

CHAPTER 3

**CLASSIFICATION, SERVICES,
AND COMPENSATION**

Authority

N.J.S.A. 11A:2-6(d), 11A:2-11(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.2009 d.377, effective November 18, 2009.
See: 41 N.J.R. 2527(a), 41 N.J.R. 4700(b).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1.c(2), Chapter 3, Classification, Services, and Compensation, expires on May 17, 2017. See: 48 N.J.R. 2653(a).

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 See, also, Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 6, 7, 10 and 27; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 7, and 27; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapter 2.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, Classification, Services and Compensation, was readopted as R.1993 d.424, effective August 5, 1993. See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

Pursuant to Executive Order No. 66(1978), Chapter 3, Classification, Services and Compensation, was readopted as R.1999 d.60, effective January 28, 1999. See: 30 N.J.R. 4346(a), 31 N.J.R. 638(a).

Chapter 3, Classification, Services and Compensation, was readopted as R.2004 d.242, effective June 4, 2004. See: 36 N.J.R. 909(a), 36 N.J.R. 3267(a).

Chapter 3, Classification, Services and Compensation, was readopted as R.2009 d.377, effective November 18, 2009. See: Source and Effective Date.

Chapter 3, Classification, Services and Compensation, was renamed Classification, Services, and Compensation by R.2013 d.001, effective January 7, 2013. See: 44 N.J.R. 2149(a), 45 N.J.R. 25(a).

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 3, Classification, Services and Compensation, was scheduled to expire on November 18, 2016. See: 43 N.J.R. 1203(a).

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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).

Case Notes

“Conflict of interest” resolution was not preempted by state law and was not “special legislation”. *Bourquin v. Hunterdon County Department of Planning*, 93 N.J.A.R.2d (CSV) 32.

4A:3-1.2 Divisions within the career service

(a) The Civil Service Commission 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 of N.J.A.C. 4A:4-2, except as provided in N.J.A.C. 4A:3-3.2A.

(c) A job title may be placed in the noncompetitive division on an ongoing or interim basis when it is determined by the Civil Service Commission 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 Civil Service Commission 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 Commission’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.

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (a), the introductory paragraph of (c), and (e)2, substituted “Civil Service Commission” for “Commissioner”, in (b), substituted “of” for “See”, and inserted “, except as provided in N.J.A.C. 4A:3-3.2A”; in (c)1, inserted a comma following “skills”; in (c)2, inserted a comma following “problems”; in (e)1, inserted a comma following “analyses” and following “authorities”; and in the introductory paragraph of (f), substituted “Commission’s” for “Commissioner’s”.

Case Notes

Business justifications for requirement that nonuniformed municipal employees be residents did not justify racially discriminatory effect of requirement. NAACP, Newark Branch v. Town of Harrison, N.J., D.N.J.1990, 749 F.Supp. 1327, affirmed 940 F.2d 792.

Ample reasons existed for the reallocation of the Operating Engineer Trainee title to the non-competitive division of the career service in accordance with N.J.A.C. 4A:3-1.2 and the renaming of the title to Operating Engineer Heating and Air Conditioning Apprentice. The Division of Classification and Personnel Management found that certification procedures based on ranked eligible lists were not likely to meet the needs of appointing authorities due to such factors as salary, geographic location, recruitment problems and working conditions. Additionally, an apprenticeship title was more desirable than the trainee title as the apprentice title would provide the appropriate time required for an incumbent to obtain the Blue Seal Operating Engineer's License needed to advance to the primary title. In re Reallocation of Operating Engineer Trainee from the Competitive to the Non-Competitive Div. of the Career Serv., CSC Dkt. No. 2014-2444, 2014 N.J. CSC LEXIS 367, Final Order (April 25, 2014).

Ample reasons existed for the reallocation of the Realty Specialist Trainee, Pensions Benefits Specialist Trainee, and Bridge Operator Trainee titles to the non-competitive division of the career service under N.J.A.C. 4A:3-1.2. There were no specific experience requirements for the Realty Specialist Trainee and Pensions Benefits Specialist Trainee titles and the only requirement was possession of a Bachelor's degree. The Bridge Operator Trainee title did not require completion of any specific education. Given that trainee titles were designed to provide entry level employment to public service, successful completion, if necessary, of the required Bachelor's degree provided sufficient evidence of eligibility for a trainee title. Competitive testing was not practicable since the knowledge, skills, and abilities associated with a trainee title were evaluated during the mandatory training period. In re Reallocation of Realty Specialist Trainee, Pensions Benefits Specialist Trainee, Bridge Operator Trainee Titles from the Competitive to the Non-Competitive Div. of the Career Serv., CSC Dkt. No. 2014-2309, 2014 N.J. CSC LEXIS 365, Final Decision (April 25, 2014).

Request by the Department of Children and Families for reallocation of titles currently designated as Management Assistant and Senior Management Assistant to interim noncompetitive status for one pay period under N.J.A.C. 4A:3-1-2(c) to allow the employees with the affected titles to be properly assigned in the career service was appropriately granted. The employees had been serving provisionally in the Department for an extended period of time, many after a major restructuring in 2006, and the interim period of reallocation was needed in order for the Division of Classification and Personnel Management to properly reassign the employees to competitive positions. The extraordinary relief was limited to the positions listed and based solely on the facts of the case. In re Matter of Mgmt. Assistant and Senior Mgmt. Assistant, Dep't of Children and Families, CSC Dkt. No. 2014-1242, 2013 N.J. CSC LEXIS 1182, Final Decision (December 4, 2013).

Ample reason existed for the reallocation of the Staff Clinical Psychologist 1 and Staff Clinical Psychologist 1, Mental Health Services titles to the non-competitive division of the career service consistent with the other titles in the series pursuant to N.J.A.C. 4A:3-1.2. It was clearly not practicable to continue to examine for such positions when each title required possession of a State-issued license, certification or specialization or for those titles where testing was impractical or for which it was difficult to recruit. In re Staff Clinical, Psychologist 1 and Staff Clinical, Psychologist 1, Mental Health Serv., CSC Dkt. No. 2014-642, 2013 N.J. CSC LEXIS 688, Final Decision (September 20, 2013).

Determination by the Division of Selection Services and Recruitment (DSSR) that an employee who was permanent in the non-competitive title of Truck Driver Heavy and worked in the Department of Public Works (DPW) was ineligible for the promotional examination for Assistant Supervisor of Public Works, (PM0090R), Teaneck Township because he was not permanent in the competitive division as of the closing date was overturned by the Civil Service Commission. Because

the employee had achieved permanent status in the title before it was allocated to the noncompetitive division, he was within the class of employees who, per N.J.A.C. 4A:3-1.2(f), were entitled to claim permanent status in a competitive title for the purpose of eligibility for promotion notwithstanding the reclassification of their positions to the noncompetitive service. However, he still had to demonstrate that he met the experience requirements for the subject title. Though out-of-title work was normally disregarded in determining whether an employee met the experience requirements for any particular examination, this employee's submission showed that he had been performing relevant duties since May 1999, and his claim was substantiated by the acting township manager. That meant that there was good cause pursuant to N.J.A.C. 4A:4-2.6(c) to accept the employee's out-of-title work experience and admit him to the examination. In re Merz, Assistant Supervisor of Pub. Works, (PM0090R), Teaneck Twp., CSC Docket No. 2014-0094, 2013 N.J. CSC LEXIS 933, Final Administrative Determination (September 4, 2013).

Determination by the Division of Selection Services and Recruitment (DSSR) that four employees who were permanent in the non-competitive title of Truck Driver and worked in the Department of Public Works (DPW) were ineligible for the promotional examination for Assistant Supervisor of Public Works, (PM0089R), Marlboro Township because they were not permanent in the competitive division as of the closing date was overturned by the Civil Service Commission. Because all of the employees had achieved permanent status in the title before it was allocated to the noncompetitive division, they were within the class of employees who, per N.J.A.C. 4A:3-1.2(f), were entitled to claim permanent status in a competitive title for the purpose of eligibility for promotion notwithstanding the reclassification of their positions to the noncompetitive service. Moreover, because there was a logical nexus between the duties performed by each employee and those required to establish eligibility for the title under test, each met the experience requirements for the title under test as required by N.J.A.C. 4A:4-2.6(a). Though under normal circumstances, the DSSR would have been correct to determine that the employees were ineligible for the subject exam as applicable experience gained in the Truck Driver title would be considered out-of-title work, their experience should have been evaluated in the context of the environment in which the employees were working. That is, it would have been appropriate to consider the potential pool of candidates who could compete for the examination. Admission of these employees to the examination also served the valid public interest of filling positions through promotional examinations per N.J.A.C. 4A:4-2.3(a). In re Gann, et al., Ass't Supervisor of Pub. Works, (PM0089R), Marlboro Township, CSC Docket Nos. 2013-3175, 2013-3200, 2013-3254, 2013-3262 (Consolidated), 2013 N.J. CSC LEXIS 829, Final Administrative Determination (August 15, 2013).

Titles of Insurance Analyst Trainee, Insurance Examiner Trainee, and Financial Examiner Trainee were properly reallocated to the non-competitive division of the career service as permitted by N.J.A.C. 4A:3-1.2 because the Department of Banking and Insurance (DOBI) had demonstrated that it required more flexibility to efficiently and quickly meet its hiring responsibilities and to address its ongoing recruitment and retention problems, which included the fact that DOBI was expending significant resources on provisional employees in the subject title through training and mentoring, the value of which was lost if such provisional appointees were not reachable on an eligible list from an open competitive examination. In re Insurance Analyst Trainee, Insurance Examiner Trainee, and Financial Examiner Trainee, CSC Dkt. No. 2014-169, 2013 N.J. CSC LEXIS 409, Final Decision (August 1, 2013).

Titles of Probation Officer and Probation Officer, Bilingual in Spanish and English were reallocated to the non-competitive division under N.J.A.C. 4A:3-1.2. It was clear that reallocation would provide the Administrative Office of the Courts (AOC) with the flexibility needed to more efficiently and quickly meet hiring responsibilities. Certification procedures based on ranked eligible lists would not meet the AOC's needs for immediate recruitment. In re Reallocation of the Probation Officer and Probation Officer, Bilingual in Spanish and English, Titles from the Competitive to the Noncompetitive Division of the Career Serv., CSC Dkt. No. 2013-3251, 2013 N.J. CSC LEXIS 679, Final Decision (July 18, 2013).

Civil Service Commission reallocated the Human Resource Consultant Trainee and Personnel and Labor Analyst Trainee titles to the non-competitive division of the career service in accordance with N.J.A.C. 4A:3-1.2. The delay occasioned by the requirement to issue an open competitive announcement, review candidates' eligibility, schedule an examination, score an examination, issue an eligibility list, and proceed with the appointment process through certification procedures impacted the appointing authority's ability to recruit for these titles. Therefore, certification procedures based on ranked eligible lists did not meet the needs of the appointing authority. In re Human Resource Consultant Trainee and Personnel and Labor Analyst Trainee, CSC Dkt. No. 2013-2956, 2013 N.J. CSC LEXIS 599, Final Decision (June 6, 2013).

Ample reason existed for the reallocation of Data Entry Machine Operator title to the noncompetitive division of the career service under N.J.A.C. 4A:3-1.2. The primary function of the title was to perform data entry and verification work. Given that most individuals typically acquired a basic knowledge of, and skill in the areas of keyboarding and computers prior to entering the workforce, it was clearly not practicable to continue to examine for the position. In re Data Entry Machine Operator Title Series, CSC Dkt. No. 503, 2013 N.J. CSC LEXIS 503, Final Decision (May 16, 2013).

Reallocation of 11 job titles to the noncompetitive division of the career service to support the expeditious staffing of non-law enforcement personnel for the newly created Camden County Police Department was appropriate under N.J.A.C. 4A:3-1.2(c). The establishment of the Camden County Police Department was analogous to a new legislative program or major agency reorganization, and it was necessary for the newly established Police Department to have non-law enforcement administrative personnel to support the operations of the department during the critical initial formation process. In re Camden Cnty. Police Dep't. Non-Law Enforcement, CSC Dkt. No. 2013-1972, 2013 N.J. CSC LEXIS 192, Final Decision (March 6, 2013).

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.

(c) In local service, a principal executive officer, for purposes of unclassified appointments under N.J.S.A. 11A:3-5(h) and (j), is a managerial title which is independent of other executive authority, and is established by statute or designated by the Merit System Board.

(d) In State service, a principal executive officer, for purposes of unclassified appointments under N.J.S.A. 11A:3-4(h), is one who is appointed by the Governor with the advice and consent of the Senate.

Case Notes

The Division of Classification and Personnel Management (CPM) won approval from the Civil Service Commission (CSC) to make temporary unclassified appointments to various career service titles in order to allow for expedited staffing of the interim Office of Recovery, Department of Human Services (DHS). CPM asserted that such an order was necessary because there was an immediate need for staff in order to meet strict timelines mandated for the administration of federal funds earmarked to assist state residents in the aftermath of Superstorm Sandy and that by their very nature, positions involving disaster relief did not lend themselves to tenure and were short-term in nature. Applying the criteria in N.J.A.C. 4A:3-1.3(a)5, the CSC concluded that because the DHS had an immediate need to make appointments and because the interim Office of Recovery would be phased down by September 30, 2015, it would not be practicable to determine merit and fitness for appointment nor make permanent appointments to the titles. That being so, relief was proper. In re Office of Recovery, Dep't of Human Servs., CSC Docket No. 2014-342, 2013 N.J. CSC LEXIS 733, Final Administrative Decision (August 16, 2013).

Expedited staffing of various career service titles in the Department of Health (DOH), Public Health Recovery Division, was authorized on findings that the same was necessary if the Division of Classification and Personnel Management was to meet the strict timelines mandated for the administration of federal funds granted to the state in the aftermath of Superstorm Sandy. Other factors that were relevant to a determination under N.J.A.C. 4A:3-1.3 that it was not practicable to utilize the normal staffing processes included that it was impractical to make permanent appointments to positions to perform disaster relief duties since such positions were, at the outset, short-term in nature and that the qualifications for such positions varied and sometimes required a very specific set of skills, by reason of which the DOH was in need of flexibility in the selection process. In re Interim Public Health Recovery Div., Dep't of Health, CSC Dkt. No. 2014-170, 2013 N.J. CSC LEXIS 410, Final Decision (August 1, 2013).

Division of Classification and Personnel Management established adequate grounds for a finding under N.J.A.C. 4A:3-1.3(a)5 permitting it to make temporary unclassified appointments to career service titles in order to allow expedited staffing of the interim Disaster Recovery Division, Department of Community Affairs (DCA), because there was an immediate need for staff in order to meet strict timelines mandated for the administration of federal funds granted in connection with Superstorm Sandy. Given the DCA's immediate need to make such appointments to meet strict timelines and the fact that the Disaster Recovery Division will be phased down by September 30, 2017, it would not be practicable to determine merit and fitness for appointment nor to make permanent appointments to the proposed titles. Given those findings, temporary unclassified appointments were properly utilized. In re Interim Disaster Recovery Div., CSC Docket No. 2013-2597, 2013 N.J. CSC LEXIS 168, Final Agency Action (April 18, 2013).

4A:3-1.4 Unclassified secretaries and confidential assistants: State service

(a) In State service, each department head, principal executive officer, board and commission may appoint one unclassified secretary and one unclassified confidential assistant.

(b) Requests for such unclassified appointments shall be made to the Commissioner, accompanied by documentation showing that no more than one person is serving in each such unclassified title in the requesting authority. In the case of boards and commissions, the following criteria must be satisfied:

1. The board or commission must have the actual power to administer a statutorily designated function; and

2. The board or commission must have the full power of an appointing authority with regard to its personnel.

(c) Upon recommendation by the Commissioner, such appointments may thereafter be approved by the Merit System Board and recorded in the Board minutes.

SUBCHAPTER 2. SENIOR EXECUTIVE SERVICE

4A:3-2.1 General provisions: State service

(a) The Senior Executive Service (abbreviated "SES") shall consist of those specific positions in State government allocated by the Merit System Board to the SES in accordance with N.J.S.A. 11A:3-3 and this subchapter.

(b) No more than 1,200 positions shall be allocated to the SES in all departments.

(c) No less than 85 percent of all positions allocated to the SES shall be filled by individuals with career status. Career status means permanent status in a career service title in State government, including those on an approved leave of absence from a permanent career position.

Amended by R.1996 d.427, effective September 16, 1996.
See: 28 N.J.R. 2538(a), 28 N.J.R. 4220(a).

Deleted provision for an SES office in the Department of Personnel.

4A:3-2.2 Designation of SES positions: State service

(a) To be allocated to the SES, a position must have substantial managerial, policy influencing or policy executing responsibilities. Allocations to SES shall be determined on the basis of specific positions, not by job titles or category.

1. A substantial managerial or policy executing position is one which has significant control of substantial resources, responsibility for major programmatic outcomes and/or responsibility for a major organizational unit.

2. A policy influencing position is one which has influence on the department's/agency's direction, mission, priorities, major goals or objectives.

(b) An SES position shall only report to a higher level unclassified position or to another SES position.

(c) The Commissioner shall establish procedures for the submission of executive/senior management plans for each department.

1. Each department head shall submit an executive/senior management plan to the Commissioner which shall include the department's SES position requests.

2. A position allocated to the SES shall be part of the executive/senior management cadre of a department.

3. The Commissioner may request information about the position necessary to process the SES position request.

4. If the original major functions and responsibilities of a vacant position allocated to the SES change but are not included in the executive/senior management plan of the department, the new functions of the position shall be reviewed by the Commissioner before posting for or filling the position.

(d) At the discretion of a department head, an appointing authority may move an SES member from one position allocated to the SES to another position allocated to the SES. The appointing authority shall review the compensation of the SES member at that time and may recommend a salary adjustment, if appropriate. An appointing authority so moving an SES member shall notify the Department of Personnel of this change.

(e) An appointing authority may move an SES member to cover an emergency assignment or other emergent need for six months or less, at the discretion of the department head. The appointing authority need not notify the Department of Personnel of such movement.

Administrative correction to (b).

See: 21 N.J.R. 1824(a).

Administrative correction to (b).

See: 21 N.J.R. 3295(a).

Amended by R.1996 d.427, effective September 16, 1996.

See: 28 N.J.R. 2538(a), 28 N.J.R. 4220(a).

In (a)2 deleted provision excluding positions which influence only internal operations, in (b) deleted department heads, rewrote (c) and added (d) and (e).

4A:3-2.3 SES appointments: State service

(a) The SES selection process includes the following:

1. Notice of vacancies in SES positions shall be posted, at a minimum, within the department in which the vacancies exist. Posting is not required if the department selects the incumbent for a position at the time of the initial allocation to the SES.

i. A department head wishing to circulate a State-wide posting of the vacancy shall do so through the Chairperson of the Civil Service Commission or designee.

2. The department shall contact the Chairperson or designee for assistance in recruiting to fill SES vacancies before recruiting applicants outside State service. Where possible, SES members from other departments will be encouraged to apply for a vacant SES position when it will not be filled from within the requesting department.

3. If the position is an initial conversion of a position previously assigned to the career service, the appointing authority shall notify in writing the incumbent of the availability of the SES position and provide the individual with the opportunity to complete the entire SES selection process.

4. The departmental selection process is at the option of the department. However, once a selection process is chosen, it must be consistently applied to all candidates for that position.

5. The department head shall forward his or her selection(s) to the Chairperson or designee.

6. Final appointment shall be subject to approval by the Chairperson or designee.

(b) A permanent employee holding a position allocated to the SES who is not selected to join the SES or chooses not to join the SES (referred to as a "non-appointed incumbent"), shall be placed in a career service position in the same organizational unit for which he or she is qualified at the same class code.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the placement of the non-appointed incumbent:

- i. Reassign the employee to a vacant position;
- ii. Separate a provisional employee without underlying career status and reassign the non-appointed incumbent to the position; or
- iii. Return an employee, serving provisionally in the highest permanent title held by the non-appointed incumbent, and reassign the non-appointed incumbent to the permanent title vacated by the provisional employee.

4. The organizational unit and the non-appointed incumbent may agree to use the following optional procedures:

- i. The non-appointed incumbent may accept an appointment to another title at the same or lower class code, in the same or different title series or job band, as the case may be, for which the employee is qualified in the same or another organizational unit.
- ii. The career status and compensation rights of the non-appointed incumbent shall be determined in accordance with the rules governing voluntary demotion. See N.J.A.C. 4A:4-7.8.
- iii. If the organizational unit offers the non-appointed incumbent options under either (b)3 or 4 above, the employee may accept either option.
- iv. If the organizational unit offers only the option under (b)3 above, the non-appointed incumbent shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the placement of a non-appointed incumbent under (b)3 or 4 above. See N.J.A.C. 4A:8.

6. If the placement of the non-appointed incumbent causes a reduction in salary of the employee, the department head may, at his or her discretion, recommend to the Chairperson or designee placement of the employee at a salary no greater than the salary the employee received in the permanent title held immediately prior to non-appointment.

(c) A non-appointed incumbent without career status may be:

1. Reassigned to an unclassified title;
2. Reassigned to a vacant career service title for which no eligible list exists; or

3. Terminated.

Amended by R.1996 d.427, effective September 16, 1996.
See: 28 N.J.R. 2538(a), 28 N.J.R. 4220(a).

Rewrote the section.

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (a)1i, substituted "Chairperson of the Civil Service Commission or designee" for "Department of Personnel"; in (a)2, substituted "Chairperson or designee" for "Department of Personnel"; in (a)5, (a)6, and (b)6, substituted "Chairperson or designee" for "Commissioner"; and in (b)4i, inserted "or job band, as the case may be,".

4A:3-2.4 SES performance evaluation: State service

The performance of all SES members shall be evaluated annually by the department head or designee in accordance with evaluation procedures set by the Commissioner.

Amended by R.1996 d.427, effective September 16, 1996.

See: 28 N.J.R. 2538(a), 28 N.J.R. 4220(a).

Deleted provision that evaluations be based on a performance agreement developed by the SES member and the department head.

4A:3-2.5 SES compensation: State service

(a) Positions allocated to the SES shall be designated as no-range, which means that no class code is designated for the position. However, salary payments for SES positions are subject to restrictions established by the Commissioner and the Director, Division of Budget and Accounting, under their legal authority.

(b) An incumbent with career status whose position is allocated to the SES, and who is appointed as an SES member, shall receive an initial salary that is no less than the salary at the time of his or her appointment as an SES member.

(c) After initial appointment, salary advancement shall be based upon performance. There shall not be specific steps within each salary level, nor increments based upon length of service.

Amended by R.1996 d.427, effective September 16, 1996.

See: 28 N.J.R. 2538(a), 28 N.J.R. 4220(a).

Rewrote the section.

4A:3-2.6 SES benefits: State service

(a) Effective January 1, 1997, SES members with underlying career service status shall be entitled to the same amount of vacation, sick, and administrative leave received by career service employees. See N.J.A.C. 4A:6-1.2, 1.3, and 1.9. SES members without underlying career status shall be subject to the unclassified leave plan, if any, utilized in his or her department.

(b) SES members shall be entitled to participate in all leave-related programs open to career service employees and employees in the executive/senior management cadre of a department, including State family leave, Federal family and medical leave, donated leave, and the voluntary furlough program. See N.J.A.C. 4A:6.

(c) An SES member may apply for a career service promotional examination in his or her current unit scope, as long as the permanent title he or she held immediately prior to SES appointment would have made the SES member eligible for the examination.

1. If the SES member had been permanent in a job band, and in accordance with N.J.A.C. 4A:3-3.2 and 4A:4-2.6 would be eligible for a promotion outside of the band, the SES member may apply for the promotional test.

2. If the movement in a job band would be an advancement appointment to a higher level within the band, the SES member may apply for the advancement in accordance with N.J.A.C. 4A:3-3.2.

Amended by R.1996 d.427, effective September 16, 1996.

See: 28 N.J.R. 2538(a), 28 N.J.R. 4220(a).

Rewrote the section.

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (a), inserted a comma following "sick" and following "1.3"; in (b), inserted a comma following "leave"; in the introductory paragraph of (c), inserted a comma following "scope"; and added (c)1 and (c)2.

4A:3-2.7 (Reserved)

4A:3-2.8 (Reserved)

Repealed by R.1996 d.427, effective September 16, 1996.

See: 28 N.J.R. 2538(a), 28 N.J.R. 4220(a).

Section was "Movement within the SES: State service".

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 Chairperson of the Civil Service Commission or designee 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 employee with underlying career status who is separated from the SES shall have the right to return to his or her highest held class code permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. For purposes of this section, an organizational unit means an appointing authority.

3. The appointing authority shall use the following procedures to effect the return of the employee to his or her career status:

i. Reassign the employee to a vacant position/title;

ii. Separate a provisional employee without underlying career status and reassign the returning employee to the position/title;

iii. Return an employee serving provisionally in the permanent title previously held by the returning employee to his or her permanent title and reassign the returning employee to the position/title vacated by the provisional employee; and

iv. If the returning employee's last held permanent position/title no longer exists, or his or her last held permanent title is no longer appropriate as a result of the position's allocation to SES, the employee shall have lateral and demotional rights determined as if the title currently exists.

4. The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee:

i. The employee may accept appointment to other titles at the same or lower class code, in the same or a different title series or job band, as the case may be, for which the employee is qualified in the same or another organizational unit.

ii. The status and compensation rights of the returning employee shall be determined in accordance with applicable rules.

iii. When the organizational unit offers the employee options under either (c)3 or 4 above, the employee may accept either option.

iv. If the organizational unit offers only the option under (c)3 above, the employee shall accept that option.

5. Layoff procedures shall be utilized when the organizational unit cannot effect the return of a permanent employee under (c)3 or 4 above. See N.J.A.C. 4A:8.

6. 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.

7. 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)7 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 Chairperson of the Civil

Service Commission or designee 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.

(e) Individuals without underlying career status who are separated from the SES may be:

1. Appointed to an unclassified title;
2. Appointed to a vacant career service title for which no eligible list exists; or
3. Terminated.

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.1996 d.427, effective September 16, 1996.

See: 28 N.J.R. 2358(a), 28 N.J.R. 4220(a).

Rewrote (c) and added (e).

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (a) and (c)7iii, substituted "Chairperson of the Civil Service Commission or designee" for "Commissioner"; in (c)3iii, inserted "and"; in (c)4i, inserted "or job band, as the case may be,"; and in (d), substituted the second occurrence of "is" for "or", and inserted a comma following "demotional".

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

Civil Service Act authorized Department to promulgate specifications for classified service, regulations adopted pursuant to the Act required county to comply with specifications, and nothing in the regulations prohibited court to compel the rights outlined in specifications. N.J.S.A. 11A:1-1 to 11A:12-6; N.J.Admin. Code title 4A, §§ 3-3.1(a, b), 9-1.1(a). *Aparin v. County of Gloucester*, 345 A.2d 41 (2001).

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).

The Division of Selection Services and Recruitment (DSSR) correctly determined that an applicant seeking admission to the promotional examination for Assistant Administrative Analyst (PC1074P), Atlantic County was ineligible for that exam because she lacked one year and seven months of applicable experience and thus did not satisfy N.J.A.C. 4A:4-2.6(a). The applicant's experience as an Office Services Manager and her duties in the Assistant Administrative Analyst position did not have as the primary focus the duties required for the subject title. Incumbents in the Assistant Administrative Analyst title assist in performing the work involved in the analysis and evaluation of administrative procedures, practices and organizational structure in order to provide information and recommendations to management on ways to improve administrative functions and managerial control of operational activities and perform other related duties. On the contrary, the applicant's experience primarily lies in administrative and clerical work and her day-to-day duties are administrative and clerical in nature. The applicant did not possess the required experience in analyzing, evaluating and providing advice to management with the objective of improving managerial effectiveness or managing, administering or directing an organizational unit and its work programs which entailed responsibility for planning, organizing, directing, staffing, coordinating and budgeting for the activities of the unit. That said, given the surrounding facts and circumstances, it was appropriate for the applicant's assigned duties and responsibilities to be reviewed to determine the position's appropriate classification per N.J.A.C. 4A:3-3.1. In re *Perla*, Assistant Admin. Analyst (PC1074P), Atlantic Cnty., CSC Docket No. 2013-2765, 2013 N.J. CSC LEXIS 737, Final Decision (August 15, 2013).

Determination by the Division of Selection Services and Recruitment that two applicants did not meet the experience requirements for admission to an open competitive examination for the dual title of Maintenance Repairer/Mechanic (C0993P), Bergen County, as required by N.J.A.C. Cite 4A:4-2.3(b)2 was amply supported by the record, which reflected that neither of the applicants possessed the required three years of applicable experience. Though such experience must have as its primary focus full-time responsibilities in the areas required in the announcement, the applicants' duties in the subject title did not have as the primary focus the maintenance and repair of various types of motor vehicles and/or construction equipment. Incumbents in the dual title of Maintenance Repairer/Mechanic perform a variety of routine maintenance and repair tasks involving masonry, plastering, carpentry, painting, plumbing, steam fitting, sheet metal, electrical, glazing, mechanical and/or other types of maintenance work. However, incumbents are also required to perform varied mechanical work involved in the repair, maintenance and servicing of motor vehicles and/or construction equip-

ment working with various machines and hand tools common to the trade. Neither of the applicants described such mechanical experience and both appeared to be primarily performing Maintenance Repairer duties in their current positions. However, though neither applicant was eligible for the examination given the deficit in experience, a review of their assigned duties and responsibilities was properly undertaken to determine the positions' appropriate classification in accordance with N.J.A.C. 4A:3-3.1. In re Marquez and Oddo, Maintenance Repairer/Mechanic (C0993P), Bergen County, CSC Docket Nos. 2013-2699, 2013-2698 (Consolidated), 2013 N.J. CSC LEXIS 890, Final Decision (August 14, 2013).

4A:3-3.2 Establishment of classification plans

(a) The Civil Service Commission 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;
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; and
3. A list of job bands to which titles have been assigned (see N.J.A.C. 4A:3-3.2A).

(c) A single specification may be used for a title series or job band. In such cases, the distinction between different titles in the series or levels in the job band, as the case may be, 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.

Amended by R.2014 d.099, effective June 2, 2014.
See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (a), substituted "Civil Service Commission" for "Commissioner", and inserted a comma following "executive"; in (b)1, deleted "and" from the end; in (b)2, substituted "; and" for a period at the end; added (b)3; and in (c), inserted "or job band" and "or levels in the job band, as the case may be,".

Case Notes

Commissioner of Department of Personnel was authorized under Civil Service Act to promulgate specification for county park rangers that contained requirement that such rangers complete a training program mandated by Police Training Commission within 18 months of appointment. N.J.S.A. 11A:3-1; N.J.Admin. Code title 4A, chap. 3-3.2(a, b). *Aparin v. County of Gloucester*, 345 A.2d 41 (2001).

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:3-3.2A Job banding: State service

(a) The job banding program, in the interest of efficiency, facilitates advancement appointments of qualified employees to the next higher title level within a job band when a vacancy exists.

(b) The Civil Service Commission shall review titles and title series in State service to determine whether they are appropriate for job banding.

1. This determination shall be guided by whether a movement from one position to a higher level position may be achieved based on an evaluation of relative knowledge, skills, and abilities without resorting to competitive examination procedures, while still satisfying the State Constitutional and statutory mandate for merit and fitness in selections and appointments.

2. The Chairperson or designee shall approve a specific number of competencies for each title level that an employee must attain to advance from a lower title level to the next higher title level.

3. Job titles in the Police and Firemen's Retirement System (PFRS) shall not be included in job banding.

4. Any job banding program approved prior to June 2, 2014, pursuant to the Commission's authority under the law, such as the Judiciary's job banding program, can continue without adopting the changes provided in Title 4A.

(c) Each title assigned to a job band shall thereafter be considered a title level. Movement from a lower title level to the next higher title level within a band shall be considered an advancement appointment. An involuntary movement from a higher title level to the next lower title level within a band, except for failure of the developmental period as set forth in (f) below, shall be considered a major disciplinary demotion. See N.J.A.C. 4A:2-2.

1. An employee may file a grievance regarding the appropriateness of the title level in which he or she is serving, in accordance with N.J.A.C. 4A:2-3 and 4A:3-3.9, as applicable.

(d) Eligibility for advancement appointment to the next higher level within a band requires that an employee attain a predetermined number of competencies approved by the Chairperson or designee in accordance with (b)2 above. Prior to attaining the predetermined number of competencies, an employee's competencies shall be evaluated twice a year, concurrently with an employee's Performance Assessment Review (PAR). (See N.J.A.C. 4A:6-5.)

1. When an appointing authority determines a need to fill a position at a particular level within a band, it may consider for advancement appointment all employees who have attained the predetermined competencies.

2. The appointing authority shall notify all employees of the advancement appointment opportunity by the conspicuous posting of a notice at all work sites where the announced advancement appointment may occur, as well as on the appointing authority's intranet and internet web sites, and via electronic communication.

i. Those interested employees serving in the level immediately below the higher level within the band to be filled who have demonstrated attainment of the required competencies shall be provided with a notice by the appointing authority and offered the opportunity to file a resume for consideration.

ii. Notices shall include the same information as required by N.J.A.C. 4A:4-2.1(c) and shall be posted for a period of no less than 14 calendar days prior to commencement of the advancement appointment selection process conducted by the appointing authority, with electronic communications to employees sent at least 14 days prior to commencement of the process.

3. Once an appointing authority determines which eligible employees are interested, it shall conduct an advancement appointment selection process approved by the Chairperson or designee and make a determination as to which employee or employees may receive an advancement appointment. The appointing authority shall then rank the candidates for the announced advancement appointment and document same, taking into account the veterans' preference described in (d)3i and ii below, where applicable.

i. Whenever a veteran ranks highest in the advancement appointment selection process, a nonveteran shall not be appointed unless the appointing authority shows cause before the Civil Service Commission why the veteran shall not receive the advancement appointment.

ii. When the advancement appointment selection process results in a tie between a veteran and a non-veteran, the veteran shall be offered the advancement appointment.

iii. An employee who is not selected for an advancement appointment may file a grievance in accordance with N.J.A.C. 4A:2-3, unless (d)3iv below applies.

iv. If the employee's non-selection is raised by that employee in a discrimination appeal under N.J.A.C. 4A:7-3, the model procedures for internal complaints alleging discrimination in the workplace at N.J.A.C. 4A:7-3.2 shall apply. Should the appeal reach the Civil Service Commission, the Commission, in determining the appeal, shall also decide the issues pertaining to non-selection.

(e) Once an employee accepts an advancement appointment, the employee shall be compensated in accordance with N.J.A.C. 4A:3-4.9, within the salary range established for that title level within the band.

1. An employee's anniversary date shall be set in accordance with N.J.A.C. 4A:3-4.5.

(f) All advancement appointments are subject to a six-month developmental period that commences upon the employee's selection for an advancement appointment. This developmental period shall serve as a transition between the employee's prior title level and the higher title level.

1. Upon successful completion of the six-month developmental period, the employee shall remain in the higher title level.

2. Should the employee fail the six-month developmental period, he or she shall be returned to his or her prior title level.

i. An employee may appeal his or her failure of the six-month developmental period by filing a grievance in accordance with N.J.A.C. 4A:2-3.

(g) If an employee receives an unsatisfactory final PAR rating, he or she shall again be required to demonstrate the attainment of the predetermined competencies corresponding to the title level in which the employee is serving.

(h) An appointing authority may, as a result of an employee's unsatisfactory final PAR rating, effect an involuntary demotion of the employee in accordance with major disciplinary procedures. See N.J.A.C. 4A:2-2.

(i) The movement to a supervisory title outside of the band shall be effected through promotional examination procedures. The movement from a title level within a band to a higher title level in a different band, or from a non-banded title to a title level within a band, may be authorized by the Chairperson or designee when the appointing authority has certified that the employee meets the predetermined competencies corresponding to the title level to which the employee is to move.

New Rule, R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 260(a), 46 N.J.R. 1331(c).

ANNOTATION: On January 9, 2014, the Concurrent Resolution below was passed by the New Jersey Legislature concerning N.J.A.C. 4A:3-3.2A. See 46 N.J.R. 257(a). This annotation is provided by the New Jersey Office of Administrative Law pursuant to N.J.S.A. 52:14B-4.3.

ASSEMBLY CONCURRENT RESOLUTION No. 215
 STATE OF NEW JERSEY
 215th LEGISLATURE
 INTRODUCED DECEMBER 12, 2013

Sponsored by:

Assemblywoman LINDA STENDER
 District 22 (Middlesex, Somerset and Union)
 Assemblyman HERB CONAWAY, JR.
 District 7 (Burlington)
 Assemblyman REED GUSCIORA
 District 15 (Hunterdon and Mercer)
 Assemblyman WAYNE P. DEANGELO
 District 14 (Mercer and Middlesex)
 Assemblyman DANIEL R. BENSON
 District 14 (Mercer and Middlesex)
 Assemblyman THOMAS P. GIBLIN
 District 34 (Essex and Passaic)
 Assemblywoman SHAVONDA E. SUMTER
 District 35 (Bergen and Passaic)

Co-Sponsored by:

Assemblywoman Watson Coleman, Senators Gordon, Greenstein and Turner

SYNOPSIS

Invalidates or prohibits adoption of rule proposed by Civil Service Commission to establish job banding program.

CURRENT VERSION OF TEXT

As introduced.

A CONCURRENT RESOLUTION concerning legislative review of rules and regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey and invalidating or prohibiting the adoption of a rule proposed by the Civil Service Commission to establish a job banding program.

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation adopted or proposed by an administrative agency to determine if it is consistent with the intent of the Legislature, and invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation if it finds that the rule or regulation is not consistent with legislative intent; and

WHEREAS, Upon finding that a rule or regulation, either proposed or adopted, is not consistent with legislative intent, Article V, Section IV, paragraph 6 provides that the Legislature shall transmit its findings in the form of a concurrent resolution to the Governor and the head of the Executive Branch agency which promulgated, or plans to promulgate, the rule or regulation, and the agency shall have 30 days from the time the concurrent resolution is transmitted to amend or withdraw the rule or regulation; and

WHEREAS, If the agency does not amend or withdraw the existing or proposed rule or regulation, Article V, Section IV, paragraph 6 provides that the Legislature may invalidate or prohibit the adoption of the proposed rule or regulation, following a public hearing held by either House on the invalidation or prohibition, the placement of a transcript of the public hearing on the desks of the members of each House of the Legislature in open meeting followed by the passage of at least 20 calendar days, and a vote of a majority of the authorized membership of each House in favor of a concurrent resolution invalidating or prohibiting the adoption of the rule or regulation; and

WHEREAS, The Civil Service Commission proposed a new rule, N.J.A.C.4A:3-3.2A, entitled "Job Banding Program," which was filed with the Office of Administrative Law on February 28, 2013 and published in the New Jersey Register on March 18, 2013; and

WHEREAS, The proposed new rule is contrary to the spirit, intent, and plain meaning of the provision in the New Jersey Constitution that requires that promotions be based on merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive. The fact that the proposed new rule would eliminate competitive promotional examinations for tens of thousands of positions for which such exams have been administered

for decades is compelling evidence that it is practicable to continue to determine the merit and fitness of candidates for such promotional positions by competitive examination in accordance with the New Jersey Constitution. The proposed new rule is not consistent with the legislative intent that the public policy of this State is to select and advance employees on the basis of their relative knowledge, skills and abilities, ensure equal employment opportunity at all levels of public service, and protect career public employees from political coercion. The proposed new rule is not consistent with the legislative intent that a competitive promotional examination process be established, maintained, and administered by the Civil Service Commission to ensure that promotions are based on merit and fitness and are not based on patronage or discriminatory reason. The proposed new rule is not consistent with the legislative intent that whenever a veteran ranks highest on a promotional certification, a nonveteran shall not be appointed unless the appointing authority shall show cause before the commission why a veteran should not receive such promotion. The proposed new rule is not consistent with the intent of the Legislature as expressed in the language of the Civil Service Act, including the spirit, intent, or plain meaning of N.J.S.A.11A:3-1, N.J.S.A.11A:4-1, N.J.S.A.11A:4-8 or N.J.S.A.11A:5-7;

WHEREAS, Assembly Concurrent Resolution No. 199 of 2013, passed by the General Assembly on June 24, 2013 and by the Senate on June 27, 2013, set forth the finding of the Legislature that the proposed rule, filed on February 28, 2013 and published on March 18, 2013, is not consistent with the Legislature's intent, and that concurrent resolution was filed with the Secretary of State and transmitted to the Governor and the Chair of the Civil Service Commission. The Civil Service Commission has 30 days from the date of transmittal to amend or withdraw the proposed rule; and

WHEREAS, Prior to voting on a concurrent resolution to invalidate an adopted rule or regulation or prohibit the adoption of a rule or regulation, a public hearing must be held on invalidating or prohibiting the adoption of the proposed rule and the transcript of that hearing must be placed on the desk of each member of the Senate and each member of the General Assembly; now, therefore,

BE IT RESOLVED by the General Assembly of the State of New Jersey (the Senate concurring):

1. The Legislature prohibits, in whole, N.J.A.C.4A:3-3.2A, the rule proposed by the Civil Service Commission and entitled "Job Banding Program," from being adopted and from taking effect pursuant to the power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.
2. If the Civil Service Commission has adopted N.J.A.C.4A:3-3.2A, the Legislature invalidates, in whole, N.J.A.C.4A:3-3.2A, the rule entitled "Job Banding Program," pursuant to the power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey.
3. The Secretary of the Senate or the Clerk of the General Assembly shall transmit a copy of this concurrent resolution to the Governor, the Chair of the Civil Service Commission, and the Office of Administrative Law.
4. This concurrent resolution shall take effect immediately.

STATEMENT

Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, this concurrent resolution prohibits, in whole, the rule proposed by the Civil Service Commission to establish a job banding program, specifically N.J.A.C. 4A:3-3.2A filed on February 28, 2013 and published on March 18, 2013, from being adopted and taking effect. If, at the time of passage of this concurrent resolution, the Civil Service Commission has adopted N.J.A.C.4A:3-3.2A, the Legislature invalidates, in whole, N.J.A.C.4A:3-3.2A, the rule proposed by the Civil Service Commission and entitled "Job Banding Program," pursuant to the power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey. Previously, the Legislature passed Assembly Concurrent Resolution No. 199 of 2013 stating the finding of the Legislature that the proposed rule is not consistent with legislative intent.

Amended by R.2014 d.173, effective November 17, 2014.
See: 46 N.J.R. 1765(a), 46 N.J.R. 2277(b).

In (d)3, inserted "approved by the Chairperson or designee" and the last sentence.

ANNOTATION: On December 18, 2014, the Concurrent Resolution below was passed by the New Jersey Legislature concerning N.J.A.C. 4A:3-3.2A. See 47 N.J.R. 245(a). This annotation is provided by the New Jersey Office of Administrative Law pursuant to N.J.S.A. 52:14B-4.3.

ASSEMBLY CONCURRENT RESOLUTION No. 192
STATE OF NEW JERSEY
216th LEGISLATURE
INTRODUCED SEPTEMBER 29, 2014

Sponsored by:

Assemblywoman LINDA STENDER
District 22 (Middlesex, Somerset and Union)
Assemblyman REED GUSCIORA
District 15 (Hunterdon and Mercer)
Assemblyman HERB CONAWAY, JR.
District 7 (Burlington)
Assemblyman TIMOTHY J. EUSTACE
District 38 (Bergen and Passaic)
Assemblyman DANIEL R. BENSON
District 14 (Mercer and Middlesex)
Assemblyman WAYNE P. DEANGELO
District 14 (Mercer and Middlesex)

Co-Sponsored by:

Assemblywoman Mosquera, Assemblyman Coughlin, Senators Gordon, Greenstein and Turner

SYNOPSIS

Invalidate Civil Service Commission job banding rule.

CURRENT VERSION OF TEXT

As introduced.

A CONCURRENT RESOLUTION concerning legislative review of rules and regulations pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey and invalidating the Civil Service Commission job banding rule.

WHEREAS, Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, the Legislature may review any rule or regulation adopted or proposed by an administrative agency to determine if it is consistent with the intent of the Legislature, and invalidate an adopted rule or regulation or prohibit the adoption of a proposed rule or regulation if it finds that the rule or regulation is not consistent with legislative intent; and

WHEREAS, Upon finding that a rule or regulation, either proposed or adopted, is not consistent with legislative intent, Article V, Section IV, paragraph 6 provides that the Legislature shall transmit its findings in the form of a concurrent resolution to the Governor and the head of the Executive Branch agency which promulgated, or plans to promulgate, the rule or regulation, and the agency shall have 30 days from the time the concurrent resolution is transmitted to amend or withdraw the rule or regulation; and

WHEREAS, If the agency does not amend or withdraw the existing or proposed rule or regulation, Article V, Section IV, paragraph 6 provides that the Legislature may invalidate or prohibit the adoption of the proposed rule or regulation, following a public hearing held by either House on the invalidation or prohibition, the placement of a transcript of the public hearing on the desks of the members of each House of the Legislature in open meeting followed by the passage of at least 20 calendar days, and a vote of a majority of the authorized membership of each House in favor of a concurrent resolution invalidating or prohibiting the adoption of the rule or regulation; and

WHEREAS, The Civil Service Commission adopted a new rule, N.J.A.C.4A:3-3.2A, entitled "Job Banding Program," which was filed with the Office of Administrative Law on February 28, 2013 and published in the New Jersey Register on March 18, 2013, and, after

the adoption of substantial changes, was adopted by the commission at its meeting on May 7, 2014 and became effective on June 2, 2014 upon publication in the New Jersey Register; and

WHEREAS, On June 16, 2014, Senate Concurrent Resolution No. 116 received final approval by the Legislature and was filed with the Secretary of State, and transmitted to the Governor and the Chair of the Civil Service Commission; and

WHEREAS, Senate Concurrent Resolution No. 116 expressed the Legislature's finding that the Civil Service Commission's new rule N.J.A.C.4A:3-3.2A, "Job Banding Program," was not consistent with legislative intent and informed the commission, pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, that the commission shall have 30 days following transmittal of that concurrent resolution to amend or withdraw the new rule or the Legislature may, by passage of another concurrent resolution, exercise its authority under the Constitution to invalidate the regulation in whole or in part; and

WHEREAS, The new rule is contrary to the spirit, intent, and plain meaning of the provision in the New Jersey Constitution that requires that promotions of public employees be based on merit and fitness to be ascertained, as far as practicable, by examination, which, as far as practicable, shall be competitive. The new rule is not consistent with the legislative intent that the public policy of this State is to select and advance employees on the basis of their relative knowledge, skills and abilities, ensure equal employment opportunity at all levels of public service, and protect career public employees from political coercion. The new rule is not consistent with the legislative intent that a competitive promotional examination process be established, maintained, and administered by the Civil Service Commission to ensure that promotions are based on merit and fitness and are not based on patronage or discriminatory reason. The new rule is not consistent with the intent of the Legislature as expressed in the language of the Civil Service Act, including the spirit, intent, or plain meaning of N.J.S.A.11A:3-1, N.J.S.A.11A:4-1, or N.J.S.A.11A:4-8; and

WHEREAS, On July 16, 2014, the Civil Service Commission approved proposed amendments to the job banding rule that would make only minor changes and are not responsive to the Legislature's finding, expressed in Senate Concurrent Resolution No. 116, that job banding is not consistent with legislative intent as expressed in the language of the Civil Service Act; and

WHEREAS, The amendments proposed on July 16, 2014 do not in any way limit the Legislature's ability to proceed with invalidating the job banding rule pursuant to Article V, Section IV, paragraph 6 through passage of this resolution; and

WHEREAS, Prior to voting on a concurrent resolution to invalidate an adopted rule or regulation or prohibit the adoption of a rule or regulation, a public hearing shall be held on invalidating or prohibiting the adoption of the proposed rule and the transcript of that hearing shall be placed on the desk of each member of the Senate and each member of the General Assembly; now, therefore,

BE IT RESOLVED by the General Assembly of the State of New Jersey (the Senate concurring):

1. The Legislature invalidates, in whole, N.J.A.C.4A:3-3.2A, the rule adopted by the Civil Service Commission and entitled "Job Banding Program," pursuant to the power set forth in Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, which became effective on June 2, 2014.

2. The Legislature recognizes 1 that the Civil Service Commission further amended N.J.A.C.4A:3-3.2A and submitted such amendments for filing to the Office of Administrative Law on July 16, 2014. As the Legislature has invalidated N.J.A.C.4A:3-3.2A in its entirety as set forth in section 1 of this concurrent resolution, any subsequent amendments to said regulation shall be deemed null and void.

3. Copies of this concurrent resolution, as filed with the Secretary of State shall be transmitted by the Secretary of the Senate or the Clerk of the General Assembly to the Governor, the Chair of the Civil Service Commission, and the Office of Administrative Law.

4. This concurrent resolution shall take effect immediately.

STATEMENT

Pursuant to Article V, Section IV, paragraph 6 of the Constitution of the State of New Jersey, this concurrent resolution invalidates, in whole, the rule proposed by the Civil Service Commission to establish a job banding program, specifically N.J.A.C. 4A:3-3.2A, which was adopted by the commission on May 7, 2014 and became effective on June 2, 2014 upon publication in the New Jersey Register. In addition, this concurrent resolution expressly provides that any amendments to that rule adopted by the Commission, including the amendment filed by the commission with the Office of Administrative Law on July 16, 2014, are null and void.

As required by the Constitution, the Legislature has previously informed the commission, through Senate Concurrent Resolution No. 116 of 2014, of the Legislature's finding that the job banding rule is not consistent with legislative intent.

4A:3-3.3 Administration of classification plans

(a) The Chairperson of the Civil Service Commission or designee 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, series, or job bands, as the case may be, 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 Chairperson or designee 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 Chairperson or designee 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 Chairperson or designee 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 appropriate Commission representative 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 appropriate Commission representative. The Commission representative 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).

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (a), substituted "Chairperson of the Civil Service Commission or designee" for "Commissioner"; in (a)2, inserted a comma following "authority"; in (a)3, substituted ", series, or job bands, as the case may be," for "or series"; in (b), (c), and (d), substituted "Chairperson or designee" for "Department of Personnel"; in (b), inserted a comma following "establishment"; in (d), inserted a comma following "unclassified", and substituted "statutes," for "Statutes"; in (e), substituted "appropriate Commission representative" for "Department of Personnel"; rewrote the introductory paragraph of (f); and in (f)6, inserted a comma following "modification" and following the second occurrence of "programs".

Case Notes

Employee was not entitled to reconsideration of a final administration decision upholding a determination that the proper classification of her position with the Department of Environmental Protection was Head Clerk. Although she argued that she was not provided with an opportunity to comment about the amended job specification for Program Technician pursuant to N.J.A.C. 4A:3-3.3(f)4, her submission of arguments regarding the amended job specification would not have changed the outcome of the case. The prior classification of her position would have been Head Clerk even if the prior job specification had been considered. In addition, because she was not serving in the affected title of Program Technician at the time of the modification of the job specification, she was not an affected person requiring notice. In re Patricia Scott, Dep't of Env'tl. Prot., CSC Dkt. No. 2013-2724, 2014 N.J. CSC LEXIS 126, Final Decision (March 26, 2014).

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

Assigning employee to more manual labor and less managerial and administrative work employee did not violate due process. *Ferraro v. City of Long Branch*, C.A.3 (N.J.)1994, 23 F.3d 803.

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.

The Division of Selection Services and Recruitment (DSSR) correctly determined that none of the eight applicants who were seeking admission to the promotional examination for Supervisor 1 MVC (PS3710T), Motor Vehicle Commission met the minimum experience requirements for the position per N.J.A.C. 4A:4-2.6(a). One of the requirements was at least one year of lead worker experience. Noting that lead worker duties were akin to those of a supervisor in many respects, absent the responsibility for formal performance evaluations that can lead to the effective hiring, firing, or demotion of a subordinate and the rule in N.J.A.C. 4A:3-3.4 that presumes that employees are appointed to a title appropriate to the duties to be performed and are not assigned duties other than those properly pertaining to the assigned title which the employee holds, the Civil Service Commission concluded that the decision of DSSR that the applicants did not meet the announced requirements was supported by the record and that none of the applicants

was entitled to relief. In re Dioses, et al., Supervisor 1 MVC (PS3710T), Motor Vehicle Comm'n, CSC Docket No. 2013-2791, 2013 N.J. CSC LEXIS 952, Final Administrative Determination (August 19, 2013).

Where issues relative to the proper classification of certain positions persisted over a period of time, with three employees who presumably would fill those positions remaining in an unclassified title pending their obtaining required professional certifications, a request by the appointing agency to extend the deadline for the completion of such certification processes was properly granted because, once such certifications were finalized, N.J.A.C. 4A:3-3.4 would not permit the employees to remain in the unclassified title in which they were currently placed. It was also appropriate to determine that at such time as the affected employees met the requirements of the title and were appointed thereto, and assuming that the current working test periods were successfully

completed, good cause was shown to consider those appointments permanent as of the date of the initial appointment per N.J.A.C. 4A:4-1.10(c), and a separate request for such an order would not be necessary. In re Substance Abuse Evaluator, Judiciary, CSC Dkt. No. 2013-3426, 2013 N.J. CSC LEXIS 630, Final Decision (August 1, 2013).

An appointing authority was directed to cease assigning out-of-title supervisory duties to an employee who was classified as a Fire Fighter. Nor was it permissible for the appointing authority to assign that employee, who had failed the Fire Captain examination and thus was ineligible for appointment to that title, to serve as "acting" Fire Captain to cover for other personnel that were either on long-term sick leave or vacation. There was no such designation as an "acting" appointment under N.J.S.A. 11A:4-13 and N.J.A.C. 4A:4-1 et seq., which provided for regular, conditional, provisional, interim, temporary, and emergency appointments. Nor did the applicable law and rules countenance assignment of out-of-title work or acting appointments. In re Dwayne Patrick, City of East Orange, CSC Dkt. No. 2013-3045, 2013 N.J. CSC LEXIS 457, Final Decision (July 19, 2013).

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 Chairperson of the Civil Service Commission or designee, 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 Chairperson of the Commission or designee in a manner and form as determined by the Chairperson or designee. Such review may be initiated by the Chairperson of the Commission or designee. 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 to affected permanent employees and approval is given by an appropriate Commission representative.

1. Within 30 days of receipt of the reclassification determination, unless extended by the Chairperson or designee 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 a reclassification determina-

tion, an appeal to the Civil Service Commission may be filed in accordance with N.J.A.C. 4A:3-3.9. In State service, appeals pertaining to an employee's title level within his or her particular job band are governed by N.J.A.C. 4A:3-3.9(c)4, 5, and 6.

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.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 260(a), 46 N.J.R. 1331(c).

In (a), substituted "Chairperson of the Civil Service Commission or designee," for "Commissioner"; rewrote (b) and (c)2; in the introductory paragraph of (c), inserted "to", and substituted "an appropriate Commission representative" for "the Commissioner"; and in (c)1, substituted "Chairperson or designee" for "Commissioner", and inserted a comma following "demotional".

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 (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).

Where an employee believed that he was being asked to perform duties outside of his job title, he should have sought an audit of the position to determine whether re-classification under N.J.A.C. 4A:3-3.5 was warranted; but until such time as an audit could be performed and a final determination made, the employee was required to continue to perform the duties assigned by management (adopting in part and rejecting in part 2007 N.J. AGEN LEXIS 57). In re *Hatcher*, OAL Dkt. No. CSV 2123-06, 2007 N.J. AGEN LEXIS 352, Final Decision (March 28, 2007).

City's requirement that all tree trimmers have a valid driver's license was not a change in the job requirement; common sense, economics, principles of good government, and State law all required that a person who operated equipment mounted on a commercial vehicle must have a commercial driver's license. In re *Zafain*, OAL Dkt. No. CSV 442-06, 2006 N.J. AGEN LEXIS 794, Initial Decision (September 25, 2006), adopted (Merit System Board November 15, 2006).

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 Civil Service Commission may determine that a new title, title series, or job band 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, title series, or job band.

(b) Requests for new titles, title series, or job bands must be submitted in writing by the appointing authority to an appropriate representative of the Civil Service Commission 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 Commission representative.

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

(d) Pending approval by the appropriate Commission representative of a new title, title series, or job band, 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 appropriate Commission representative will be:

1. In State service:

i. The beginning of the pay period immediately after 14 days from the date the appropriate Commission representative 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 Commission representative when a classification review has been initiated by the Commission representative; or

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

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.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

Rewrote the section.

4A:3-3.7 Trainee, apprentice, recruit, and intern titles

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

1. Unless otherwise specified, this section applies to all titles designated by the term "trainee" and to other titles where the job specification necessitates the application of this section, such as apprentice, recruit, and intern titles.

2. A single trainee title may provide entry level employment for more than one title, title series, or job band, 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 a working test period.

(d) The duration of the training period shall be as follows:

1. In the case of trainees and recruits only, the length of the training period shall be designated in the job specification for the particular title.

i. The designated length of a training period for a trainee (not an apprentice, recruit, or intern) title shall not be longer than 12 months, unless otherwise provided by law.

ii. The length of a training period for a recruit title may vary in accordance with the applicable job specification or be determined by separate regulatory requirements; or

2. The length of a training period for an apprentice or intern title shall be not less than 12 months and not more than the length of time provided in the applicable job specification to successfully complete the training period, as determined by the time permitted for completion of formal coursework and preparatory training, and, where applicable, attainment of any required certifications, permits, and/or licenses.

(e) The training period must be continuous, except if interrupted by leave or layoff from the title.

(f) The training period may include provisional service in the case of a trainee title.

(g) The training period may include service of the trainee, recruit, apprentice, or intern in a higher related title.

(h) In the case of trainees (not apprentices, recruits, or interns), the training period shall be extended, upon approval by the Chairperson of the Civil Service Commission or designee, beyond the time designated in the job 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.

(i) In the case of trainees, apprentices, recruits, and interns, the training period may be reduced, upon approval by the Chairperson of the Civil Service Commission or designee, to a shorter period than designated in the specification when:

1. The employee has completed the working test period;

2. The employee meets the minimum qualifications for the primary title; and

3. All employees in the same title subject to the training period in the same appointing authority who meet the conditions specified in (i)1 and 2 above are provided with a reduced training period.

(j) The advancement of the successful, permanent trainee, apprentice, recruit, or intern, as applicable, to the appropriate primary title shall be accomplished without the usual promotional examination process, but rather by regular appointment of the employee to the appropriate primary title.

1. To effect advancement, the appointing authority must certify the employee's successful completion of the training period, as well as, where the job specification for the primary title so provides, the satisfaction of any and all additional requirements beyond the trainee requirements, such as obtaining a license, completing extra training, or attaining a particular proficiency standard.

2. In State service, advancement to a primary title shall coincide with the beginning of a pay period.

3. The failure of a permanent employee to successfully complete the training period as indicated in the job specification shall be considered a cause for separation.

4. Trainees, apprentices, recruits, or interns, as applicable, who are advanced to a primary title, shall be required to complete a working test period in the primary title. Employees who fail to successfully complete a working test period in the primary title have no right to return to the trainee, apprentice, recruit, or intern title.

(k) For anniversary date changes in State service when a trainee, apprentice, recruit, or intern receives a regular appointment to the primary title, see N.J.A.C. 4A:3-4.5.

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.2012 d.043, effective February 21, 2012.

See: 43 N.J.R. 2693(a), 44 N.J.R. 449(a).

Section was "Trainee titles". In the introductory paragraph of (a), inserted ", apprentice, recruit and intern"; rewrote (a)1 and (d); in (c), substituted "a" for "their" and "period" for "periods"; added new (e) through (g) and (k); recodified former (e) through (g) as (h) through (j); and rewrote the introductory paragraph of (h), and (i) and (j).

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

Section was "Trainee, apprentice, recruit and intern titles". In the introductory paragraph of (a) and of (j), and in (a)1, (d)1i, (j)4, and (k), inserted a comma following "recruit"; in (a)2, substituted a comma for "or" following "title", and inserted "or job band,"; in the introductory paragraph of (b), inserted a comma following the second occurrence of "regular"; in (d)2, inserted a comma following "permits"; in (g), inserted a comma following "apprentice"; in the introductory paragraph of (h) and of (i), and in (j)4, inserted a comma following "recruits"; and in (j)1, inserted a comma following "training".

4A:3-3.7A Police Assistant title: local service

(a) The regular appointment of an employee to the title of Police Assistant shall be in the competitive division of the career service. An employee so appointed shall meet the minimum requirements set forth in the job specification and satisfactorily complete a working test period. See N.J.A.C. 4A:4-5.2(d).

(b) Removal of an employee serving permanently in the title of Police Assistant shall be done in accordance with major disciplinary procedures. See N.J.A.C. 4A:2-2.

(c) Subject to the provisions of (d) below, an employee serving permanently in the title of Police Assistant who meets one or more of the following conditions shall be removed from the Police Assistant title for cause:

1. Unsatisfactory performance rating, notwithstanding satisfactory completion of the working test period;

2. Failure to satisfactorily complete the Police Academy Special Law Enforcement Officer Class 1 Training Program, or equivalent, provided by the appointing authority;

3. Failure to meet the criteria for promotional eligibility by the announced closing date;

4. Failure to apply for the examination for the title of Police Officer when the employee meets the criteria for promotional eligibility by the announced closing date;

5. Failure of the examination for the title of Police Officer; or

6. One or more of the general causes for discipline set forth in N.J.A.C. 4A:2-2.3.

(d) In lieu of removing the employee for cause, the appointing authority alternatively may choose to transfer the employee, in accordance with N.J.A.C. 4A:4-7.1, or otherwise move the employee, to a different, vacant title. However, under no circumstances may an employee who meets one or more of the conditions in (c) above continue to serve in the Police Assistant title.

(e) An employee serving permanently for a minimum of one year in the Police Assistant title shall be considered eligible to take a promotional examination for the title of Police Officer, provided that the employee also satisfies the criteria set forth in N.J.A.C. 4A:4-2.4 and 2.6 for promotional examinations.

New Rule, R.2006 d.104, effective March 20, 2006.

See: 37 N.J.R. 4351(a), 38 N.J.R. 1425(a).

4A:3-3.7B Correction Officer Apprentice title: State service

(a) The appointment of an employee to the title of Correction Officer Apprentice shall be a temporary appointment from a certification of Correction Officer Recruit eligibles on

an entry-level law enforcement eligible list. The purpose of this temporary appointment is to ensure that individuals so appointed shall receive training appropriate to the duties of a Correction Officer Recruit in accordance with the Police Training Act. See N.J.S.A. 52:17B-66 et seq.

(b) Notwithstanding the employee's temporary appointment in State service, the employee shall not accrue seniority for purposes of layoffs (N.J.A.C. 4A:8-2.4) or vacation leave accruals (N.J.A.C. 4A:6-1.2) while serving in the title of Correction Officer Apprentice.

(c) The length of the period of temporary appointment to the title of Correction Officer Apprentice shall be established by the Department of Corrections; provided, however, that the length of this period shall be the same for all employees receiving the appointment from the same certification, but in no case longer than six months.

(d) Upon successful completion of the residential training program required by the Police Training Act, and in-service training provided by the Department of Corrections under the authority of the Police Training Commission, the employee serving in the title of Correction Officer Apprentice shall receive a regular appointment to the title of Correction Officer Recruit.

(e) An individual who receives a regular appointment to the title of Correction Officer Recruit in accordance with (d) above but who had permanent status in another title in State service as of the time of temporary appointment shall be considered to have been on an unpaid leave of absence from his or her original State position during the period of temporary appointment. Such permanent service prior to the leave of absence shall be aggregated to calculate the employee's seniority for layoff purposes as well as to determine his or her vacation benefit at the time of the employee's regular appointment to the title of Correction Officer Recruit.

(f) Notwithstanding any provisions in Title 4A of the New Jersey Administrative Code to the contrary, employees receiving a temporary appointment to the title of Correction Officer Apprentice shall not have any appeal rights to the Civil Service Commission during the period of temporary appointment. Such employees' sole right of appeal shall be to the Police Training Commission. See N.J.A.C. 13:1-11.

New Rule, R.2010 d.061, effective April 19, 2010.
See: 42 N.J.R. 9(a), 42 N.J.R. 775(a).

4A:3-3.8 Intermittent titles

(a) In State service and in local service upon approval of the Commissioner of Personnel, 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. State employees who hold full-time primary employment in State service are not eligible to serve in an intermittent title.

(b) In State service, 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. Employees who hold full-time primary employment in State service are exempt from the recall provision.

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. If the Department's audit of a title demonstrates that the intermittent designation is inappropriate, the Department shall convert the title to a regular, year-round, full-time or part-time career service title. An incumbent in the converted title shall receive a provisional appointment to the title, subject to competitive testing and certification procedures. See N.J.A.C. 4A:4.

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

(e) In local service, an appointing authority may request that the Commissioner establish intermittent titles.

1. The local appointing authority shall submit to the Commissioner a proposal, which shall specify:

- i. A list of proposed intermittent titles;
- ii. The prorated amounts of paid leave time;
- iii. The prorated length of the working test period for employees serving in such titles; and

iv. A compensation plan which shall identify the per diem or hourly rates for all intermittent titles.

2. The local appointing authority shall not make intermittent appointments unless the intermittent titles have been approved by the Commissioner. Such appointments shall be made in accordance with procedures on appointments made to career service positions within the non-competitive division. See N.J.A.C. 4A:3-1.2.

3. The local appointing authority shall retain all records concerning intermittent employment, subject to Depart-

ment of Personnel audit, and submit to the Department on an annual basis a report identifying all intermittent appointments made during the year, the intermittent employees' length of employment and the titles utilized for these intermittent appointments.

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

LEAVE ENTITLEMENTS—INTERMITTENT EMPLOYEES
(STATE SERVICE)

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.

Amended by R.1998 d56, effective January 20, 1998.
See: 29 N.J.R. 4363(a), 30 N.J.R. 382(b).

In (a), inserted the second sentence; and in (b)3, inserted the second sentence.

Amended by R.2000 d.258, effective June 19, 2000.
See: 32 N.J.R. 1111(a), 32 N.J.R. 2228(a).

In (a), inserted "and in local service upon approval of the Commissioner of Personnel," following "service" in the first sentence, and

substituted a reference to State employees for a reference to employees; in (b), substituted "In State service," for "Intermittent" at the beginning of the introductory paragraph; in (c), added the second through fourth sentences; in (d), added "in State service" at the end; inserted a new (e); recodified former (e) as (f), and inserted "in State service" throughout; and added a reference to State service in the title of the chart.

Case Notes

Applicant was not eligible for the promotional examination for Unemployment Insurance Clerk (PS8072N), Department of Labor and Workforce Development, because she did not possess an aggregate of

one year of continuous permanent service as of the closing date. When she accepted the title of Intermittent Labor Clerk, she accepted the terms enumerated in N.J.A.C. 4A:3-3.8, including a potential two week annual furlough. Additionally, there was no basis on which to relax N.J.A.C. 4A:4-2.6(a)1 because 91 applicants were deemed eligible for the subject examination who possessed the one year of permanent service. In re Carolyn Thibault, Unemployment Insurance Clerk (PS8072N), Dep't. of Labor and Workforce Dev., CSC Dkt. No. 2013-257, 2013 N.J. CSC Lexis 67, Final Decision (January 9, 2013).

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 by an employee or union representative shall be made in writing. The appeal shall include a position classification questionnaire completed by the appellant, and shall specify the title which the appellant believes is appropriate to the duties performed by the employee and explain how the duties at issue are more appropriate to the requested title than to the title in which the employee is currently serving.

1. The employee's immediate supervisor shall indicate on the position classification questionnaire the supervisor's agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent on each duty, and the title proposed by the appellant as appropriate to the duties performed. To the extent that the supervisor disagrees with information on the questionnaire, the supervisor shall explain in writing the nature of the disagreement. The supervisor shall also sign the position classification questionnaire.

2. The employee's immediate supervisor shall forward the completed position classification questionnaire to the program manager/division director, as applicable, who shall indicate on the questionnaire agreement or disagreement with the appellant's description of job duties, the appellant's cited percentage of time spent on each duty, and the title proposed by the appellant as appropriate to the duties performed. To the extent that the program manager/division director disagrees with information on the questionnaire, he or she shall explain in writing the nature of the disagreement. The program manager/division director shall also sign the questionnaire.

3. The supervisor and program manager/division director shall complete their portions of the questionnaire and provide their signatures on the form in accordance with (c)1 and 2 above within 15 days of the employee's submission of the appeal to the immediate supervisor. By no later than the end of this period, the program manager/division director shall submit to the agency representative the completed questionnaire, along with the appellant's most recent PAR form (see N.J.A.C. 4A:6-5).

4. In the case of an employee challenging his or her title level within a job band, the agency representative shall review the appeal and determine one of the following:

- i. The position is properly placed at the existing title level;
- ii. The position is properly placed at the existing title level, but that duties of a different title level are being performed, in which case the appointing authority shall immediately remove all inappropriate duties; or
- iii. The position should be placed at a different title level.

5. If an employee serving in a job band title is found to be performing duties at a higher level in the band, the appointing authority:

- i. May post a notice of advancement appointment opportunity for the position and select the employee who has demonstrated the attainment of the required competencies for that level (see N.J.A.C. 4A:3-3.2A(d)); or
- ii. If the incumbent employee has not demonstrated the attainment of the required competencies, shall remove the higher level duties.

6. If an appellant challenging his or her title level disagrees with the determination rendered by the agency representative, the appellant may file a grievance appeal regarding job band title level issues. See N.J.A.C. 4A:2-3.

- i. The appointing authority shall notify the appropriate representative of the Civil Service Commission of the determination for recordkeeping purposes.

7. In the case of an appeal not pertaining to a title level within the employee's particular job band, the agency representative shall review the appeal, affix to it an organizational chart, and ensure that the information set forth in (c)1, 2, and 3 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 forward the appeal with organizational chart to the appropriate representative of the Civil Service Commission. The agency representative may in writing indicate with the submitted appeal a recommended approval or rejection of the appeal for specified reasons. The agency representative shall notify the appellant of the submission to the Commission representative. If additional information is required of the appellant, the agency representative shall forward the appeal with organizational chart and the additional information to the appropriate representative of the Civil Service Commission within 10 days of receipt of the appellant's response to the request for additional information.

8. A representative of the Civil Service Commission shall review the appeal filed pursuant to (c)7 above, request additional information if needed, order a desk audit where

warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and all completed documentation as required by the representative of the Civil Service Commission, and shall:

i. Where the agency representative, Commission representative, and appellant are in agreement with the proposed title, issue an abbreviated decision letter; or

ii. Where the agency representative, Commission representative, and appellant are not in agreement with the proposed title, 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 Civil Service Commission, and a determination that:

(1) The position is properly classified;

(2) The position is properly classified, but that out-of-title duties are being performed, in which case the Commission representative shall order, in writing, the immediate removal of inappropriate duties within a specified period of time; or

(3) 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 representative of the Civil Service Commission. 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 a representative of the Commission, the appeal shall also include a completed position classification questionnaire and an organizational chart. If the appellant's supervisor has not signed the questionnaire within five working days of receipt of the questionnaire from the appellant, the appellant may forward the questionnaire to the appropriate representative of the Commission without the supervisor's signature but with a notation of the date of presentation to the supervisor.

1. A representative of the Civil Service Commission shall review the appeal, request additional information if needed, order a desk audit where warranted, and issue a written decision letter. The decision letter shall be issued within 180 days of receipt of the appeal and of all completed documentation as required by the Commission representative, and shall include a summary of the duties of the position, findings of fact, conclusions, a notice to the employee or authorized employee representative of appeal rights to the Civil Service Commission, 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 Commission 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.

(e) Appeals from the decision of the Commission representative to the Civil Service Commission pursuant to (c)7 and 8 or (d) above may be made by an employee, authorized employee representative, or local appointing authority. The appeal shall be submitted in writing within 20 days of receipt of the decision letter and include copies of all materials submitted, the determination received from the lower level, statements as to 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 Civil Service Commission may render a decision based on the written record or appoint an independent classification reviewer. If the Commission 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 Commission 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 the 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.

3. If an appeal is granted by the Civil Service Commission, the effective date of implementation shall be:

i. In State service, the pay period immediately after 14 days from the date an appropriate Civil Service Commission representative first received the appeal or reclassification request, or at such earlier date as directed by the Commission; or

ii. In local service, the date an appropriate representative of the Commission first received the appeal or reclassification request, or at such earlier date as directed by the Commission.

4. The decision by the Commission is the final administrative determination.

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

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.2012 d.009, effective January 3, 2012.

See: 43 N.J.R. 2404(a), 44 N.J.R. 70(a).

Rewrote (c) through (f); and in (g) and (h), substituted "Commission" for "Commissioner".

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 260(a), 46 N.J.R. 1331(c).

Rewrote the section.

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).

Division of Selection Services (DSS) correctly determined that four applicants for an examination for Sewer Repairer Supervisor (PM1903R), Hamilton, were ineligible because they were not permanent in a title to which the examination was open and that one other applicant was ineligible for the examination because he did not possess one year of time-in-grade. Nor was there error in the title scope of the examination because the title scope utilized by the appointing authority properly classified the duties of the position and the appointing authority was not obligated to utilize a wider title scope. Nor was the fact that the examination yielded an eligible list of one name a defect for which relief was available because an eligible list can be issued with one or two names, and the only consequence thereof is that the appointing authority may not be obligated to make an appointment from such an abbreviated list. In re Bisanzio, Sewer Repairer Supervisor (PM1903R), Hamilton, CSC Docket Nos. 2014-2052, 2014-2186, 2014-2050, 2014-2049, 2014-2051 (Consolidated), 2014 N.J. CSC LEXIS 13, Final Administrative Determination (April 14, 2014).

Sufficient cause was present to assign an effective date of March 26, 2011, to an employee's reclassification to Senior Highway Safety Specialist pursuant to N.J.A.C. 4A:3-3.9(f)1. She presented sufficient proof that she had her position classification request hand delivered to an appointing authority representative on February 24, 2011 and no additional information was required of her. The Position Classification Questionnaire (PCQ) that the employee prepared in February 2011 and August 2012 contain the same exact duties, notwithstanding the fact that she might have used an incorrect form initially or that the form changed during the pendency of her request. Additionally, even assuming that the Deputy Director did not have the authority to sign the first PCQ, he should have ensured the matter was forwarded to the appropriate representative in a timely manner. In re Suzanne O'Hearn, Dep't of Law and Public Safety, CSC Dkt. No. 2013-1952, 2014 N.J. CSC LEXIS 22, Final Decision (April 10, 2014).

In an appeal by a municipality of a ruling that granted an employee's reclassification request, the Civil Service Commission determined that the employee's primary duties were not consistent with the job specifications of a Principal Account Clerk and that N.J.A.C. 4A:3-3.9 thus required the municipality either to reclassify the employee's position to Assistant Municipal Tax Collector or to remove the out-of-title duties from the employee's current position of Principal Account Clerk. The record showed that the employee's duties included verifying and confirming tax lien redemptions; processing municipal service charges; placing liens on properties; assisting the tax collector with tax sales and tax billing; and assisting with applications for property tax deductions. If the municipality could not create the position of Assistant Municipal Tax Collector because of budgetary constraints, the municipality was required to remove the out-of-title duties from the employee's current job specifications. In re Callery, Town of Phillipsburg, CSC Dkt. No. 2013-1657, 2013 N.J. CSC LEXIS 1206, Final Admin. Action (November 20, 2013).

Good cause within the meaning of N.J.A.C. 4A:1-1.2(c) was shown in connection with a request by the Director, Division of Classification and Personnel Management (CPM), seeking the relaxation of provisions of N.J.A.C. 4A:4-1.1(c) to permit an employee to be provisionally appointed, pending promotional examination procedures, to the competitive title of Customer Service Representative 2, which appointment was in accordance with N.J.A.C. 4A:3-3.9(f). Relevant factors included that the employee's credentials were reviewed by the Division of Selection Services and Recruitment (DSSR) resulting in a finding that if the employee's out-of-title work was accepted, she would meet the requirements for the Customer Service Representative 2 title. In re Messiha, Dep't of Law & Pub. Safety, CSC Docket No. 2014-203, 2013 N.J. CSC LEXIS 936, Final Administrative Determination (September 4, 2013).

An employee of the Department of Children and Families who had been overpaid \$11,891.87 due to a position misclassification and the ensuing failure of the Department to promptly implement a decision of the Division of State and Local Operations (SLO) reclassifying the employee was entitled to partial relief from the statutory mandate that she repay such amounts to the State. The employee's request for a waiver of the overpayment did not satisfy the criteria in N.J.A.C. 4A:3-4.21 for complete relief from the repayment obligation. However, given the equities of the situation, the effective date of the reclassification was subject to further adjustment under N.J.A.C. 4A:3-3.9(f)1. Inasmuch as the overpayment was caused, at least in part, by the Department's failure to implement the reclassification decision, the date of reclassification – and hence the date on which the period of overpayment would begin – was properly determined to be April 4, 2012, and the period of overpayment for which the employee was properly held liable would be that period from April 4, 2012 through June 29, 2012. The Department was also properly warned that further disregard of such orders could result in the imposition of a fine on the agency as permitted by N.J.A.C. 4A:10-2.1(a)2. In re Susan Santiago, Dep't of Children & Families, CSC Dkt. No. 2013-341, 2013 N.J. CSC LEXIS 480, Final Decision (August 1, 2013).

When an employee was reclassified from a Superintendent Parks and Forestry 3 to a Superintendent Parks and Forestry 2, a review of N.J.A.C. 4A:3-3.9(f) indicated to the Civil Service Commission that his appointment date was correctly set to the first date of the pay period after 14 days from when the agency received the reclassification request with the proper documentation. There was nothing in the record to suggest that the appointing authority acted in bad faith or was seriously negligent in its internal department processing delays. In re Vincent Bonica, Jr., Dep't. of Env'tl. Prot., CSC Dkt. No. 2013-1613, 2013 N.J. CSC LEXIS 683, Final Decision (July 17, 2013).

An employee's challenge to the propriety of the unclassified title of Instructor 1 Education (12 Months) for her position and seeking classification as an Education Program Development Specialist 1 lacked merit to the extent that it relied on her claim that she should have been contacted during the review. That was because, per N.J.A.C. 4A:3-3.9(c)5, such classification reviews could either be conducted by a paper review based on the Position Classification Questionnaire completed by the employee and supervisor, by use of an on-site audit with the employee and supervisor, or by use of a formal telephone audit seeking clarifying information. That being so, an interview with the employee was not mandatory for a proper classification review, and the review at issue could not be invalidated on that basis. In re Wendy Eufemia, Dep't of Educ., CSC Docket No. 2012-2895, 2013 N.J. CSC LEXIS 494, Final Decision (May 15, 2013).

Though the former Division of State and Local Operations was correct in classifying positions held by three employees of the Department of Environmental Protection as Program Technician positions, an effective date that was 30 days after the date of the reclassification determination was properly assigned per N.J.A.C. 4A:3-3.9(f), thereby lessening the monetary impact of reclassification on two of the employees, who in effect had been overpaid for the duties that they had performed in the period between the effective date of reclassification and the determination of their appeal by the Civil Service Commission. Under these facts, moreover, a waiver of repayment of the overage might be available upon a showing that all of the factors in N.J.A.C. 4A:3-4.21

had been met. In re Guerieri et al., Department of Environmental Protection, CSC Dkt. Nos. 2012-3528, 2012-3529, and 2012-3541, 2013 N.J. CSC LEXIS 218, Final Agency Action (April 5, 2013).

Although a desk audit conducted by the former Division of State and Local Operations (SLO) concerning the proper classification of an employee's position was rendered late under N.J.A.C. 4A:3-3.9(c)5, that procedural violation did not entitle the employee to a reclassification of his position. His position was found to be properly classified as an Employment and Training Specialist 2 by both SLO and the Civil Service Commission. Any procedural violation was not prejudicial to the employee, and he was not harmed. In re Angel Lierena, Dep't. of Labor and Workforce Dev., CSC Dkt. No. 2011-4279, 2013 N.J. CSC LEXIS 217, Final Decision (April 4, 2013).

Employees were granted an earlier effective date of reclassification pursuant to N.J.A.C. 4A:3-3.9(f)1. Although the assigned effective dates

were technically correct, an incorrect organizational table was submitted by the appointing authority as part of the salary reevaluation request, resulting in the erroneous conclusion that the employees did not perform the required duties of Storekeeper. In re Norman Ehrke et al, Dep't of Transp., CSC Dkt. Nos. 2012-1430, 2012-3167, 2012-3284, 2013 N.J. CSC LEXIS 215, Final Decision (April 4, 2013).

Employee who was permanently appointed to the career service title of Program Development Specialist 1 (PDS), Corrections effective May 7, 1998; who then was appointed to the unclassified title of Administrator Prison Complex (APC), effective August 2, 2008, at a salary of \$99,501; and who then was returned to the Program Development Specialist 1, Corrections title with a salary of \$83,580, which was the highest salary in that range, was not entitled to have the \$99,501 salary "red-circled" per N.J.A.C. 4A:3-4.12(c) because the APC title and the PDS title were assigned to different occupational groups and, based on these differences, it was determined that the employee's experience as an

administrator did not provide significant experience and training for service in the range title as required by N.J.A.C. 4A:3-4.12(c). Not only was the use of occupational group categorizations as recognized by the U.S. Department of Labor a reasonable and objective method for identifying job similarities per N.J.A.C. 4A:3-4.12(a)1 but the employee failed to provide substantiation for his claim that his work in the APC position further prepared him for his PDS position. Finally, to the extent that the employee was actually claiming that he was performing out-of-title duties or that his title was misclassified, his remedy was to file a classification appeal per N.J.A.C. 4A:3-3.9, as such a claim was not properly addressed by his proposal remedy of red-circling. In re Craig Conway, Department of Corrections, CSC Docket No. 2010-4019, 2013 N.J. CSC LEXIS 37, Final Decision (February 12, 2013).

SUBCHAPTER 4. COMPENSATION

4A:3-4.1 General provisions

(a) In local service, appointing authorities shall establish compensation plans that 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 an appropriate representative of the Civil Service Commission, 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 an appropriate representative of the Civil Service Commission in developing compensation plans.

(b) In State and local service, an appropriate representative of the Civil Service Commission 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 Civil Service Commission.

1. In State service, the appointing authority or the appointing authority's designee shall sign the regular and supplemental payroll certification documents submitted to the Centralized Payroll Unit, Department of the Treasury. The certification documents shall state, in substance, that all persons whose names appear on the accompanying payroll proof have rendered services for the benefit of the State, in the positions shown and for the time period indicated, for which funds are available. The certification shall further state, in substance, that formal approval of the employment of these persons has been, or is in the process of being, secured from the Civil Service Commission and the Department of the Treasury. See N.J.A.C. 4A:4-1.10 for Civil Service Commission approval of appointments.

(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 an appropriate representative of the Civil Service Commission, 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 Civil Service Commission 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 Civil Service Commission.

Amended by R.2013 d.001, effective January 7, 2013.
See: 44 N.J.R. 2149(a), 45 N.J.R. 25(a).

In the introductory paragraph of (a), substituted "that" for "which"; in (a)1 and (a)3, and in the introductory paragraph of (b) and of (c), substituted "an appropriate representative of the Civil Service Commission" for "the Department of Personnel"; in the introductory paragraph of (b), substituted "Civil Service Commission" for "Commissioner or the Board"; added (b)1; in (c)3, inserted a comma following "titles"; in the introductory paragraph of (d) and in (d)2, substituted "Civil Service Commission" for "Commissioner"; in the introductory paragraph of (d), inserted a comma following "maintain"; and in (d)2, inserted a comma following "rule".

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 (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).

Public health officer reaching maximum salary within salary range by virtue of completing five years of service is entitled to increases as range itself increases; officer receiving maximum salary whose labor grade is elevated by union contract does not become entitled to maximum salary for new grade until completion of five years in new grade. *Brown v. City of Jersey City*, 289 N.J.Super. 374, 674 A.2d 185 (A.D.1996).

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	Salary Range
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.

Case Notes

Negotiations with union concerning Department of Environmental Protection's reduction of employees' workweek were preempted by statute and regulations that created comprehensive demotional layoff scheme. *State v. Communications Workers of America, AFL-CIO*, 285 N.J.Super. 541, 667 A.2d 1070 (A.D.1995), certification denied.

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 ra-

tionale 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).

Case Notes

Pilot programs adopted by Commissioner of Department of Personnel, under which list of people who could be hired from certification would be expanded and under which length of work test period for local government employees would be increased, exceeded scope of powers constitutionally delegated to Commissioner. *Communications Workers of America, AFL-CIO v. New Jersey Dept. of Personnel*, 299 N.J. Super. 166, 690 A.2d. 695 (A.D.1997).

When, upon receipt of employees' additional information under N.J.A.C. 4A:3-4.3(b)1 concerning the change in the duties of the position in the reevaluation of the Wage Collection Referee title by the former Division of State and Local Operations (SLO), the appointing authority was provided the opportunity to indicate its recommendations regarding the request, it was not inappropriate for SLO to discuss the pending salary reevaluation with the appointing authority and it was not necessary for it to solicit the oral input of the employees. In re Wage Collection Referee, Dep't of Labor and Workforce Dev., CSC Dkt. Nos. 2013-1440, 2013-1441, 2013-1442, 2013 N.J. CSC LEXIS 520, Final Decision (May 16, 2013).

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) The anniversary date of a trainee, apprentice, recruit or intern shall change as the result of regular appointment to the primary title. See N.J.A.C. 4A:3-3.7. The new anniversary date shall be the pay period following completion of 26 full pay periods after the date of regular appointment to the primary title.

(d) 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).
Amended by R.2012 d.043, effective February 21, 2012.
See: 43 N.J.R. 2693(a), 44 N.J.R. 449(a).

Added new (c); and recodified former (c) as (d).

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	N.J.A.C. 4A:3-4.10
	Downward title reevaluation	N.J.A.C. 4A:3-4.11

Case Notes

Negotiations with union concerning Department of Environmental Protection's reduction of employees' workweek were preempted by statute and regulations that created comprehensive demotion layoff scheme. *State v. Communications Workers of America, AFL-CIO*, 285 N.J.Super. 541, 667 A.2d 1070 (A.D.1995), certification denied.

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) Unless a different salary adjustment is established in a collective negotiations agreement, the following provisions shall be applied when employees are appointed to a title with a higher class code, except that in no event shall such adjustment result in a higher salary than that provided for in this section.

(b) 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 (g) 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;
3. Employees receive an advancement appointment to a higher title level with a higher class code in a job band; or
4. Employees are appointed to a title with a higher class code, when the conditions in (b)1, 2, or 3 above are not applicable, provided the Chairperson of the Civil Service Commission or designee 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.

(c) 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 (b) 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.

(d) 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.

(e) Employees who do not meet the criteria set forth in (b) 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 (c) and (d) above shall be applied as appropriate.

(f) 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).

(g) 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.

(h) 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.

EXAMPLE: An employee on step four, range A10 in a 10-month title, is promoted to a 12-month title with salary range A15. There is no changes in workweek. The work year adjustment would bring the employee to step four, range A13. Then, salary is calculated based on (a) and (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).
Petition for Rulemaking.
See: 42 N.J.R. 956(a).
Petition for Rulemaking.
See: 43 N.J.R. 747(b).
Amended by R.2011 d.219, effective August 15, 2011.
See: 43 N.J.R. 903(a), 43 N.J.R. 2168(a).

In the introductory paragraph of (a), inserted " , unless a different salary adjustment is established in a collective negotiations agreement, except that in no event shall such adjustment result in a higher salary than that provided for in this section"; and in the introductory paragraph of (a)3, substituted "Civil Service Commission" for "Department of Personnel".

Amended by R.2014 d.099, effective June 2, 2014.

See: 45 N.J.R. 500(a), 46 N.J.R. 1331(c).

In (a)2, deleted "or" from the end; added new (a)3; recodified former (a)3 as (a)4; in (a)4, substituted "(a)1, 2, or 3" for "(a)1 or 2"; in the example in (f), inserted a comma following "4E" in the column heading; and in the example in (g), substituted "10-month" for "10 month" and "12-month" for "12 month".

Amended by R.2014 d.128, effective August 18, 2014.

See: 46 N.J.R. 473(a), 46 N.J.R. 1815(a).

Added new (a); recodified former (a) through (g) as (b) through (h); in the introductory paragraph of (b), deleted "unless a different salary adjustment is established in a collective negotiations agreement, except that in no event shall such adjustment result in a higher salary than that provided for in this section" following the second occurrence of "range", and substituted "(g)" for "(f)"; in (b)3, substituted "(b)1" for "(a)1"; in (c) and (e), substituted "(b)" for "(a)"; in (e)1, substituted "(c) and (d)" for "(b) and (c)"; and in the EXAMPLE in (h), inserted "and (b)".

4A:3-4.10 Demotional pay adjustments: State service

(a) The salary of an employee who receives a disciplinary demotion shall be adjusted by reducing the employee's salary one increment in the higher range. Then, the employee's salary in the lower range will be set at the step that is equal to or next lower than such reduced salary.

1. The adjustment in (a) above shall be made after adjustment for workweek. See N.J.A.C. 4A:3-4.9(f).

i. 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 workweek adjusted range at the same step. Calculate the amount of extra salary by applying the percentage arrived at above to the increment of the workweek adjusted range.

2. The anniversary date is retained, unless the action results in step eight or nine, in which case the anniversary date is based on the effective date of the action.

(b) When an appointing authority demotes an employee involuntarily in lieu of removal due to loss of qualifications for job title (for example, a Truck Driver whose license is suspended is demoted to a Building Maintenance Worker), salary and anniversary date shall be determined as provided in (a) above. If the employee is subsequently returned to the former title, he or she may be appointed up to and including the step held prior to the demotion.

(c) If the demotion is other than disciplinary or in lieu of removal under (b) above, the employee's salary shall be reduced one increment in the higher range. Then the employee's salary in the lower range will be set at the step that is equal to or next higher than such reduced salary.

1. The adjustment in (c) above is made after adjustment for workweek. See N.J.A.C. 4A:3-4.9(f).

2. The anniversary date is retained, unless the action results in step eight or nine.

i. If the action results in step eight, the employee shall be eligible for advancement to step nine, if warranted by performance, on the pay period that reflects the difference between the time served on the step prior to demotion and 39 pay periods.

ii. If the action results in step nine, the anniversary date is based on the effective date of the action.

3. This adjustment shall be applied only when the employee has served at least 12 months in the higher title and:

i. The employee has previously held the lower title;

ii. The employee is being demoted in lieu of layoff; or

iii. The Chairperson of the Civil Service Commission or designee finds that service in the higher title provided significant preparation and training for service in the lower title.

4. If the conditions in (c)3 above are not met, then salary and anniversary date shall be determined by reconstructing the employee's salary as if the employee had remained in or been appointed to the lower title on the date he or she was appointed to the higher title. N.J.A.C. 4A:3-4.4 may be applied, but in no case shall an employee receive a higher salary than that calculated through the application of (c) above.

(d) For all non-disciplinary demotions except voluntary demotions and those provided in (b) above, an employee demoted to a title lower than the class code of his or her permanent title must be given 45 days' notice of demotion by the appointing authority.

(e) This section shall not be used to gain a salary increase for an employee, except in the following situations:

1. An employee is moving from a managerial to a non-managerial title and the applicable salary regulation issued in accordance with the annual Appropriations Act provides that the affected employee shall receive a salary increase; or

2. The employee receives a salary increase due to a change in workweek.

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.1994 d.71, effective February 7, 1994.

See: 25 N.J.R. 4821(a), 26 N.J.R. 794(a).

Administrative correction.

See: 27 N.J.R. 2577(b).

Amended by R.2012 d.088, effective May 7, 2012.

See: 44 N.J.R. 5(a), 44 N.J.R. 1333(a).

In the introductory paragraph of (c)3, substituted "12" for "four"; in (c)3iii, substituted "Chairperson of the Civil Service Commission or designee" for "Department of Personnel"; and rewrote (e).

**4A:3-4.11 Downward title reevaluation pay adjustments:
State service**

(a) When a title is reevaluated to a lower class code, or when a title is eliminated and incumbents are placed in a title having a lower class code, each employee in that title shall remain at his or her current base salary. The part of an employee's base salary that is above the nearest lower step in the lower range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment. If the employee's base salary is above the maximum step, the employee will be red circled, that is, remain at that salary until the maximum step of the lower range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the lower range.

1. The effective date of a downward title reevaluation shall be the first pay period that is 60 days after the date of the reevaluation determination by the Commissioner.

2. All employees affected by a downward title reevaluation and their negotiations representatives shall be given notice by the appointing authority of the reduction in range at least 45 days prior to the effective date.

3. When a title has been eliminated and incumbents placed in a title having a lower class code, the Commissioner, on his or her own initiative or upon the request of affected employees and/or their negotiations representatives, may provide for additional adjustments for affected employees.

New Rule, R.1990 d.45, effective January 16, 1990.
See: 21 N.J.R. 1184(a), 22 N.J.R. 166(a).
Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

**4A:3-4.12 Movement of employees from no-range or
single rate titles to titles having salary ranges:
State service**

(a) When a title is changed from a no-range or single rate category to a range in the Compensation Plan, or when an employee moves from a no-range title to a title having a salary range, the salary shall be adjusted up to the step in the range that is the same or next higher than the salary of the no range or single rate title and the anniversary date assigned based on the pay period the employee would have been eligible for an increase in the no range or single rate title, providing the following two criteria are met:

1. The Department of Personnel finds that service in the no-range title provided the employee with significant experience and training for service in the range title; and

2. The employee has served in the former title for four months or more.

(b) When the employee's appointment does not satisfy the conditions in (a) above, salary and anniversary date shall be determined by reconstructing the employee's salary as if the employee had been serving in the range title on the date the employee was appointed to the no-range title, provided, however, that in no event shall the new salary be higher than the salary in the no-range title.

(c) If the employee's base salary is above the maximum step, the employee will be red circled, that is, remain at that salary until the maximum step of the range is increased to a level at or above the employee's base salary, at which time the employee's salary shall be moved to that maximum step of the range.

(d) This section shall not apply to employees appointed from a Tentative Title or to a Trainee Title. See N.J.A.C. 4A:3-4.14 regarding Trainee Titles and 4A:3-4.15 regarding Tentative Titles.

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

Employee who was permanently appointed to the career service title of Program Development Specialist 1 (PDS), Corrections effective May 7, 1998; who then was appointed to the unclassified title of Administrator Prison Complex (APC), effective August 2, 2008, at a salary of \$99,501; and who then was returned to the Program Development Specialist 1, Corrections title with a salary of \$83,580, which was the highest salary in that range, was not entitled to have the \$99,501 salary "red-circled" per N.J.A.C. 4A:3-4.12(c) because the APC title and the PDS title were assigned to different occupational groups and, based on these differences, it was determined that the employee's experience as an administrator did not provide significant experience and training for service in the range title as required by N.J.A.C. 4A:3-4.12(c). Not only was the use of occupational group categorizations as recognized by the U.S. Department of Labor a reasonable and objective method for identifying job similarities per N.J.A.C. 4A:3-4.12(a)1 but the employee failed to provide substantiation for his claim that his work in the APC position further prepared him for his PDS position. Finally, to the extent that the employee was actually claiming that he was performing out-of-title duties or that his title was misclassified, his remedy was to file a classification appeal per N.J.A.C. 4A:3-3.9, as such a claim was not properly addressed by his proposal remedy of red-circling. In re Craig Conway, Department of Corrections, CSC Docket No. 2010-4019, 2013 N.J. CSC LEXIS 37, Final Decision (February 12, 2013).

**4A:3-4.13 Salaries of employees whose annual salaries
are not on a step in their salary range: State
service**

Except as otherwise provided by the Commissioner, an employee whose base salary is not on a step in his or her salary range shall remain at his or her current base salary. That part of an employee's salary that is above the nearest lower step in the salary range will be carried as extra salary until the employee's anniversary date, at which time the employee's salary shall be moved to the next higher step, if warranted by performance, in lieu of the normal performance increment. If the employee's base salary is above the maximum step, the employee will be red circled, that is, remain at that salary until the maximum step of the range is increased to a level at or above the employee's base salary, at which time the em-

ployee's salary shall be moved to that maximum step of the 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:3-4.14 Movement of employees to trainee titles from titles having higher pay rates: State service

(a) Except as provided in (b) below, an employee with permanent status or with at least six months' continuous service may, at the option of the appointing authority, retain his or her current salary when appointed to a trainee title. The employee shall remain at his or her salary until the salary rate of the trainee title exceeds the employee's salary, the employee advances to the primary title after completing the training period, or the employee is advanced to a higher title. Upon advancement from the trainee title to the primary title, the employee's salary shall be determined by reconstructing the employee's salary as if the employee had continued to serve in his or her permanent title during the training period or by the normal advancement from a trainee to a primary title, whichever is greater.

(b) An employee in (a) above shall not be paid higher than the maximum step of the primary title.

4A:3-4.15 Salaries for employees appointed to tentative title positions: State service

(a) When appointed to positions designated "Tentative Title":

1. New employees, at the discretion of their appointing authority, may be appointed at a salary up to the fourth step of the salary range initially recommended for the title by the Department of Personnel, based on the new title request materials submitted by an appointing authority.

2. Current employees of an agency shall have their salaries adjusted in accordance with rules which would be applicable if, in fact, the title were actually compensated at the salary range specified in (a)1 above.

(b) If the final evaluated range is lower than the initially recommended range, the salaries of employees serving in affected Tentative Title positions shall be adjusted in accordance with downward title reevaluations. See N.J.A.C. 4A:3-4.11.

(c) Anniversary dates shall be set based on the date of appointment to the Tentative Title.

4A:3-4.16 Salaries of employees on military leave during a trainee period: State service

(a) Upon return from military leave, a regularly appointed employee in a trainee title shall receive a salary at the six months rate, provided the total time in the trainee title on the job and on leave equals six months or more.

(b) Upon successful completion of the total 12 months of trainee service on the job, including the required working test period, the employee will be advanced to the primary title at the salary rate the employee would have received had the employee not been on military leave.

(c) The employee's personnel record shall indicate seniority in all pertinent titles retroactive to dates on which the employee would have gained such seniority had the employee not gone on military leave.

4A:3-4.17 Salaries and anniversary dates for employees appointed from a special reemployment list: State service

(a) The salary of an employee appointed from a special reemployment list shall be determined as follows:

1. When appointed to the same title held at the time of the reduction in force, the employee shall receive the same step of the salary range received on the date of the layoff or the salary determined in accordance with (a)2 below, whichever is the most beneficial to the employee.

2. When appointed to a different title from the one held at the time of the reduction in force, the employee shall receive the most beneficial to the employee of the following:

i. The same step and salary range that he or she would have received if appointed to the new title on the date of the reduction in force; or

ii. When the employee is currently serving in another title, the salary determined by adjustment to the new title:

(1) When appointed to a new title with the same class code, make a lateral pay adjustment, N.J.A.C. 4A:3-4.8;

(2) When appointed to a new title with a higher class code, make an advancement pay adjustment, N.J.A.C. 4A:3-4.9. If the employee has attained a higher salary in a lower title than the current value of the step he or she would have received in the new title on the date of the layoff, the salary shall be set at the step that is next higher than the salary in the lower title. The anniversary date will be set based on the effective date of the action; or

(3) When appointed to a new title with a lower class code, make a demotional pay adjustment, N.J.A.C. 4A:3-4.10.

(b) The anniversary date of an employee appointed from a special reemployment list shall be determined as follows:

1. When using (a)1 or (a)2i above to determine salary, reconstruct the employee's anniversary date to the date of the reduction in force, then calculate the additional number of pay periods needed to meet the requirements for a

performance increment (except as provided in (a)2ii(2)). Assign the anniversary date which will include the additional number of pay periods of service needed to satisfy anniversary date requirements.

2. When using (a)2ii above to determine salary, follow the provisions for either a lateral pay adjustment (N.J.A.C. 4A:3-4.8), advancement pay adjustment (N.J.A.C. 4A:3-4.9) or demotional pay adjustment (N.J.A.C. 4A:3-4.10) as applicable.

3. If at the time of the reduction in force the employee was at the maximum salary step for the title from which displaced, assign the anniversary date that reflects the length of time that the employee had been at the maximum step on the date of the reduction in force.

EXAMPLE: An employee is reappointed from a special reemployment list on April 3, 1993 (pay period 8/93) to the permanent title from which the employee was laid off on January 23, 1993 (pay period 3/93). At the time of the layoff the employee was receiving the ninth step of the salary range with an anniversary date of 1/93. When reappointed, the employee will receive an anniversary date of 6/93 to show that the employee had been at the maximum step of the salary range for two pay periods.

(c) The salary and anniversary date for an employee who is appointed to a title that was reevaluated after the date of the reduction in force shall be determined by calculating the salary and anniversary date by (a)1 and (b)1 above, using the title's former salary range. See N.J.A.C. 4A:3-4.9 and 4A:3-4.11.

(d) This section shall not be used to obtain a salary greater than that the employee would have received in the absence of a reduction in force.

(e) This section shall be applied to unclassified or provisional employees recalled after a reduction in force in accordance with a collective negotiations agreement.

New Rule, R.1989 d.570, effective November 6, 1989.
See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).
Amended by R.1993 d.424, effective September 7, 1993.
See: 25 N.J.R. 1916(a), 25 N.J.R. 4064(a).

4A:3-4.18 Salaries and anniversary dates for employees appointed from a regular reemployment list: State service

(a) A current State employee who is appointed from a regular reemployment list shall have the salary and anniversary date determined in accordance with N.J.A.C. 4A:3-4.8 through 4A:3-4.11, as appropriate. If the employee would receive a greater salary under the provisions of (b) below, the appointing authority may request application of those provisions.

(b) An individual not currently employed by the State who is appointed from a regular reemployment list shall receive an

anniversary date based on the new date of appointment and, at the request of the appointing authority, be paid:

1. When re-appointed to the prior permanent title, up to the same step in the salary range which the employee was receiving in that title; or, if the employee was serving in an unclassified title or provisionally in another title at the time of the separation, up to the same step in the salary range which the employee would have received had the employee been returned to his or her permanent title on the date of the separation.

2. When reappointed to a title other than the prior permanent title, up to the same step in the salary range which the employee would have received if the employee had been appointed to the title on the date of the separation.

(c) When an employee has been reappointed to a title which has been reevaluated since the separation, the employee's salary shall be set up to an amount determined by reconstruction. See N.J.A.C. 4A:3-4.10.

4A:3-4.19 Other forms of compensation: State service

The Commissioner shall issue annual updates to the Compensation Plan regarding computing pay for temporary employees, extra compensation on special projects, emergency rates and other allowances to employees.

4A:3-4.20 Retroactive pay: State service

Personnel actions having retroactive effective dates shall apply only to employees who remain on a State payroll on the date of the retroactive payment and employees who retire or die during the period of retroactive application.

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

Retroactive application of Department of Personnel retroactive pay regulation to state troopers who resigned prior to regulation's promulgation would be manifestly unjust, in view of troopers' reasonable reliance on prior practice of providing retroactive pay adjustments to troopers who had resigned in good standing; however regulation's application to troopers who resigned after its issuance would work no such injustice, as troopers' union was aware of regulation. *State Troopers Fraternal Ass'n of New Jersey, Inc. v. State*, 149 N.J. 38, 692 A.2d 519 (1997).

Salary of former Correction Major with the Department of Corrections was improperly calculated upon his voluntary demotion and return to his permanent title of Correction Captain due to his salary as an Associate Administrator, Prison Complex not being increased upon the retroactive changes to salary range 4-27. Pursuant to N.J.A.C. 4A:3-4.20, he was entitled to all of the benefits of the retroactive change to salary schedule 4-27 regardless of the title he was currently serving in because he was still on a State payroll as an Associate Administrator, Prison Complex. It was not necessary that he return to the title of Correction Captain prior to receiving those benefits. *In re William Moleins, Dep't. of Corr., CSC Dkt. No. 2012-1610*, 2013 N.J. CSC LEXIS 822, Final Decision (September 20, 2013).

4A:3-4.21 Salary overpayments: State service

(a) The Commissioner may waive, in whole or in part, the repayment of an erroneous salary overpayment, or may adjust the repayment schedule based on consideration of the following factors:

1. The circumstances and amount of the overpayment were such that an employee could reasonably have been unaware of the error;
2. The overpayment resulted from a specific administrative error, and was not due to mere delay in processing a change in pay status;
3. The terms of the repayment schedule would result in economic hardship to the employee.

(b) An employee or appointing authority may request a waiver of repayment in accordance with the procedure for written record appeals. See N.J.A.C. 4A:2-1.

Amended by R.1989 d.570, effective November 6, 1989.

See: 21 N.J.R. 2429(a), 21 N.J.R. 3451(a).

In (a): deleted "or" between 2 and 3.

Case Notes

Sufficient basis did not exist to grant a waiver of salary overpayments pursuant to N.J.A.C. 4A:3-4.21. Both of the employees were aware that their positions were to be reclassified to a title with a lower salary range. Thus, since they were maintained in their positions until the appointing authority reassigned their duties, they were clearly aware that the matter of their position classification was in dispute. Also, the Civil Service Commission was not convinced that either of the employees would be unable to afford repayment of the salary overpayment over a period of time because they did not demonstrate that the amount they would be required to pay on a bi-weekly basis each pay period would create a hardship. In re Rebecca Croke and Lorie Guerieri, Dep't. of Env't. Prot., CSC Dkt. No. 2013-2896, 2013-2897 (Consolidated), 2013 N.J. CSC LEXIS 775, Final Decision (October 2, 2013).

An employee of the Department of Children and Families who had been overpaid \$11,891.87 due to a position misclassification and the ensuing failure of the Department to promptly implement a decision of the Division of State and Local Operations (SLO) reclassifying the employee was entitled to partial relief from the statutory mandate that she repay such amounts to the State. The employee's request for a waiver of the overpayment did not satisfy the criteria in N.J.A.C. 4A:3-4.21 for complete relief from the repayment obligation. However, given the equities of the situation, the effective date of the reclassification was subject to further adjustment under N.J.A.C. 4A:3-3.9(f)1. Inasmuch as the overpayment was caused, at least in part, by the Department's failure to implement the reclassification decision, the date of reclassification – and hence the date on which the period of overpayment would begin – was properly determined to be April 4, 2012, and the period of overpayment for which the employee was properly held liable would be that period from April 4, 2012 through June 29, 2012. The Department was also properly warned that further disregard of such orders could result in the imposition of a fine on the agency as permitted by N.J.A.C. 4A:10-2.1(a)2. In re Susan Santiago, Dep't of Children & Families, CSC Dkt. No. 2013-341, 2013 N.J. CSC LEXIS 480, Final Decision (August 1, 2013).

Employees were not entitled to a waiver of the obligation to repay salary overpayments pursuant to the three factors of N.J.A.C. 4A:3-4.21. Although they claimed that the repayments of the amounts would create a hardship, none presented any specific evidence, such as their monthly income and expenses, to substantiate their claims of hardship, and all three factors had to be satisfied in order to obtain a waiver. In re

Khasima Alexander, et al., Dep't. of Corr., CSC Dkt. Nos. 2013-1087 to 2013-1138, 2013 N.J. CSC LEXIS 563, Final Decision (July 1, 2013).

Though the former Division of State and Local Operations was correct in classifying positions held by three employees of the Department of Environmental Protection as Program Technician positions, an effective date that was 30 days after the date of the reclassification determination was properly assigned per N.J.A.C. 4A:3-3.9(f), thereby lessening the monetary impact of reclassification on two of the employees, who in effect had been overpaid for the duties that they had performed in the period between the effective date of reclassification and the determination of their appeal by the Civil Service Commission. Under these facts, moreover, a waiver of repayment of the overage might be available upon a showing that all of the factors in N.J.A.C. 4A:3-4.21 had been met. In re Guerieri et al., Department of Environmental Protection, CSC Dkt. Nos. 2012-3528, 2012-3529, and 2012-3541, 2013 N.J. CSC LEXIS 218, Final Agency Action (April 5, 2013).

SUBCHAPTER 5. OVERTIME COMPENSATION**4A:3-5.1 General provisions**

(a) In local service, overtime compensation shall be paid pursuant to standards prepared and administered by the appointing authority in accordance with the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

(b) In State service, overtime compensation for employees in the career, senior executive and unclassified services shall be paid pursuant to this subchapter. See chart (Appendix A) at the end of this subchapter which outlines these overtime provisions.

(c) See N.J.A.C. 4A:6-2 for State service hours of work and workweek designation rules.

4A:3-5.2 Definitions: State service

The following terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Base salary" means the employee's rate of pay exclusive of any additional payments or allowances.

"Cash overtime compensation" means payment at a rate of one and one-half times the hourly proration of the employee's base salary, or one and one-half times the employee's regular rate, as specified.

"Compensatory time off" means the granting of time off in lieu of cash payment where permitted for excess or unusual work time.

"Covered position" means a position which is subject to the provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

"Exempt position" means a position which is excluded from the provisions of the Fair Labor Standards Act.

“Fixed workweek title” means a title specified in the State Compensation Plan as having a 35 hour (35, 3E) or 40 hour (40, 4E) workweek. See N.J.A.C. 4A:6-2.2.

“Holiday” means a legal holiday or a special holiday authorized by law or executive order.

“Non-limited title” means a title having irregular or variable work hours. Such titles may be designated as exempt non-limited (NL, N4), or covered, also known as non-exempt, non-limited (NE). See N.J.A.C. 4A:6-2.3.

“Overtime compensation” means cash overtime compensation or compensatory time off as permitted.

“Pay period” means the period beginning 12:01 A.M. Saturday and ending midnight the second Friday following (Note: A schedule of pay periods is published annually by the New Jersey Department of the Treasury.).

“Regular rate” means 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. For employees in covered titles, the regular rate includes clothing allowances unless the allowance is for the purchase or maintenance of prescribed clothing required by the employer. Employees in covered non-limited titles (NE) shall be deemed to have a 40-hour workweek for determining the hourly proration. 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.

“Seven day coverage position” means a position assigned to an area where work coverage is required on a seven day basis throughout the year.

“Workweek” means the period beginning 12:01 A.M. Saturday and ending midnight the following Friday except in those instances where the Commissioner or his or her representative has approved an alternate workweek for overtime purposes for employees engaged in seven day operations.

Amended by R.1990 d.552, effective November 19, 1990.
See: 22 N.J.R. 2627(b), 22 N.J.R. 3481(a).

“Regular rate” amended to be consistent with Fair Labor Standards Act (29 U.S.C. §§ 201 et seq.).

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

Fact that Department of Corrections provided total compensation to its physicians that included ten more days of vacation than that granted other employees did not make the compensation “overtime compensation”. State, Dept. of Corrections v. Communications Workers of America, AFL-CIO, 240 N.J.Super. 26, 572 A.2d 213 (A.D.1990).

4A:3-5.3 40 hours or less in a workweek: State service

(a) Employees in the following groups may be eligible for overtime compensation for work performed beyond their regular work hours, but not more than 40 hours:

1. Employees in 35 hour fixed workweek titles (35, 3E) for time worked in excess of the regular workweek.

2. Employees in 35 hour fixed workweek titles (35, 3E) who are participating in an approved alternative workweek program may be eligible for overtime compensation for work performed beyond 70 work hours in a 14 day work period.

3. Employees in non-limited titles (NL, NE) who meet unusual work time requirements, at the discretion of the appointing authority.

4. State Police law enforcement officers, at the request of the Office of Employee Relations.

5. Part-time employees only when they work beyond the regular workweek established for full-time employees in their titles.

(b) Temporary employees shall not be eligible for overtime compensation under this section.

(c) An employee shall be eligible for overtime compensation under this section only when:

1. The employee is in pay status for the full number of hours in his or her regular workweek;

2. The employee works at least one hour beyond the regular workweek or approved alternative workweek program of 70 hours in a 14 day work period, for employees in 35 hour fixed workweek titles (35, 3E); and

3. The work is covered by the job specification for the employee’s title, except for emergencies as provided in N.J.A.C. 4A:3-5.7(d).

(d) Overtime compensation under this section shall be paid as follows:

1. Employees in 35 hour fixed workweek titles (35, 3E) shall be compensated either in cash payment or compensatory time off at the discretion of the appointing authority with the approval of the Commissioner or his or her designee for time worked in excess of the regular workweek but not more than 40 hours, except that such employees participating in an approved alternative workweek program of 70 hours in a 14 day work period shall be so compensated for time worked in excess of 70 hours but not more than 80 hours.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee’s base salary. An overtime rate conversion table shall be published with the State Compensation Plan.

ii. Compensatory time off shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek or approved alternative workweek program of 70 hours in a 14 day work period for employees in 35 hour fixed workweek titles (35, 3E).

2. Employees in non-limited titles (NL, NE) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time, provided that employees serving as a commissioner or department head; an assistant or deputy commissioner; a division director or equivalent; and employees in exempt positions in titles which are not represented in collective negotiations with established salary ranges at or above range 32, and in such exempt positions in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation. In no event shall employees in non-limited titles have any entitlement to cash overtime compensation.

3. Work credited toward overtime compensation must be in one-half hour units of continuous work beyond each regular work day, or a work day in an approved alternative workweek program of 70 hours in a 14 day work period for employees in 35 hour fixed workweek titles (35, 3E).

4. Employees in non-limited (NL, NE) positions who are not eligible for cash overtime compensation shall not receive a cash payment for unused comparable time off upon separation from service.

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

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

Revised (d)2; added new (d)4.

Amended by R.1997 d.8, effective January 6, 1997.

See: 28 N.J.R. 4295(b), 29 N.J.R. 123(b).

Inserted references to approved alternate workweek program throughout; (a)2 newly inserted and former (a)2 through (a)4 recodified as (a)3 through (a)5.

Case Notes

Fact that Department of Corrections provided total compensation to its physicians that included ten more days of vacation than that granted other employees did not make the compensation "overtime compensation". *State, Dept. of Corrections v. Communications Workers of America, AFL-CIO*, 240 N.J.Super. 26, 572 A.2d 213 (A.D.1990).

Department of Corrections' decision to grant physicians extra vacation days was within its discretion. *State, Dept. of Corrections v. Communications Workers of America, AFL-CIO*, 240 N.J.Super. 26, 572 A.2d 213 (A.D.1990).

4A:3-5.4 Criteria for exemption from Federal Fair Labor Standards Act: State service

(a) The following are the criteria for exemption from the Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.:

1. An unclassified employee is exempt if he or she:
 - i. Holds a public elective office of the State;
 - ii. Is a member of the personal staff of an elected office holder;
 - iii. Is appointed by such an office holder to serve on a policy making level;

iv. Is an immediate adviser to such an office holder with respect to the constitutional or legal powers of the office; or

v. Meets one of the criteria for exemption set forth in (a)2 through 6 below.

2. An executive employee paid at least \$250.00 a week on a salary basis exclusive of board, lodging and other facilities is exempt if the employee regularly directs the work of two or more other employees and the employee's primary duty is management of the enterprise or a recognized department or subdivision thereof.

3. An administrative employee who is paid on a salary or fee basis at least \$250.00 a week, exclusive of board, lodging or other facilities, is exempt if his or her primary duty is responsible office or non-manual work directly related to management policies or general business operations or responsible work in the administration of an educational institution and his or her work requires the exercise of discretion and independent judgment.

4. A professional employee who is paid at least \$250.00 per week is exempt if his or her primary duty requires advanced knowledge in a field of science or learning or involves work as a teacher, and requires the consistent exercise of discretion of judgement; or his or her primary duty involves artistic work in a recognized field of artistic endeavor.

5. Executive, administrative and professional employees who are paid less than \$250.00 per week may be exempt under conditions specified in Federal regulations. See 29 C.F.R. 541.

6. Employees engaged in law enforcement or fire protection activities, including security personnel in correctional institutions, who are employed by a public agency that employs less than five law enforcement or five fire protection workers in a workweek, are exempt.

(b) An individual position may be exempt if it meets the criteria in this section, even if it is in a covered title. See N.J.A.C. 4A:3-5.10(b) for position designation appeals.

4A:3-5.5 Federal fair labor standards applicable to more than 40 hours in a workweek for 35, 40 and NE titles: State service

(a) Employees in covered positions may be eligible for overtime compensation under this section as follows:

1. Employees in covered fixed workweek titles (35, 40) and covered non-limited titles (NE), shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her representative for time worked in excess of 40 hours per week, provided that compensatory time off in lieu of cash overtime compensation is permitted by one of the following agreements:

i. Applicable provisions of a collective negotiations agreement, memorandum of understanding, or any other agreement between the State and representatives of such employees;

ii. In the case of employees who do not have a collective negotiations representative, an agreement or understanding made between the appointing authority and the employee before the performance of the overtime work. For such employees who were hired prior to April 15, 1986, the regular practice in effect on April 15, 1986 regarding compensatory time off in lieu of cash overtime compensation shall constitute an agreement or understanding.

2. The Commissioner or his or her designee may approve an alternate work period and corresponding maximum hour designation for covered law enforcement and fire protection employees as set forth in the table below. Such employees shall receive overtime compensation for time worked in excess of maximum allowable hours in the work period.

Maximum Hours in Work Period

Work Period (days)	Firefighters	Law Enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

3. A hospital or residential care facility may, under a prior agreement with affected employees and as approved by the Commissioner or his or her designee, use a work period of 14 consecutive days for computing overtime compensation for covered employees.

4. Temporary employees shall be entitled to overtime compensation unless their work duties meet the criteria for exemption under the Fair Labor Standards Act.

(b) Overtime compensation under this section shall be paid as follows:

1. Covered employees (35, 40 or NE titles) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of 40 hours per week as provided in (a)1 above. However, if an alternate work period is adopted pursuant to (a)2 above, overtime compensation shall be paid in accordance with that schedule.

2. Cash compensation for overtime work shall be at the rate of one and one-half times the regular rate.

3. Compensatory time off shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

4. Employees engaged in a public safety activity, an emergency response activity, or a seasonal activity may accrue not more than 480 hours of compensatory time off. Employees engaged in any other work may accrue not more than 240 hours of compensatory time off.

5. Cash compensation for accrued compensatory time off shall be paid at the regular rate earned by the employee at the time such employee receives such payment. However, upon termination of employment, an employee shall be paid for unused compensatory time at a rate not less than the average regular rate received during the last three years of employment, or the final regular rate received by such employee, whichever is higher.

6. Overtime compensation for work in excess of 40 hours for covered employees who work at different pay rates during the same workweek shall be paid as follows:

i. Cash overtime compensation shall be at the rate of one and one-half times the weighted average of the different rates paid during that workweek.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

7. If a 14 day work period is elected for hospital employees under (a)3 above, covered employees shall receive overtime compensation for work in excess of eight hours in a workday or 80 hours in a work period at a rate representing one and one-half times the regular rate of pay. The extra compensation at the premium rate paid for hours worked in excess of eight in a workday may be credited toward any overtime compensation payable for hours worked in excess of 80 in the 14 day work period.

8. Work credited toward overtime compensation shall be in one-tenth hour units (six minutes) of continuous work beyond each regular work day.

Amended by R.1990 d.552, effective November 19, 1990.

See: 22 N.J.R. 2627(b), 22 N.J.R. 3481(a).

Added (b)8, regarding work credited in one-tenth hour units.

4A:3-5.6 Federal fair labor standards applicable to more than 40 hours in a workweek for 3E, 4E, NL and N4 titles: State service

(a) Employees in exempt positions may be eligible for overtime compensation under this section as follows:

1. Employees in exempt fixed workweek titles (3E, 4E) shall be eligible for either cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of 40 hours per week.

2. Employees in 4E titles who are participating in an approved alternative workweek program may be eligible for overtime compensation for work performed beyond 80 hours in a 14 day work period.

3. Employees in exempt non-limited titles (NL, N4) shall not be eligible for cash overtime compensation except as provided in N.J.A.C. 4A:3-5.7(d).

(b) Overtime compensation for employees in exempt positions shall be as follows:

1. Exempt employees in fixed workweek titles (3E, 4E) shall be compensated either in cash payment or compensatory time off at the discretion of the department head with the approval of the Commissioner or his or her designee for time worked in excess of the regular workweek.

i. Cash compensation for overtime work shall be at the rate of one and one-half times the hourly proration of an employee's base salary.

ii. Compensatory time off in lieu of cash compensation shall be at the rate of one and one-half hours for each hour worked in excess of the regular workweek.

2. Exempt employees in non-limited workweek titles (NL, N4) who meet unusual work time requirements may, at the discretion of the appointing authority, be compensated through either a provision for flexible work time patterns or a grant of comparable amounts of time off to a maximum of one hour for each hour of unusual work time, provided that employees serving as a commissioner or department head; an assistant or deputy commissioner; a division director or equivalent; and employees in exempt positions in titles which are not represented in collective negotiations with established salary ranges at or above range 32, and in such exempt positions in titles with single rates or no range who are receiving a salary at or above the first step of such ranges, shall not be granted such compensation. See N.J.A.C. 4A:3-5.7(e)2 as to special project rates.

3. Employees in exempt positions who are not eligible for cash overtime compensation shall not receive a cash payment for unused comparable time off upon separation from service.

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

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

Revised (b)2; added new (b)3.

Amended by R.1997 d.8, effective January 6, 1997.

See: 28 N.J.R. 4295(b), 29 N.J.R. 123(b).

Inserted new (a)2 and recodified former (a)2 as (a)3.

4A:3-5.7 Special circumstances: State service

(a) Eligibility for overtime compensation for on call employees shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required to remain on call and cannot use their own time effectively shall be considered to be working and shall have such on call time included in the total hours worked. In those situations where employees are merely required to remain at home or leave word with appropriate officials where they may be reached, they are not considered to be working while on call unless their freedom to engage in personal activities during that period is severely restricted.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

2. Employees in exempt positions (3E, 4E, NL, N4) shall have no entitlement to compensation for such time.

(b) Eligibility for overtime compensation for training shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required by their employer to participate in job related training shall have such training time included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no entitlement to compensation for such time.

(c) Eligibility for overtime compensation for travel shall be as follows:

1. Employees in covered positions (35, 40, NE) who are required to travel contiguous to the normal workday in excess of normal commutation time shall have such hours included in the total hours worked.

i. Overtime compensation at the rate of one and one-half times the regular rate or one and one-half hours for each hour worked in excess of the regular workweek shall only be payable for that period after total hours worked exceed 40 hours in a workweek.

ii. For time worked in excess of a 35 hour fixed workweek but not over 40 hours, hour for hour compensation may be granted in the form of cash or time off, at the discretion of the appointing authority.

2. Employees in exempt fixed workweek positions (3E, 4E) may be granted hour for hour compensation in the form of cash or time off, at the discretion of the appointing authority.

3. Employees in exempt non-limited positions (NL, N4) shall have no entitlement to compensation for such time.

(d) Eligibility for overtime compensation for exceptional emergencies shall be as follows:

1. When an agency head declares an exceptional emergency involving a critical service disruption that poses a danger to health or safety, he or she may authorize:

i. Cash overtime compensation for non-limited employees in titles with established salary ranges below range 32 performing emergency related work. For these circumstances employees in non-limited titles shall be deemed to have a 40 hour workweek.

ii. Overtime compensation for work not covered by the job specification. See N.J.A.C. 4A:3-5.3(c)3.

2. An agency head shall file with the Commissioner two reports concerning an exceptional emergency as follows:

i. Within seven days of the declaration of the exceptional emergency, a fully detailed justification for the declaration. The report shall describe the critical services which could have been or were disrupted and what dangers were posed to health or safety.

ii. Within 30 days of the conclusion of the exceptional emergency, a list of the names, titles, hours of work designations and number of hours of emergency related overtime work of employees who performed emergency related work on an overtime basis.

3. These provisions shall not apply to work performed beyond the regular work hours on emergency maintenance, construction, snow removal or other related work in situations which constitute unreasonable safety hazards to the public, employees, other persons or property of the

State. The Commissioner shall establish emergency condition rates for these circumstances.

(e) Eligibility for special project rate compensation shall be as follows:

1. If an employee works on a part time, occasional or sporadic basis, and solely at the employee's option, in a different capacity from which the employee is regularly employed, the hours employed in the different capacity shall be excluded from the calculation of the hours to which the employee is entitled to overtime compensation. Such employment may be paid at special project rates as approved by the Commissioner.

2. NL and N4 employees who perform extraordinary work activities on a limited or periodic basis necessitating work time beyond the general workweek in the same capacity from which the employee is regularly employed may be paid special project rates as approved by the Commissioner.

3. A fully detailed justification for a special project for which (e)1 or 2 above would be applicable must be filed with the Commissioner or his or her representative for review and approval.

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

Fact that Department of Corrections provided total compensation to its physicians that included ten more days of vacation than that granted other employees did not make the compensation "overtime compensation". State, Dept. of Corrections v. Communications Workers of America, AFL-CIO, 240 N.J.Super. 26, 572 A.2d 213 (A.D.1990).

Department of Corrections' decision to grant physicians extra vacation days was within its discretion. State, Dept. of Corrections v. Communications Workers of America, AFL-CIO, 240 N.J.Super. 26, 572 A.2d 213 (A.D.1990).

4A:3-5.8 Holiday pay: State service

(a) Full-time and part-time employees in fixed workweek titles shall be entitled to overtime compensation in addition to their regular rate of compensation for all work performed on a holiday, except as provided in (d) below, even if they are not in pay status for a full workweek.

(b) Employees in non-limited titles are not entitled to overtime compensation for work performed on a holiday, except as provided in N.J.A.C. 4A:3-5.6. However, those in titles below that of agency head may, at the discretion of the appointing authority, be granted comparable time off to a maximum of hour for hour for such work in addition to their regular rate of compensation.

(c) The following shall govern overtime compensation for full-time and part-time employees in fixed workweek titles who are employed in a seven day coverage operation:

1. If a holiday occurs on a regular workday of an employee, the employee is entitled to overtime compensation for all work performed on that holiday in addition to the regular rate of compensation.

2. If a holiday occurs on a regular day off, an employee shall be given an additional day off in the same workweek. If, as a result of an emergency, the employee is required to work on the additional day, he or she shall be entitled to overtime compensation for all work performed on the additional day.

3. If a holiday occurs on a regular workday of an employee and the employee does not report for duty, he or she shall not be eligible for overtime compensation or an alternate day off for that holiday.

(d) A part-time or full-time employee in a fixed workweek title, in conjunction with his or her appointing authority, may agree to work on a holiday in exchange for a specified day of personal preference off. If the employee is required to work on the specified personal preference day, she or he shall be entitled to overtime compensation for all hours worked on the personal preference day as if that day were the holiday.

(e) Eligibility for overtime compensation for temporary employees shall be as follows:

1. Unless permitted by a negotiated labor contract, temporary employees shall not be entitled to overtime compensation for work performed on a holiday, except as provided in N.J.A.C. 4A:3-5.5(a)(4).

2. Unless permitted by a negotiated labor contract, temporary employees shall not be entitled to any form of compensation for a holiday not worked.

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

4A:3-5.9 Appointing authority responsibilities: State service

(a) Each appointing authority shall develop procedures for administering overtime that are consistent with this subchapter and at a minimum provide for:

1. Written authorization by the appointing authority or his or her designee in advance of overtime to be worked. Whenever circumstances are such that prior authorization is not possible, the overtime must be authorized in writing immediately thereafter;

2. Records of approved overtime requests and work accomplished;

3. Systems for continuous and periodic review of overtime requirements with a view toward accomplishing the work during regular work time; and

4. Written procedures for supervisory personnel to follow in the authorization of either compensatory time or cash payment for overtime.

(b) A copy of each department's procedures, written interpretations and any subsequent changes are to be filed with the Commissioner or his or her designee and approved prior to promulgation.

(c) For budget requests, the appointing authority shall provide an annual summary to include the extent and justification for overtime required during the past fiscal year, current fiscal year, and the extent and justification of anticipated overtime during the next fiscal year. The latter shall be supported by a description of the work programs to be accomplished, the amount of hours and money involved, the circumstances dictating that it be overtime, and alternatives that would permit accomplishment of the overtime work on regular time. The instructions for the above shall be included in the "Manual for Preparation of Budget Request" which is published and distributed to all State agencies by the Office of Management and Budget in the Department of the Treasury. The appointing authority shall file a copy of this summary with the Commissioner or his or her representative.

(d) The following records shall be kept:

1. Name of employee in full;

2. Home address, including zip code;

3. Date of birth, if under 19;

4. Sex and occupation;

5. Time of day and day of week on which the employee's workweek begins;

6. Regular hourly rate of pay in any workweek in which overtime premium is due, or other basis of wage payment (such as "\$5.00 hr.," "\$40.00 day," "\$200.00 wk.");

7. Daily and weekly hours of work;

8. Total daily or weekly straight time earnings;

9. Total overtime compensation for the workweek;

10. Total additions to or deductions from wages paid;

11. Total wages paid each pay period;

12. Date of payment and the pay period covered by payment; and

13. Approved overtime requests and a summary of work accomplished.

(e) Upon demand, the appointing authority shall make available to the Commissioner or his or her representative all records and accounts of overtime work at the time(s) and location(s) specified.

(f) Upon demand for reports of compensatory time off or comparable time off, the appointing authority shall make available to the Commissioner or his or her representative the following items:

1. The names, titles and salary ranges of employees receiving compensatory time off or comparable time off;

2. The names, titles and salary ranges of employees receiving payment for unused compensatory time off or comparable time off, the amount paid to each such employee, and the number of hours on which the payment was based;

3. The number of days on which compensatory time off or comparable time off was earned;

4. The total number of hours each employee worked beyond the normal workweek;

5. The total number of hours of compensatory time off or comparable time off earned by each employee;

6. The total number of hours of compensatory time off or comparable time off used by each employee;

7. The balance of unused compensatory time off or comparable time off for each employee; and

8. A justification for the granting of compensatory time off or comparable time off for each employee.

(g) Procedures for payments of compensable overtime will be published as part of the payroll manual.

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).

Case Notes

Denial of overtime pay to state employee who failed to follow prescribed procedures for seeking such compensation did not constitute "good cause" employee's resignation, for purpose of unemployment benefit eligibility. *Heulitt v. Board of Review*, Dept. of Labor, 300 N.J.Super. 407, 693 A.2d 155 (A.D.1997).

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 240 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.

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

Administrative correction.
See: 37 N.J.R. 3035(a).