

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources

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District Personnel Manual Issuance System

E-DPM Bulletin No. 9-23

SUBJECT: Statutory Restriction on Appointments of Certain Excepted Service Employees to Positions in other Services Preceding and After Mayoral Election

Date: April 15, 2014

1. Purpose

Because of the upcoming November 4, 2014 Mayoral general election, this Electronic-District Personnel Manual (E-DPM) bulletin serves as a REMINDER to subordinate agencies of the statutory restriction on non-competitive appointments of certain Excepted Service employees beginning 6 months before the Mayoral primary election and ending 3 months after the Mayoral general election.

Additionally, this E-DPM Bulletin provides general information on the ability of certain Excepted Service employees to return to vacant positions in the Career or Educational Services.

2. Statutory Restriction and Applicability

- a. The statutory restriction referenced above, contained in D.C. Official Code § 1-609.02, reads as follows:

"No person holding an Excepted Service appointment pursuant to § 1-609.03 or § 1-609.08 may be appointed to a position in the Career, Management Supervisory, or Educational Service during the period that begins 6 months before the Mayoral primary election and ends 3 months after the Mayoral general election." [Emphasis added.]

- b. The restriction applies to the following Excepted Service employees:

- (1) Excepted Service employees appointed under **D.C. Official Code § 1-609.03** –
- (a) Appointees to Excepted Service positions in subordinate agencies, part of the Mayor's one hundred sixty (160) and in the Executive Office of the

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Mayor or the Office of the City Administrator authorized in D.C. Official Code § 1-609.03(a)(1); and

- (b) Appointees to Excepted Service positions in subordinate agencies, authorized in D.C. Official Code § 1-609.03(a) (3) (5) (6).
- (2) Excepted Service employees appointed under **D.C. Official Code § 1-609.08** – These are the following statutory officeholders:
 - (a) The City Administrator;
 - (b) The Director of Campaign Finance, District of Columbia Board of Elections and Ethics;
 - (c) The Auditor of the District of Columbia;
 - (d) The Chairman and members of the Public Service Commission;
 - (e) The Chairman and members of the Board of Parole;
 - (f) The Executive Director of the Public Employees Relations Board;
 - (g) The Secretary to the Council;
 - (h) The Executive Director of the Office of Employee Appeals;
 - (i) The Executive Director and Deputy Director of the District of Columbia Lottery and Charitable Games Control Board;
 - (j) The Budget Director to the Council;
 - (k) The Chief Administrative Law Judge, the Administrative Law Judges, and the Executive Director of the Office of Administrative Hearings; and
 - (l) The Chief Tenant Advocate of the Office of the Tenant Advocate.

3. Provisions on the Statutory Restriction in D.C. Official Code § 1-609.02

- a. During the remaining 10-month (10-month) period immediately preceding and after the Mayoral general election, in this case from **April 15, 2014 through February 4, 2015**, Excepted Service employees as described in Paragraph 2(b) (1) and (2) above cannot be moved to positions in the Career Service, Management Supervisory Service, or Educational Service.
- b. This restriction applies only to non-competitive appointments/movement, and does not prevent an Excepted Service employee as described in Paragraph 2(b) (1) and (2) above from applying and competing for a position in any of the three (3) services, in accordance with the requirements of the District government's personnel law, D.C. personnel regulations, and the District government's recruitment and selection policies and practices.

4. Responsibilities Regarding the Movement of Covered Excepted Service Employees to Positions in the Career Service, Management Supervisory Service, or Educational Service

- a. Human resources staff within each subordinate agency delegated recruitment and selection authority via Mayor's Order 2012-28 are responsible for advising agency staff of the statutory restriction in D.C. Official Code § 1-609.02; and ensuring that the provisions of D.C. Official Code § 1-609.02 are strictly followed by their agency.
- b. Appropriate staff within the D.C. Department of Human Resources (DCHR) are responsible for ensuring that no personnel action request ("PAR") for the non-competitive movement of an Excepted Service employee, as described in Paragraph 2 (b) (1) and (2) of this E-DPM Bulletin, is processed.

5. Discretionary Return for Excepted Service Employees with Career or Educational Service Status

- a. While D.C. Official Code § 1-609.05 provides that employees in the Excepted Service do not have any job tenure or protection, D.C. Official Code § 1-609.02 provides in part that:

"...upon termination, a person with Career or Educational Service status may return, at the discretion of the terminating personnel authority, within 3 months of termination to a vacant position in such service for which he or she is qualified."
[Emphasis added.]

- b. Accordingly, for the purposes of this E-DPM Bulletin, the term "*discretionary return*" refers to the ability of an Excepted Service employee who previously had Career or Educational Service status, to return to a position in any of those two (2) services without having to compete.



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Director

Attachment:

- *Frequently Asked Questions*

GOVERNMENT OF THE DISTRICT OF COLUMBIA
D.C. Department of Human Resources



Excepted Service: Restriction on Movement of Certain Excepted Service Employees to the Career Service, Management Supervisory Service, or Educational Service during the remaining 10-Month Period Preceding and After the General Mayoral Election; and Discretionary Return of Certain Excepted Service Employees

Q1. What is this statutory (legal) provision restricting the movement of certain Excepted Service employees immediately before a Mayoral election?

A1. The restriction is contained in D.C. Official Code § 1-609.02, and it provides that:

“No person holding an Excepted Service appointment pursuant to § 1-609.03 or § 1-609.08 may be appointed to a position in the Career, Management Supervisory, or Educational Service during the period that begins 6 months before the Mayoral primary election and ends 3 months after the Mayoral general election.” [Emphasis added.]

Q2. What is an “appointment in accordance with D.C. Official Code § 1- 609.03?”

A2. An Excepted Service appointment “in accordance with D.C. Official Code § 1-609.03” is an Excepted Service appointment as follows:

- (a) Appointees to Excepted Service positions in subordinate agencies, part of the Mayor’s one hundred sixty (160) and in the Executive Office of the Mayor or the Office of the City Administrator authorized in D.C. Official Code § 1-609.03(a)(1); or
- (b) Appointees to Excepted Service positions in subordinate agencies, authorized in D.C. Official Code § 1-609.03(a)(3)(5)(6), which includes appointees in the following agencies: (1) Office the Inspector General; (2) Metropolitan Police Department; and (3) Fire and Emergency Medical Services Department.

Q3. What is an “appointment in accordance with D.C. Official Code § 1-609.08?”

A3. An Excepted Service appointment “*in accordance with D.C. Official Code § 1-609.08* is an Excepted Service **statutory officeholder** appointment in any of the following positions:

- *The City Administrator;*
- *The Director of Campaign Finance, District of Columbia Board of Elections and Ethics;*
- *The Auditor of the District of Columbia;*
- *The Chairman and members of the Public Service Commission;*
- *The Chairman and members of the Board of Parole;*
- *The Executive Director of the Public Employee Relations Board;*
- *The Secretary to the Council;*
- *The Executive Director of the Office of Employee Appeals;*
- *The Executive Director and Deputy Director of the District of Columbia Lottery and Charitable Games Control Board;*
- *The Budget Director to the Council;*
- *The Chief Administrative Law Judge, the Administrative Law Judges, and the Executive Director of the Office of Administrative Hearings; and*
- *The Chief Tenant Advocate of the Office of the Tenant Advocate.*

Q4. What is the period/length of the statutory restriction?

A4. The restriction period is April 15, 2014 through February 4, 2015.

Q5. Does the statutory restriction cover all appointments to the Career Service, Management Supervisory Service, and Educational Service?

A5. No, the restriction applies only to non-competitive appointments/movement and does not prevent an Excepted Service employee appointed in accordance with D.C. Official Code §§ 1-609.03 or 1-609.08 from applying and competing for a position in one of these three (3) services.

Q6. Is an Excepted Service employee with Career or Educational status entitled to a return?

A6. No, in accordance with D.C. Official Code § 1-609.05, any return offered to an Excepted Service employee with Career or Educational Service status is solely at the discretion of the terminating personnel authority, and must occur within 3 months of termination.

Q7. Is an Excepted Service employee with no Career Service or Educational Service status entitled to a return upon termination?

- A7. No; however, the individual may apply for vacant positions in any service that are advertised through competitive recruitment procedures.
- Q8. If an agency submits a *Personnel Action Request* (“PAR”) for the non-competitive appointment of an Excepted Service employee in one (1) of the categories described in Q2 and Q3 above to a position in the Career Service or Educational Service during the restricted period (May 5), can the PAR action be processed?**
- A8. No, the PAR cannot be completed and the Excepted Service employee cannot be moved if the *PAR* action was submitted during the April 15, 2014 – February 4, 2015 “restriction period.” Processing the action would violate the provisions of D.C. Official Code § 1-609.02.
- Q9. Can an Excepted Service employee “bump” a Career Service or Educational Service employee in an encumbered (filled) position?**
- A9. No, neither the personnel law nor the personnel regulations provide *“bumping rights.”* An Excepted Service employee eligible to a return can move only to a vacant position (at the discretion of the terminating personnel authority).
- Q10. What if an employee with Career Service or Educational Service status has been temporarily placed in an Excepted Service position? Can he or she return back to the Career Service or Educational Service?**
- A10. Yes, subsection 906.1 of Chapter 9, Excepted Service, of the D.C. personnel regulations, provides that a person holding a position in the Career Service may be detailed, temporarily promoted, temporarily transferred, or temporarily reassigned to a position that would otherwise be in the Excepted Service without losing his or her existing status in the Career Service or Educational Service. To implement a detail, temporary promotion, temporary transfer, or temporary reassignment of a Career Service or Educational Service employee to an Excepted Service position, the employee must be informed of the conditions of employment under the new appointment. A written acknowledgement of the temporary nature of the Excepted Service position and that the Career Service or Educational Service employee does not lose his existing status must be completed. The written acknowledgement is placed in the employee’s Official Personnel Folder (OPF).