



The examples and best practices listed here are illustrative only, and are intended only for use as general advice. An appeal decision is the product of applying the Civil Service Rules, Article and Constitutional principles of Due Process to the unique facts of each case. Accordingly, these FAQ's and the HR Handbook do not predict or guarantee a particular result.

Q. Who is the appointing authority?

A. The person the state constitution or a state statute says can appoint employees. This person is the “statutory appointing authority.” (Rule 1.4)

Q. Is there a law on appointing authority for each governmental entity?

A. Yes. The law is usually in the constitutional provision or statute that created the entity or in the Executive Reorganization Act (Title 36 of the Revised Statutes).

Q. Does the Secretary have “concurrent” appointing authority with the Assistant Secretaries?

A. No, the general pattern in the statutes is that the Secretary is only the appointing authority for the employees of the executive office of the secretary, employees not assigned to an office, and contract workers. However, some departments do not follow the general pattern. For example, the Director of the Department of State Civil Service, the Commissioner of Insurance, the Attorney General, the Public Service Commission, and the Secretary of State are the appointing authorities for all employees in their departments except employees of certain autonomous entities. When in doubt, an agency should contact its legal office.

Q. Who is the appointing authority for the employees of various autonomous entities (usually boards and commissions) that are within a department?

A. It depends on how the statutes transferred the entity to the department. Parts I-IV of the Executive Reorganization Act (LSA-R.S. 36:801-921) contain several different transfer provisions. For example, the executive head of an agency transferred under LSA-R.S. 36:801 retains appointing authority, whereas the executive head of an agency transferred under LSA-R.S. 36:802 loses appointing authority.

Q. The Undersecretary is responsible for “personnel management.” Does that mean that the Undersecretary is the appointing authority for the whole department?

A. No, generally the Undersecretary is only the appointing authority for the employees of the Office of Management and Finance.

Q. Can appointing authority be delegated?

A. Yes, by any lawful means. (Rule 1.4)

Q. What is a lawful delegation?

A. Anything that clearly conveys the appointing authority’s intent to authorize someone else to exercise authority on his behalf. It can be verbal, or in a memo, the employee handbook, a policy, a rule, or an authentic act.

Q. Has certain language been problematic?

A. Authorizing someone to “initiate, process, sign, maintain, and secure personnel documents and records of personnel transactions” was not sufficient to delegate appointing authority. Delegating authority to “issue disciplinary letters” nearly got an agency into trouble in a removal case.

Q. Should appointing authority be delegated?

A. Even if the appointing authority delegates no other authority, it is advantageous for an agency to have someone on each work shift with the authority to initiate a suspension pending investigation and to accept a resignation. In addition, it is advantageous for a multi-member appointing authority such as a board or commission to delegate appointing authority to a single individual.

Q. Who can delegate appointing authority?

A. Only someone with appointing authority. The initial delegation must come from the statutory appointing authority.

Q. When a statutory appointing authority delegates authority, does he lose appointing authority?

A. No, a delegation of authority is not a surrender of authority.

Q. Can appointing authority be delegated piecemeal?

A. Yes, an appointing authority can delegate all or any part of his authority.

Q. What if the statutory appointing authority refuses to delegate any authority?

A. That is the appointing authority's prerogative.

Q. Who can be a delegated appointing authority?

A. Anyone – a classified employee, an unclassified employee, a contractor.

Q. Can appointing authority be re-delegated?

A. Yes, but it is discouraged. The statutory appointing authority might object to the re-delegation and proof becomes more complicated with each re-delegation.

Q. Can the appointing authority prevent re-delegation without his permission?

A. Yes, by putting this in the initial delegation.

Q. What if a delegated appointing authority has a conflict of interest and needs to recuse himself?

A. The statutory appointing authority should delegate authority to someone else for that particular transaction.

Q. What if a statutory appointing authority has a conflict of interest and needs to recuse himself?

A. The statutory appointing authority should delegate authority to his superior.

Q. What is the best way to delegate or re-delegate appointing authority?

A. Authentic act.

Q. What is an authentic act?

A. A formal writing executed before a Notary Public and two witnesses. (La. Civil Code Art. 1833)

Q. Why use authentic acts?

A. Because if the employee appeals the action, the original paper (or a **certified** copy of the original) proves the delegation – the statutory appointing authority does not have to testify to the delegation.

Q. Who can certify a copy?

A. Any person who possesses an original. (La. Civil Code Art. 1840 and La. Code of Evidence Arts. 902(2)(b) and 904)

Q. Should the Notary Public execute the authentic acts in multiple originals?

A. Yes, in quadruplicate originals: one for the Notary Public, one for the person delegating authority, one for the person receiving delegated authority, and one for the Human Resource Director. This provides several people who can certify copies.

Q. Should the agency send copies of delegations to the Department of State Civil Service?

A. No. The agency should maintain these records at the agency and produce them when needed at an audit or appeal hearing.

Q. Is any other method of delegating authority self-proving?

A. Adopting a rule and publishing it in the *Louisiana Register* (LSA-R.S. 49:966 C). This is particularly useful when the statutory appointing authority is a multi-member entity such as a board or commission.

To prove this type of delegation, the agency only has to provide the *Louisiana Register* volume and page number where the rule appears.

Q. If the method of delegating authority is not self-proving, how can the agency prove the delegation?

A. Through any competent evidence. Generally, this will require the testimony of the person who delegated appointing authority – the statutory appointing authority. Testimony from the person who received appointing authority is hearsay, and therefore not competent.

Q. When must the agency prove appointing authority?

A. An agency should prove appointing authority at every appeal hearing because the employee can raise lack of appointing authority at any time, even for the first time at the Court of Appeal.

Q. Is there a way to avoid having to redo delegations when the person receiving authority leaves office?

A. Yes, by delegating authority to a person/title “and his or her successor in office.”

Q. Is there a way to avoid having to redo delegations when the person delegating authority leaves office?

A. No, the agency must redo the delegations.

Q. What are the consequences when the employee appeals an action and the agency does not prove appointing authority?

A. If the employee raises the issue, the Commission or Referee will reverse the action and order the agency to pay back pay with interest and attorney’s fees.

Q. What should an agency do if it realizes that the person who took an action did not have authority to do so?

A. Seek approval under Rule 15.10 to rescind the action and start over.

Q. If the agency rescinds the action for lack of appointing authority, can the agency re-use the same charges?

A. Yes.