

CHAPTER 3
CLASSIFICATION, SERVICES
AND COMPENSATION

Authority

N.J.S.A. 11A:2-6(d), 11A:211(h), 11A:3-1 through 7 and 11A:6-24;
29 U.S.C. 201, et seq.; and Executive Order No. 70(1992).

Source and Effective Date

R.1993 d.424, effective August 5, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

Executive Order No. 66(1978) Expiration Date

Chapter 3, Classification, Services and Compensation, expires on
August 5, 1998.

Chapter Historical Note

Chapter 3, Classification, Services and Compensation, was adopted as R.1988 d.416, effective September 6, 1988. See: 20 N.J.R. 846(a), 20 N.J.R. 2255(b). See, also, Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 6, 7, 10 and 27; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 7, and 27; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapter 2. Pursuant to Executive Order No. 66(1978), Chapter 3 was readopted as R.1993 d.424. See: Source and Effective Date. See, also, section annotations for specific rulemaking activity.

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APPENDIX A. OVERTIME ELIGIBILITY AND COMPENSATION CHART

SUBCHAPTER 1. CAREER AND UNCLASSIFIED SERVICES

4A:3-1.1 Career service

(a) All job titles shall be allocated to the career service, except for those job titles allocated by the Board to the unclassified service as provided in N.J.A.C. 4A:3-1.3 and those positions in State service allocated by the Board to the Senior Executive Service as provided in N.J.A.C. 4A:3-2.

(b) Before a title in the career service is reallocated to the unclassified service, the Board shall hold a public hearing to solicit comment with respect to the criteria set forth in N.J.A.C. 4A:3-1.3.

(c) When a title is reallocated from the career service to the unclassified service by the Board or by legislative enactment, incumbents with permanent status in the title shall retain all career service rights so long as they remain in that title. When a permanent incumbent is appointed to a different, unclassified title, the employee shall retain only those rights to a Merit System Board hearing available to career service employees upon separation from government service for disciplinary reasons (see N.J.A.C. 4A:2-2) or due to layoff (see N.J.A.C. 4A:8).

4A:3-1.2 Divisions within the career service

(a) The Commissioner shall allocate and reallocate career service titles between the competitive and noncompetitive divisions.

(b) A career service job title in the competitive division is subject to the competitive examination procedures. See N.J.A.C. 4A:4-2.

(c) A job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Commissioner that it is appropriate to make permanent appointments to the title and one or more of the following criteria are met.

1. Competitive testing is not practicable due to the nature of the knowledge, skills and abilities associated with the job;

2. Certification procedures based on ranked eligible lists have not or are not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions; or

3. There is a need for immediate appointments arising from a new legislative program or major agency reorganization.

(d) All appointees to noncompetitive titles shall meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period.

(e) Prior to any reallocation from the competitive to noncompetitive divisions, whether on an ongoing or interim basis, an administrative review shall be conducted and notice of the proposed reallocation shall be sent to affected appointing authorities and negotiations representatives. The notice shall designate the period of time, which in no event shall be less than 20 days, during which written comment may be submitted, and may provide for a public hearing.

1. Data, reports, analyses and other information utilized in the determination shall constitute the administrative record, and shall be available for review by affected employees, appointing authorities and negotiations representatives.

2. After the comment period and the public hearing, if any, the Commissioner shall issue a final administrative decision containing findings and conclusions with respect to the proposed reallocation, based upon the administrative record and any comment received, and implementation procedures.

(f) When a job title is reallocated from the competitive to noncompetitive divisions, the Commissioner's decision shall specify an effective date for reallocation.

1. Permanent employees in that title as of the effective date shall retain their permanent status in the noncompetitive division.

2. Probationary employees in that title as of the effective date shall continue serving their working test periods and, upon successful completion, attain permanent status in the noncompetitive division.

3. Provisional employees who remain in that title as of the effective date shall receive regular appointments and begin serving their working test periods on the effective date.

(g) If a title is designated noncompetitive on an interim basis, at the end of the interim noncompetitive period, which shall be no greater than one year, the job title shall be redesignated as competitive. Individuals appointed during the interim noncompetitive period shall, upon successful completion of their working test periods, attain permanent status in the competitive division.

4A:3-1.3 Unclassified service

(a) A job title shall be allocated by the Board to the unclassified service when:

1. In State service, the title is so designated under N.J.S.A. 11A:3-4;

2. In local service, the title is so designated under N.J.S.A. 11A:3-5;

3. The title is designated unclassified by another specific statute;

4. A specific statute provides that incumbents in the title serve for a fixed term or at the pleasure of the appointing authority; or

5. The Board determines that it is not practicable to determine merit and fitness for appointment in or promotion to that title by examination and that it is not appropriate to make permanent appointments to the title.

(b) In local service, no more than 10 municipal department heads may be allocated to the unclassified service in each municipality. A department head in a municipality, where not otherwise set by statute, is a person whose position has been created by ordinance or resolution, as appropriate, to perform substantial managerial duties, and who has the authority and powers of appointment, removal, selection for promotion, and control of the assignment and work of subordinates subject only to the legislative power of the governing body and applicable statutes.

4A:3-2.9 Separation from the SES: State service

(a) Any SES member may be separated from the SES at the discretion of the department head upon 20 days' notice. A copy of the separation notice shall be provided to the Commissioner at the same time it is sent to the employee.

(b) In case of removal of an SES member with career status from State service, or return to a lower level than provided in (c) below, the procedures set forth in N.J.A.C. 4A:2-2 (major discipline) shall apply.

(c) An SES member with career status who is separated from the SES shall have a right to return to a career service position in the same department.

1. The position shall be at the same salary level of the employee's permanent title held immediately prior to SES appointment, if there are career service titles in the department at that level. If there are no career service titles in the department at the same salary level, then the position shall be at the next lower level.

2. The employee shall have permanent status in the title immediately upon return to the career service, and shall have seniority as if it had continued to accrue in the permanent title held immediately prior to SES service.

3. Upon return to the career service, the salary shall be the same as if the employee had remained in the career service and had not been appointed to the SES, provided, however:

i. The salary shall in no event be greater than the salary earned in the SES; and

ii. If the minimum guaranteed in (c)3 above places the employee above the salary level of the title in which he or she is placed, the salary shall not change until such time as the salary range increases to include the guaranteed minimum salary;

iii. The department head may, at his or her discretion, recommend to the Commissioner placement of the employee at a higher salary than the minimum.

(d) If the position to which an SES member is appointed is vacated or abolished due to a reduction in force, and the SES member has career status, the SES member shall have lateral, demotional and special reemployment rights based upon the permanent title held immediately prior to SES appointment.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

SUBCHAPTER 3. CLASSIFICATION**4A:3-3.1 Classification of positions**

(a) Each position in the career and unclassified services shall be assigned by the Department of Personnel to a job title.

(b) Positions in the career service shall, on the basis of job analysis, be assigned the title which:

1. Describes the duties and responsibilities to be performed and the level of supervision exercised and received;
2. Establishes the minimum education and experience qualifications necessary for successful performance; and
3. In State service, sets the level of compensation.

(c) Assigned job titles shall be used in all records and communications relating to personnel and payroll, including budgets. Appointing authorities may designate appropriate descriptive titles to be used for other purposes, such as correspondence with the public.

(d) Titles shall be identified by language which does not specify or imply a fixed gender.

(e) See N.J.A.C. 4A:3-3.9 for classification appeal procedures.

Case Notes

Physician in local service not in classified service. *Morris Cty. v. Civil Service Dept.*, 177 N.J.Super. 25, 424 A.2d 852 (1980).

Classification jurisdiction of Commission. *State v. State Supervisory Employees Association*, 78 N.J. 54, 393 A.2d 233 (1978).

Unclassified service excluded from veteran's tenure rights. *Schroeder v. Bd. of Freeholders, Essex Cty.*, 63 N.J. 124, 305 A.2d 409 (1973).

State Police not in classified service (decided on statutory grounds). *State Troopers Fraternal Ass'n v. State*, 115 N.J.Super. 503, 280 A.2d 235 (Chanc.Div.1971) affirmed 119 N.J.Super. 375, 291 A.2d 840 (App. Div.1972), affirmed 62 N.J. 302, 301 A.2d 141 (1973).

Local service; title held to be in classified service; appointing authority contends chief building inspector is unclassified. *Bowser v. Dept. of Civil Service of New Jersey*, 108 N.J.Super. 132, 260 A.2d 246 (App.Div.1970).

4A:3-3.2 Establishment of classification plans

(a) The Commissioner shall establish and maintain classification plans for all job titles in the career, senior executive and unclassified services.

(b) The classification plans shall consist of:

1. A list of job titles; and
2. A job specification for each title, which shall include a descriptive summary of duties and responsibilities of a position or group of positions which are sufficiently similar in content to be assigned a job title.

(c) A single specification may be used for a title series. In such cases, the distinction between different titles in the series will be set forth in the specification.

(d) To the extent feasible, the same job titles shall be used in the State and local classification plans.

Case Notes

Questionnaire inquiry to determine classification of certain municipal titles. In re Tp. Moorestown, 107 N.J.Super. 274, 258 A.2d 134 (App.Div.1969).

4A:3-3.3 Administration of classification plans

(a) The Commissioner shall implement and administer the classification plans and in this regard shall:

1. Classify new positions and reclassify existing positions through job analysis;
2. Establish new titles, abolish unnecessary titles, and consolidate titles where a single title is appropriate for the grouping of positions with similar qualifications, authority and responsibility;
3. Modify specifications for existing titles or series to ensure their accuracy; and
4. Notify appointing authorities and provide for notice to other affected persons of changes in classification plans.

(b) Appointing authorities shall promptly notify the Department of Personnel of new positions to be established, the authority and reasons for their establishment and of all organizational changes or changes in the duties and responsibilities of individual positions, and such additional information as may be required.

(c) Appointing authorities shall provide the Department of Personnel with updated organization charts on an annual basis.

(d) Positions in the career, unclassified and senior executive services shall be subject to job audit by the Department of Personnel to ensure accurate classification and compliance with Title 11A, New Jersey Statutes and Title 4A, N.J.A.C.

(e) In State service, each department and autonomous agency shall designate an individual as the agency representative, to serve as its liaison with the Department of Personnel on all classification and compensation matters.

(f) In State service, the agency representative shall provide notice to affected and potentially affected negotiations representatives upon submission of the following to the Department of Personnel. The Department of Personnel shall verify that proper notice has been given of each of the following:

1. Reorganizations;
2. Job content reevaluation requests;
3. Requests for new titles or title series;
4. Job specification modification requests;
5. Employee relations group changes; and

6. Establishment, modification or termination of flexi-time programs, alternate workweek programs and adjusted hours of operation.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

4A:3-3.4 Title appropriate to duties performed

No person shall be appointed or employed under a title not appropriate to the duties to be performed nor assigned to perform duties other than those properly pertaining to the assigned title which the employee holds, unless otherwise provided by law or these rules.

Case Notes

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-6.4). *Valluzzi v. Bergen County*, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

4A:3-3.5 Reclassification of positions

(a) When the duties and responsibilities of a position change to the extent that they are no longer similar to the duties and responsibilities set forth in the specification and the title is no longer appropriate, the Commissioner shall after review:

1. Reclassify the position to a more appropriate title if there is one;
2. Establish a new title to which the position shall be reclassified; or
3. Take other appropriate action based on the organizational structure of the appointing authority.

(b) An appointing authority may request a classification review by the Department of Personnel in a manner and form as determined by the Commissioner. Such review may be initiated by the Department of Personnel. An employee or union representative may request a classification review in accordance with N.J.A.C. 4A:3-3.9.

(c) No reclassification of any position shall become effective until notice is given affected permanent employees and approval is given by the Commissioner.

1. Within 30 days of receipt of the reclassification determination, unless extended by the Commissioner in a particular case for good cause, the appointing authority shall either effect the required change in the classification of an employee's position; assign duties and responsibilities commensurate with the employee's current title; or reassign the employee to the duties and responsibilities to which the employee has permanent rights. Any change in the classification of a permanent employee's position, whether promotional, demotional or lateral, shall be effected in accordance with all applicable rules.

2. Should an employee in the career or unclassified service in State or local service, or an appointing authority in local service, disagree with reclassification, an appeal may be filed in accordance with N.J.A.C. 4A:3-3.9.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

Case Notes

Bd. of Educ. violated equal pay provisions of Fair Labor Standards Act by paying less to female custodial workers than male custodial workers for equal work requiring equal skill, effort, and responsibility; female job category could have been combined with male category by Commission or petition from Bd. (citing former N.J.A.C. 4:1-6.5). *Brennan v. Bd. of Educ.*, Jersey City, New Jersey, 374 F.Supp. 817 (D.N.J.1974).

Appellant suspended and subsequently removed from title of Senior Systems Analyst reinstated to duties appropriate to his permanent title; appointing authority failed to support charges of falsifying residency address, falsely signing affidavit with intent to defraud county and failing to complete assignments timely and correctly (citing former N.J.A.C. 4:1-6.4). *Valluzzi v. Bergen County*, 10 N.J.A.R. 89 (1988), adopted—Merit System Bd., App.Div. A-3269-87, 3/3/88.

4A:3-3.6 New titles

(a) The Department of Personnel may determine that a new title or title series is necessary, when it is found that a new set of functions is assigned to the position(s) being reviewed and these new functions are not appropriately described by an existing title or title series.

(b) Requests for new titles or title series must be submitted in writing by the appointing authority to the Department of Personnel on a designated form. In State service, such requests shall be submitted by the agency representative. The request must include:

1. A detailed explanation of why the new title is needed and why an existing title cannot be used or specification modified;
2. Designation of any title to be abolished or replaced; and
3. Any other information requested by the Department of Personnel.

(c) If the Department of Personnel determines that there is a need for a new title or title series, a new job specification will be prepared and in State service the title will be evaluated for compensation purposes.

(d) Pending approval by the Commissioner of a new title or title series, the designation "Tentative Title" may be used for affected positions. See N.J.A.C. 4A:3-4.15 for compensation procedures in State service.

(e) In State service, appeals from a salary evaluation of a new title will be processed in accordance with N.J.A.C. 4A:3-4.3.

(f) The effective date of the creation of a new title by the Commissioner will be:

1. In State service:

i. The beginning of the pay period immediately after 14 days from the date the Department of Personnel receives the new title request and all requested information;

ii. The date of appointment to the Tentative Title; or

iii. An appropriate date as established by the Commissioner when a classification review has been initiated by the Department of Personnel; or

2. In local service, an appropriate date as established by the Commissioner.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

4A:3-3.7 Trainee titles

(a) Trainee titles may be established in State and local service to provide for entry level employment.

1. This section applies to all titles designated by the term "trainee" and to other titles where the specification designates the application of the trainee rule, for example, Correction Officer Recruit.

2. A single trainee title may provide entry level employment for more than one title or title series, under appropriate circumstances.

3. In State service, trainee positions are established by the temporary downward classification of another title.

(b) Positions in competitive trainee titles may only be filled by regular appointments from open competitive, promotional, regular or special reemployment lists, or, in the absence of such lists, by provisional appointments. Positions in noncompetitive trainee titles may only be filled by regular appointments, including appointments from regular or special reemployment lists. Eligibility for promotion to a trainee title shall include open competitive requirements.

(c) Upon regular appointment, trainees must successfully complete their working test periods.

(d) Advancement to the lowest title in the related title series, referred to in this section as the primary title, shall take place only upon successful completion of the training period. The length of the training period shall be designated in the specification for the particular trainee title. The designated length shall not be longer than 12 months, unless otherwise provided by law. The training period must be continuous, except if interrupted by leave or layoff from the trainee title, and may include provisional service in the trainee or higher related title.

(e) The training period shall be extended, upon approval by the Department of Personnel, beyond the time designated in the specification when:

1. The trainee has not yet completed the working test period; or
2. A trainee is serving provisionally and an eligible list for the title has not yet been issued.

(f) The training period may be reduced, upon approval by the Department of Personnel, to a shorter period than designated in the specification when:

1. The trainee has completed the working test period;
2. The trainee meets the minimum qualifications for the primary title; and
3. All trainees in that title in the same appointing authority who meet these conditions are provided with a reduced training period.

(g) The advancement of the successful, permanent trainee to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by reclassifying the trainee position to an appropriate primary title and by concurrent regular appointment of the trainee to the position.

1. To effect advancement, the appointing authority must certify the trainee's successful completion of the training period, and, for those primary titles requiring extra training courses or the attainment of a proficiency standard over the trainee title requirements, that the trainee has successfully completed such requirements. A trainee may only receive advancement to one of the appropriate primary titles specified for that trainee title.
2. In State service, advancement to a primary title shall coincide with the beginning of a pay period.
3. The inability of a permanent trainee to attain a level of performance warranting advancement to the appropriate primary title shall be considered cause for separation.
4. Trainees advanced to a primary title shall be required to complete a working test period in the primary title. Trainees who fail to successfully complete their working test period in the primary title have no right to return to the trainee position.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

4A:3-3.8 Intermittent titles: State service

(a) In State service, the designation "intermittent" shall be used for those titles in the career service where work responsibilities are characterized by unpredictable work schedules and which do not meet the normal criteria for regular, year-round, full-time or part-time assignments.

(b) Intermittent employees may be subject to furlough when due to managerial needs, the employee cannot be scheduled for work within the next week.

1. A furlough shall not be considered a layoff, nor shall the notice obligations or layoff rights set forth in N.J.A.C. 4A:8 be applicable to intermittent employees subject to furlough. However, reasonable advance written notice shall be given to furloughed employees.

2. Furloughing shall be done in the inverse order of seniority in the designated work unit based on official records at the end of the last pay period. Prior to use by the appointing authority, designated work units must be submitted to and approved by the Department of Personnel.

3. Recall from furlough shall be made in seniority order from among furloughed employees assigned to the designated work unit.

4. In case of equal seniority, the tie shall be broken based on the number of hours in pay status under temporary employment during the last two years immediately preceding conversion to an intermittent title.

5. Recall may be extended on a regional or Statewide basis if the recall list for the designated work unit is exhausted.

6. Additional furlough procedures may be set by the Commissioner.

(c) Records for intermittent employees, including hours worked, recall lists, telephone contact lists and benefit time accumulation, shall be maintained by the appointing authority in a manner acceptable to, and subject to audit by, the Department of Personnel.

(d) See N.J.A.C. 4A:4-5.2 for working test periods for intermittent employees.

(e) The following chart indicates the amount of vacation, sick and administrative leave to which intermittent employees are entitled based on accumulated hours of work. See N.J.A.C. 4A:6-2.4(b) for holiday pay.

LEAVE ENTITLEMENTS—INTERMITTENT EMPLOYEES

VACATION LEAVE

	Employees with up to 10,440 hours of service (equivalent of 5 years)	After 10,440 hours of service (equivalent of 5 years)	After 25,056 hours of service (equivalent of 12 years)	After 41,760 hours of service (equivalent of 20 years)
Workweek				
40, 4E and N4 hour titles	1 day (8 hours) for each 174 hours in regular pay status.	1 day (8 hours) for each 139 hours in regular pay status.	1 day (8 hours) for each 104 hours in regular pay status.	1 day (8 hours) for each 84 hours in regular pay status.

	Employees with up to 9,135 hours of service (equivalent of 5 years)	After 9,135 hours of service (equivalent of 5 years)	After 21,924 hours of service (equivalent of 12 years)	After 36,540 hours of service (equivalent of 20 years)
Workweek				
NL, NE, 35 and 3E hour titles	1 day (7 hours) for each 152 hours in regular pay status.	1 day (7 hours) for each 122 hours in regular pay status.	1 day (7 hours) for each 93 hours in regular pay status.	1 day (7 hours) for each 73 hours in regular pay status.

SICK LEAVE

	Through Dec. 31 of First Calendar Year of Employment	After Dec. 31 of First Calendar Year of Employment
Workweek		
40, 4E and N4 hour titles	1 day (8 hours) for each 174 hours in regular pay status.	1 day (8 hours) for each 139 hours in regular pay status.
NL, NE, 35 and 3E hour titles	1 day (7 hours) for each 152 hours in regular pay status.	1 day (7 hours) for each 122 hours in regular pay status.

ADMINISTRATIVE LEAVE

Workweek	
40, 4E and N4 hour titles	½ day (4 hours) for each 174 hours in regular pay status to a maximum of 3 days (24 hours) in any calendar year.
NL, NE, 35 and 3E hour titles	½ day (3½ hours) for each 152 hours in regular pay status to a maximum of 3 days (21 hours) in any calendar year.

Amended by R.1990 d.48, effective January 16, 1990.
See: 21 N.J.R. 3337(a), 22 N.J.R. 166(b).

In (e): revised text by adding chart indicating amounts of leave time to which intermittent employees are entitled.

4A:3-3.9 Appeal procedure

(a) An appeal from the classification or reclassification of a position is a request for review, or a complaint that the duties of a specific position do not conform to the approved job specification for the title assigned to that position.

(b) The procedures in this section are applicable to employees in the career and unclassified services.

(c) In State service, a classification appeal from an employee or union representative shall be submitted, in writing, to the agency representative. The appeal must identify the specific duties that do not conform to the specification for the title and, if the appellant proposes a different existing title for the position, an explanation of how that title more accurately describes the duties of the position than the current or proposed title. The appeal should also include a completed position classification questionnaire. If the appellant's supervisor has not signed the questionnaire within five working days of receipt, the appellant may forward the questionnaire to the agency representative without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. The agency representative shall review the appeal, provide an organization chart and ensure that the information set forth in (c) above has been included. Within 10 days of receipt of the appeal, the agency representative shall either notify the appellant that specific additional

information is required, or shall forward the appeal to the Department of Personnel and so notify the appellant, and may indicate a recommended approval or rejection of the appeal for specified reasons. If additional information is required, the agency representative shall forward the appeal to the Department of Personnel within 10 days of receipt of the appellant's response to the request for additional information.

2. A representative of the Department of Personnel shall review the appeal, request additional information if needed, order a desk audit where warranted, and issue a written decision. The decision letter shall be issued within 60 days of receipt of the appeal and all requested information and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to an employee or authorized employee representative of appeal rights to the Commissioner and a determination that:

- i. The position is properly classified;
- ii. The position is properly classified, but that out-of-title duties are being performed, in which case the representative shall order, in writing, the immediate removal of inappropriate duties within a specified period of time; or
- iii. The position should be reclassified, in which case, normal reclassification procedures shall be initiated immediately.

(d) In local service an appeal from an employee, union representative, or appointing authority shall be submitted, in writing, to the appropriate regional office of the Department of Personnel. The appeal must identify the specific

duties that do not conform to the specification for the title and, if the appellant proposes a different title for the position, an explanation of how that existing title more accurately describes the duties of the position than the current or proposed title. If requested by the Department of Personnel, the appeal should also include a completed position classification questionnaire and an organization chart. If the appellant's supervisor has not signed the questionnaire within five working days of receipt, the appellant may forward the questionnaire to the Department of Personnel without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the Department of Personnel shall review the appeal, request additional information if needed, order a desk audit where warranted, and determine that:

- i. The position is properly classified;
- ii. The position is properly classified, but that out-of-title duties are being performed, in which case the representative shall order, in writing, the immediate removal of inappropriate duties; or
- iii. The position should be reclassified, in which case normal reclassification procedures shall be initiated.

2. The representative's decision letter shall be issued within 60 days of receipt of the appeal and shall include a summary of the duties of the position, findings of fact, conclusions, determination and a notice of appeal rights to the Commissioner.

(e) Appeals to the Commissioner may be made by an employee, authorized employee representative or local appointing authority and shall be submitted in writing, within 20 days of receipt of the decision letter and must include copies of all materials submitted and the determination received from the lower level, state which portions of the determination are being disputed and the basis for appeal. Information and/or argument which was not presented at the prior level of appeal shall not be considered. When new information and/or argument is presented, the appeal may be remanded to the prior level.

1. The Commissioner may render a decision based on the written record or appoint an independent classification reviewer. If the Commissioner appoints an independent classification reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and given the opportunity to present their arguments before the reviewer. An employee may be represented by counsel or by a union representative.

2. The classification reviewer shall submit a report and recommendation to the Commissioner within 30 days of the review. The report and recommendation shall include an analysis of the duties of the position as they relate to the job specification, findings, conclusions, and recommendation. The report and recommendation shall be sent to all parties with notice that exceptions are to be filed within 15 days of receipt of the report and recommendation. Exceptions must be served on all parties. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of exceptions.

(f) If an appeal is upheld, the effective date of implementation shall be:

1. In State service, the pay period immediately after 14 days from the date the Department of Personnel received the appeal or reclassification request, or at such earlier date as directed by the Commissioner; or
2. In local service, an appropriate date established by the Commissioner.

(g) The decision by the Commissioner is the final administrative determination.

(h) See N.J.A.C. 4A:10-2 for enforcement of determinations by the Commissioner.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

Case Notes

Thirty day rule regarding departmental decision promulgated after departmental hearing and, therefore, not applicable (citing former N.J.A.C. 4:5-1.5). Appeal of Darcy, 114 N.J.Super. 454, 277 A.2d 226 (App.Div.1971).

SUBCHAPTER 4. COMPENSATION

4A:3-4.1 General provisions

(a) In local service, appointing authorities shall establish compensation plans which provide for paying employees in reasonable relationship to their job titles.

1. Each appointing authority shall provide a current copy of its compensation plan to the Department of Personnel, and shall provide any subsequent modifications within 20 days after adoption.

2. When a salary range is established for a job title, an employee shall not be paid a base salary below the minimum or above the maximum established for that range.

3. An appointing authority may request information and technical assistance from the Department of Personnel in developing compensation plans.

(b) In State and local service, the Department of Personnel may audit an appointing authority's payroll records to determine compliance with Title 11A, New Jersey Statutes, Title 4A, N.J.A.C., and orders issued by the Commissioner or the Board.

(c) In local service, payroll records may be audited through on-site examinations, submission of payrolls for specified time periods, or a combination of both. Upon request by the Department of Personnel, an appointing authority shall submit a payroll, certified by an authorized financial officer, which contains the following information and such other information as may be requested:

1. Name of jurisdiction;
2. Name of department;
3. Names, titles and social security numbers of employees;
4. Actual amount of pay for pay period, including dates employed;
5. Annual rate of pay; and
6. Beginning and ending dates for current pay period.

(d) In State service, the Commissioner shall establish, maintain and approve changes in a compensation plan for all employees in the career and unclassified services. See N.J.A.C. 4A:3-2.5 for Senior Executive Service compensation.

1. The compensation plan shall establish pay rates and a series of salary ranges.
2. Each employee in the career and unclassified services shall be paid within the salary range or at the pay rate assigned to the employee's job title and pay shall be adjusted in accordance with this subchapter, except as otherwise provided by law, rule or action of the Commissioner.

Case Notes

Bd. of Educ. violated equal pay provisions of Fair Labor Standards Act by paying less to female custodial workers than male custodial workers for equal work requiring equal skill, effort, and responsibility; compliance with Commission requires no defense; Bd. not req'd to accept compensation suggested by Commission (citing former N.J.A.C. 4:1-7.1 and 7.3). *Brennan v. Bd. of Educ.*, Jersey City, New Jersey, 374 F.Supp. 817 (D.N.J.1974).

The Commission's suggested salary standards are not binding upon local government units (citing former N.J.A.C. 4:1-7.1(b)). In the *Matter of Pemberton Twp. Mun. Utilities Authority*, 205 N.J.Super. 31, 500 A.2d 18 (App.Div.1985).

Validity of appeals panel in salary disputes. *Abramson v. Farrell*, 122 N.J.Super. 30, 298 A.2d 705 (1972).

Judicial relief. In re Senior Appeals Examiners, 60 N.J. 356, 290 A.2d 129 (1972).

4A:3-4.2 Job evaluation: State service

(a) Each new job title shall be evaluated, and existing job titles reevaluated, based upon the New Jersey Job Content Evaluation System as approved by the Commissioner. Class codes shall be designated for job titles through this evaluation process. However, the Commissioner may, in appropriate circumstances, designate a job title as no-range, meaning that no class code is designated, or may assign a single rate, and may include restrictions on salary payments for such titles.

(b) Once the class code for a job title is designated, the salary range shall be determined according to workweek and work year as follows (see N.J.A.C. 4A:6-2.2 and 2.3 for designation of workweek):

1. The salary range for NL and NE titles shall be the same as the class code;
2. The salary range for 35 hour and 3E titles shall be one range lower than the class code;
3. The salary range for 40 hour, 4E and N4 titles shall be one range higher than the class code;
4. The salary range for 10 month titles shall be three ranges lower than the class code.

EXAMPLE: A job title has been designated class code 18 through the evaluation process. The salary range will be determined based on work week and work year as follows:

Work Week	Salary Range
NL, NE	18
35, 3E	17
40, 4E, N4	19
Work Year	
10 Month (NL or NE)	15

(c) For use of class codes in determining types of pay adjustments, see N.J.A.C. 4A:3-4.7.

4A:3-4.3 Job reevaluation requests and appeals: State service

(a) Appointing authorities may request a reevaluation by the Department of Personnel of a job title to determine its proper class code. The request, which shall be submitted through the agency representative, must include a brief rationale for the request, an organization chart, and the requested new salary level. The Department of Personnel may require additional information to be submitted in a manner and form as determined by the Commissioner.

(b) An appeal by an employee or authorized employee representative for a reevaluation shall be submitted, in writing, to the agency representative. The appeal must identify and explain the areas of substantive change in job content or other change in job evaluation factors through written narrative and a revised job specification, which shall

be marked to indicate changes, and include evidence that the change in job content affects all employees in the title. The Department of Personnel may require additional information to be submitted in a manner and form as determined by the Commissioner.

1. The agency representative shall review the appeal and ensure that the information set forth in (b) above has been included. Within 10 days of receipt of the appeal, the appointing authority representative shall either notify the appellant that specific additional information is required, or shall forward the appeal to the Department of Personnel and so notify the appellant, and may indicate a recommended approval or rejection of the appeal for specified reasons. If additional information is required, the agency representative shall forward the appeal to the Department of Personnel within 10 days of receipt of the appellant's response to the request for additional information.

(c) A representative of the Department of Personnel shall review the request or appeal and render a written decision. A written decision on evaluation appeals shall be rendered within 60 days of receipt of all required information. The decision letter shall include a notice of appeal rights to the Commissioner in the case of an appeal by an employee or authorized employee representative.

(d) Any affected employee or authorized employee representative may appeal the determination to the Commissioner within 20 days of its receipt. The appeal shall contain all information which was presented to the prior level, a statement identifying the specific portions of the prior level determination being contested, and the basis for appeal. The appellant shall provide copies to all parties.

(e) The Commissioner may render a decision based on the written record or appoint an independent salary reviewer. All parties, either personally, through counsel or authorized union representative, shall have the opportunity to present argument. Information and/or argument which was not presented at a prior level of appeal shall not be considered.

1. If a salary reviewer is appointed, he or she shall submit a report and recommendation to the Commissioner within 30 days after the review.

2. The report and recommendation shall be sent to all parties. Exceptions may be filed within 15 days of receipt of the report and recommendation. If exceptions are filed, cross-exceptions may be filed within 10 days of receipt of the exceptions. Exceptions and cross-exceptions shall be served on all parties.

(f) A decision by the Commissioner is the final administrative determination.

(g) If a title is approved for reevaluation, the effective date of the reevaluation shall be the first full pay period following the receipt by the Department of Personnel of a fully documented request for reevaluation under (a) above or a fully documented appeal under (b) above.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

4A:3-4.4 Salary rates for initial appointments: State service

(a) An appointing authority may place a new employee at a salary step up to and including the fourth step of the salary range for the employee's title. A new employee, for purposes of this section, is one who has had no immediate prior State service with that appointing authority. See N.J.A.C. 4A:4-7.4(b) for transfers.

(b) When the employee has separated from another State appointing authority, a State college, Rutgers, the State University, the New Jersey Institute of Technology, or the University of Medicine and Dentistry of New Jersey, and has been hired without an interruption in service, the employee may be placed up to and including that step of the salary range that the employee would receive if the employee had been continuously employed in the new agency.

(c) An authorized hiring rate (AHR) is the set salary for initial appointments to particular job titles as established by the Commissioner. When an AHR is established or changed, current employees in such titles whose salaries are below the AHR shall be advanced to the AHR, and current employees in such titles whose salaries are the same as the AHR may be advanced by the Commissioner.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

4A:3-4.5 Anniversary dates: State service

(a) An anniversary date is the biweekly pay period in which an employee is eligible, if warranted by performance and place in the salary range, for a salary increase.

1. An employee's anniversary date shall be assigned upon initial appointment to the first pay period following the completion of 26 full pay periods after appointment. In years which contain 27 pay periods, anniversary dates shall be determined in accordance with a schedule issued by the Department of Personnel.

EXAMPLE: An employee is appointed to a position on Monday, August 16, 1993. The first full pay period following the date of appointment is pay period 18, which begins on August 21, 1993. The employee's anniversary date is pay period 18 in calendar year 1994, expressed as 18/94.

2. An employee who starts work on the first Tuesday of a pay period immediately following a Monday holiday or special day off shall be assigned the anniversary date of that pay period.

3. An employee at the eighth step of the range only becomes eligible for advancement to the ninth step, if warranted by performance, following the completion of 39 pay periods.

(b) A current employee's anniversary date may change as a result of an advancement pay adjustment. See N.J.A.C. 4A:3-4.9. If the anniversary date is advanced based on the date of adjustment, the new anniversary date is the first pay period following the completion of 26 full pay periods after the date of that adjustment.

1. An employee's anniversary date may also change as a result of time spent in non-pay status. See N.J.A.C. 4A:3-4.6.

(c) Employees in intermittent titles shall receive initial and subsequent anniversary dates which correspond to the first pay period after completion of 1827 work hours (NL, NE, 35 and 3E titles) or 2088 work hours (40, 4E and N4 titles) in regular pay status. When an employee moves from an intermittent title, 80 hours of service in an intermittent title shall equal one pay period for 40, 4E and N4 titles and 70 hours of service in an intermittent title shall equal one pay period for NL, NE, 35 and 3E titles.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

4A:3-4.6 Anniversary date change when employee is in non-pay status: State service

(a) Except as provided in (b) below, time spent by employees in non-pay status, including suspensions, shall not be included in total time of employment when calculating eligibility for annual increments.

1. An employee's anniversary date shall be advanced by one full pay period for each full pay period in non-pay status.

2. If an employee is in non-pay status on an intermittent basis during the course of a calendar year, the employee's anniversary date shall be advanced by one pay period for each 10 working days in non-pay status.

(b) The following periods of non-pay status shall not be deducted from earned time for purposes of calculating anniversary dates:

1. Military leave;
2. Educational leave;
3. The two month period when employees in 10 month job titles are not scheduled to work;
4. Days on which part-time employees are not scheduled to work;

5. Leave without pay following exhaustion of sick leave injury;

6. Leave without pay while receiving workers' compensation benefits;

7. Leave without pay under a voluntary alternative to layoff program;

8. Voluntary furlough; and

9. Furlough extension leave.

(c) When an employee returns from one full pay period or more in non-pay status, or when an employee accumulates 10 or more working days in non-pay status on an intermittent basis, the appointing authority shall notify the Department of Personnel and the employee in writing that the anniversary date is to be changed. If an alternate workweek plan has been established, consideration of the adjusted hours per day must be made when counting the number of work days in non-pay status.

(d) Intermittent days without pay which total less than 10 shall not be carried forward to the next calendar year.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).
Amended by R.1995 d.12, effective January 3, 1995.
See: 26 N.J.R. 4126(a), 27 N.J.R. 145(a).
Administrative correction.
See: 27 N.J.R. 2577(b).

4A:3-4.7 Determining types of pay adjustments: State service

When an employee moves to a different title, including a change in workweek and/or work year, the type of pay adjustment shall be determined according to class code change as follows:

Compared to Old Title	Class Code of New Title Type of Pay Adjustment	Applicable Section
Same	Lateral	N.J.A.C. 4A:3-4.8
Higher	Promotion, upward title reevaluation, and other advancements	N.J.A.C. 4A:3-4.9
Lower	Demotion Downward title reevaluation	N.J.A.C. 4A:3-4.10 N.J.A.C. 4A:3-4.11

4A:3-4.8 Lateral pay adjustments: State service

(a) A lateral pay adjustment occurs when an employee moves to a title having the same class code. An employee affected by such lateral pay adjustment shall not be considered to have been promoted or demoted, even if actual salary changes.

(b) Employees affected by a lateral pay adjustment shall have their pay adjusted to the same step in the salary range of the new title as that step at which they were paid in the salary range of the former title. The employee's anniversary date shall not be changed.

EXAMPLE: An employee currently on step four, salary range A10 (\$15,800.94), in a 35-hour workweek title (class code 11), is appointed to a 40-hour workweek title in class code 11. The new salary range will be A12, and the employee will be placed on step four (\$17,415.44). **NOTE:** Salaries effective September 12, 1987.

(c) When a workweek change occurs for an employee whose salary is between steps of the range, the following calculation shall be made to accommodate the workweek adjustment. Divide the amount of extra salary by the amount of the increment of the employee's current salary range. This will provide a percentage of the current increment represented by the extra salary. Adjust the employee's salary to the new range at the same step. Calculate the amount of extra salary by applying the percentage arrived at above to the increment of the new range.

Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

4A:3-4.9 Advancement pay adjustments: State service

(a) Employees who are appointed to a title with a higher class code shall receive a salary increase equal to at least one increment in the salary range of the former title plus the amount necessary to place them on the next higher step in the new range. If the workweek changes, workweek adjustments will be made prior to the determination of anniversary date. If the workweek increases, workweek adjustments will be made prior to salary determination. (See (f) below). This subsection shall apply when the following conditions are met:

1. Employees are appointed from their permanent title to a title with a higher class code following or subject to a promotional examination;
2. Employees are serving in a title which is reevaluated to a higher class code; or
3. Employees are appointed to a title with a higher class code, when the conditions in (a)1 or 2 above are not applicable, provided the Department of Personnel finds the following criteria are met:

- i. The employee has served continuously in the lower title for at least four months immediately preceding the effective date of the advancement; and
- ii. The service in the lower title provided significant preparation and training for service in the higher title.

(b) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary schedule, the steps described in (a) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

(c) When an employee has been at the maximum of his or her previous salary range for at least 39 pay periods, and the salary increases after workweek adjustment would be less than two increments in the employee's previous range, the employee shall receive an additional increment in the new range, providing the employee is not already at the maximum of the new range.

(d) Employees who do not meet the criteria set forth in (a) above shall be placed on a step in the salary range of the title with the higher class code that is the same or next higher than the salary paid in the title with the lower class code.

1. The adjustments described in (b) and (c) above shall be applied as appropriate.

(e) The anniversary date will be retained if the total salary increase after workweek adjustment is less than two increments in the employee's previous range. If the total salary increase after workweek adjustment is two increments or more, or the advancement results in step eight or nine, the anniversary date will be determined by the effective date of the action (frozen if step eight or nine).

(f) The workweek adjustment is computed by finding the workweek adjusted range, according to the following chart, and then placing the employee on the same step in the workweek adjusted range as the employee's step in the former range.

WORKWEEK OF EMPLOYEE'S NEW TITLE

	35 or 3E	35 or 3E NO CHANGE	NL or NE +1 SALARY RANGE	40, 4E or N4 +2 SALARY RANGES
Workweek of Employee's Former Title	NL or NE	-1 SALARY RANGE	NO CHANGE	+1 SALARY RANGE
	40, 4E or N4	-2 SALARY RANGES	-1 SALARY RANGE	NO CHANGE

EXAMPLE: An employee on step four in salary range A10 in a 35-hour week title is appointed to a 40-hour week title. Adjusting salary range A10 (35 hours) to the 40-hour week (+2 salary ranges) will result in a range A12, step four.

(g) When an employee's work year changes, a work year adjustment shall first be performed before making any other adjustments under this section. The work year adjustment is computed by placing the employee in the same step three ranges up, when work year is increased from 10 to 12 months, or three ranges down, when work year is decreased from 12 to 10 months.

Amended by R.1993 d.44, effective January 19, 1993.

See: 24 N.J.R. 3588(a), 25 N.J.R. 290(a).

Redesignated existing (f) as (g); added new (f).

4A:3-5.10 Appeal procedures: State service

(a) Appeals may be filed under this subchapter as follows:

1. Position designation appeals, in which the issue is the status of a particular position as exempt or covered under the Fair Labor Standards Act, 29 U.S.C. 201 et seq.; and/or

2. Title designation appeals, in which the issue is the status of an entire job title in the State classification plan as exempt or covered under the Fair Labor Standards Act.

(b) Position designation appeals may be filed by an employee and shall be submitted, in writing, to the appointing authority through the personnel office.

1. The appeal must identify the specific duties at issue and must be accompanied by a Classification Questionnaire, signed by the employee and the supervisor. If the appellant proposes a different status for the position (exempt or covered), he or she must explain how the requested status more accurately reflects the duties of the position under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4.

2. The appointing authority shall review the appeal and notify the appellant of its decision within 20 days of receipt of the appeal. This decision letter must include the duties of the position, findings of fact, conclusions and the determination that:

i. The position is properly classified as exempt or covered; or

ii. The position is improperly designated, in which case the appointing authority shall provide appropriate duties or designate the appropriate status.

3. The decision letter shall state that the appellant has the right to appeal an adverse decision. Additionally, if the appellant does not receive a decision letter from the appointing authority within 20 days, he or she may file an appeal, in writing, within 10 days from the final day for the appointing authority's decision. All second level appeals shall be submitted to the Department of Personnel.

i. An employee submitting a second level appeal must include a copy of the initial appeal letter to the appointing authority, a copy of the completed Classification Questionnaire, and the appointing authority's decision letter, if issued. The appeal must state what specific portions of that decision are contested and the reasons.

4. The appropriate section of the Department of Personnel shall review the appeal, order an audit where warranted, and issue a written decision. The decision letter shall be issued within 20 days of receipt of the appeal and shall include findings of fact, conclusions, a determination and a statement that the appellant has the right of appeal to the Commissioner.

5. All appeals to the Commissioner must include copies of the determinations and decision letters from the lower levels and state which findings are being disputed and the reasons. Appeals shall be submitted, in writing, within 20 days of receipt of the decision letter from the prior level in the Department of Personnel.

i. The Commissioner shall render a decision based on the written record or such other procedures as he or she deems appropriate.

ii. The decision of the Commissioner shall be the final administrative decision.

(c) Title designation appeals may be filed either by the appointing authority or an affected employee.

1. The appeal must explain how the requested status more accurately reflects the duties of the title under the Fair Labor Standards Act. See N.J.A.C. 4A:3-5.4. Such appeals shall be submitted, in writing, to the Department of Personnel.

2. The appeal shall be reviewed and a written decision issued in accordance with (b)4 above.

3. An appeal of the first level decision may be filed with the Commissioner in accordance with (a)5 above.

(d) Other issues relating to overtime payments may be reviewed through the grievance process. See N.J.A.C. 4A:2-3.

Amended by R.1993 d.424, effective September 7, 1993.

See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

APPENDIX A: OVERTIME ELIGIBILITY AND COMPENSATION CHART

ELIGIBILITY STATUS		COMPENSATION	
	Comp Plan	In excess of 35 but not more than 40 hours per workweek	In excess of 40 hours per workweek as prescribed by FLSA
35 (covered)	35	Cash compensation at one and one-half times the hourly proration of the base salary or compensatory time off (CTO) at one and one-half times the hours worked.	Cash compensation at one and one-half times the regular rate ¹ or CTO at one and one-half times the hours worked providing the employee has not accrued more than 250 hours of CTO. ²
35 (exempt)	3E	Cash compensation at one and one-half times the hourly proration of the base salary or CTO at one and one-half times the hours worked.	Cash compensation at one and one-half times the hourly proration of the base salary or CTO at one and one-half times the hours worked.
40 (covered)	40	Not applicable	Cash compensation at one and one-half times the regular rate ¹ or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO. ²
40 (exempt)	4E	Not applicable	Cash compensation at one and one-half times the regular rate or CTO at one and one-half times the hours worked.
NL (covered)	NE	No cash compensation. CTO for unusual work time to a maximum of hour for hour (discretionary). ⁴	Cash compensation at one and one-half times the regular rate ¹ or CTO at one and one-half times the hours worked providing the employee has not accrued more than 240 hours of CTO. ²
NL (exempt)	NL	No cash compensation. CTO for unusual work time to a maximum of hour for hour (discretionary). ⁴	No cash compensation. ³ CTO for unusual work time to a maximum of hour for hour (discretionary). ⁵
NL4 (exempt)	N4	Not applicable.	No cash compensation. ³ CTO for unusual work time to a maximum of hour for hour (discretionary). ⁵

¹ Regular rate is the hourly proration of the employee's annual base salary plus the fair market value of goods and facilities received as part of the wages. Employees who work at different pay rates in a single workweek shall have their hourly proration based on a weighted average of the different rates.

² Note: Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of CTO.

³ Except as provided in N.J.A.C. 4A:3-5.7(d) (Exceptional Emergencies).

⁴ Except as provided in N.J.A.C. 4A:3-5.3(d)2.

⁵ Except as provided in N.J.A.C. 4A:3-5.6(b)2.