




<b>Approved by:</b> Juan Williams, Commissioner	<b>Policy Number:</b> 23-002
<b>Signature:</b> 	<b>Supersedes:</b> 12-067, 12-020, 12-019
<b>Application:</b> Executive Branch Agencies, Human Resource Officers, All Employees	<b>Effective Date:</b> July 1, 2023
<b>Authority:</b> T.C.A. § 4-3-1703, T.C.A. § 8-30-104, T.C.A. § 8-30-201, T.C.A. § 8-30-202	<b>Rule:</b> Chapter 1120-02

## Designating Positions in State Service

Pursuant to Tenn. Code Ann., Section 8-30-201, state service is divided into the preferred service and the executive service.

### Designating Positions as Preferred or Executive Service

Pursuant to Tenn. Code Ann. § 8-30-202, the following positions have been designated as executive service:

1. Any officer or employee appointed by the governor and all positions permanently assigned to the governor’s office and governor’s residence.
2. Any deputy commissioner or equivalent authority and any assistant commissioner or equivalent in each department or state agency. Equivalent authority is determined by duties, responsibilities, and reporting relationships. Salary level may be an indicator but may not be the only factor considered. Chief executive officers of commissions and agencies are considered equivalent to or higher than assistant commissioners.
3. Wardens and directors of correctional facilities identified in Title 41 and chief officers of mental health institutes or developmental centers identified in Title 33. These individuals are not considered equivalent to assistant commissioners for the purposes of this policy.
4. The head of a division or major unit within a state agency or regional director or manager for a state agency, regardless of the title of the position, who, as a substantial part of the position’s duties, provides meaningful input on the development of agency/departmental policy goals or the implementation of agency/departmental policy.
5. The highest ranking employee of a state agency who has a primary responsibility for one (1) or more of the following functions:
  - a. Public information and legislative affairs;

- b. Fiscal, budget, and audit matters;
  - c. Security or internal affairs;
  - d. Information technology systems; and
  - e. Human Resources.
6. A clinical director, medical director, or other licensed physician.
  7. A licensed attorney engaged in the practice of law and representing the state in such capacity.
  8. Any position serving in a confidential capacity to a commissioner, deputy commissioner, assistant commissioner or equivalent authority. Positions serving in a “confidential capacity” are administrator and professional positions to commissioners, deputy, or assistant commissioners, or equivalent authorities. A position serving in a confidential capacity has access to confidential information of a highly sensitive nature that is used to contribute significantly to the development and implementation of agency/departmental policy goals. A position does not automatically rise to the level of confidential by merely having access to confidential information. While this does not require a direct report, the Department will determine when an administrative or professional position has a relationship to a commissioner, deputy, or assistant commissioner or equivalent that rises to the level of confidential. In addition, the executive secretary, or similar job classifications, may be included in this category because of the nature of the secretary’s work.
  9. An employee of the department of mental health and substance abuse services who is a psychiatric hospital superintendent, psychiatric hospital administrator, or psychiatric hospital nurse executive.

Excluding the positions or their equivalents listed above, all other full-time positions in state service are preferred service.

The agency will submit an Electronic Position Change Request (ePCR) to change the status of the position.

### **Filled Positions Moved into Executive Service**

When due to changes within an agency’s organizational structure or the job duties of the position, if a filled position meets the standard as outlined in the “Designating Positions as Preferred or Executive Service” section to move from preferred service to executive service, the position will be designated as misclassified until it is vacated. At the time the position is vacated, the position will then be moved to executive service. The agency shall submit an ePCR to change the status of the position. If a preferred employee accepts an executive service appointment, that employee then becomes part of the executive service.

### **Executive Service Positions Changing to Preferred Service**

When an appointing authority submits a written justification requesting to change a filled executive service position to the preferred service, as defined in Tenn. Code Ann. § 8-30-202 in the appointing authority's agency, the Commissioner of the Department of Human Resources (Department) will determine:

- (a) if the incumbent meets the minimum qualifications as required by the job specification for the incumbent's job classification, and
- (b) if the incumbent has at least one (1) calendar year of state service performing the major duties in the job classification to which the position is assigned, known as a reasonable test of fitness.

An incumbent who meets the minimum qualifications and has performed the major duties and responsibilities of that job classification for at least one (1) calendar year shall be certified as qualified and will be changed to a preferred service employee.

At the completion of one (1) calendar year, the Department shall certify to the appointing authority when an incumbent does not meet the minimum qualifications. The appointing authority shall notify the incumbent that they do not qualify and give notice that the incumbent will be dismissed within sixty (60) days after the certification, or within sixty (60) days after the establishment of a pool of applicants for such position, unless the appointing authority certifies to the Department that such incumbent has rendered satisfactory service and should be retained, although without becoming a preferred employee.

On the basis of noncompetitive testing, the Department may authorize continued employment of the incumbent in another position of no higher rank in the classification plan for which the incumbent is found to meet the minimum qualifications and, if the incumbent is so employed, the incumbent shall be deemed to be a preferred employee.

The agency shall submit an ePCR to change the status of the position.

Questions regarding this policy may be directed to the Compensation Division.