

Administrative Procedure # 8.2a

Effective Date: 12/07/2020

# Designation of Temporary Unclassified Positions

Revision Date:

Statutory Reference: 43A.08, subd. 2a

## GENERAL PROCEDURES AND INSTRUCTIONS

### Description

The Commissioner of Minnesota Management and Budget (MMB), or the Commissioner's delegate, may authorize the temporary designation of a position in the unclassified service for professional, managerial, or supervisory positions which are fully anticipated to be of limited duration, for a period not to exceed three years.

### Objective

To assist state agencies to properly designate positions as temporary unclassified and convert temporary unclassified positions to the classified service when appropriate, and to provide a procedure to resolve disputes about the temporary designation of positions in the unclassified service.

### Scope

This administrative procedure applies to all executive branch agencies as defined in Minnesota Statutes section 43A.02, subds. 2 and 22, the Minnesota State Retirement System, the Public Employees Retirement Association, the Teacher's Retirement Association, the Minnesota State Colleges and Universities system, and employees employed in temporary unclassified appointments in those agencies.

## Definitions and Key Terms

Key Term	Definition
<i>The Commissioner</i>	The Commissioner of MMB.
<i>Delegated Agency</i>	An agency with an HR Director or designee to whom the Commissioner has delegated authority, through a signed delegation agreement, to temporarily designate positions in the unclassified service and to convert temporary unclassified positions to the classified service.
<i>Agency Delegate</i>	The individual in a delegated agency who carries the Commissioner's delegation of authority to temporarily designate positions in the unclassified service and to convert temporary unclassified positions to the classified service, as provided in the delegation agreement.
<i>Job Audit</i>	A process to determine the proper classification and classified/unclassified designation of a position.

## Exclusions

N/A

## Legal References

Minn. Stat. §. 43A.08, subd. 2a, Temporary unclassified positions

Minn. Stat. §. 43A.15, subd. 7, Appointments for unclassified incumbents of newly classified positions

Minn. Rule 3900.1300, Temporary designation of positions in the unclassified service

# GENERAL STANDARDS AND EXPECTATIONS

## I. Designation of a Position as Temporary Unclassified

MMB, or a delegated agency, determines the designation of a position as temporary unclassified through a job audit performed at the time the position is created.

MMB, or a delegated agency, shall only designate a position to be temporary unclassified if the following criteria are met:

- The position is professional, managerial, or supervisory.
- The work of the position is short-term in nature and is fully anticipated to not exceed three years. “Fully anticipated not to exceed three years” means either:
  - The work will not be needed after a certain date due to anticipated completion of a function or project, or
  - The funding for the position is not anticipated to be renewable.

If any of the above identified criteria unexpectedly change during the life of a temporary unclassified appointment, MMB, or a delegated agency, shall consider converting the temporary unclassified appointment to a permanent classified position in accordance with M.S. 43A.15 Subd 7.2

If any of the above identified criteria unexpectedly change during the life of a temporary unclassified appointment, MMB, or the delegated agency, shall perform a job audit to determine whether the position is eligible for converting the temporary unclassified appointment to a permanent classified position in accordance with M.S. 43A.15 subd 7.2 and the process outlined in Sections II and III.

If MMB, or the delegated agency determines that the position had been improperly designated in the temporary unclassified service when it was created, the Appointing Authority must convert the temporary unclassified appointment to a permanent classified position in accordance with M.S. 43A.15 subd 7.2 if the position meets the criteria listed in Section III.

Examples of temporary unclassified positions include but are not limited to those involving project-related work, work during major reorganizations, program development, work during significant periods of transition, and work with limited-duration funding.

Upon request, an employee hired into a temporary unclassified position must be provided a written explanation for the temporary unclassified designation within 15 business days.

## II. Procedure for Review of Temporary Unclassified Designation

If an employee in a temporary unclassified position believes their position has been improperly designated as temporary unclassified, they may request a review of the designation as provided below. This review procedure is available only to temporary unclassified employees who: 1) were hired for their temporary unclassified position

through an open competitive selection process in accordance with HR/LR Policy #1434, Recruitment & Selection; and 2) have at least 63 business days before their temporary unclassified position ends.

The review procedure is as follows:

- 1) For delegated agencies, the employee submits a request in writing to the delegated HR Director of their employing agency to review the temporary unclassified designation of their position. The request must state the basis for the employee’s assertion that their position is not appropriately designated as temporary unclassified and must include any supporting documentation the

employee wishes the employing agency to consider.

- a) The agency must provide a written determination to the requesting employee within 21 business days of its receipt of the employee's request.
  - i) If the agency determines the position is properly designated as temporary unclassified, the written determination must include an explanation for the decision upholding the designation. The agency's determination does not require a job audit.
  - ii) If the agency determines the position is not properly designated as temporary unclassified, the agency may choose to convert the temporary unclassified position to the classified service. If there is an incumbent in the position at the time of conversion, the agency may authorize the probationary appointment of the incumbent if the incumbent satisfies all

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criteria for conversion as set forth in Section III below. The agency must perform a job audit to convert the position. The job audit must include the criteria listed in Section III below

- b) An agency's failure to provide a written determination to the employee within 21 business days will be considered a decision by the agency to uphold the temporary unclassified designation of the position.
- 2) If the employing agency is not a delegated agency, OR if a delegated agency decides to uphold the temporary unclassified designation (including by failing to provide a written determination to the employee within 21 business days), the employee may request review of the designation by MMB. Such a request to MMB must be made within 14 business days of the delegated agency's decision to uphold the temporary unclassified designation. If the employee does not request MMB review, the agency's decision is final and is not grievable.

The employee's request for MMB review must be in writing, addressed to the MMB Deputy Commissioner of Enterprise Human Capital, with a copy to the employing agency, must state the basis for the employee's assertion that the position is not appropriately designated as temporary unclassified, and must include any supporting documentation the employee wants MMB to consider.

- a) Within 14 business days of its receipt of the employee's request to MMB, the employing agency must provide MMB the following information, with a copy provided to the employee: a written justification for the temporary unclassified designation; the employee's position description; the organization chart; any other information MMB requests; and any supporting documentation the employing agency wants MMB to consider.
  - b) Within 14 business days of its receipt of all of the submissions, MMB will provide a written determination to the employee and the employing agency. MMB's decision is final and is not grievable.
    - i) If MMB determines the position was properly designated as temporary unclassified, the written determination will include an explanation for the decision upholding the designation. This determination does not require a job audit.
    - ii) If MMB determines the position is not properly designated as temporary unclassified, and if the employing agency determines to convert the temporary unclassified position to the classified service, MMB or the delegated agency must perform a job audit to convert the position. The job audit must include the criteria listed in Section III below.
- 3) An employee in a temporary unclassified position may request review under this procedure 45 business days prior to serving one year in the position. However, an employee is not eligible for conversion unless they satisfy all criteria for conversion set forth in Section III below, including service in the position for at least one year.
- 4) A request for review under this procedure must be made to a delegated agency, or to MMB if the employing agency is not a delegated agency, no later than 63 business days prior to the end of the employee's appointment.

### III. Conversion of a Temporary Unclassified Position to Classified Service; Appointments

MMB, or a delegated agency, may convert a position from temporary unclassified to the classified service if the position was not properly designated as temporary unclassified when the position was created, or because a job audit shows that a change in circumstances justifies conversion.

When a temporary unclassified position is converted to a classified position, MMB, or a delegated agency, may authorize the probationary appointment of the incumbent employee to the newly classified position under Minnesota Statutes section 43A.15, subd. 7, if the incumbent has met **all** of the following criteria:

- 1) The incumbent meets all of the minimum qualifications of the newly classified position.
- 2) The incumbent served at least one year in the unclassified position before the position was placed in the classified service.
- 3) The incumbent was hired for the temporary unclassified position through an open competitive selection process in accordance with HR/LR Policy #1434, Recruitment & Selection and Administrative Procedure 10 Limited Consideration of State Employees.

If the incumbent employee is appointed to the newly classified position, the incumbent's classification seniority in the classified position starts as of the effective date of the incumbent's probationary appointment to the classified position.

## RESPONSIBILITIES

### I. Agencies

#### *Agencies Delegated for Temporary Unclassified Decisions*

- Designate positions as temporary unclassified in accordance with law and this Administrative Procedure.
- Report to the agency delegate changes in organization structure, job duties, or other relevant considerations that may affect the placement of a position in the unclassified service.
- Maintain individual position descriptions for each employee that reflect the nature, purpose, duties and responsibilities of the position. See Administrative Procedure 20.
- Notify the appropriate supervisor and incumbent of classification decisions.
- Review temporary unclassified designations when requested or as otherwise appropriate.
- Follow the review procedure in this Administrative Procedure.
- Convert positions that are no longer appropriately designated as temporary unclassified to the classified service, as appropriate.

#### *Non-Delegated Agencies*

- Designate positions as temporary unclassified in accordance with law and this Administrative Procedure, subject to approval by MMB.
- Report to the Agency Services Division of MMB changes in organization structure, job duties, or other relevant considerations that may affect the placement of a position in the unclassified service.
- Maintain individual position descriptions for each employee that reflect the nature, purpose, duties and responsibilities of the position. See Administrative Procedure 20.
- Notify the appropriate supervisor and incumbent of classification decisions.

- Follow the review procedure in this Administrative Procedure.
- Requests to MMB for designation of temporary unclassified positions, review of temporary unclassified designations, or conversion of temporary unclassified positions shall include:
  1. A completed position description signed by the appropriate parties.
  2. A current organization chart or description of the unit identifying the positions above, below, and the position to be studied.
  3. For new positions, a justification for placement in the temporary unclassified service based on the statutory criteria.
  4. For existing positions, a cover memo that states any changes to the position and sets forth the justification for the temporary unclassified designation or conversion to the classified service, based on the statutory criteria.
  5. For non-managerial positions that provide supervision or lead work direction to employees, a completed “Supervisory Status Questionnaire.”

## II. Minnesota Management and Budget

- For agencies without delegated authority, designate positions as temporary unclassified and convert temporary unclassified positions to the classified service in accordance with law and this Administrative Procedure.
- At the request of agencies, on its own initiative, or in accordance with the review procedure in this Administrative Procedure, review the designation of a position as temporary unclassified.
- Advise and train agencies on temporary unclassified criteria and job evaluation processes.

## OTHER RELEVANT LAWS, RULES, CONTRACTS AND ADMINISTRATIVE PROCEDURES

The following items are relevant to the material contained in this Administrative Procedure. Review of these items is essential for a total understanding of the subject:

- A. Minnesota Statutes § 43A.08, subd. 2a
- B. Minnesota Statutes § 43A.15, subd. 7
- C. Personnel Rule 3900.1300
- D. Administrative Procedure 10 – Limited Consideration of State Employees
- E. Administrative Procedure 20 – Job Clarification/Performance Appraisal
- F. HR/LR Policy #1434, Recruitment & Selection
- G. Job Audit Manual