

“CIVIL SERVICE SCHOOL” Key Notes from Class #4

“Civil Service tests” for County positions in Ohio have been gone for 20+ years...so how do we satisfy the requirement to fill vacant positions by “competitive examination”?

- Recruitment & Selection
- Probationary Period
- Compensation
- Overtime

Recall that Article XV, Section 10 of the Ohio Constitution requires that civil service positions, including those in counties, be filled “according to merit and fitness, to be ascertained as far as practicable by competitive examinations”.

Also remember that the “civil service” in Ohio is comprised of both the “classified” and “unclassified” service, and that positions in the “unclassified” service which serve at the pleasure of the appointing authority are **exempt** from the “competitive exam” requirement.

The state’s Department of Administrative Services (DAS) was the agency responsible for our classified civil service testing; while they maintained testing for state positions, by the mid-1980s they were only doing tests for certain JFS positions for counties, and by 1990 had pretty much stopped doing even those.

This created a quandary: how can counties comply with the examination requirement if the agency having that responsibility just...stopped...doing them? Many new county employees in the 1980s-1990s who didn’t take a “competitive examination” were hired under the former “provisional” status in the Ohio Revised Code—they weren’t **statutorily** considered “permanent” until after 2 years of employment! Even though this “technical” option did exist, it still didn’t fully comply with the actual words of the state Constitution.

Finally, in 2007 the Ohio General Assembly, working with interested counties (including Lucas), passed amendments to the ORC that significantly changed the “competitive examination” requirements while still ensuring that positions were filled by “merit & fitness”. Let’s look at ORC 124.23 to see what changed...

Chapter 124 | Department of Administrative Services - Personnel

Ohio Revised Code / Title 1 State Government

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Section

Section 124.01 | Department of administrative services - personnel definitions.

Section 124.011 | City school districts - civil service commissions.

Section 124.02 | Director of administrative services and state personnel board of review to set commission.

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Section 124.21 | Civil service districts.

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Section 124.23 | Examinations.

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Section 124.24 | Examinations for employees engaged in mi

Section 124.241 | Professional employees and registered service employees of county board of

Section 124.25 | Formal application for examination.

There are only a few Sections of Chapter 124 that deal with recruitment/selection for counties...we'll start here!

ORC 124.23 (B) requires that all examinations be “public” and “open to all citizens of the United States and those persons who have legally declared their intentions of becoming United States citizens”. We will see shortly that this means we need to publicly post recruitment for classified positions, including minimum qualifications, so that people are aware and can “apply” to be considered for “examination” for the position.

ORC 124.23 (C) (1) and (2) provide a “credit” that can be added to a person’s “score” for qualifying military service (*but what if there isn’t an actual numerical “score” calculated?*).

But ORC 124.23 (D) is where the significant changes occurred. No longer are we statutorily required to provide a “civil service test”!

"An examination may include..."

"AN EVALUATION OF SUCH FACTORS AS
EDUCATION, TRAINING, CAPACITY, KNOWLEDGE,
MANUAL DEXTERITY, AND PHYSICAL OR
PSYCHOLOGICAL FITNESS."



"An examination shall..."

"CONSIST OF ONE OR MORE TESTS IN ANY
COMBINATION."



"Tests may be..."

"WRITTEN, ORAL, PHYSICAL, DEMONSTRATION
OF SKILL, OR AN EVALUATION OF TRAINING AND
EXPERIENCES AND SHALL BE DESIGNED TO
FAIRLY TEST THE RELATIVE CAPACITY OF THE
PERSONS EXAMINED TO DISCHARGE THE
PARTICULAR DUTIES OF THE POSITION...."



"Tests may include..."

"STRUCTURED INTERVIEWS, ASSESSMENT
CENTERS, WORK SIMULATIONS, EXAMINATIONS
OF KNOWLEDGE, SKILLS, AND ABILITIES, AND
ANY OTHER ACCEPTABLE TESTING METHODS."

Some of the key components of a “structured interview” include:

- Questions are determined **in advance & in writing**
- **All** of these core questions are asked of **all** interviewees (follow-up questions are permitted where needed on an individual basis)
- Questions should be **reflective of the actual job duties**
- Preference is for “**behaviorally/competency-based**” questions which **illuminate how the candidate has performed in the past**
- Where possible, questions asked should have specific responses that we are looking for (i.e., *success in this job would mean xyz*)
- The interviewers take notes on candidate’s **responses** (not interpretations) as well as any specific follow-up questions asked, including those asked by the candidate

Competency-Based Interview Questions Resource Manual

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Instructions:

Click on the above link to see the
bookmarks to the left to navigate

The CPD has a nice
tool available to
help you think about
what great
questions to ask!

Interview Questions - Working Document

COMPETENCY/ DEFINITION	INTERVIEW QUESTIONS
Attention to Detail <i>Directs attention to the task at hand in order to avoid making mistakes. Prepares and carefully reviews figures, computations, reports, etc., to identify any errors or problems, ensures consistency and that information can be understood by all who read it. Shows concern for all aspects of the job no matter how small.</i>	<ol style="list-style-type: none"> 1. What methods/procedures do you use to make sure that your work is error free? Give me a specific example that shows when you used these methods. 2. Describe a situation where you discovered a mistake prior to distributing a letter, etc.). How did you discover the mistake and what action did you take to learn? 3. Describe a situation where you did not discover a problem prior to distributing work output. What was the impact and what did you learn from it? 4. Tell me about a task that you have delegated to someone else in the last six months. What approach did you take to ensure the accuracy of the result? What was the result? 5. Describe a critical task or process you do routinely. The last time you completed this task, what steps did you take to ensure that the result was 100% accurate and what was the result? 6. How do you keep from overlooking mistakes when reviewing long, complex tasks? Give me an example of when you used this method recently. 7. Tell me about a time when something went wrong in your work. What did you learn from it?

Be aware of interview questions that could be viewed as discriminatory or that may be prohibited by federal EEO or Ohio civil service laws! It is best to have HR review any draft questions!



Short answer: NO.

ORC 9.481 (B) (1) states that “no political subdivision shall require any of its employees, as a condition of employment, to reside in any specific area of the state.”

However, there is an exception available: to ensure “adequate response times” by “certain employees” to “emergencies or disasters”, a political subdivision can require that “any” employees reside either in the county itself or any adjacent county in Ohio. This can be done either by initiative ballot petition by the voters of the political subdivision or by resolution of the legislative authority for the political subdivision (which by statute is the Board of County Commissioners for a county). **This is NOT in effect in Lucas County.**

Chapter 124 | Department of Administrative Services - Personnel

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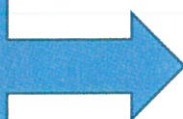
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Section 124.26 | Eligibility lists; veteran's preference; expiration of list.

Section 124.27 | Appointments from eligible lists - probation.

Section 124.271 | Provisional employees.

**Let's look at what
this Section has to
say next!**



ORC 124.27 (A) refers to an “eligible list”, which is outdated language that applies to the actual civil service testing days (test takers were placed on a list in order of scores). Today, this is interpreted to mean that the appointing authority may only select a new hire from the list of those “eligible”. But what does that mean? All those who applied? Only those who applied & met the minimum qualifications? Only those who applied, met the MQs, and were actually “tested”, i.e. interviewed? Honestly...we aren’t really sure.

- Select from one of the “top 10” or from one of the “top 25%”, whichever is greater
- If there are 10 or fewer names, may select any of them
- Make sure applicants being considered complete an actual job application, not just submit a resume!

NOTE: This Section does NOT apply to county employees—only to state employees! Rules regarding promotions would be covered in a collective bargaining agreement for bargaining unit positions, and should still be based on “merit & fitness” for other non-bargaining unit positions.

Section 124.31 | Promotions.

Section 124.32 | Transfers - reinstatements.

Section 124.321 | Reduction in work force - layoffs - job aboli

The ORC also has statute regarding probationary periods.

For those, we'll stay in this Section...

Section 124.26 | Eligibility lists; veteran's preference; expiration of list.

Section 124.27 | Appointments from eligible lists - probation.

Section 124.271 | Provisional employees.

This time, we'll be looking at 124.27 (B):

- A probationary period is required for **all classified positions** filled by a **new hire** ("original appointment") or **internal promotion**.
- This probationary period must be **no less than 60 calendar days but no more than one calendar year** for full-time employees & part-time employees who work a portion of **every day of the week** (to be negotiated for bargaining unit positions); intermittent employees serve a probationary period using a formula.
- Time spent on **unpaid leave** of absence **does not count** (add days to the probationary period).
- No appointment or promotion is "final" until the employee has satisfactorily completed the probationary period.
- A probationary employee may be **removed or reduced at any time during the probationary period if their service is considered unsatisfactory**.
- A probationary removal or reduction is **not** appealable to the State Personnel Board of Review (*but may be grieved if involving a bargaining unit employee serving a promotional probationary period*).
- The ORC is silent regarding "**extensions**" to **probationary periods**; however, Courts have ruled that these are to the employee's benefit & not harmful, even though controlled by the employer. For bargaining unit employees, cover extensions in the collective bargaining agreement. For non-bargaining unit employees, **1)** keep in mind that the max for a probationary period is one year; **2)** be reasonable in the length of extension (30-60 calendar days), and **3)** get the employee's agreement to any extension in writing.

PART-TIME INTERMITTENT:
1,000 hours = 180 days
1,400 hours = 252 days
1,500 hours = 270 days
1,700 hours = 300 days
2,000 hours = 365 days

Ohio Administrative Code 123:1-19-04

Conduct/behavior issues are different from performance/ability to learn the job duties. Conduct/behavior issues should be dealt with much sooner than later, and with limited if any "second chances", depending on the severity!

How long do we give a probationary employee to correct issues?

Although probationary removals aren't appealable to SPBR, the former employee may still file an EEO or Ohio Civil Rights charge, so follow these best practices:

- Conduct probationary performance evaluations at several intervals
- Make sure all evals are in writing, with specifics, including how to improve performance
- Engage the probationary employee, don't "lecture" them

Temporary employees are **UNCLASSIFIED** and **NOT** subject to "examination" nor do they really serve a probationary period.

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Section 124.29 | Authority for temporary furloughs.

Section 124.30 | Filling classified positions in civil service without competition.

Section 124.301 | Waive residency for job and family services employee

- Temporary appointments are only for urgent reasons
- Temporary appointments are limited to 120 calendar days...
- ...UNLESS filling in for an employee on approved leave
- Successive temporary appointments for same person are prohibited

Be aware of special requirements found in ORC 145.381 which may apply!

What happens if we want to re-hire a former employee who retired from us?

IF the retired employee used to work in a position “customarily filled by a vote of members of a board or commission or by the legislative authority of a county (Board of County Commissioners)”,

AND it is proposed that this retired employee would be re-hired into the **same** position they retired from,

THEN the following must occur before re-employment can begin:

(1) Not less than sixty days before the employment as a reemployed retirant is to begin, give public notice that the person is or will be retired and is seeking employment with the public employer;

(2) Between fifteen and thirty days before the employment as a reemployed retirant is to begin, hold a public meeting on the issue of the person being employed by the public employer.

Note that ORC 145.381 only applies to county appointing authorities who are a board, a commission, or the board of county commissioners; it does not apply to individual county elected officials who are appointing authorities.

Is there anything in the ORC that governs compensation for County employees?

In a word: No.

We’ve previously looked at a couple Sections of ORC that give broad authority to a County appointing authority to “set compensation”. While there are several Sections that apply to **State** employees, things like starting pay, promotion pay, TWLs, & temporary pay supplements are left to the discretion of the County appointing authority (subject to collective bargaining, of course). **But as we’ll see in Class #5, reductions in pay are a different story!**

Overtime is actually required by a federal, not state, law (the “Fair Labor Standards Act”, or FLSA).

Our final topic for this class session is overtime.

While State law mirrors the federal requirements, there are a few things in the ORC that touch on some of these requirements; we find these in **ORC 4111.03**

Ohio Revised Code

Title

General Provisions

Title 1 | State Government

Title 3 | Counties

Title 5 | Townships

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Title 59 | Insurance

Title 41 | Labor and Industry

Title 43 | Liquor

Start by looking for
Title 41

Title 41 | Labor and Industry

Ohio Revised Code

Chapter

Chapter 4101 | Safety In The Workplace

Chapter 4104 | Boilers

Chapter 4105 | Elevators

Chapter 4109 | Employment Of Minors

Chapter 4111 | Minimum Fair Wage Standards

Chapter 4112 | Civil Rights Commission

Then go to Chapter
4111

Chapter 4111 | Minimum Fair Wage Standards

Ohio Revised Code / Title 41 Labor and Industry

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Section

Section 4111.01 | Minimum fair wage standards definitions.

Section 4111.02 | Wage rates.

Section 4111.03 | Overtime.

Lastly, select Section
4111.03

A county employee who is not exempt from the FLSA shall be paid at time-and-a-half for every hour over 40 worked in a week

ORC 4111.03 (A)

A county employee may choose to be compensated for OT in the form of compensatory time ("comp time") at the same rate of time-and-a-half, with the comp time to be used by the employee within 180 days of when it was earned

ORC 4111.03 (B)

A county appointing authority (except a county JFS department) may adopt a policy indicating their intention to **NOT** require comp time to be used within 180 days of being earned

ORC 4111.03 (C)

NOTE: Overtime is also a mandatory subject for collective bargaining.

The only thing that ORC 4111.03 adds to the conversation about overtime is the availability & use of comp time, which is not common in the private sector.

For guidance on the rules governing OT (permitted exemptions from OT, defining "hours worked", etc...) you should review information provided on the U.S. Department of Labor website:

www.dol.gov/general/topic/workhours/overtime