

CHAPTER 3
CLASSIFICATION, SERVICES
AND COMPENSATION

Authority

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

Source and Effective Date

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

Executive Order No. 66(1978) Expiration Date

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

Chapter Historical Note

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 See, also, Historical Notes and annotations at repealed N.J.A.C. 4:1, Civil Service Rules, specifically Subchapters 6, 7, 10 and 27; repealed N.J.A.C. 4:2, State Service, specifically Subchapters 6, 7, and 27; and repealed N.J.A.C. 4:3, Local Service, specifically Subchapter 2.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

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APPENDIX A. OVERTIME ELIGIBILITY AND COMPENSATION CHART

SUBCHAPTER 1. CAREER AND UNCLASSIFIED SERVICES

4A:3-1.1 Career service

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

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

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

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

(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.

(d) The Commissioner shall establish and maintain an SES office within the Department of Personnel to administer and monitor the SES and to maintain the SES training and development program.

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. This does not include those positions which only influence internal operations.

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

(c) The Commissioner shall establish procedures for submission of SES position requests.

Administrative correction to (b).

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

Administrative correction to (b).

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

4A:3-2.3 SES appointments: State service

(a) The SES selection process includes the following:

1. Notice of the SES opening shall be filed with the Department of Personnel by the applicable department and posted in all departments. The posting requirement may be waived when a position is first allocated to the SES and the department head wishes to fill the position with the incumbent.

2. Applications shall be made to the department head on a form prescribed by the Department of Personnel.

3. The departmental selection process may consist of an interview, a structured interview before a panel, or an assessment-type evaluation or any combination thereof. However, once a selection process is chosen, it must be consistently applied to all candidates for that position.

4. The department head shall forward his or her selection(s) to the Commissioner along with the supporting materials, a description of the selection process, and detailed reasons for the selection(s).

5. Final appointment shall be subject to approval by the Commissioner, which approval may include modification of requirements.

(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 department for which he or she is qualified.

1. The position shall be in the same salary level as the incumbent's permanent career service title, or, if no career service position remains in the department at that level, then, the next lower level at which there are career service positions in that department for which the non-appointed incumbent is qualified.

2. In the event of movement to a position with a lower salary level, the non-appointed incumbent shall be placed at the closest lower step. The department head may, in his or her discretion, recommend to the Commissioner placement of a non-appointed incumbent at a salary higher than this minimum standard.

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

(a) 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.

(b) Evaluations shall be based upon a performance agreement jointly developed by the SES member and the department head or designee and reviewed by the Commissioner.

4A:3-2.5 SES compensation: State service

(a) The initial salary of all appointees to the SES shall be no less than the minimum of the salary level assigned to the position, and shall be no more than the midpoint unless approved by the Commissioner.

(b) Incumbents with career status whose positions are allocated to the SES shall, upon initial appointment to the SES, also receive a one-time lump sum payment as authorized by the Commissioner.

(c) SES members shall be paid an annual salary no less than the minimum and no more than the maximum of the salary level assigned, not including performance or other awards.

(d) 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.

4A:3-2.6 SES benefits: State service

(a) SES members shall receive paid vacation leave as follows:

1. Up to 12 years of continuous State service, 20 working days;
2. After 12 and up to 20 years of continuous State service, 25 working days;
3. Over 20 years of continuous State service, 30 working days.

(b) Upon certification of the appointing authority and approval by the Commissioner that an SES member was unable to utilize all of his or her annual vacation leave due to legitimate business demands which prevented the use of such leave, in December of each year, accrued vacation days carried over from the preceding year, up to a maximum of one-half year's allotment, may be converted to cash and either:

1. Paid to the employee; or
2. Invested by the State and paid to the employee, with accumulated interest, at the time of separation from SES.

(c) SES members shall be entitled to the same sick and administrative leave benefits as employees in the career service. See N.J.A.C. 4A:6-1.3 and 4A:6-1.9.

(d) In addition to those benefits provided to career service employees, SES members shall receive such other non-salary benefits approved by the Commissioner.

4A:3-2.7 (Reserved)

4A:3-2.8 Movement within the SES: State service

(a) Temporary movement within the SES may take place as follows:

1. Loaned executive assignments for renewable six month periods, with the consent of the departments involved and the participating SES member; or
2. Participation in a program in which a group of SES members is assigned to work, for a specific duration, on matters which cross departmental lines or other special issues.

(b) During such temporary movement, the department head may make an interim appointment to the temporarily vacated SES position using the selection procedures set forth in N.J.A.C. 4A:3-2.3.

(c) Transfer to an SES position in another department may take place upon notice of at least 30 days by the SES member to the department he or she is leaving, unless a shorter time period is agreed to by that department.

1. Approval of the transfer by the department from which the SES member transfers shall not be required. If that department determines that the services of the SES member are essential beyond the notice period, and the SES member agrees to remain for an extended period, that department shall pay the difference in salary, if any, during the extension period.

2. Upon transfer, an SES member with career status shall have the right to return to a career service position only in the new department.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Case Notes

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

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

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

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

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

4A:3-3.2 Establishment of classification plans

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

(b) The classification plans shall consist of:

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

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

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

Case Notes

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

4A:3-3.3 Administration of classification plans

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

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

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

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

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

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

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

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

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

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

4A:3-3.4 Title appropriate to duties performed

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

Case Notes

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.