record, a copy of the notice served on the employee, whereby he is required to submit the necessary additional evidence to determine if he meets the requirements of the position. They shall also inform the Central Personnel Administration Office of the classification for which it is understood that the employee meets the requirements and whose functions are compatible with the program or agency in which he works. The Individual Administrators shall also submit copy of the recruitment rules for the class of position they understand the employee meets the requirements. Whenever the

agency understands that the employee does not meet the minimum requirements, it shall be evaluated if the services of the employee have been satisfactory, following the procedure established in Part IV-D, paragraph 3 (c) of these Special Normative Rules.

In its technical evaluation of the compliance with minimum requirements, the Central Personnel Administration Office shall establish substitutions of preparation and experience, and the acceptable equivalences within the limits of the current rules, in order to achieve the purposes of this Act, including the percentage accreditation of the experience acquired by the employee during the time he has performed the functions of the position.

This Office shall inform the agency of the decision made and the latter shall notify the employee thereof, following the established procedures. In case it is decided that the employee does not meet the minimum requirements of the position he occupies, the agency shall create a position for the employee at the corresponding level of classification and for which he meets the requirements, following the classification criteria of the applicable Classification Plan.

c. <u>If the Employee Does not Meet the General Conditions for Entrance in the Public Service</u>

It shall be assumed that all the employees meet the general conditions for entrance in the public service as established in Section 4.3 Item (3) of the Puerto Rico Public Service Personnel Act. The agency shall submit to the Central Personnel Administration Office clear evidence of the cause for ineligibility that applies to the employee. The Office shall evaluate the case to determine if there is sufficient evidence of ineligibility. If this Office determines that the employee meets the general conditions for entrance, it shall notify the agency thereof, which then shall proceed to change his status.

When it is determined that the employee does not meet said conditions, this Office shall contact the employee, through the agency, orienting him about the steps he shall take to submit himself to the eligibility procedure and sending him the corresponding forms. A term of ten (10) days shall be granted to the employee to initiate this procedure if he is interested in the eligibility.

If at the end of ten (10) days, the employee has not contacted this Office, the agency shall be notified that the change of status cannot take place. The latter shall then notify the employee thereof, through the previously established procedure.

The cases covered by this Act that submit themselves to the eligibility procedure shall be evaluated by the Eligibility Board as a priority, in order to determine if the eligibility should have retroactive effect as of June 30, 1989.

d. If the Employee Has not Rendered Satisfactory Services

According to Act No. 56, supra, it is assumed that the employees with three or more years of service have rendered satisfactory services. In the case of employees with less than three (3) years of service, the agency shall submit, in addition to the employee's record, the following:

1. evidence that the agency has granted the employee the right to be heard, as established in part IV, D, 3(c) of these Special Normative Rules.
2. sufficient evidence that from the totality of the record, it appears that the employee has not rendered satisfactory services, including previous negative evaluations notified to the employee, and evidence of disciplinary actions taken by the Appointing Authority, such as suspension from employment and withdrawal of salary, written reprimands, etc.;
3. in the case of employees whose original appointment has been

renewed, an explanation shall be sent by the agency about the reasons why the transitory appointment has been renewed if the services had not been satisfactory and the corresponding evidence.

The Director of the Central Personnel Administration Office shall inform the agency of its final determination. The latter shall then notify the employee thereof, following the previously established procedure.

V PREFERENTIAL RIGHT

A. Definition

Preferential right means the right for a transitory employee to be included in a special register of eligible employees for the class of position he occupied on August 16, 1989, or any other equal or similar position, his right to be certified as the only candidate, and to be appointed with regular career status to the vacant permanent positions of said classification that exist or may arise in the agency in which he used to work on said date, with preference over any other candidate, except over the retired persons recovering from disability or students with scholarships who may have completed their studies.

B. Requisites to Acquire Preferential Right

1. To occupy on August 16, 1989 a position of fixed duration in programs of determined duration or a permanent position with transitory status, in an agency of the

Personnel System, except the Municipalities, for a period of one (1) year or more.

2. To meet the minimum requirements for the class of position and the general conditions for entrance in the public service.

3. To have rendered satisfactory services as certified by the Head of the Agency.

C. Establishment and Administration of Special Registers

1. The agencies shall identify the employees meeting the requirements to be included in the preference registers. In the case of employees occupying positions of fixed duration, prior evaluation on the merits by the Central Personnel Administration Office of the temporary nature of the program in which they work, shall be required, as established in Part IV-D, paragraph 4 (a) of these Special Normative Rules.

2. The Office, in the case of the Central Administration, and each Appointing Authority, in the case of the Individual Administrators, shall establish special registers where the names of the persons with preferential rights shall be included. All the transitory employees entitled to that right shall have their names included in the corresponding special registers before December 31, 1989. It shall not be necessary for the employees to apply to be included in these registers.

3. The agencies of the Central Administration shall submit to the Central Personnel Administration Office the form "List of

Transitory Employees with Preferential Right" with the names and information about their employees with preferential right. In the case of employees occupying permanent positions, that information shall be submitted on or before September 30, 1989.

4. The names of the eligible persons shall be placed in decreasing order of seniority of service. Furthermore, in the case of the Central Administration, employees shall be placed in groups according to the name of the agency where this right exists.

5. The Office, in the case of the Central Administration, and each Appointing Authority, in the case of the Individual Administrators, shall notify in writing the employee of his admission in the special preference register for the corresponding class of position.

6. The names of the persons with preferential right shall appear in the special registers until June 30, 1992. Nevertheless, said names shall be eliminated from the register if the employee rejects an appointment, or if any of the causes established in Items (4) and (5) of Section 7.5 of the Personnel Regulations arises; Essential Areas to the Merit Principle. Written notice to that effect shall be sent to any candidate whose name is eliminated from the special register, and he shall be informed of his right to appeal. Whenever the elimination of a name from the register has been erroneous, the name shall be reincluded in that register.

7. In case that the class of position to which the special register corresponds, is modified

or eliminated, the names of the candidates in said registers shall be included in special registers for the class of position whose functions correspond to those of the modified or eliminated class. The employee shall meet the minimum requirements of the position.

8. The agencies shall take the necessary steps to recruit first the candidates with preferential right, when there are any vacant permanent positions.

9. The candidates with preferential right shall be certified as the only candidates for the agency in which they rendered services on August 16, 1989, and said agency shall have to appoint the employee if he is available. If in the same special register there are candidates with preferential right for the same agency, who have the same time of service, all of them shall be certified and the agency shall select the most efficient one.

10. The agencies that on August 16, 1989 have vacant permanent positions in addition to the ones necessary to place the employees acquiring regular status, shall use the same to recognize preferential right to employees, following the previously established procedure.

VI. RIGHT TO REINSTATEMENT

A. Employees who, on July 1, 1989, work in the confidential service and who, immediately before occupying the confidential position, had been transitory employees for a period of at least one

year, and who meet the other requirements imposed by the Act, shall be entitled to reinstatement in a position in the career service, equal or similar to the one they occupied as transitory employee, as soon as they are severed from confidential service.

In accordance with Article 4 of Act No. 56, supra, in the case of reinstatements in positions assigned to classes whose probationary periods are longer than one (1) year by provisions of special acts, the employee must have rendered services for the same period of time established for the probationary period.

B. The reinstatement of the employee in the career service shall occur simultaneously with the severance from the confidential position, so that there shall not be any interruption of service. The Appointing Authority shall notify the employee in writing of the title of classification, location, and number of the position in which he will be reinstated, of the corresponding status, salary, and effective date of reinstatement.

C. In any case of reinstatement the employee shall obtain regular status.

D. The salary assigned to the employee at the moment of his reinstatement shall be determined in accordance with the regulations in force on the date of change; provided that the new salary shall not be lower than the one the employee received immediately before passing to hold a position in the confidential service.

VII. RULES FOR THE EMPLOYMENT OF TRANSITORY PERSONNEL AND

FOR THE CREATION OF POSITIONS OF FIXED DURATION AS OF AUGUST 16, 1989

A. General Provisions

The rules to create positions of fixed duration and for the employment of transitory personnel apply to all the agencies within the Personnel System, except to the State Election Board. Said rules shall be strictly interpreted so that they should comply with the purpose of promoting that personnel recruitment in the government agencies be done through procedures compatible with the merit system, and avoiding the reappearance of a parallel structure of transitory employment to fulfill permanent functions of the career service.

The permanent functions of the agencies shall be fulfilled through the creation of permanent positions, irrespectively if the positions or programs are paid out of state, federal, or combined funds. The agencies shall refrain from creating positions of fixed duration to deal with permanent necessities or to perform functions of vacant permanent positions, except as authorized later on. As a general rule, the positions of fixed duration shall be only created when temporary, emergency, unexpected necessities, or necessities of determined duration arise.

The positions of fixed duration to deal with emergency or unexpected necessities shall be created for a maximum term of six (6) months. During said period, the agencies shall determine if the necessity is permanent or temporary. If this is a permanent necessity, the permanent position shall be created. If the necessity is temporary the position of fixed duration may be

extended to an additional period of twelve (12) months. Any creation or subsequent extension of a position of fixed duration, whose total term exceeds eighteen (18) months, shall require the evaluation and prior approval of the Director of the Central Personnel Administration Office.

B. Definitions

The phrases indicated below shall have the following meanings:

1. "Permanent Functions or Necessities"- activities related to the powers and duties assigned to the agency by its organic law and other activities assigned to it by special acts, regulations, or executive or administrative assignments, that shall be exercised in a continuous or stable manner, or that repeat or extend themselves without interruption for an indefinite time, without being necessarily perpetual. The permanent functions of the agencies may correspond to the career service or the confidential service.

2. "Temporary Necessities" - activities that shall only last a limited period of time, as opposed to perpetual or indefinite ones. Although the term of duration is not expressed, temporary necessities last for some time, after which they are not repeated, or they are of intermittent nature, and are suspended or interrupted from time to time and then resumed for a limited period of time.

3. "Necessities of Determined Duration"-

Activities of temporary nature whose term of duration has been previously established.

4. "Emergency Necessities" - Activities arising as consequence of an occurrence or occasional combination of circumstances altering the regular order of the activities of the agency, that occur suddenly and require immediate action to avoid that services be affected.

5. "Unexpected Necessities" - Activities arising without notice, without being expected or anticipated, and for which the agency is not prepared.

6. "Program of Determined Duration" - Programs created for fixed periods of effectiveness to fulfill functions of temporary nature, regardless of the origin of the funds out of which they are paid.

7. "Urgent Service Necessities" - essential or indispensable actions that have to be carried out urgently for the purpose of complying with the functions of the agency or its programs. They do not include the actions that result merely convenient or profitable whose solution may be delayed until the ordinary steps are taken.

C. Creation and Classification of Positions of Fixed Duration

The agencies shall classify the positions of fixed duration and assign to them the salary schedules in harmony with the classification and compensation plans for the career or confidential service, as the case may be. The description of the duties of each position of fixed duration

whose creation is requested shall be reflected in Form OCAP-16.

Together with the application for authorization to create positions, the agencies shall submit to the Budget and Management Office a copy of the Forms OCAP-16 for each position. Furthermore, they shall submit a justification for the requested creation identifying if the necessity to be covered is a temporary, emergency, unexpected, or of determined duration one. The Budget and Management Office may request any other information it deems necessary to establish the real nature of the functions of the position.

Upon receipt of the application of the agency, the Budget and Management Office shall verify it in the light of the "Report on Positions of Fixed Duration to Be Eliminated - Act No. 56 of August 56, 1989" in order to ensure that the requested positions do not correspond to the same functions or positions that have been determined to be permanent positions of the career service.

1. Creation of Positions of Fixed Duration in the Confidential Service

   When the necessity to be covered with the position of fixed duration corresponds to the confidential service, the Budget and Management Office shall send the Central Personnel Administration Office a copy of Form OCAP-16 and of the justifications submitted by the agency. The Central Personnel Administration Office shall verify the real nature of the functions and the total number of confidential positions that

the agency is authorized to have. Whenever the agencies have twenty-five (25) confidential positions, this Office shall determine if additional positions shall be authorized, considering the organizational structure of the agency, its functional complexity or size.

2. Creation of Positions of Fixed Duration to Cover Permanent Necessities

When new programs are initiated or permanent necessities arise within the programs of the agencies, they shall request from the Budget and Management Office the authorization to create permanent positions, following the established procedures. Whenever there is an urgent, emergency or unexpected service necessity, positions of fixed duration may be created to attend to said permanent functions for a period that shall not exceed six (6) months. That shall be an exceptional mechanism only used under the above mentioned circumstances. The positions of fixed duration in these cases shall be eliminated as soon as the Budget and Management Office makes a decision about the creation of permanent positions.

3. Creation or Extension of Positions of Fixed Duration for More than 18 Months

Any position of fixed duration whose creation or subsequent extension exceeds a total period of time of 18 months shall require prior determination from the Director of the Central Personnel Administration

Office that this is a position in Programs or Projects of determined duration paid out of federal, state, or combined funds.

In order for the Central Personnel Administration Office to make said determination, the agencies shall submit the evidence indicated in Part IV-D, paragraph 4 (a) of these normative rules. Said Office shall verify in the report on positions of fixed duration that have been eliminated by virtue of Act No. 56, supra, that the created positions of fixed duration are not the same as the ones eliminated.

D. Recruitment and Selection of Transitory Employees

The persons appointed to cover temporary necessities in the government shall have transitory status. Transitory employees shall meet the general conditions for entrance in the public service established in Section 4.3, Subsection (3) of the Puerto Rico Public Service Personnel Act. Furthermore they shall meet the minimum requirements for the class of career positions to which they are appointed or those set by the Appointing Authority in the case of confidential positions. No one may be appointed with transitory status if during the period of (1) year preceding the effectiveness of the appointment he has occupied another position with said status in the public service.

The recruitment and selection of transitory employees shall be carried out without discrimination on the account of race, color, sex, birth, age, origin or social condition, political or religious creeds. A particular political

affiliation may be established as a requirement for confidential positions when, due to the nature of the functions, said criteria is an appropriate requirement.

In order to expedite the recruitment of transitory employees agencies shall not be required to use the regular procedure. Agencies shall use the means they consider to be the most convenient and effective to have access to resources in order to fill each position. Candidates to positions with functions in career service shall be evaluated in order to determine that they meet minimum requirements. Transitory confidential employees shall be freely selected and removed.

Agencies with local or regional offices may delegate recruitment and selection of transitory employees if they think it may expedite the process. In this case, they shall adopt written rules for delegation and maintain centralized supervision so that the corresponding legal, regulatory, and normative provisions be observed.

Transitory appointment shall not grant the employee the right to retention in the public service except during the term of effectiveness of the appointment. A transitory employee may be recruited for a permanent position in the career service with probationary or regular status, provided that he submits himself to the recruitment and selection procedures prescribed by Section 4.3 of the Puerto Rico Public Service Personnel Act. Agencies shall refrain from offering regular appointment to transitory employees, except when the procedures of the law have been followed. The Personnel Offices of the

agencies shall be responsible for providing guidance to newly appointed transitory employees about the procedure to follow if they wish to compete for permanent positions in the career service.

Employees with regular or probationary status may be promoted or transferred to cover temporary necessities through appointment with transitory status to positions of fixed duration or to permanent positions. Said employees shall keep the rights acquired in their permanent positions, among them the granting of leaves of absence and reinstatement in their positions. This provision shall be used when the functions of the position to be filled temporarily require prior experience at the same level or another level of classification. It shall not be used to cover permanent necessities that may be covered through regular procedure nor to provide employees other employment opportunities.

The Appointing Authorities shall guarantee the legality of all the transitory appointments they make and that transitory employees are assigned the duties of the positions to which they have been appointed.

1. Transitory Appointments to Permanent Positions

   Transitory employees may be appointed to permanent positions of the confidential service when the incumbent of the position is on leave without pay.

   Likewise, transitory employees may be appointed to permanent positions of the career service under the following circumstances:

a) when the incumbent of the position is on leave without pay.

b) When there is an emergency in the rendering of services that makes impossible or inconvenient the certification of candidates listed in a register of eligible employees, in which case the appointment shall not exceed ninety (90) days.

c) When there is not any appropriate register of elegible employees for a position requiring some type of license and when the candidate to be appointed has only a provisional one.

d) When the incumbent of the position has been dismissed and has appealed this action before the Board of Appeals of the Personnel Administration System.

e) When the incumbent of the position has been suspended from employment and salary for a given time.

f) When the incumbent of the position passes to occupy another position through transitory appointment and has the right to be reinstated in his former position.

In any case of transitory appointment under item (b) the agency shall take the steps to establish the registers of elegible employees within the term of duration of the transitory appointment, following the procedures established in Section 7.10 of the Personnel Regulations: Areas Essential to the Merit Principle. The agencies of the Central

Administration shall request prior authorization from the Central Personnel Administration Office in order to make transitory appointments under this item.

Transitory appointments shall not be made under subsection (c) without prior authorization of the Central Personnel Administration Office. This mechanism shall only be used when there are no candidates with permanent license to fill the position. The transitory appointment shall end when the license granted by the corresponding organization expires or when an adequate register of elegible employees is established. The Office, in the case of the Central Administration and the Appointing Authorities, in the case of the Individual Administrators, shall maintain continuous recruitment for the classes of position in which recruitment of transitory employees with a provisional license has been authorized.

Transitory appointment to permanent positions may be extended while the circumstances which caused the same to happen are still lasting.

2. Processing of Transitory Appointments

a) Transitory appointments shall be made through the form Notice of Appointment and Oath of Transitory Employees (OCAP-11-A), accompanied with all the forms and documents required for this personnel action. The social security number of the selected person shall be used as employee number. The employee

shall be notified of the terms of his appointment through the delivery of a copy of Form OCAP-11-A.

b) Before making an appointment, the agencies shall check in the original documents that the candidate meets all the minimum requirements for the position established in the notices of examinations or in special laws. In case there is no notice, the recruitment rules or the class specifications shall be used. If there is more than one of the mentioned documents, the most recent one shall be used. The agency shall certify the verification of said requirements.

c) The agency shall deliver to the employee copies of the list of duties of his position (OCAP-16) at the moment of his appointment.

d) The authorized extensions of transitory appointments shall be made through the form Report of Change (OCAP-15). The class of transitory appointment shall be indicated in item number 31 of this form.

E. Training

1. At the beginning of their appointment, transitory employees shall receive the training indispensable for the efficient performance of their functions.

2. Transitory employees may participate in the trainings offered by the Personnel Development Institute in the Public Service provided that this training is proven to be

indispensable for the efficient performance of their functions, and that it does not prevent any career employee to participate in the same, and that the provisions of Act No. 182 of July 23, 1974, as amended, and the Puerto Rico Public Service Personnel Act are met.

3. No leave of absence with or without pay shall be granted to transitory employees for studying (except in the cases provided by Section 10.4 (9) of the Personnel Regulations: Areas Essential to the Merit Principle), registration fees, or assistantships or exchange.

F. Retention in the Service

Transitory employees shall have the right not to be severed arbitrarily from their employment during the term of their employment. They shall not be entitled to retention once this term is over.

In order for a transitory employee to benefit from retention during the term of his appointment he shall satisfy the criteria of productivity, order, efficiency, and discipline that shall prevail in the public service. Said employees shall comply with the duties and obligations established in Article 6 of the Puerto Rico Public Service Personnel Act, with the rules of ethic established in Act No. 12 of July 24, 1985 and with any other rule of conduct applicable to public employees. All the transitory employees shall be evaluated periodically in order to determine if they comply with these criteria.

When the conduct of a transitory employee is not adjusted to the established rules, the

Appointing Authority shall take the corresponding corrective measures. Any transitory employee may be severed from service at any time within the term of his appointment. When severance is for just cause, the employee shall be granted the right to be heard in accordance with Special Normative Rules Number 1-86.

Any transitory employee convicted of any felony or any offense implying moral depravation or infraction of his official duties shall be severed from service, pursuant to Article 208 of the Political Code.

Transitory employees may be removed from service in the following cases:

1. due to the elimination of positions for lack of work or funds. In these cases the agency shall comply with all the rules and procedures established in Section 9.3 of the Personnel Regulations: Areas Essential to the Merit Principle.

2. When it is determined that said employee is physically or mentally disabled to fulfill the functions of his position in accordance with the provisions of the Puerto Rico Public Service Personnel Act, as amended, and the applicable regulations.

3. In the cases of appointments to programs of determined duration lasting more than twelve months, if the employee becomes disabled due to a work accident and is under medical treatment with the State Insurance Fund, he may be severed from office once twelve months have lapsed after the date of the work accident, according to Article 5-A of Act

No. 45 of April 18, 1939, as amended, known as Workmen's Accident Compensation Act.

Any transitory employee that has been severed from work before the end of his appointment may request review before the Board of Appeals of the Personnel Administration System.

G. Records

1. The agencies shall maintain a record for each transitory employee in accordance with Section 5.8 of the Public Service Personnel Act and the regulatory provisions applicable by virtue of said act.
2. The agencies shall keep a clear and complete history of the positions of fixed duration similar to the one of the permanent positions but it shall also include the justification for the creation of said position of fixed duration.

H. Other Provisions

1. Any transitory appointment made to fulfill permanent functions of the agencies, except as authorized in Part VII, paragraphs C (2) and D (1) of these Special Normative Rules, as well as the appointments of transitory employees to other positions before one (1) year has lapsed since the end of the last appointment, shall be considered as serious violations of the law and the public order.
2. The appointing Authorities shall be responsible for the legality, accuracy, adequacy, necessity, and correctness of all the payments made by virtue of transitory appointments.

3. The appointing authorities shall be required to correct immediately any transitory appointment made in violation of the law or these rules by error committed in good faith, as soon as they take cognizance of such error.

4. The Budget and Management Office and the Central Personnel Administration Office, as the case may be, shall make ineffective any authorization they may have granted to create positions of fixed duration, as soon as they know that the position fulfills permanent functions of the agency in violation of the Act and these special Normative Rules.

5. Transitory employees are not recruited through the procedures of career service. Therefore, they shall not have the same rights as career employees. Reclassification of positions of fixed duration, changes of duties, authority or responsibility shall not occur. Transitory employees shall not be promoted, transferred or demoted,; neither shall they be assigned functions other than the ones for which they have been appointed.

6. The compensation of employees shall correspond to the minimum rate of the schedule corresponding to the class of position to which they have been appointed, in accordance with the Compensation plan of the career or confidential service that may be applicable.

7. Transitory employees shall receive fringe benefits established and determined by special acts, and those prescribed by

regulations adopted by virtue of the Puerto Rico Public Service Personnel Act.

VII. REPORTS

A. Each agency shall keep a registry of positions of fixed duration for each fiscal year that shall contain the following information:

1. Title of the Class of Position
2. Number of the Class of Position
3. Number assigned to the position
4. Name of the Employee
5. Social Security Number of the Employee
6. Salary of the Employee
7. Part-Time Work - Number of Hours
8. Location of the Position: city, office, bureau, section
9. Date of the beginning and the end of the appointment
10. Justification for the creation of the position

B. All the agencies of the Personnel System shall submit to the Central Personnel Administration Office a semiannual report about the transitory appointments to positions of fixed duration and permanent positions. The report shall correspond to the period from July 1 to December 31 and from January 1 to June 30 of each year and shall be sent to the Central Personnel Administration Office no later than the 30th of the following month at the end of the period covered by the report. The following information shall be included:

1. Title of the Class
2. Number of the position
3. Location of the Position

4. Duration of the Position

5. Justification for the creation of the position

6. Name of the transitory employee and Social Security Number. If the employee has resigned or has been severed and another incumbent has been appointed for the remaining time, state the information about all the incumbents.

7. Date of beginning and end of the appointment.

8. Origin of the funds out of which the position is paid.

IX. AUDITING

A. The Central Personnel Administration Office shall audit periodically the personnel actions related to the creation and classification of transitory positions in order to determine their legality and correctness, and to see to the strict application of the merit principle.

B. If irregularities or violations are found as a result from the auditing, the Central Personnel Administration Office shall take the corresponding remedial measures. Furthermore, it shall keep informed the Budget and Management Office and the Controller's Office. In case it previously determines that the actions constitute a public offense, it shall refer the evidence to the Secretary of Justice for the corresponding action.

X. PENALTIES

If it is determined that there has been deceit or fraud on the part of the employee receiving the appointment, the agency shall ask him the salaries unduly received in accordance with Article 1795 of the Civil Code of Puerto Rico.

If there were intention or negligence on the part of the official authorizing any illegal action with respect to Act No. 5 of October 14, 1975, as amended, and to these rules, he shall be subject to the penalties established in Section 10.1 of the referred to Act No. 5.

XI. SPECIAL PROVISION

For the purpose of guaranteeing uniformity in the interpretations, any particular situation not covered by the rules established in these Special Normative Rules shall be submitted to the Central Personnel Administration Office by written application for official evaluation.

XII. REPEAL

These special Normative Rules repeal Circular No. 2-81 issued by the Central Personnel Administration Office on June 9, 1981 in all its parts related to the recruitment and selection of transitory employees and any other rule or norm that may be in conflict with this document, provided that the provisions related to the recruitment and selection of untrained and half-trained personnel of the above circular No. 2-81 remain in force.

XIII. EFFECTIVENESS

The provisions of these Special Normative Rules shall take effect immediately after their filing with the State Department.

The Budget and Management Office approves the content of these Special Normative Rules with respect to its functions of creation and elimination of positions of fixed duration and its participation in the committee to evaluate the programs of determined duration.

Roberto Inclán
Director
Budget and Management Office

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