

THIRD CLASS CITY CODE - PHYSICAL AND PSYCHOLOGICAL EXAMINATIONS,  
GRADING FOR DISCHARGED SERVICEMEN, SELECTION OF APPOINTEE AND  
PROMOTIONS OF CIVIL SERVICE APPLICANTS

Act of Oct. 19, 2010, P.L. 533, No. 77

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Session of 2010  
No. 2010-77

HB 1517

AN ACT

Amending the act of June 23, 1931 (P.L.932, No.317), entitled "An act relating to cities of the third class; and amending, revising, and consolidating the law relating thereto," providing for physical and psychological medical examinations; further providing for grading for discharged servicemen and for selection of appointee; and providing for promotions of civil service applicants.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of June 23, 1931 (P.L.932, No.317), known as The Third Class City Code, reenacted and amended June 28, 1951 (P.L.662, No.164), is amended by adding a section to read:

**Section 4404.1. Physical and Psychological Medical Examinations.--**(a) A board may require that an applicant conditionally appointed in accordance with section 4406 of this act undergo a physical or psychological medical examination as a condition of permanent appointment. Physical medical examinations, if required, shall be under the direction of a physician or other qualified medical professional. Psychological medical examinations, if required, shall be under the direction of a psychiatrist or psychologist.

(b) A physician, other qualified medical professional, psychiatrist or psychologist shall be appointed by council and shall render an opinion as to whether the conditional appointee has a physical or mental condition which calls into question the individual's ability to perform all of the essential functions of the position for which the individual was conditionally appointed.

(c) If the opinion rendered by the physician, other qualified medical professional, psychiatrist or psychologist calls into question the conditional appointee's ability to perform all essential functions of a position, the director of the department within which the position is to be filled shall meet with the conditional appointee for the purpose of having one or more interactive discussions on whether the conditional appointee can, with or without reasonable accommodation, perform all the essential functions of the position.

(d) If, at the conclusion of the interactive discussion under subsection (c), the department director determines that the conditional appointee is not qualified, the department director shall give written notice to the conditional appointee and the board.

(e) Nothing in this act shall be construed to authorize physical or psychological medical examinations prior to conditional appointment in accordance with section 4406 of this act.

(f) As used in this section, the following definitions shall apply:

"Medical examination" shall mean any examination, procedure, inquiry or test designed to obtain information about medical history or a physical or mental condition which might disqualify an applicant if it would prevent the applicant from performing, with or without reasonable accommodation, all of the essential functions of the position.

"Physician" shall have the meaning given to it in 1 Pa.C.S. § 1991 (relating to definitions).

"Qualified medical professional" shall mean an individual, in collaboration with or under the supervision or direction of a physician, as may be required by law, who is licensed:

(1) as a physician assistant pursuant to the act of December 20, 1985 (P.L.457, No.112), known as the "Medical Practice Act of 1985," or the act of October 5, 1978 (P.L.1109, No.261), known as the "Osteopathic Medical Practice Act"; or

(2) as a certified registered nurse practitioner pursuant to the act of May 22, 1951 (P.L.317, No.69), known as "The Professional Nursing Law."

Section 2. Section 4405 of the act is amended to read:

Section 4405. Grading for Discharged Servicemen.--When any person who was engaged in the military service of the United States during any military engagement in which the United States participated, and has an honorable discharge therefrom, shall take any examination for appointment [or promotion, his], **the** examination shall be marked or graded in the same manner as provided for all other examinations. When the examination of [any such person] **the discharged individual** is completed and graded, if the grade is passing, [then such] **the** grading or percentage as the examination merits shall be increased by fifteen per centum, and [such] **the** total mark or grade shall represent the final grade or classification of [such person] **the discharged individual** and shall determine [his or her] **the individual's** order of standing on the [eligible] **eligibility** list. For the purpose of this article[, the military service]:

(1) "**Military service**" means the army, navy, marines, air force, coast guard, and any branch or unit thereof[; and servicemen].

(2) "**Servicemen**" means [the members thereof] **members of the military service**, including women[; and military engagement].

(3) "**Military engagement**" includes land, naval and air engagements.

Section 3. Section 4406 of the act, amended October 13, 1965 (P.L.579, No.300), is amended to read:

Section 4406. Selection of Appointee from Certified List of Applicants.--[Said] **The** boards shall make and keep, in numerical order, a list containing the names of all applicants for civil service positions in [said] **the** city who may pass the required [mental and physical examinations.] **examinations, including any required physical fitness or agility examinations that are job-related and consistent with business necessity.**

Where more than one person takes examinations for any [of said positions] **position** at the same time, the names of all those successfully passing [such] **the** examination shall be entered upon the **eligibility** list [of eligible names] in the order of their respective percentages, the highest coming first. The board shall furnish to council a certified copy of all lists so prepared and kept. Wherever any vacancy shall occur in any civil service position in [said] **the** city, the city council shall make written application to the president of the proper

board, who shall forthwith certify to the city council, in writing, the three names on the **eligibility** list [of applicants for such] **for the** position having the highest percentage, but if there be less than three eligible names on [such] **the** list, the board shall certify [such name or] **the** names. [Thereupon the] **The** director of the department in which [such] **the** appointment is to be made shall nominate to the city council a person from the **eligibility** list submitted to fill [such] **the** vacancy. If the city council approves [such] **the** nomination, the person nominated shall be **conditionally** appointed by council to fill [such] **the** vacancy, and shall be assigned for service in the department[.], **subject to any physical or psychological medical examinations that may be required by the appropriate examining board as a condition of permanent appointment in accordance with section 4404.1 of this act.** If the council does not approve [such] **the** nomination, **or if the appointee is determined by the medical examination process to be unqualified,** then the director of the department in which [such] **the** appointment is to be made shall submit another nomination for [such] **the** position from the remaining names, if any, and if [such] **the** nomination is not approved by the council, [he] **or if the appointee is determined by the medical examination process to be unqualified, the director** shall submit the third name, if any. The person whose nomination by the director is approved by the city council shall be appointed to fill [such a] **the** position in the department or as building inspector. [In all cases the boards may recommend those in the employ of a department for promotion in case the person recommended is competent for the higher position.] The name of the person so appointed shall be immediately stricken from the **eligibility** list of [said] **the** board, and the names of the rejected persons shall immediately be restored to their proper place [in said] **on the eligibility** list: Provided, however, That if the name of any applicant has been submitted to the [said] council and been rejected three times **or the appointee has been determined by the medical examination process to be unqualified,** then [such] **the** name shall be stricken from the [eligible] **eligibility** list. **Examinations for promotions for civil service positions in the city shall be pursuant to section 4406.1 of this act. As used in this section, the term " medical examination " shall have the meaning given it in section 4404.1 of this act.**

Section 4. The act is amended by adding a section to read:

**Section 4406.1. Promotions.--The civil service boards may recommend those in the employ of a department for promotion if the person recommended is competent for the higher position. If an examination is required, the city council shall notify the applicable civil service board of a civil service vacancy in the city which is to be filled by promotion and shall request the certification of an eligibility list as provided in this article. The board shall certify for each vacancy the names of three persons on the eligibility list who have received the highest average in the last preceding promotional examination held within the period of two years preceding the date of the request for the eligibility list. If three names are not available, the board shall certify the names remaining on the list. The city council shall make an appointment from the names certified, based solely on the merits and fitness of the candidates, unless the city council makes objections to the board regarding one or more of the persons on the eligibility list. The city council shall have power to determine in each**

**instance whether an increase in salary shall constitute a promotion.**

Section 5. Nothing contained in this act shall affect the validity of any civil service appointments or promotions made prior to the effective date of this section.

Section 6. This act shall take effect immediately.

APPROVED--The 19th day of October, A.D. 2010.

EDWARD G. RENDELL