

Update-Hiring Temporary Employees (Goetz Case Summary)

In early 2000, the Employment Relations Board (ERB) in *Fairbank vs. State of Oregon, EOTC*, Case No. MA-3-98, and *Reger vs. State of Oregon, EOTC*, Case No. MA-17-98, issued orders clarifying ORS 240.309, Temporary Appointments. The ERB found in these cases that the Eastern Oregon Training Center (EOTC) violated ORS 240.309 by employing temporary workers for more than six months without meeting either of the statute's two exceptions to the six-month limitation. The Board explained:

In sum, we interpret ORS 240.309 as allowing the State to employ a temporary employee for more than six months in only two circumstances: (1) in an emergency, a temporary employee may be hired for the need created by that emergency, and may continue to be employed for more than six months, **if** (*emphasis added*) the particular emergency continues to exist **and** (*emphasis added*) no other reasonable way to address it exists; and (2) when an employee goes on an approved leave, a temporary employee may fill in behind that permanent employee for the entire length of that leave, even if that means the temporary employee remains employed longer than six months.

In response to these two decisions, The Department of Administrative Services, Human Resource Services Division (DAS, HRSD) revised State Policy 40.025.01, Temporary Appointments. The policy revisions revoked the authority previously delegated to agency heads to extend temporary appointments beyond six months. DAS, HRSD approval is now required for such an extension.

In a recent ERB decision, (January 2002) *Goetz vs. State of Oregon, Department of Administrative Services*, Case No. MA-8-00, the ERB held that the State violated ORS 240.309 by employing Goetz for longer than six months and ordered the State to pay damages.

The ERB reiterated that as in *Fairbank*, a temporary employee could be extended beyond six months when "...the same emergency need continues to exist at the end of the six months, ... provided that there is no other reasonable way to address the emergency."

In *Goetz*, the ERB stated, "On this record, there is no evidence to establish that the same emergency workload need continued Nor is there evidence to establish that employing Goetz was the only reasonable means to address that emergency workload need, assuming it continued to exist"

This summary is meant to act as a reminder to State agencies that the ERB has made it clear that to employ a State temporary employee beyond six months the same emergency need must continue to exist **and** there must be no other reasonable means to meet the emergency. In addition, DAS, HRSD must approve the extension.

When employing a temporary employee in State service the "best practice" is to check the personnel system first to make sure the employee has not worked for more than six months as a temporary for any other State agency in the last 12 months. The ERB has stated that the State is one employer for the purpose of ORS 240.309. The six month limitation is not just for time worked at your agency, but for the time worked in state government.