

Emergency Rules

**Title 1—OFFICE OF ADMINISTRATION
Division 20—Personnel Advisory Board and
Division of Personnel
Chapter 3—Personnel Selection, Appointment,
Evaluation and Separation**

EMERGENCY AMENDMENT

1 CSR 20-3.040 Probationary Period. The board is amending sections (1) and (2) and deleting sections (4)–(6).

PURPOSE: This amendment revises this rule pursuant to changes to Chapter 36, RSMo made by Senate Bill 1007 (2018).

PURPOSE: This rule establishes the conditions and procedures which govern the probationary period of employment required for individuals appointed or promoted to positions described under section 36.030.1(2), RSMo.

EMERGENCY STATEMENT: This emergency amendment incorporates and implements changes to the law effected by Senate Bill 1007 (2018), effective August 28, 2018. Emergency amendment of this rule is necessary to preserve the compelling governmental interest of successfully implementing the changes to Chapter 36, RSMo made by Senate Bill 1007 (2018) across the departments and agencies of the executive branch of Missouri state government. Provisions of the existing rule are inconsistent with the provisions of Chapter 36, RSMo, effective August 28, 2018, and must be amended to avoid confusion or improper application, avoid potential liabilities, and ensure consistent implementation of Senate Bill 1007 (2018). A proposed amendment which covers the same material will be filed at a later date to be published in the Missouri Register. The scope of this emergency amendment is limited to the circumstances creating the emergency and complies with the protections extended in the Missouri and United States Constitutions. The Personnel Advisory Board believes this emergency amendment is fair to all interested persons and parties under the circumstances. This emergency amendment was filed August 17, 2018, becomes effective August 28, 2018, and expires February 28, 2019.

(1) **Objective and Scope.** The probationary or working test period shall be utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee to his/her position and for rejecting any employee whose performance does not meet the required work standards. **This rule applies only to positions described under section 36.030.1(2), RSMo.**

(2) **Duration.** *[Every person appointed to a permanent position subject to the law shall be required to successfully complete a working test during a probationary period which shall be of sufficient length to enable the appointing authority to observe the employee's ability to perform the various principal duties pertaining to the position; however, a new probationary period shall not be required for a regular employee who is reinstated within two (2) years after layoff, or demotion in lieu of layoff, by the same division of service.]* The probationary period shall begin upon *[reemployment, noncompetitive appointment, noncompetitive promotion or appointment from a register of eligibles, a promotional register or reinstatement register. However, uninterrupted service in a position by a provisional or emergency employee which immediately precedes an appointment from the register to the same position shall be credited toward the probationary period except that the employee must serve in probationary status at least sixty (60) days following his/her appointment]* **the appointment or promotion of the employee.** Any interruption of

service during the probationary period shall not be counted as a part of the total probationary service required. Probationary service will be subject to the following provisions:

(A) The normal length of probation for employees in all medical and dental classes of positions and in classes identified by the director as having substantial supervisory or administrative responsibilities shall be twelve (12) months. The maximum length of probation shall be eighteen (18) months and the minimum length of probation shall be six (6) months for employees in those positions serving original or promotional probationary periods;

(B) The normal and the minimum length of probation for all other classes of positions shall be six (6) months for employees in those positions serving an original or promotional probationary period. The maximum length of probation for those employees shall be twelve (12) months;

[(C) The minimum length of probation shall be three (3) months for employees of any class who are serving a probationary period following reemployment under these rules or following reinstatement which occurs later than two (2) years after the effective date of layoff or demotion in lieu of layoff. The normal and the maximum length of probation in these cases shall be the same as is provided in this rule for promotional and original probationary periods for the class category involved. However, a probationary period is not required for employees of any class who are reinstated within two (2) years of layoff or demotion in lieu of layoff;]

[(D)](C) If an appointing authority finds that it will require more time than the normal probationary period to evaluate an employee's ability to successfully perform the various duties of a position, the appointing authority may extend the probationary period not to exceed the maximum period allowed under these rules. Prior to the expiration of a normal probationary period, the appointing authority shall notify the employee in writing of the reasons for, and duration of, the extension. A copy of the notice shall be filed with the director;

[(E)](D) If an appointing authority finds that a probationary employee is performing the duties of a position in an effective and fully satisfactory manner, the appointing authority may reduce the length of probation to no less than the minimum probationary period prescribed under these rules for the class and type of appointment involved. The appointing authority shall notify the employee and the director in writing of the reduction and the reasons; **and**

[(F)](E) The normal probationary period for the class involved shall be served by all employees unless the appointing authority takes specific action under these rules to extend or reduce the length of probation; *and/* **for a specific probationary employee or for employees in a particular job class.**

[(G) Probationary periods which have been entered into by an employee prior to July 19, 1947 shall be completed in accordance with the rules in effect at the beginning of the probation (see section 36.250, RSMo).]

[(4) Dismissal During Probationary Period. At any time during the probationary period the appointing authority may remove an employee if, in the opinion of the appointing authority, the working test indicates that the employee is unable or unwilling to perform the duties of the position satisfactorily or that his/her habits and dependability do not merit his/her continuance in the service. Upon removal, the appointing authority shall report to the director and to the employee removed the action and the reasons. No more than three (3) employees shall be removed successively from the same position during their probationary period without the approval of the director. An employee who is found by the director to have been appointed through fraud or error shall be removed within ten (10) days of notification to this effect by the director to the appointing authority. An employee serving a probationary

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period following a promotion shall be considered a regular employee with respect to the class of position held prior to promotion as defined in section 36.020(14), RSMo and shall have all the rights and privileges accorded regular employees under section 36.390.5, RSMo.

(5) Probationary Period Reports. At least ten (10) days prior to the expiration of an employee's probationary period, the appointing authority shall notify the director in writing whether the services of the employee have been satisfactory and whether s/he will continue the employee in his/her position. A copy of the notice shall be given to the employee. No employee shall be paid for work performed after the expiration of the probationary period unless, prior to the performance of the work, the appointing authority has notified the director that the employee will be continued in his/her position. Upon successful completion of an original probationary period, an employee shall receive a regular appointment and the director shall be so notified in accordance with 1 CSR 20-1.050(2).

(6) Restoration to Appropriate Register. If an employee is removed from his/her position during or at the end of his/her probationary period and the director determines that s/he is suitable for appointment to another position, his/her name may be restored to the register from which it was certified. An employee appointed from a promotional register who does not complete the probationary period successfully shall be reinstated in a position in the class occupied by the employee immediately prior to his/her promotion or in a comparable class.]

*AUTHORITY: section 36.070, RSMo Supp. [1998] 2018. Original rule filed July 9, 1947, effective July 19, 1947. For intervening history, please consult the **Code of State Regulations**. Emergency amendment filed Aug. 17, 2018, effective Aug. 28, 2018, expires Feb. 28, 2019. An emergency amendment covering this same material will be published in the October 1, 2018, issue of the **Missouri Register**. A proposed amendment covering this same material will be filed at a later date to be published in the **Missouri Register**.*