

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.

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:3-2.7 (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Repealed by R.1996 d.427, effective September 16, 1996.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 Commissioner at the same time it is sent to the employee.

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

(c) An 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;

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 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 Commissioner placement of the employee at a higher salary than the minimum.

(d) If the position to which an SES member is appointed or 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).

## SUBCHAPTER 3. CLASSIFICATION

### 4A:3-3.1 Classification of positions

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

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

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

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

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

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

#### Case Notes

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

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

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

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

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

### 4A:3-3.2 Establishment of classification plans

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

(b) The classification plans shall consist of:

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

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

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

**Case Notes**

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

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

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

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

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

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

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

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

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

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

6. Establishment, modification or termination of flexible programs, alternate workweek programs and adjusted hours of operation.

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

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

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

**Case Notes**

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).

#### 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).

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.