

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-5.1b, Chapter 3, Classification, Services and Compensation, expires on November 18, 2016. See: 43 N.J.R. 1203(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 See, also, Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 6, 7, 10 and 27; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 7, and 27; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapter 2.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).

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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 Commissioner shall allocate and reallocate career service titles between the competitive and noncompetitive divisions.

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

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

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

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

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

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

(e) Prior to any reallocation from the competitive to noncompetitive divisions, whether on an ongoing or interim

basis, an administrative review shall be conducted and notice of the proposed reallocation shall be sent to affected appointing authorities and negotiations representatives. The notice shall designate the period of time, which in no event shall be less than 20 days, during which written comment may be submitted, and may provide for a public hearing.

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

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

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

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

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

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

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

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.

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.

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 Department of Personnel.

2. The department shall contact the Department of Personnel 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 Commissioner.

6. Final appointment shall be subject to approval by the Commissioner.

(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 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 Commissioner 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.

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.

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).

(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).

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.

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.

(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

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:3-3.3 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 Depart-

ment of Personnel. The Department of Personnel shall verify that proper notice has been given of each of the following:

1. Reorganizations;
2. Job content reevaluation requests;
3. Requests for new titles or title series;
4. Job specification modification requests;
5. Employee relations group changes; and
6. Establishment, modification or termination of flexi-time programs, alternate workweek programs and adjusted hours of operation.

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

4A:3-3.4 Title appropriate to duties performed

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

Case Notes

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).

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 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, 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 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 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).

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 noncompetitive division. See N.J.A.C. 4A:3-1.2.

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

Workweek 40, 4E and N4 hour titles	Employees with up to 10,440 hours of service (equivalent of 5 years) 1 day (8 hours) for each 174 hours in regular pay status.	After 10,440 hours of service (equivalent of 5 years) 1 day (8 hours) for each 139 hours in regular pay status.	After 25,056 hours of service (equivalent of 12 years) 1 day (8 hours) for each 104 hours in regular pay status.	After 41,760 hours of service (equivalent of 20 years) 1 day (8 hours) for each 84 hours in regular pay status.
Workweek NL, NE, 35 and 3E hour titles	Employees with up to 9,135 hours of service (equivalent of 5 years) 1 day (7 hours) for each 152 hours in regular pay status.	After 9,135 hours of service (equivalent of 5 years) 1 day (7 hours) for each 122 hours in regular pay status.	After 21,924 hours of service (equivalent of 12 years) 1 day (7 hours) for each 93 hours in regular pay status.	After 36,540 hours of service (equivalent of 20 years) 1 day (7 hours) for each 73 hours in regular pay status.

SICK LEAVE

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

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. The agency representative shall review the appeal, affix to it an organizational chart and ensure that the information set forth in (c)1 through 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 repre-

sentative 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.

5. 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 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 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 and 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.

(f) If an appeal is granted by the Civil Service Commission, the effective date of implementation shall be:

1. 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

2. 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.

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

(h) 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".

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 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;

- 6. Leave without pay while receiving workers' compensation benefits;
- 7. Leave without pay under a voluntary alternative to layoff program;
- 8. Voluntary furlough; and
- 9. Furlough extension leave.

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

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

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

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

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

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

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:3-4.8 Lateral pay adjustments: State service

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

(b) Employees affected by a lateral pay adjustment shall have their pay adjusted to the same step in the salary range of the new title as that step at which they were paid in the salary

range of the former title. The employee's anniversary date shall not be changed.

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

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

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

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

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

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

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

(b) When an employee is advanced to a title with a salary schedule which is different (dollar value of ranges and steps do not coincide) from the employee's previous salary sched-

ule, the steps described in (a) above are first performed in the previous schedule, and then the employee's salary is set at the lowest step in the new schedule and range that equals or exceeds that salary.

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

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

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

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

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

WORKWEEK OF EMPLOYEE'S NEW TITLE

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

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

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

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 change in workweek. The work year adjustment would bring the employee to step four, range A13. Then, salary is calculated based on (a) 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”.

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.