



DEPARTMENT OF ADMINISTRATION

Enterprise Policy

HR-TRANSFERS-2019

DIVISION OF HUMAN RESOURCES

Transfer Policy

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Kyle Adamonis
(401) 222-5664

kyle.adamonis@hr.ri.gov

1. Purpose

- a. During the course of business, there arise occasions where a determination may be made by an appointing authority to transfer an employee from one entity to another for the good of the operations. Given that there are three statutes which govern the transfer of an Executive Branch employee, this policy serves to provide clarification as to the applicability, accountability and parameters of these statutes that dictate a transfer action.

2. Statutes that Govern the Transfer of an Executive Branch Employee

- a. R.I. Gen. Laws § 36-4-34.1 titled Transfer of state employees:
 - (i.) Applicable to non-union employees only
 - (ii.) May be classified, unclassified or non-classified
 - (iii.) Must be a comparable position within executive branch
 - (iv.) Employee retains civil service status, rate of pay and benefits
 - (v.) For a duration of 1 year, but may be extended upon request
- b. R.I. Gen. Laws § 36-4-34 titled Transfer within classified service:
 - (i.) Applicable to classified employees only
 - (ii.) May be union or non-union
 - (iii.) Must be the same class of position
 - (iv.) No limitation on the duration of the transfer
- c. R.I. Gen. Laws § 42-40-3 titled Interchange of Government Employees:
 - (i.) Applicable to all government employees subject to applicable merit system laws/rules and CBAs
 - (ii.) Transfer from state agency to another state government (state other than RI), federal agency, municipality, state college, instrumentality of the state (i.e. water district, fire district) or quasi state agency
 - (iii.) No more than 36 months within a 60-month period

3. Definitions

- a. **"Comparable Position"** - A "comparable position" is defined as a job assignment with duties and responsibilities and/or knowledge, skills, and abilities which are reasonably

similar to the general nature of work in the employee's current position and/or those contained in prior positions held by the employee. Considerations may include current employment, prior employment/work experience and education/training. See PR 6.051. Emphasis added.

- b. **“Same Class of Position”** - the personnel administrator is required in this respect to see to it that all positions that are substantially similar with respect to authority, responsibility, and character of work are included within the same class. See *Prete v. Parshley*, 99 R.I. 172 (1965).
- c. **“Inter-agency”** - For the purposes of this policy, an inter-agency transfer would be of an employee from one Executive Branch agency to another Executive Branch agency. Note that for the purposes of this policy, agencies under the auspices of EOHHS are considered to be standalone agencies and the transfer of an employee from one agency to another agency would be considered an inter-agency transfer.
- d. **“Intra-agency”** - For the purposes of this policy, an intra-agency transfer would be of an employee within the same Executive Branch agency.

4. Special Note on Collective Bargaining Agreements

- a. When seeking to transfer a union employee under R.I. Gen. Laws § 36-4-34 or under R.I. Gen. Laws § 42-40-3, the Agency Director seeking the transfer is directed to review the applicable collective bargaining agreement (CBA) to ensure the transfer is consistent with the CBA.

5. Procedures for Compliance

- a. R.I. Gen. Laws § 36-4-34.1: If it has been determined that it is in the best interest of the state that a non-unionized employee be transferred to a comparable position within the executive branch of state service, retaining their civil service status, rate of pay and benefits and the intended duration is one year or less, the Agency Director of the sending agency must gain approval from the Director of Administration and the Personnel Administrator by means of the completion of an Intent to Transfer form. This Form must be submitted no less than ten (10) business days before the intended date of transfer. The Director of Administration and the Personnel Administrator will then sign the Intent to Transfer form and return the form to the Agency Director, indicating the transfer request has been approved.
 - (i.) Following the official approval of the transfer, the Director of Administration's Office will send a transfer letter to the employee with information pertinent to the transfer action, with a copy to the Personnel Administrator.
 - (ii.) Per the governing statute, within seven days of the Transfers of State Employee to Comparable Position Report and cover letter will be filed by the Office of the Director of Administration with the required information to identified legislative entities.
 - (iii.) Approaching the one-year mark and each one year mark thereafter, if it has been determined that it is in the best interest of the state that the transferred employee remain in his/her transfer position, the requesting authority must submit for approval extension to the Director of Administration and the Personnel

Administrator by means of the Intent to Transfer form no less than ten (10) business days before the one-year anniversary of original transfer date.

- (iv.) Upon approval and as per the governing statute, within seven days of the transfer extension, the Transfers of State Employee to Comparable Position Report will be filed by the Office of the Director of Administration with the required information to the identified legislative entities.
 - (v.) Upon the decision to transfer the employee back to their pre-transfer agency and no less than ten (10) business days before the conclusion of the transfer period, the Agency Director of the sending agency must submit an Intent to Transfer form to the Director of Administration and the Personnel Administrator, indicating the employee's transfer assignment has concluded. The Agency Director will then send a letter to the transferred employee, indicating that the transfer has concluded and shall contain other applicable information to the employee regarding the transfers conclusion. A copy of this letter shall be forwarded to the Personnel Administrator.
- b. R.I. Gen. Laws § 36-4-34: If it has been determined that it is in the best interest of the state to transfer a classified employee in the same classification from one entity to another entity, be it inter-agency or intra-agency, an Intent to Transfer form must be submitted to the Personnel Administrator no less than ten (10) business days before the intended date of transfer.
- (i.) If the transfer is inter-agency, signature on the Form is required by both appointing authorities of the transferring and receiving agencies. The Form shall then be forwarded to the Personnel Administrator, who will then sign the Intent to Transfer form and return the form to both Agency Directors, indicating the transfer request has been approved.
 - (ii.) Following the official approval of the transfer, the sending agency will send a transfer letter to the employee with information pertinent to the transfer action, with a copy to the Personnel Administrator.
 - (iii.) If the transfer is intra-agency, the appointing authority of the agency shall complete the Intent to Transfer form and submit it to the Personnel Administrator along with a copy the of the transfer letter to the employee with information pertinent to the transfer action. Receipt of this documentation to the Personnel Administrator must be no later than ten (10) business days before the intended date of the transfer.
- c. R.I. Gen. Laws § 42-40-3: If it has been determined that it is in the best interest of the state to transfer an employee of the State from a state agency to another state government, a federal agency, municipality, state college, another instrumentality of the state such as a water district or fire district, or a quasi-state agency, an Intent to Transfer form must be submitted to the Personnel Administrator indicating the agreement between the State's appointment authority and the external appointing authority no less than ten (10) business days before the intended date of transfer. The sending agency will send a transfer letter to the employee with information pertinent to the transfer action, with a copy to the Personnel Administrator.

- (i.) Leading up to the initial period of 36 months, if it has been determined that it is in the best interest of the state that the transferred employee remain in their transfer position, the requesting authorities of the two entities must submit for the intent to extend to the Personnel Administrator by means of the Intent to Transfer form no less than ten to (10) business days before conclusion of the initial allowable 36 month period.
- (ii.) Following the maximum allowable period of 60 months or a lesser determined transfer period, the employee shall be transferred back to their pre-transfer agency and position. At this time and no less than ten (10) business days before the ending of the transfer period, the appointing authorities of both entities must submit a joint Intent to Transfer form to the Personnel Administrator. Included shall be a copy of the letter to the employee regarding the transfers conclusion.
- (iii.) If it has been decided that it is in the best interest of the state that the employee who been transferred under R.I. Gen. Laws § 42-40-3 shall remain in their transferred position beyond the maximum allowable period of 60 months, the appointing authority of the transferred employees' base agency may request an extension under R.I. Gen. Laws § 36-4-34.1 or R.I. Gen. Laws § 36-4-34 as applicable. In either case, the appointing authority must follow the parameters for the applicable statute as detailed above.

6. Repercussions for Noncompliance

- a. Failure to follow the practices, rules and procedures found herein may result in denial of a request for transfer.
- b. Unless otherwise prohibited by law, the State expressly reserves the right to modify this policy without notice.

7. Signatures

[Handwritten Signature]
Executive Director of Human Resources

6/7/19
Date

[Handwritten Signature]
Director of Administration

6/10/19
Date

