

5122-7-11

Unclassified service.

- (A) The purpose of this rule shall be to establish procedures governing placement of employees in the unclassified service, revocation of an unclassified employee's appointment, and removal or suspension of unclassified employees.
- (B) The provisions of this rule shall be applicable department wide.
- (C) The following definitions shall apply to this rule in addition to or in place of those appearing in rule 5122-1-01 of the Administrative Code:
- (1) "Administrative relation" means a relationship where an employee has substantial authority to initiate discretionary action and/or in which the department must rely on the employee's personal judgment and leadership abilities.
 - (2) "Appointing authority" means the director of the department or the managing officer of an institution as defined in section 5119.27 of the Revised Code.
 - (3) "Classified service" means the competitive civil service of the state as specified in section 124.11 of the Revised Code.
 - (4) "Division" means, within ODMH, the director's office, administrative services, human resources, hospital services, program and policy development, legal and regulatory services, and the medical director.
 - (5) "Fiduciary relation" means a relationship where the department reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with the knowledge of proper procedures. It is characterized by qualities and personal attributes beyond technical competence that cannot be satisfactorily measured by competitive selection.
 - (6) "Primarily and distinctively administrative or managerial" means attributes describing positions which utilize discretion and independent judgement in establishing policies and discharging duties principally concerned with the planning, directing, and controlling of the operations, functions, or affairs of a division or other organizational unit. The term "primarily administrative or managerial," when used in division (A)(14) of section 124.11 of the Revised Code, is considered to be synonymous with this definition.
 - (7) "Removal" means a dismissal from duty which may include reasons specified in section 124.34 of the Revised Code.

- (8) "Revocation of appointment" means the withdrawal of an employee's appointment to the unclassified service.
 - (9) "Suspension" means a disciplinary action resulting in temporary deprivation of employment without pay as a punitive or disciplinary measure.
 - (10) "Unclassified service" means all positions which are exempt from all examinations and which provide no tenure under the law. Appointment to a position in the unclassified service may be made at the discretion of the appointing authority and the incumbent may be removed, suspended or reduced from the position at the pleasure of the appointing authority.
- (D) In accordance with divisions (A)(8), (A)(9), (A)(13), (A)(14), (A)(15), (A)(26) and (A)(32) of section 124.11 of the Revised Code, the following positions shall be in the unclassified service:
- (1) Four clerical and administrative support employees to the director.
 - (2) The department's division deputies and their assistants who are authorized to act for and on behalf of the agency, or hold a fiduciary or administrative relation to the department.
 - (3) Any physician or dentist who is a full-time employee of the department or of an institution under its jurisdiction; and physicians who are in residency programs at the institutions.
 - (4) Up to twenty positions at each institution under the jurisdiction of the department that the director determines to be primarily administrative or managerial.
 - (5) Up to fifteen positions in any division, excluding administrative assistants to the director and division deputies, which are within the immediate staff of a division deputy and which the director determines to be primarily and distinctively administrative and managerial.
 - (6) Up to five positions within the department that the director determines to be involved in policy development and implementation. The compensation for these positions shall not be less than the minimum of pay range 41 and not more than the maximum of pay range 44 for the E-2 salary schedule in accordance to section 124.152 of the Revised Code.

(E) The following procedure shall apply when the appointing authority determines that revocation of an unclassified employee's appointment may be necessary:

(1) The appointing authority shall confer with the division of human resources to determine whether the unclassified employee has a right to placement to a position within the classified service .

(a) If the unclassified employee has no right to placement back in the classified service, the appointing authority shall provide written notice of removal from employment with the department or institution. Should the employee request a statement of reasons for the removal, a statement may be provided upon consultation with the division of legal and regulatory services and the division of human resources.

(b) If the unclassified employee has a right to placement back in the classified service, the appointing authority shall provide written notice of the revocation of the employee's unclassified appointment. At that time, the employee may request placement back into the classified service. Upon such a request, the employee shall be placed into the classified service according to rules promulgated by the department of administrative services. Should an employee choose to resign and waive their right to return to the classified service, such waiver should be noted on their resignation.

(c) Pursuant to section 124.11 of the Revised Code, an unclassified employee who has a right to resume a position in the classified service forfeits that right when the employee is removed from the position in the unclassified service due to incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of Chapter 124. of the Revised Code or the rules of the director of administrative services, any other failure of good behavior, any other acts of misfeasance, malfeasance, or nonfeasance in office, or conviction of a felony. An unclassified employee in this situation shall be afforded a hearing before the appointing authority or their delegate prior to removal. The division of human resources shall advise as to the process of the hearing.

(F) When in the opinion of the appointing authority an unclassified employee should be disciplined via a suspension, the appointing authority may suspend the employee without regard to section 124.34 of the Revised Code. Therefore, no order of suspension need be prepared and no statutory cause for suspension need be cited. However, a precautionary order is recommended. Reasons for suspension should be discussed with the employee and a personnel action form documenting the

suspension action shall be prepared and filed.