

LEGISLATIVE VICTORY

Crediting Provisional Time

A bill has been signed into law, which requires that any time spent as a provisional employee be counted towards an employee's probationary term upon receiving a permanent appointment in the same title.

This law went into effect on September 7, 2023.

What was the law before?

Employees can spend years as a provisional employee as they wait for available civil service tests. Once appointed to a permanent role, they can be required to spend up to an additional year on probation.

Who does this affect?

Nearly 18,000 provisional employees who work for the State of New York, municipal governments, and school districts.

What is the law now?

All the time that an employee spends as a provisional employee will count towards their probationary term once they receive a permanent appointment in the same title.

Why does this matter?

Provisional and probationary employees do not have access to the same disciplinary rights as permanent employees and can be fired at will. Under this new law, employees will not have to wait another year without these rights.

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Guidance for Counting Provisional Time Towards Probationary Periods

On October 13, 2023, the State Department of Civil Service released guidance on the application of a new law, which requires any time spent as a provisional employee to be counted towards an employee's probationary term upon receiving a permanent appointment to the same title. This law went into effect on September 7, 2023.

- Any provisional employee that receives a permanent appointment to the same title that they were serving in provisionally on or after September 7, 2023, shall have all the time in provisional status counted towards completing the required probationary period.
- These changes do not apply to individuals who served provisionally and were permanently appointed prior to September 7, 2023.
- These changes impact provisional appointments AND provisional promotions.
- These changes do not apply to temporary appointments.
- For the provisional service to count towards completion of probation, the permanent appointment must be immediately following the provisional service in the same title, in the same agency.
- These changes do not apply in cases where an individual receives a new appointment to a parenthetical position. For example, if an individual serves provisionally as a Child Support Investigator, that time would not count towards the probationary period of a Child Support Investigator (Spanish Speaking).
- If an individual serving provisionally missed more than 10 days of work, those absences could be added to the time that needs to be served to count towards the completion of the probationary term.
- If an individual serving provisionally fails the civil service examination, they will not have their provisional time counted towards probation since they are not eligible for permanent appointment to the position immediately following provisional service.

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