

## Case Notes

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

**4A:3-3.3 Administration of classification plans**

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

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

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

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

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

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

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

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

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

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

**4A:3-3.4 Title appropriate to duties performed**

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

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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.

**4A:3-3.5 Reclassification of positions**

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

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

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

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

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

the classification of a permanent employee's position, whether promotional, demotional or lateral, shall be effected in accordance with all applicable rules.

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

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

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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).

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

#### 4A:3-3.6 New titles

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

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

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

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

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

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

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

1. In State service:

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

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

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

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

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

#### 4A:3-3.7 Trainee titles

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4A:3-3.8 Intermittent titles: State service**

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

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

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

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

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

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

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

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

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

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

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

**LEAVE ENTITLEMENTS—INTERMITTENT EMPLOYEES**

**VACATION LEAVE**

	<b>Employees with up to 10,440 hours of service (equivalent of 5 years)</b>	<b>After 10,440 hours of service (equivalent of 5 years)</b>	<b>After 25,056 hours of service (equivalent of 12 years)</b>	<b>After 41,760 hours of service (equivalent of 20 years)</b>
<b>Workweek 40, 4E and N4 hour titles</b>	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.

	<b>Employees with up to 9,135 hours of service (equivalent of 5 years)</b>	<b>After 9,135 hours of service (equivalent of 5 years)</b>	<b>After 21,924 hours of service (equivalent of 12 years)</b>	<b>After 36,540 hours of service (equivalent of 20 years)</b>
<b>Workweek</b> 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**

	<b>Through Dec. 31 of First Calendar Year of Employment</b>	<b>After Dec. 31 of First Calendar Year of Employment</b>
<b>Workweek</b> 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**

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

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

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

**4A:3-3.9 Appeal procedure**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Case Notes

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

## SUBCHAPTER 4. COMPENSATION

### 4A:3-4.1 General provisions

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

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

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

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