

**New York State
Department of Civil Service**

**Summary
of
New York State
Civil Service Law**



**Andrew M. Cuomo
Governor**



A Message from the President.

Appointments and promotions in New York State civil service are made according to merit and fitness as mandated by the New York State Constitution. There are many laws that contain provisions dealing with civil service matters, with the majority of them provided in the Civil Service Law, Rules and Regulations.

This newly-revised guide summarizes important aspects of the statutory basis for our State's merit system of public employment. It is a valuable reference tool that provides increased access to information about the laws, rules and regulations that affect the civil service system.

I hope that you find the *Summary of New York State Civil Service Law* useful.

A Note About Municipal Government

This Summary includes provisions of Civil Service Law that only apply to employment in State government. Information regarding employment in municipal government (including counties, cities, towns, villages, school districts and special districts) or the application of a particular provision of Civil Service Law to municipal employment can be obtained from the appropriate municipal civil service agency.

Each of the 101 municipal civil service agencies has adopted rules to carry into effect the provisions of Civil Service Law. The municipal rules have the force and effect of law, and govern many aspects of merit system administration in the municipalities. These rules should be referred to for the specific provisions that apply to particular municipalities.

Abbreviation Key

This Summary includes abbreviations of citations of laws, rules and regulations. Below is a key to those abbreviations.

CSL	Civil Service Law
CSR	Classified Service Rules
CFR	Code of Federal Regulations
ML	Military Law
NYCRR	New York Codes, Rules and Regulations
POL	Public Officers Law
PR	Regulations of the Department of Civil Service (President's Regulations)
RSSL	Retirement and Social Security Law
USC	United States Code

**Summary of New York State
Civil Service Law
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Sources of the Law Governing Civil Service

Civil Service Law, Rules and Regulations

The Civil Service Law and the Rules and Regulations promulgated there under, implement the mandate of the State Constitution, Article V, section 6, which provides that:

"Appointments and promotions in the civil service of the State and all of the civil divisions thereof, including cities and villages, shall be made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive, ..."

Article V, section 6 also provides for additional credits in competitive examinations for certain disabled and non-disabled veterans. Since this preference for veterans is inconsistent with the constitutional requirement of competition, it was necessary that provision for such credits be included in the Constitution itself.

The majority of the provisions pertaining to civil service procedures and requirements in the State service are contained in the Civil Service Law, the Rules for the Classified Service, the Regulations of the State Civil Service Commission (Commission's Regulations) and the Regulations of the Department of Civil Service (President's Regulations). The Rules and Regulations implement the Law and provide procedures for carrying out the principles expressed in the Constitution and Law. The Rules and Regulations, of course, must be consistent with the Law.

The principal rules governing the recruitment of personnel and personnel changes, including examinations, appointments, promotions, transfers and reinstatements, are contained in the Rules for the Classified Service. The Rules for the Classified Service are subject to the approval of the Governor and take effect when filed with the Department of State. These Rules apply to all employment under the jurisdiction of the State Department of Civil Service.

The Attendance Rules for Employees in New York State Departments and Institutions, commonly referred to simply as the Attendance Rules, govern such matters as vacation, sick leave, holidays and other time allowances. They apply to officers and employees in the classified service in the Executive Branch of the State government.

In addition to the Civil Service Law, Rules and Regulations, there are many other laws containing provisions dealing with civil service matters. For example, there are provisions affecting the employment of people in the civil service in the Public Officers Law, Public Authorities Law, Military Law, Town Law and Village Law. Even the executive budget approved by the Legislature each year is, in a sense, a law dealing with civil service matters. State and federal human rights and employment laws and the Public Employees' Fair Employment Act (The Taylor Law) significantly influence the administration of the civil service system.

Furthermore, there is a fairly large body of court decisions and Opinions of the Attorney General and the State Comptroller dealing with civil service issues.

Civil Service Administration

The Department and the Commission

- CSL § 5.1**
5.2 The authority and responsibility for administration of the Civil Service Law in New York State government is vested in the State Department of Civil Service. Although many in the public service make no distinction between the Department and the State Civil Service Commission, they do have separate identities and functions. The Commission consists of three members appointed by the Governor, with the advice and consent of the Senate, for overlapping six year terms, with a term expiring every two years. No more than two of the members may be of the same political party. The President of the Commission is designated by the Governor from among the three members and serves as President at the pleasure of the Governor. The President of the Commission is the head of the Department.
- CSL § 7** As head of the Department, the President of the Commission is responsible for carrying out all of the duties and functions of the Department. These include, for example, the administration of the examinations program, which encompasses the scheduling, preparation, conduct and rating of examinations; setting minimum qualifications; establishing the type and conduct of tests; and deciding whether to hold an open-competitive or promotion examination in any given instance. Other examples of the administrative functions of the Department are the establishment and certification of eligible lists, maintenance of rosters, certification of payrolls, provision of services to local jurisdictions, administration of the health insurance program and all matters of internal management of the Department, including the appointment and assignment of personnel in the Department. The President is also responsible for the enforcement of the Rules and Regulations.
- CSL § 6** The functions of the Commission may be described generally as quasi-legislative, appellate and investigative. It might be characterized as the "watchdog" of the merit system. The quasi-legislative function involves the promulgation of rules and regulations, and the appellate function involves hearing and determining appeals. These include appeals in disciplinary cases for those employees not covered by contract, appeals from involuntary leaves of absence, appeals from examination ratings, and appeals of any action taken by the President, acting as the head of the Department of Civil Service. Any appeal of the President's action must be filed in writing with the Commission within 30 days of the determination. The Commission may make such investigation relative to the determination appealed, as it may deem advisable, and may affirm, reverse or modify such determination. The Commission may hold a hearing on the appeal, but is not required to do so. No appeal is allowed if the determination of the President relates solely to matters of internal management of the Department of Civil Service or if the determination was approved in advance by the Commission. Also, no appeal may be taken to the Commission from any action of the President dealing with the administration of the health insurance program.
- CSL § 6.3** The Commission also has the authority to conduct investigations concerning any matter touching on the enforcement and effect of the Civil Service Law or Rules.

In connection with such an investigation, the Commission or its designated representative may issue subpoenas, administer oaths and interrogate witnesses.

The Commission has also been given the functions formerly exercised by the Merit Award Board for making merit awards for outstanding accomplishments or suggestions by State employees.

CSL § 145
146

Department and Commission Jurisdiction

The State Department of Civil Service and the Civil Service Commission exercise direct jurisdiction over all employment in the classified service of the Executive Branch of State government, except positions (uniformed and non-uniformed) in the Division of State Police. Examinations and other civil service requirements applicable to the State Police are administered directly by the Superintendent of State Police. The Department and Commission also have jurisdiction over a number of, but not all, public authorities and public benefit corporations.

CSL § 6.1

Jurisdictional Classification

The "civil service" encompasses all offices and positions in the service of the State or any of its civil divisions, except offices and certain employees in the Division of Military and Naval Affairs.

CSL § 2.5

Unclassified and Classified Service

The civil service is divided into the unclassified and classified service. The unclassified service includes elective offices; offices filled by election or appointment of the legislature on joint ballot; legislative officers and employees; department heads; certain officers and employees appointed by the Governor; officers, members and employees of boards of elections; and, the largest group, teachers and supervisory personnel in the public schools, the State University and certain community colleges.

CSL § 35

All positions not in the unclassified service are in the classified service. All positions in the classified service, when created are automatically in the competitive class until the Commission takes action to place them in the exempt, non-competitive or labor classes. The division of positions into these classes is called jurisdictional classification, and is based principally on the extent to which examination is practicable.

CSL § 40

Exempt Class

The exempt class is defined in the Civil Service Law to specifically include one secretary of each department, temporary state commission or other State officer authorized by law to appoint a secretary, deputies of principal executive officers authorized by law to act generally for and in place of their principals, and certain court clerks. The secretary of each municipal board or commission authorized by law to appoint a secretary shall also be in the exempt class. Additionally, any other

CSL § 41
CSR § 2.1

subordinate positions for which competitive or non-competitive examination is found to be not practicable may be placed in the exempt class. No position is in the exempt class unless it is specifically listed as exempt in the Rules for the Classified Service. The Commission must amend its rules to add a position to the exempt class listing. Such amendment is subject to approval of the Governor. The statute provides that for any title listed in the exempt class in the rules, only one position is authorized unless a different number is specifically prescribed in the rules. The statute also provides that when a vacancy occurs in the exempt class, the Commission shall study and evaluate the position and within four months determine whether it is properly classified in the exempt class. Pending such determination the position may not be filled except on a temporary basis.

Non-Competitive Class

**CSL § 42
CSR § 2.2**

The non-competitive class consists of those positions for which it is not practicable to conduct examinations on a competitive basis. Appointments to non-competitive positions are to be made after a non-competitive examination, such as a review of training and experience, as prescribed by the Department. For the most part, this class consists of skilled trades positions. However, it does include some higher level administrative, scientific or technical positions, positions that are confidential in nature, or involve making or influencing policy. Positions in the non-competitive class require an amendment to the rules. The statute provides that a title listed in the non-competitive class shall include only one person unless a different or an unlimited number is specified in the rules. Further, the Commission may, by appropriate amendment to the rules, designate among positions in the non-competitive class those that are confidential or policy influencing. Positions so designated carry a "phi" designation. Incumbents of positions that carry a "phi" designation do not obtain tenure under Section 75 of the Civil Service Law.

**CSL § 55-b
55-c**

Under Section 55-b, up to 1,200 positions can be designated specifically for filling by people with physical or mental disabilities who are otherwise qualified to satisfactorily perform the duties of the position. Positions so designated are classified in the non-competitive class by the Commission. Under Section 55-c, an additional 500 positions can be classified as non-competitive for the employment of disabled veterans who served in time of war. Disabled candidates seeking employment under 55-b or 55-c must present documentation of their disability to the Department's Employee Health Service for eligibility determinations.

The difference between the exempt and the non-competitive classes, insofar as appointment is concerned, is that for positions in the exempt class, the appointing officer is free to select whomever he/she pleases and the agency, rather than the Department of Civil Service, sets any educational, experience or other qualification requirements. If the position is in the non-competitive class, the appointing officer still has the power of selection, but the appointee must meet such educational, experience and other qualification requirements as may be fixed by the Department of Civil Service. Generally, no written or oral tests are required for non-competitive class appointments.

Labor Class

**CSL § 43
2.3**

Labor class titles are listed in the Regulations of the Civil Service Commission. Positions in the labor class involve unskilled labor; however, qualifying tests may be required for appointment to labor class positions.

Competitive Class

The competitive class consists of all offices and employments in the classified service that are not in the exempt, non-competitive or labor class. Positions in the competitive class are not listed in the rules or regulations. No action is required to place a position in the competitive class. Every position in the classified service is automatically in the competitive class unless and until it is specifically classified in another jurisdictional class.

CSL § 44

Reclassification

The courts have held that when a position is reclassified from the exempt, non-competitive or labor class to the competitive class, an incumbent who has been serving in the position on a permanent basis is entitled to permanent appointment in the reclassified position with all the rights and privileges of competitive class status, without further examination.

Permanent incumbents of positions that have been reclassified from the competitive to the non-competitive jurisdictional class are immediately accorded the same protection afforded to tenured non-competitive employees. Employees so affected are entitled to the disciplinary protections of Section 75, and to exercise the same vertical bumping and retreat rights they would have been entitled to, had their positions remained in the competitive class.

Continuation of Employment in Takeovers by the State

The Civil Service Law contains provisions to retain certain employees of private institutions or enterprises that are taken over by the State. The provisions apply to those who have been employed for at least one year. Under such provisions, the positions held by the private employees are initially placed in the non-competitive class pending their assignment to an appropriate jurisdictional class. However, such an employee may be disqualified from further employment if he/she is not found to be a person of good character. All positions held by such employees are required to be assigned to appropriate jurisdictional classes within one year after the acquisition of the private institution or enterprise. The incumbents are entitled to all the rights, benefits and status of the jurisdictional class to which their respective positions are assigned. This action is termed a "cover-in" and must be approved by the Civil Service Commission.

CSL § 45

Classification and Compensation

The Civil Service Law provides for a Classification and Compensation Division in the Department of Civil Service, and a Director of Classification and Compensation. The Director is responsible for ascertaining and recording the duties and responsibilities of positions in the classified service of the State, classifying such positions, and allocating salary grades for competitive, non-competitive and-in his/her discretion-labor class positions. All positions, with the exception of part-

**CSL § 117
118**

time, exempt and some temporary and labor class positions, are assigned (allocated) to a salary grade as specifically set forth in the Civil Service law. All positions in the same title, unless unallocated, are in the same salary grade. With the exception of the professional service of SUNY, members of the Division of State Police, and positions in the Division of Military and Naval Affairs and a few smaller organizations, all positions in State government are under the jurisdiction of the Classification and Compensation Division. Positions with similar duties having the same qualifications and requiring the same examination are generally classified under the same title.

CSL §120 Most classification actions are initiated by applications to the Director of Classification and Compensation. An agency appointing officer may request the classification and salary allocation of a new position or the reclassification (change in title) or reallocation (change in salary grade) of an existing position or title. An employee may also apply for the reclassification or reallocation of his or her own position and/or title but may not, however, request the establishment of a new position. In the event that an employee or an appointing officer disagrees with a classification determination, an appeal of the determination may be brought to the Civil Service Commission. The appeal must be filed within 60 days of the receipt of the determination.

CSL §121.1 Any determination to classify, allocate, reclassify or reallocate a position takes effect on the first day of the fiscal year after approval by the Director of the Budget
121.2 and funds are appropriated. An employee affected by such a change has no legal entitlement to any back dated salary adjustment.

Reclassification

CSL §121.3 An employee whose position is reclassified does not automatically receive
122 permanent status in the new title. The individual may have to qualify through the competitive examination process. Judgments are made on an individual case-by-case basis depending upon the changes in duties and responsibilities that supported the change in title and/or grade level.

CSL §121.2 In those cases where a permanent employee's position is reclassified to a lower grade level, the affected employee's salary will not be reduced as a result of the action and, in a similar situation, the salary of a permanent incumbent of an unallocated position will not be reduced when that position is allocated to a salary grade.

Bargaining Units

CSL §130.1 Except for those employees considered Managerial/Confidential, there are seven
130.4 bargaining units into which most employees are grouped. The Civil Service Law sets forth the salary schedules that are applicable to each specific unit. Newly hired employees receive the hiring rate of the salary schedule unless an increased hiring rate has been approved by the Director of Classification and Compensation and the Director of the Division of the Budget. Increased hiring rates may be approved based on recruitment difficulties and/or the outstanding qualifications of a particular candidate.
131.1-a

Hiring to Job Rate

Movement from the hiring rate to the job rate (maximum) is determined by an evaluation of performance as prescribed in the applicable performance evaluation plan developed by the Governor's Office of Employee Relations. Employees promoted to a higher grade level receive the hiring rate of the new grade or an increase in their present salary of 1-1/2 percent plus 1-1/2 percent for each grade advanced, whichever results in a higher salary.

**CSL § 131.2
131.6**

Geographic/Pay Differentials

In addition to the scheduled salary rates, an employee's total salary may be affected by location compensation, inconvenience pay, geographic area pay differentials and/or shift pay differentials. Location pay, as negotiated with employee unions, is added to the base pay of all employees, including those designated as Managerial/Confidential, located in New York City, and in the Counties of Monroe, Rockland, Westchester, Suffolk, Nassau, Dutchess, Orange and Putnam. Inconvenience pay, as negotiated with employee unions, is added to the base pay of all employees regularly assigned to evening or night shifts.

**CSL §130.6
130.7**

Both geographic and shift pay differentials are administrative tools intended to facilitate recruitment and retention of employees in those areas where salaries and employment practices of other employers adversely affect the ability of the State to recruit and retain a competent work force. Both require the approval of the Director of Classification and Compensation and the Director of the Division of the Budget, and are selectively applied. A geographic pay differential is an amount of money added to the pay range of a salary grade for selected titles in a specified location of the State. In a similar manner, shift pay differentials are approved for selected titles in a specified area for those employees working evening or night shifts on a regular basis.

Examinations

Civil Service Law requires that, as far as practicable, positions in the competitive class be filled through a competitive examination process that ascertains the relative merit and fitness of each candidate.

CSL § 50.1

Applications/Requirements

The State Department of Civil Service must issue an announcement for each competitive examination, setting forth the minimum qualifications, the subjects of the examination and other information deemed necessary, and advertise such examination.

**CSL § 50.2
PR §66.1**

Candidates for competitive examinations must submit applications and demonstrate that they meet the announced requirements. The State Civil Service Department may refuse to examine or to certify an applicant who does not meet

**CSL §50.3
50.4
CSR § 3.2**

the minimum qualifications. There are several other grounds for disqualification, including falsification of an examination application. Disqualified applicants must be provided a written explanation and afforded an opportunity to submit an opposing explanation. Additionally, they may appeal the disqualification to the Civil Service Commission.

Promotion

CSL §52.1
CSR §3.3 Positions in the competitive class above entry-level are generally filled by promotion from among individuals holding competitive class lower grade positions in direct line within the department in which the vacancy exists. The Department of Civil Service may determine that it is impracticable or against the public interest to limit eligibility to individuals holding lower grade direct line positions. Eligibility for promotion may be extended to individuals in collateral lines or to comparable positions in any other unit or units, and may include minimum training and experience requirements.

Open Competitive

CSL § 51.1 The State Civil Service Department may, on its own initiative or upon the request of the appointing officer stating his/her reasons, determine to conduct an open-competitive examination instead of a promotion examination.

CSL § 51.2
51.3 If there is a promotion field, and an open-competitive and promotion examination are not being held simultaneously, a notice of intention to conduct an open-competitive examination must be posted for at least 15 days. During this 15-day period, employees who believe that a promotion examination should be held may submit specific reasons why they believe a promotion exam to be practicable and in the public interest.

Non-Competitive Class Eligibility for Promotion

CSL § 52.11 For certain designated titles, employees who hold or formerly held non-competitive or labor class positions have the same opportunities to take promotion examinations as employees in competitive class positions, as long as the promotion examination is being held in conjunction with an open-competitive examination.

CSL § 55.b
55.c
52.13 Additionally, individuals appointed to non-competitive class positions pursuant to Section 55-b or 55-c have the same opportunities to take promotion exams as employees in competitive class positions. No simultaneous open-competitive exam need be held. The same opportunity may be extended by the Civil Service Commission to Vietnam Era veterans.

Eligible Lists

Duration

The Civil Service Law provides that the duration of an eligible list shall be not less than one year or more than four years. If a list has been in existence for one year or more, it shall terminate upon the establishment of an appropriate new list unless the old list is extended by action of the Department of Civil Service. Additionally, should a financial emergency restrict the filling of vacancies, the Department of Civil Service may, in its discretion, extend the duration of the list for a period equivalent to the length of the restriction. Once a list expires, it cannot be revived, nor can an individual whose name was on the expired list receive an appointment on that basis.

CSL § 56
PR § 68.1

Ranking

Successful candidates are placed on an eligible list in order of their respective final examination ratings, including seniority and veterans' credits. The rules provide that if two or more eligibles receive the same final rating, they shall be placed on the list in accordance with such uniform, impartial procedure as may be prescribed by the Department of Civil Service. All eligibles with the same final score are equally reachable for appointment.

CSL § 61.1
CSR § 3.5
3.6
PR § 67.2

"Continuing" Eligible Lists

Civil Service Law provides for "continuing" eligible lists, to which names of eligibles are added as applicants are tested on a periodic basis. "Continuing" eligible lists may be utilized when the Department of Civil Service finds that there are inadequate numbers of well qualified persons available for recruitment. The periodic tests administered are designed to be equivalent in coverage and difficulty. The name of any candidate who passes the test is placed or interfiled on the list in rank order according to their final rating, and eligibility continues for a period fixed by the Department of Civil Service.

CSL § 57

Certification Order

When an appointment is to be made to fill a vacancy, and there is no redeployment roster, preferred list, reemployment roster, placement roster or special military list in existence for the position, lists are normally certified in the following order:

CSL § 52.1
52.4
52.5

1. promotion unit eligible list, if applicable,
2. departmental promotion list or departmental segment of interdepartmental promotion list,
3. general interdepartmental promotion list,
4. open-competitive list.

Filling Vacancies

CSL § 52.1
60.3
61.1

Vacancies are to be filled by promotion examination rather than by open-competitive examination, as far as practicable. When an open-competitive and promotion examination for the same title are held simultaneously, the promotion list is certified first until exhausted; then the open-competitive list is certified. The Department of Civil Service has the authority to determine whether an existing list is appropriate for filling a vacancy in a similar title.

Combining Lists

CSL § 60.1

Civil Service Law provides that when a list is less than one year old and contains less than three names of people willing to accept appointment and a new list is established, the people on the old list have preference in certification over the new list until the old list is one year old. During that time, such names shall be certified along with enough names from the top of the new list to provide the appointing officer with a sufficient number of eligibles from which to make a selection for appointment.

Civil Service Law also provides that when a list has been in existence for one year or more and is continued upon the establishment of a new list containing less than three names, the Department of Civil Service may certify the names from the old list along with sufficient names from the new list to provide an appointing officer with a sufficient number of eligibles from which to make a selection for appointment.

Certification By Locality

CSL § 60.3

For an appointment to any State position in a locality outside of Albany County, the Department of Civil Service may certify residents of the county or judicial district which includes such locality, or any combination of counties or judicial districts including such locality. Where a list is certified on a local residence basis and becomes exhausted of residents, the general State-wide list must be certified to fill any further vacancies occurring in that locality. All positions in Albany County must be filled from the general State-wide list.

Permanent Appointment

Canvass and Offer of Appointment

One of the causes of confusion in connection with the appointment process is a lack of understanding of the difference between a canvass and an offer of appointment. A canvass is nothing more than an inquiry as to whether the eligible would be willing to accept appointment if it were offered; it is NOT an offer of appointment. Normally, before an appointment is made, the eligibles at the top of the list are canvassed. Those who indicate a willingness to accept appointment are then interviewed. In the course of the interview, an eligible may decide that he/she is not interested in appointment. Selection is made from among the three highest ranking eligibles willing to accept appointment. It is important to note that there is nothing in the Civil Service Law or Rules that requires eligibles be interviewed. If one of the first three on a list is willing to accept appointment, the appointing officer may make an appointment and need not canvass or otherwise communicate with the other eligibles on the list. However, eligibles considered but not selected for appointment must be given notice of non-selection when another individual is hired for the position.

CSL § 61.3

Appointment or promotion from an eligible list must be made by selecting one of the three highest ranking eligibles willing to accept appointment. However, if there are eligibles having "tied" ratings, selection may be made from among those whose final ratings are equal to or higher than the third highest ranking eligible on the list who have indicated a willingness to accept appointment. All eligibles attaining the same score are listed as having the same rank.

**CSL § 61.1
CSR § 3.6
4.2**

Failure to Respond to Canvass, Declining Appointment

An eligible canvassed for appointment or offered appointment in writing who fails to respond within 10 business days after the mailing of such canvass or offer (or before the end of the second succeeding business day if the canvass or offer is made by telephone), may be considered ineligible for the particular appointment. In other words, he/she does not have to be considered as one of the three selections. If an eligible fails to reply to an offer or canvass, declines or indicates unwillingness to accept appointment, fails to appear for the interview, or fails to report for work after accepting an offer of appointment, his/her name shall be withheld from further certification from the list. Eligibility may be restored upon the candidate's request, or upon the request of the appointing officer concerned, if a satisfactory explanation for his/her action is submitted to the Department of Civil Service. An eligible may decline an offer of appointment without jeopardizing his/her status on the list, provided there is satisfactory reason for the declination. Legitimate reasons for declination of appointment include agency and/or location of employment, or temporary inability--physical or otherwise--to accept appointment.

**CSR § 4.1(b)
4.1(c)**

Permanent Appointment to Competitive Positions on Non-Competitive Basis

CSR § 4.2(b)
CSL § 52.7

A permanent appointment to a competitive class position may be made by non-competitive examination if an open-competitive examination has failed to produce an eligible list containing the names of at least three people willing to accept appointment. In such a case, the appointing officer may request that a non-competitive qualifying examination be given to an individual nominated by the appointing officer. If the individual is successful on the examination, the agency may appoint the person on a permanent basis. In a promotion situation, if there are no more than three people eligible for examination for promotion to a vacant competitive class position, or whenever no more than three people file applications for examination to such position, the appointing officer may nominate an employee for non-competitive promotion to such vacancy. A nominee who passes an examination appropriate for the duties and responsibilities of the position to be filled may be permanently appointed. No examination may be required in such a case if the nominee has already passed an appropriate examination.

Trainee Appointments

CSR § 4.3
4.5(c)

The Department of Civil Service may condition appointment or promotion to certain positions upon the satisfactory completion of a traineeship in an appropriate lower training title and, when required, the satisfactory completion of specified training courses. The period of such term of training shall be prescribed by the Department of Civil Service. Upon satisfactory completion of the traineeship, and any academic courses that may be required, appointees are entitled to full permanent status in the position for which the appointment was made. If an appointee's conduct, capacity or fitness is not satisfactory, or if he/she fails to pursue or satisfactorily continue any required academic courses, his/her employment may be discontinued at or before the end of the traineeship. The probationary period for appointment to trainee positions coincides with the length of the traineeship. However, where appointment from an open-competitive list can be made either to a trainee or journey level position, the length of the probationary period shall be for 26 to 52 weeks or the length of the training service, whichever is greater.

Seasonal Appointments

CSR § 4.4

Appointments from eligible lists to positions in the competitive class where the service is not continuous throughout the year but recurs in each successive year are designated as seasonal appointments. These appointments are made by selecting one of the top three eligibles from the appropriate eligible list, in the same manner as regular permanent appointments. When the employment season ends, the names of employees are put on a seasonal reemployment list in the order of their first appointment to the particular title they vacated at the end of the employment season. The seasonal reemployment list is certified to the appointing officer at the commencement of the next employment season, and those on the list are entitled to reemployment in the order in which their names appear. However, any such person may be re-examined by the Department of Civil Service with respect to physical fitness for the performance of required duties, and may be

disqualified for further employment in the same manner and for the same reasons that apply to the disqualification of an eligible on an open-competitive list. The names of any people on a seasonal reemployment list who are not reached for reemployment remain on the list for certification in subsequent seasons, but no person may continue to be eligible for reemployment for more than three years from the date of his/her last separation from seasonal employment. A seasonal reemployment list is not a preferred list such as is established upon the abolition of regular year-round competitive class positions.

The rule governing seasonal appointments provides that if a vacancy occurs in a full-time position having a title and duties similar to that of a seasonal position and no appropriate open-competitive list is available, the vacancy may be filled with a person serving in a seasonal position. The person's original appointment date to the seasonal position must be the same as or earlier than the original appointment date of the third highest standing person willing to accept appointment.

Contingent Permanent Status

Civil Service Law authorizes the State Civil Service Commission to provide by rule for the extension of some or all rights and benefits of permanent status to individuals receiving an appointment to a temporarily vacant position in the labor, competitive or non-competitive class. These are referred to as contingent permanent appointments. Except in the case of the return of a prior incumbent, the contingent permanent employee has all rights and benefits of a permanent employee.

CSL § 64.4
CSR § 4.11

In the case of the return of a prior incumbent, first, any temporary or provisional employee in that title is displaced. Then, the most recent contingent permanent appointee to the title (if there is more than one) is displaced. Displacement is not based on the incumbents' classified service seniority dates, but rather on the order of the incumbents' contingent permanent appointment dates. The displaced individual may return to his/her former permanent position (hold item), if any, and will have his/her name placed on any appropriate reemployment lists for the title from which displaced.

CSR § 4.11(a)
4.11(b)(1)

In addition, an affected competitive class employee may request restoration to the eligible list from which the original contingent permanent appointment was made, if still in existence.

CSR § 4.11(b)

Probationary Term

Requirements

Civil Service Law requires that a probationary term be served upon original appointment to a position in the competitive class and upon interdepartmental promotion. The law permits the State Civil Service Commission to require that

CSL § 63.1

a probationary term be served upon intradepartmental promotion and appointment to positions in the exempt, non-competitive and labor jurisdictional classes. It further permits the appointing officer to waive the probationary term upon interdepartmental promotion. When probationary service is required upon promotion, the employee shall be placed on a leave of absence from his/her former permanent position pending satisfactory completion of the probationary term.

CSR § 4.5(a)
4.5(b)(2)
4.5(b)(4)(i)
4.5(e)

The Classified Service Rules provide that every permanent appointment, promotion or transfer shall require satisfactory completion of a probationary term. For the purposes of these rules, "promotion" includes the appointment of an employee to a higher grade position in the non-competitive class. As with promotions, the rules provide that upon transfer, when probationary service is required, the employee shall be placed on leave of absence from his/her former permanent position pending the satisfactory completion of the probationary term. However, the appointing officer may elect to waive the probationary term required upon transfer.

CSL § 63.1
CSR § 4.5(e)
4.5(b)(5)(i)

The employee has the right, upon reasonable notice, to return to his/her permanent position at any time during the probationary term if so desired. If the employee fails to perform satisfactorily during the probationary term, he/she shall be returned to his/her former position at the end of the probationary term. Unless notified of successful completion or termination at an earlier date, the employee is deemed to have completed probation at the end of the maximum term.

Duration

CSR §
4.5(b)(5)(i)
4.5(b)(5)(ii)

The basic probationary term required for most original permanent appointments is not less than 26 or more than 52 weeks. The exceptions are appointments to training positions, Teacher and Vocational Instructor positions and to titles specifically listed in the rules. The rules provide that the probationary term continues to the maximum limit, unless the appointing authority gives written notice to the probationer that the probationary term has been successfully completed. If the probationer's service is not satisfactory, employment may be terminated at any time after eight weeks and before the completion of the maximum period. However, at the discretion of the appointing officer, a probationer who has not satisfactorily completed the original term may be offered an opportunity to serve an additional term of not less than 12 or more than 26 weeks in a different assignment.

CSR§
4.5(b)(2)
4.5(b)(4)(i)

The rules also provide for a probationary period, upon transfer or promotion, of between eight to 26 weeks for positions at Grade 13 and below, and between 12 and 52 weeks for positions at Grade 14 and above.

CSR § 4.5(f)

An employee who has resigned and is thereafter reinstated, either by the former agency/or by another agency, is required to serve a new probationary period in the same manner and subject to the same requirements as that of the original appointment.

Absence

CSR § 4.5(g)

Any periods of authorized or unauthorized absence during the probationary term aggregating up to 10 workdays if the term is less than 26 weeks, or up to 20 workdays if the term is greater than 26 weeks, may, at the discretion of the

appointing authority, be considered as time served in the probationary term. In addition, when the probationary term for a trainee appointment or promotion exceeds one year, periods of absence aggregating up to 20 days multiplied by the number of years constituting the probationary term may be considered as time served. Any periods of absence not so considered and any periods in excess of these minimums may not be considered as time served. Accordingly, the minimum and maximum periods of the probationary term must be extended by the number of workdays of absence not counted as time served in the probationary term. Traineeships are also correspondingly lengthened.

Probationary Reports

The rules require that the supervisor carefully observe the conduct and performance of the probationer and report in writing to the appointing authority at least two weeks before the end of the term. Also, the supervisor, from time to time during the probationary term, is required to advise the probationer of his/her status and progress. A probationer whose services are to be terminated is entitled to receive written notice at least one week prior to such termination and, upon request, is entitled to an interview with the appointing authority. This does not mean, however, that the appointing authority must state specific reasons for the termination of a probationer.

**CSR §
4.5(b)(5)(iii)**

Termination/Resignation

Probationers who are terminated or resign before the end of the probationary term, may request to have their names restored to the eligible list from which they were appointed, if it still exists. Names may be restored to the list, if the Department of Civil Service determines that a second opportunity for appointment is warranted.

CSR § 4.5(h)

If a person serving a probationary term is appointed to a higher level position on a temporary or provisional basis, the appointing officer may count the appointee's service in the higher level position toward the satisfactory completion of the probationary term in the lower level position. At the end of the minimum probationary term, or the entire probationary term if it is of a fixed duration, the probationer may require the appointing authority to furnish a decision in writing as to whether or not service in the higher level position is considered as satisfactory probationary service. If the decision is not to count the higher level service, the probationer may request to be returned to the lower position to complete the probationary term. The probationer may not be terminated from the lower level position on account of unsatisfactory service unless he/she has actually served in such position, in the aggregate, at least eight weeks. A probationer may be removed during the minimum probationary period on charges of incompetency or misconduct in the same manner as a permanent employee.

**CSR § 4.5(i)
4.5(j)**

There is no appeal to the Civil Service Commission on the procedures or merits of probationary termination. The courts have held that an appointing officer has broad discretion in determining the fitness of a probationer. They will not disturb the decision of an appointing officer unless it is clearly shown to have been made in bad faith.

Non-Permanent Appointments

The two major types of non-permanent appointments are temporary appointments and provisional appointments. Basically, a temporary appointment is an appointment to a position that is established for only a temporary, short duration or an appointment to a permanent position that is temporarily vacant. A provisional appointment, on the other hand, is a stopgap appointment to a vacant position pending the establishment of an appropriate eligible list from which a permanent appointment to such position can be made.

Temporary

CSL § 64.1 A temporary appointment may be made to a permanent position temporarily vacant due to the leave of absence of the permanent incumbent. Such temporary appointment may extend for the authorized duration of the leave of absence as prescribed by statute or rule. A temporary appointment also may be made for up to six months where the Department of Civil Service finds that the position to which such appointment is proposed will not continue for a longer period. However, if the position continues beyond the six-month limit, the temporary appointment may be extended up to an additional six months with the approval of the Department of Civil Service. Successive temporary appointments may not be made to the same position after the expiration of the authorized period of the original temporary appointment.

CSL § 64.2 Temporary appointments for up to three months may be made without regard to existing eligible lists. If an appointment is made for a period exceeding three months but not exceeding six months, a person may be selected from an appropriate list, if available, without regard to his/her standing on such list. Any further temporary appointment beyond the six-month period or any temporary appointment initially made for a period exceeding six months must be made from among the three highest ranking eligibles on an appropriate list, if available, who are willing to accept such temporary appointment.

CSR § 64.3 A temporary appointment may be made without examination when the person appointed will render professional, scientific, technical or other expert services on an occasional basis, or on a full-time or regular part-time basis in a temporary position established to conduct a special study or project for a period not exceeding 18 months. Such appointment may be authorized only in a case where it would not be practicable to hold an examination of any kind.

Provisional

CSL § 65.1 A provisional appointment may be made when no appropriate eligible list of at least three people willing to accept appointment is available to fill a vacancy in a permanent position in the competitive class. In such case, the appointing officer nominates a person for the provisional appointment. If the nominee is certified by the Department of Civil Service as qualified, he/she may be approved as a provisional appointee until an appointment can be made from an appropriate eligible list. The qualifications of the nominee are determined on the basis of a review and

evaluation of his/her training, experience and other qualifications measured against the minimum requirements for the position. No written, oral or performance test is normally required. The appointing authority must attest that the provisional nominee meets the minimum qualifications for the position.

The law provides that no provisional appointment may continue for more than nine months. Successive provisional appointments of the same individual may not be made to the same position after the nine-month period. If an examination fails to produce a list adequate to fill positions held on a provisional basis, new provisional appointments may be made to any positions remaining unfilled. A former provisional appointee may be given such new provisional appointment. However, a provisional who has served for nine months or longer and who has passed an examination which results in a "non-mandatory" list must be either appointed permanently or removed from the position.

CSL § 65.2
65.4

A provisional appointment must be terminated within 60 days following the establishment of an appropriate list. However, an application may be made to the Department of Civil Service for a waiver of this requirement. A waiver may be sought if there are provisional appointees to be replaced by permanent appointments from a newly established list and the appointing officer believes that terminating all provisional appointees within that time would disrupt or impair essential public service. The Department of Civil Service may be asked to authorize the termination of the employment of various provisional appointees at stated intervals, in other words, on a staggered basis. In no case may the employment of any provisional be continued longer than four months following establishment of the eligible list.

CSL § 65.3

Tenure Rights

A temporary or provisional employee has no tenure rights and, therefore, may be removed at will. In the event of abolition of positions, all temporary or provisional employees in the titles involved must be laid off before permanent employees. Temporary and provisional employees have the same salary rights as permanent employees. If a person is given a temporary appointment from an eligible list, eligibility for permanent appointment from such list is unaffected. If a permanent employee is given a temporary or provisional appointment or promotion to a higher level position in his/her department, the employee may be placed on leave from his/her former lower grade permanent position.

CSL § 80.1
CSR § 80-a.1
55(d)
4.10

Reassignment

The movement of an employee between organizational units or geographical locations of the same appointing authority with no change in title or salary grade is a *reassignment*. Appointing officers have wide latitude in assigning and reassigning employees to positions under their jurisdictions.

CSR § 1.2(b)(2)

Transfers

CSR §
1.2(b)
1.2(b)(1)

The term *transfer* is often loosely used to describe any movement from one position to another. For purposes of applying civil service requirements, however, the term has a narrower, technical meaning. It is defined in the rules as a "change, without further examination, of a permanent employee from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority, or to a position in a different title in the same or a higher salary grade under the jurisdiction of the same appointing authority."

Conditions and Limitations

CSR §
5.1(a)(3)
4.5(e)
4.5(b)(4)(i)
5.1(a)(1)
5.1(a)(2)
5.1(a)(3)

Transfers require the written consent of the transferee and the appointing authority having jurisdiction over the position to which the transfer is sought, and the approval of the Department of Civil Service. When a probationary period is required upon transfer, the transferee is placed on leave from his/her former permanent position pending satisfactory completion of the probationary term. However, the appointing authority having jurisdiction over the position to which transfer is sought may elect to waive the required probationary term. Administrative transfers (CSL Section 52.6) and regular transfers (CSL Section 70.1) may be effected even if there is a viable promotion eligible list. Transfers under CSL Section 70.4 may be made only if an open-competitive appointment would be in order. Generally, a transfer may not be made to a position for which there is a redeployment roster, preferred list, reemployment roster or placement roster containing the name of an eligible willing to accept reinstatement to the position to which transfer is sought. Such transfer may be made, however, if the vacancy created by such transfer is in the same geographical area as the position to which the transfer is made and the redeployment roster, preferred list, reemployment roster or placement roster eligible is simultaneously offered reinstatement to such vacancy. A transfer may be made only to a position that has the same, substantially the same or a lower salary grade as the position from which transfer is to be made.

Transfer to Avert Layoff – Agency Reduction Transfer Lists

CSL § 78

Section 78 enables the State to transfer employees from one agency or department of the State to positions in the same title or any comparable title in another department or agency of the State to avert layoffs. Transfers authorized by this provision can, in many instances, be effectuated despite the existence of a reemployment, eligible or preferred list. The Department of Civil Service has the statutory authority to place the names of eligible employees upon appropriate transfer lists and to certify such lists for filling vacancies.

Geographical Areas

CSR § 5.1(b)
5.8

The rules contain special provisions pertaining to transfers between geographical areas. They provide that a person appointed in the State service in one geographical area may not be transferred or reassigned for at least one year after appointment to a

similar position in another geographical area, unless reachable for appointment to the other position from the eligible list. This rule does not apply, however, to reassignments made under a reassignment list program approved by the Department of Civil Service or to transfers effected from placement rosters.

Agency Functions

Statute requires that provisions be made for transferring necessary officers and employees who perform the functions to be transferred. Such provisions apply when functions are transferred from:

CSL § 70.2

- one department or agency of the State to another department or agency of the State, or
- one department or agency of a civil division of the State to another department or agency of such civil division, or
- from one civil division of the State to another civil division, or
- from a civil division of the State to the State or vice versa.

For the purposes of determining those holding permanent appointments in the competitive class to be transferred in such a case, officers and employees are selected within each class of positions in the order of their original appointment, with due regard to the right of preference in retaining disabled and non-disabled veterans. Competitive class employees who are not so transferred have their names entered on an appropriate preferred list. Even though these general provisions are contained in the law, most legislative enactments providing for the transfer of functions from one department or agency to another contain special provisions for the transfer of the personnel involved.

Administrative Positions

Transfers between "administrative" positions are authorized by Section 52.6 of the Civil Service Law. Administrative positions include those in the area of law, personnel, budgeting, methods and procedures, management, records analysis, and administrative research as determined by the Civil Service Department. Section 52.6 transfers are based on the fact the tests or qualifications for the positions from which and to which transfer is sought are substantially equivalent.

Resignation and Reinstatement

Effective Date

The rules require that every resignation be in writing. If no effective date is specified in a resignation, it takes effect upon delivery to or filing in the office of the appointing authority. If an effective date is specified, it takes effect on such

CSR § 5.3(a)
5.3(b)
5.3(c)

specified date. If an employee who is on leave of absence without pay submits a resignation, it is deemed to be effective as of the date of commencement of such absence. A resignation may not be withdrawn, canceled or amended after its delivery to the appointing authority without the consent of the appointing authority.

Incompetency or Misconduct Charges

If charges of incompetency or misconduct have been or are about to be filed against an employee and the employee submits a resignation, the appointing authority may elect to disregard the resignation and pursue the charges. In such a case, if the employee is found guilty of the charges and dismissed from service, the termination is recorded as a dismissal rather than a resignation.

CSR § 5.4

A permanent employee who resigned may be reinstated by an agency without examination within one year from the date of the resignation to the position from which he/she resigned, if vacant, or to any vacant position to which he/she was eligible for transfer or reassignment. Employees separated for more than one year may be reinstated only upon approval of the Civil Service Commission. Reinstatement is not a right conferred upon the employee. Reinstatement is wholly discretionary with the appointing officer.

Redeployments

CSL § 79

Where, and to the extent a collectively bargained agreement so provides, State employees who will be suspended or demoted as a result of the State's right to contract for goods and services, will have their names placed on redeployment rosters. These rosters will be used for filling positions in the same title or any comparable title, as determined by the Department of Civil Service. Redeployment lists must be certified for filling vacancies before any other eligible list, placement roster, reemployment roster or preferred list. The Commission, with the approval of the Division of Budget, has the discretion to extend these rights to management/confidential employees as well.

The names of people on a redeployment list must be certified in the order of their original appointments, and in accordance with Sections 80 and 80(a) of the Civil Service Law. In addition, a person appointed from a redeployment list shall receive at least the same salary received in the position from which he/she will be or was suspended or demoted. Further, probationers who are appointed from a redeployment list to a position in the same title will be required to complete their probationary term. Employees who are appointed from a redeployment list to a position in a comparable title shall be required to complete the probationary term in accordance with rules promulgated by the Civil Service Commission. Finally, in no case may an employee's name remain on a redeployment list longer than six months following suspension or demotion.

The Department of Civil Service may determine that there are no positions in the same title or any comparable title to which an employee can be redeployed. In such instances, the Department of Civil Service may place the person's name on a special reemployment roster for filling positions in titles for which the employee meets the essential tests and qualifications. However, eligibility for appointment of an employee whose name appears on a special reemployment roster shall not continue

for a period longer than four years from the date of suspension or demotion. In addition, eligibility for appointment shall terminate at such time as the employee is redeployed, and in no event shall eligibility continue once the employee is no longer eligible for reinstatement from a preferred list. Finally, unlike the case with redeployment lists, a person appointed from a special reemployment roster does not receive salary protection and is required to serve a new probationary period.

Layoffs and Preferred Lists

Criteria for Having Rights

Layoff is a term commonly used whenever an employee is separated from State service because of economic or program reductions. However, not all employees who are laid off are entitled to rights under Sections 80 and 80-a of the Civil Service Law. Generally, to have retention, displacement and/or preferred list rights, the separation must occur because of the abolition of positions and employees must be permanent employees of New York State in:

- a competitive class position,
- a labor class position for at least one year, or
- a non-competitive class position of a non-confidential or non-policy influencing nature for at least one year.

Within a title within a layoff unit, employees meeting the above criteria have rights to be retained over provisional, probationary or temporary employees.

**CSL § 80.1
80-a.1
85.7(1)
CSR § 5.5(c)
5.5(d)
5.5(g)
5.6(c)
5.6(d)
CSL § 80.2
80-a.2**

Seniority

Where some but not all permanent employees will be retained, retention is based upon date of permanent appointment to a position in the classified service, with the least senior employee being laid off first. An additional 30 months and 60 months seniority are given to veterans and disabled veterans, respectively. A spouse domiciled with a veteran having a 100 percent service connected disability receives 60 months additional seniority. Employees who are blind are given absolute preference in retention; they are considered to be more senior than all other employees in the same title.

Seniority is calculated based upon continuous service. Continuous service for layoff purposes is defined similarly to continuous service for purposes of seniority credits on a promotion examination; i.e., intervening periods of employment on a provisional or temporary basis or in the unclassified service do not interrupt the continuity of the service. Continuity is interrupted by a break in service of over one year. However, no previously gained credit is lost for absences of under three years. Any period of absence in excess of three years is deducted pro rata from seniority credit earned before the absence.

Layoff Units

CSL § 80.5 Layoffs in the State are made among employees in the department where the
80-a.3 abolition or reduction occurs. However, the President of the Civil Service
PR § 72.1 Commission may, by regulation, designate separate units for suspension or demotion. These include any State hospital, institution or facility, or any division of any State department or agency, or specified hospitals, institutions and facilities of a single State department or agency within a particular geographic area.

"Bumping" and "Retreating"

CSL § 80.7 Competitive class employees may often have an opportunity to displace other less
CSR § senior employees in the layoff unit through either bumping or retreat. Exactly what
5.5(a) may occur in the case of bumping varies with each situation, but generally, the
5.5(a)(1) employee will displace the least senior employee, provided he/she has greater
5.5(a)(3) retention standing, in the next existing lower occupied title in direct line of promotion. Non-competitive and labor class employees do not bump since there are no direct promotion lines in these classes.

CSL § 80.7 If no lower level occupied positions in direct line of promotion exist in the layoff
80-a(5) unit, competitive class employees may have retreat rights. Non-competitive and
CSR labor class employees also have retreat rights. Retreat means that the employee,
§5.5(a)(2) provided he/she has greater retention standing, may displace the least senior
5.5(h) individual in the layoff unit who occupies the last lower level title that the employee
5.6(a)(1) held on a permanent basis.
5.6(h)

Placement Rosters

CSL § 81-b Prior to the date of layoff, the names of permanent employees expected to be
CSR § 5.8 displaced may be put on a placement roster. If the placement roster includes an eligible who is willing to accept the appointment, use of the open-competitive and promotion lists and transfers from other than placement rosters are blocked. All employees on these rosters are equally reachable for appointment. Appointments made from a placement roster are treated as transfers and require a probationary period. However, as with any transfer, the appointing officer may waive the probationary term.

CSR § 5.8(c) Placement roster eligibles who refuse a transfer, fail their probationary periods or are not appointed become preferred list eligibles as of the date of layoff.

Generally, placement rosters are established only for the titles in which employees facing layoff are currently serving. However, in some cases a placement roster may be certified for other appropriate titles. The employee must be given 20 days notice of the impending layoff.

Preferred Lists

CSL § 81.1 Laid off and demoted employees are certified to fill positions from a preferred list.
81.2 On any particular preferred list certification, employees are ranked according to
CSR § 5.5(g) their preferred list adjusted seniority. Inclusion on the preferred list certification
5.6(g) depends on several criteria:

- whether the title to be filled is the same title, a direct line title or a comparable title;
- whether the position to be filled is in the employee's former layoff unit or another layoff unit;
- whether the employee was a probationer or had completed probation at the time of layoff;
- whether the position is permanent or temporary and whether the employee has indicated a willingness to take a temporary position;
- the geographic location of the job and whether the employee has indicated a willingness to work in that county;
- the previous declinations and reinstatements of each employee.

Given these criteria, it is apparent that an individual's rank may vary widely on different certifications.

Preferred List Reinstatements

Appointing officers must either reinstate the number one eligible willing to accept appointment or leave the position vacant. There is no probationary period upon reinstatement from a preferred list, unless the laid off employee was on probation at the time of layoff. Such employees must complete their probationary periods when reinstated. However, a preferred list eligible reinstated to a traineeship position would be on probation for the length of the traineeship.

CSL § 81.4

Term of Eligibility

An individual's name may remain on a preferred list for a title for up to four years, unless permanently appointed to a position at the same salary grade. Eligibles who decline a job offer may retain some eligibility or be removed from the list, depending upon their salary grade and county of layoff. It is also possible to be allowed to be inactive on the preferred list and reactivated at a future date for good cause. Eligibles reinstated at a lower salary grade retain their preferred list eligibility for higher grade positions.

CSL § 81.1
81.5
81.8
CSR § 5.7
5.7(c)

Preferred list eligibles are considered permanent employees for purposes of qualifying for promotion examinations. However, time on the preferred list does not count toward the amount of service required and does not interrupt continuous service for seniority if an eligible is reinstated from the list.

Reemployment Rosters

Reemployment rosters are intended to provide additional employment opportunities to laid off employees. Competitive class employees are placed on reemployment rosters for selected titles other than preferred list titles based on the similarity of duties, minimum qualifications and examinations. Non-competitive and labor class

CSL § 81-a
81-b

employees are placed on reemployment rosters for titles for which they are qualified for appointment. Former employees on reemployment rosters do not appear in rank order; that is, any individual on the roster may be appointed. Upon appointment, the employee must serve an appropriate probationary period. Reemployment rosters consisting of former permanent employees must be used to fill positions for which no preferred lists exist before placement rosters, eligible lists or other methods of appointment may be used.

Disciplinary Proceedings

Those Subject to Provisions

- CSL § 75
76.4** The disciplinary procedures described below are those set forth in statute. The contracts negotiated between State employee unions and the Governor's Office of Employee Relations have substituted "Contract Disciplinary Procedures" for these provisions. Thus, the following information applies mainly to Managerial/Confidential employees and persons not in a negotiating unit or subject to the Taylor Law.
- CSL § 75.1** Employees who are subject to the provisions of Section 75 may not be removed or otherwise subjected to disciplinary penalty except for incompetency or misconduct established after a hearing on stated charges.
- CSL§75.1(b)(c)
CSR§ 4.5
4.5(b)(5)(i)
4.5(b)(5)(ii)** The provisions of the Civil Service Law dealing with removal for incompetency or misconduct apply to permanent competitive class employees, and, except as noted below, honorably discharged war veterans and exempt volunteer firefighters holding a position by permanent appointment in the classified service. State and local employees holding non-competitive class position by permanent appointment for at least five years are likewise covered. In addition, a probationer who has not completed eight weeks of service is entitled to notice and hearing pursuant to Section 75 if he/she is to be removed from the position for misconduct or incompetence before the end of the minimum probationary period. However, such individuals may be terminated without recourse to Section 75 after eight weeks and up to the end of the maximum period of their probationary term.
- CSL § 75.1
75.1(c)** A war veteran and an exempt volunteer firefighter serving in the exempt, non-competitive or labor class, is not covered by Section 75 if he/she holds the position of private secretary, cashier or deputy of any official or department, or is an independent officer. In addition, if the Civil Service Commission designates a non-competitive class position as confidential or policy influencing, the incumbent is not protected by the provisions of Section 75.

Under certain circumstances, public employees are protected against retaliatory disciplinary action resulting from their disclosure of information that relates to what the employee reasonably believes to be a violation of law, rule or regulation.

CSL § 75-b

Investigations

Frequently, charges are preceded by an investigation by the appointing authority. It is well established that an appointing officer has the right to question an employee with respect to matters involving or affecting job performance and that an employee is obligated to answer such questions. Refusal to answer constitutes insubordination. The appointing officer may question the employee under oath, and have the questions and answers recorded. Any employee, including managerial/confidential, who appears to be a potential subject of disciplinary action, has, at the time of questioning, a right to representation and shall be notified in advance, in writing, of this right.

POL § 61

Charges

Charges of misconduct or incompetency, under Section 75, must be brought within 18 months of the act or omission unless the charge would constitute a crime if proved in a court of competent jurisdiction. For managerial/confidential employees or those employees covered by a collective bargaining agreement, the period is reduced to one year. The charges must be in writing and sufficiently specific to apprise the employee of what he/she is being charged with to enable him/her to defend him/herself. The charges may be served on the employee personally or by mail. The individual is then entitled to at least eight days in which to answer the charges in writing.

**CSL§ 75.2
75.4**

Hearings

The hearing must be conducted by the officer or body having the power to remove the person or by a deputy or other person designated, in writing, by that officer or body. The burden of proving the charges rests on the official or supervisor making the charges.

CSL § 75.2

The employee is entitled to be represented by counsel or a union official, to summon witnesses to testify on his/her behalf at the hearing, and to confront and cross-examine those testifying against him/her.

Case law requires that the hearing be open to the public; however, it may be closed if the employee so requests. A transcript of the hearing is required, and the determination of the appointing officer must be in writing and supported by substantial evidence in the record.

CSL § 75.3

If found guilty of some or all of the charge(s), an employee's entire work history may be considered in setting the penalty to be imposed.

Suspension/Dismissal

If the employee is suspended pending the hearing and determination of charges and is subsequently found not guilty, he/she is entitled to reinstatement with back pay, less any unemployment benefits. If found guilty, he/she may be:

- dismissed or demoted,
- suspended without pay for a period not exceeding two months,
- fined an amount not exceeding \$100 to be deducted from his/her salary, or
- reprimanded.

The statute permits the appointing officer to suspend an employee without pay for up to 30 days pending a hearing and determination of disciplinary charges. Such a suspension is procedural only and not a penalty. Thus, if an employee is found guilty and receives a reprimand, he/she is not entitled to back pay for the period of suspension. However, the statute permits an appointing officer, in his/her discretion, to consider the suspension as part of the penalty. The appointing authority should be prepared to defend at the hearing a determination to impose a suspension without pay. Prior to initiating a suspension without pay, an employee must be provided with a notice of the charge lodged or to be lodged, an explanation of the evidence and an opportunity to present reasons not to impose the suspension.

An employee is entitled, upon request, to be furnished a copy of the transcript of the hearing without charge. Also, when an employee is found guilty, a copy of the charges, the written answer, the transcript of the hearing and the determination must be placed on file in the office of the department or agency in which he/she has been employed. Copies must be filed with the State Civil Service Commission.

Appeals

§ 76.1 An employee who is dismissed, demoted, suspended without pay, fined or reprimanded, without a remittance of his/her pre-hearing suspension without pay, may appeal either to the State Civil Service Commission or to the courts. If he/she elects to appeal to the Commission, the appeal must be filed in writing within 20 days after receipt of the written notice of the determination.

CSL § 76.2 The Commission reviews the record of the disciplinary proceeding and the transcript of the hearing, and makes a determination on the basis of such record and transcript and such oral or written argument as it may deem necessary. No new evidence may be presented before the State Civil Service Commission or its designated representative. The record is reviewed to determine whether the decision of the appointing officer is based on substantial evidence, whether procedural rights and safeguards have been observed, and whether the penalty imposed is reasonable in light of all the circumstances.

CSL § 76.3 The Commission may affirm, reverse or modify the determination appealed. It may, in its discretion, direct the reinstatement of the employee or permit transfer to a vacancy in a similar position in another division or department, or direct that the

employee's name be placed on a preferred list. In appropriate circumstances the Commission may arrange a transfer of the employee, in order to avoid the difficult and unproductive work situation that might ensue were he/she returned to his/her former job. The employee is entitled to back pay for the period of his/her removal less unemployment insurance benefits. No adjustment is made for other earnings during that time.

If a person is disqualified after having received appointment, the appointment is, in effect, declared void and the person is not entitled to the protection of Section 75. However, such people do have certain due process rights pursuant to Section 50.4.

**CSL § 50.4
66.4(d)**

In addition, a public officer who is convicted of a felony or a crime involving a violation of his/her oath of office, vacates his/her position without recourse to Section 75.

**POL
§30.1(e)
CSL § 75**

Leave for Disability

Length of Leave

Any employee who is disabled due to an injury that is compensable under the Workers' Compensation Law is entitled to a cumulative leave of absence, while actually disabled, for a period of one year or, if disabled due to an assault on the job for a period of two years, unless the employee is found to be permanently disabled from performing the duties of the job. The employee may be separated upon expiration of the leave, or upon a finding of permanent inability to perform the job duties. However, the employee has a right to a hearing to challenge a refusal to permit return to duty, or a proposed discharge upon exhaustion of leave or finding of permanent disability. After separation, the employee may apply within one year of recovery, for reinstatement to his/her former job, or a similar job for which he/she is qualified. If he/she is found fit to perform the duties of his/her former position, but no appropriate vacancy shall exist, or if the workload does not warrant filling such vacancy, his/her name shall be placed upon a preferred list.

**CSL § 71
CSR § 5.9**

Medical Examinations

An appointing officer may have reasonable grounds to believe that an employee is unable to perform the duties of his/her position due to a physical or mental disability resulting from circumstances other than occupational injury or disease. If so, the appointing officer may require a medical examination of the employee, after giving the employee written notice of the facts that led to this conclusion. Upon examination, if the medical officer certifies that the employee is not physically or mentally fit to perform the job duties, the appointing authority will notify the employee in writing. The employee has the right to request a hearing to appeal the determination. Except where the employee's continued presence on the job presents a potential danger or would severely interfere with operations--in which case the employee may be placed on leave immediately--an employee is kept on the job until

**CSL § 72.1
72.5**

a final determination is made after a hearing or the end of the appeal process, whichever is later. The employee who refuses to submit to an examination is considered insubordinate, and this can be the basis for disciplinary action.

Termination/Reinstatement

CSL § 73

An employee placed on leave pursuant to CSL Section 72 or who is voluntarily on leave by reason of a non-occupational injury or disease, may be terminated after a continuous absence of one year. An employee may, within one year of the termination of the disability, apply for reinstatement. If the person is found mentally and physically able to return to work, but an appropriate position is not available, the individual will be placed on a preferred list.

Veterans' Rights

Additional Credits for Examination

CSL § 85.2

The State Constitution requires that examinations for appointment or promotion in State service be competitive, so far as practicable. At the same time, it contains a significant exception to the strict rule of competition by giving additional credits in competitive examinations to war veterans. Disabled veterans receive 10 points additional credit on their examination scores in open-competitive examinations and five points in promotion examinations. Non-disabled veterans are granted five points in open-competitive examinations and two and one-half points in promotion examinations. In every case, however, the veteran must attain a passing mark on an examination before additional credits may be added to his/her score. The additional credits may not be applied to raise a failing grade to a passing one.

Eligibility

CSL § 85.1

Veterans eligible for the credits are those who:

- were members of the Armed Forces of the United States;
- served on active duty for other than training purposes in time of war;
- were discharged honorably, released under honorable circumstances, or will be honorably discharged or released under honorable circumstances at the time of appointment; and
- are residents of New York State at the time of application for appointment, promotion or retention, as the case may be.

A veteran who is disabled is defined as someone who meets the above service criteria and is certified by the United States Department of Veterans Affairs [formerly known as the Veterans Administration] as having a disability rated at ten percent or more which was incurred while serving in the United States Armed

Forces in time of war. The disability must be in existence and the disabled veteran must be receiving payment from the Department of Veterans Affairs for such disability at the time of application for appointment or retention.

Time of War

Time of war means: for World War I, from April 6, 1917 to November 11, 1918; for World War II, from December 7, 1941 to December 31, 1946; for the Korean Conflict, from June 27, 1950 to January 31, 1955; for the Vietnam Conflict, from February 28, 1961 to May 7, 1975; and for hostilities in the Persian Gulf, from August 2, 1990 to the end of such hostilities. In addition, those who were awarded the armed forces, navy or marine corps expeditionary medal during the following periods will qualify: for hostilities in Lebanon, from June 1, 1983 to December 1, 1987; for hostilities in Grenada, from October 23, 1983 to November 21, 1983; and for hostilities in Panama, from December 20, 1989 to January 31, 1990. In addition, men and women qualify for veterans' credits if they were a member of the United States Public Health Service from July 29, 1945 to December 31, 1946, from June 27, 1950 to July 3, 1952, or if disabled while serving as a Merchant Seaman or while on transport service duty, between December 7, 1941 and August 15, 1945.

CSL §85.1(c)
38CFR §
3.6(c)(2)(iii)

Further, a person qualifies for veterans' credits provided he/she became disabled while serving overseas as a United States civilian employed by the American Field Service under United States Armies and United States Army Groups during armed conflict from December 7, 1941 to May 8, 1945, and was honorably discharged or released. A person also qualifies for veterans' credits provided he/she became disabled while serving overseas as a United States Civilian Flight Crew and Aviation Ground Support Employee of Pan American World Airways or one of its subsidiaries or its affiliates as a result of Pan American's contract with Air Transport Command or Naval Air Transport Service during armed conflict from December 14, 1941 to August 14, 1945, and was honorably discharged or released.

Use of Credits

It should be noted that additional credits are applied to a qualifying candidate's score only at the time the eligible list is established. An individual must apply for and prove eligibility for such credit *before* the eligible list is established, otherwise, it will be too late for him/her to receive credits on that list. By law a list cannot be established until two months after the last day allowed for filing applications for an examination. This assures veterans at least two months in which to apply and demonstrate eligibility for credits.

CSL § 85.3

A veteran may receive additional credits in any or all examinations in which he/she is a successful candidate, up to the time that the additional credits are actually used to obtain an appointment or promotion. That is, these credits are added to passing scores on any number of eligible lists; however, a veteran is only entitled to obtain one appointment resulting from these additional credits.

CSL § 85.4

Credits are deemed to be used when a veteran receives a permanent appointment or promotion in the service of the State or a civil division from an eligible list on

which he/she was allowed (and had not waived) additional credits, either as a disabled or a non-disabled veteran. The additional credits are not deemed to be used if:

- the relative rank of the appointee on the eligible list or on the certification thereof from which the appointment or promotion is made has not been affected by the additional credits, or
- the appointee resigns or is terminated at or before the end of his/her probationary term and thus does not acquire permanent status.

CSL § 85.5

A veteran may elect to waive or relinquish additional credits on any examination at any time before appointment or promotion, and accept the lower rank on the eligible list to which he/she is otherwise entitled. If the veteran does this, his/her credits cannot be restored on that list.

Preference In Retention

CSL § 85.7

Another important benefit granted to disabled and non-disabled veterans is the right of preference in retention in the event of a reduction in force in the competitive class. This preference has already been noted in the discussion on layoffs. The qualifications for eligibility for additional examination credits also apply to eligibility for preference in retention.

War Veterans and Exempt Volunteer Firefighters

CSL § 86

The Civil Service Law also contains provisions favoring war veterans and exempt volunteer firefighters who are laid off upon the abolition of positions in the non-competitive or labor jurisdictional class. The law provides that if the non-competitive or labor class position of a veteran or exempt volunteer firefighter is abolished, he/she shall be entitled to transfer to any similar position where a vacancy exists and receive the same compensation. He/she does not have a right to bump a non-veteran, nor does the law mean that a veteran or exempt volunteer firefighter must be given a vacant position even if there are no duties to perform in the position. In other words, it does not mandate the filling of a position that would otherwise stay vacant because of lack of work. However, it does give the laid off war veteran or exempt volunteer firefighter the right of preference to employment in similar positions over others who might otherwise be appointed to such positions. It is incumbent upon the veteran to seek and find such positions.

Military Service and Leaves of Absence

The rights and privileges of public employees who enter military service are provided for in the Military Law, principally in Sections 242 and 243. The former section deals with members of reserve forces who perform ordered military duty in the service of New York State or the United States. The latter deals with the rights of those inducted into, or whose National Guard units are activated into, the regular military forces of the United States.

38USC§ 4302

Additional rights are guaranteed by federal law. In addition, federal law provides that veterans shall be accorded the protections of federal or state law, whichever is more generous.

A civil service employee who is a member of the organized militia or any of the reserve forces of the Armed Forces of the United States shall be deemed to be on leave of absence while performing ordered military duty. Ordered military duty is defined as any duty performed pursuant to orders issued without the employee's consent; or even though such orders are issued with the consent of the employee, for periods not exceeding a total of 30 calendar days or 22 working days in one calendar year, or any continuous period of absence.

ML § 242.1
242.2
242.3

A civil service employee who is a member of a reserve component shall be deemed to be on leave of absence while attending any service school conducted by the Armed Forces, or while in full-time training or active duty for training, even though such orders are issued with the consent of the employee.

ML §242.3
242.3-a

An employee's absence while performing ordered military leave shall not constitute an interruption of continuous employment nor shall there be any loss of vacation or holiday privilege.

ML § 242.4

A reservist shall be paid his/her salary for all periods of absence while performing military duty, not exceeding a total of 30 calendar days or 22 work days, whichever is greater, during any one calendar year of any continuous period of ordered military service. This period may be extended by rule in times of emergency.

ML § 242.5

An employee who enlists in the Armed Forces is entitled to a maximum four-year leave of absence, except during a period of war or national emergency declared by the President; or for one additional year, if service is extended for the convenience of the government.

ML § 243.1
38USC§4302

In order to be eligible for reinstatement following military duty or for any of the rights and benefits granted to returning veterans under the Military Law, a veteran must be honorably discharged or released under honorable circumstances.

ML§243.1(c)

Military Law provides that any employee who enlists or is drafted into military duty shall be deemed to be on leave of absence and is entitled to reinstatement to his/her position if application is made up to 90 days after the termination of military duty as defined in such section. Even if reinstatement is not requested within the 90 day period, the employee remains eligible for reinstatement at the discretion of the appointing officer at any time within one year after the termination of military duty.

ML § 243.2

An employee on military leave may "not be subjected directly or indirectly to any loss of time, service, increment or any other right or privilege, or be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in office." Thus, upon reinstatement following termination of military duty, an employee is entitled to receive the same salary he/she would otherwise be receiving had he/she remained in his/her position, and full credit, for promotional purposes, for the period of absence.

ML § 243.5

Entitlement to Examinations

The Military Law provides certain rights pertaining to civil service examinations. A person serving on active duty in the armed forces of the United States during the

ML §243-c
ML §243-b

filing period for a civil service examination, or a person who has been honorably discharged after an examination filing period shall be permitted to file an application for such examination no later than 10 business days prior to the scheduled examination date or the last date to file for such examination, whichever is later. If qualified, such person shall be allowed to compete in such examination. Further, any member of the Armed Forces of the United States or organized militia who duly filed an application for a civil service examination but was deprived of an opportunity to compete because of active military duty shall be afforded a military make-up examination.

ML § 243.5 If a public employee is on regular military duty and a promotion examination is held for which the employee is entitled to take, the employee may take a comparable examination if a request is made within 60 days after restoration to his/her position. If the employee passes the comparable examination, his/her name is placed on the regular eligible list, provided it still exists. If the final rating is such that the employee would have been reached for certification for appointment between the date when he/she entered military duty and the date that he/she was officially notified of his/her rating, his/her name is placed on a special eligible list. The special list remains in existence for two years and is certified before any subsequent list, including a preferred list. If the employee is promoted from the special eligible list, he/she is entitled to retroactive seniority, for purposes of computing seniority, training and experience credit upon promotion to the earliest date on which any eligible who was ranked lower on the regular promotion list was promoted. The employee is not, however, entitled to have seniority backdated for salary purposes.

Appointment While on Military Duty

ML § 243.6
243.7 Military Law also provides that if a person's name is on an open-competitive or promotion eligible list when he/she enlists or is drafted into military duty, that person may, at the discretion of the appointing officer, be appointed from such list and then placed on military leave of absence until he/she returns from military duty. In such case, he/she earns seniority and salary credit from the date of appointment. A person on an eligible list who is not so appointed while on regular military duty may have his/her name placed on a special eligible list following return, provided the person has been reached for certification during military duty and the original eligible list is still in existence.

Such a special list will continue for a period of two years following termination of military duty and is certified before any subsequent eligible lists, including a preferred list. If an eligible is appointed from such a special list, he/she is entitled to retroactive seniority for the purposes of computing seniority, training and experience credit upon promotion, and seniority in the event of layoff, to the earliest date upon which any eligible who was lower on the original list was appointed.

ML §243.7-b Applicants who are called to military duty before taking all parts of an open-competitive or promotion examination and are prevented from completing the examination can obtain a comparable holding of the remaining parts of the exam. The applicant may then be entitled to special military list status as described in ML §243.5.

Credit Toward Probationary Requirements

If a person enters military duty as defined in ML § 243 while serving a probationary period, the time absent on military duty shall be credited as satisfactory probationary service. This does not, however, overcome unsatisfactory probationary service rendered before entering military duty nor may it guarantee the employee successful completion of the probationary term.

**ML § 243.9
38 USC 4302**

Age Requirements

Military Law also provides that if maximum age requirements are established for any position, the period of military duty served by a candidate shall not be included in computing age, up to a maximum of six years.

ML§243.10-a

Leave for Education

Military Law provides an educational leave of absence for any employee who served during hostilities in World War II through the Viet Nam era and is eligible to receive educational benefits provided by the federal government on account of such service. Such employee shall be entitled to a leave of absence not exceeding four years while pursuing courses of studies under such federal benefits.

ML § 246

Political Activity

Rules of Conduct

Most people in the service of the State of New York are not prohibited from taking part in or contributing to partisan political campaigns in their off-duty hours. At the same time, they are protected by the Civil Service Law from having political influence imposed upon them in their jobs. This law provides that no employee shall be questioned concerning his/her political affiliations or compelled to contribute to any political fund, that no person shall be appointed or discharged on the basis of political opinions or affiliations and that no person shall use his/her official position or authority to compel political action or allegiance from subordinates. The law also provides for penalties for violations of these provisions.

**CSL § 107
CSR § 6.2**

Federally Funded State Agencies

State employees whose principal employment is in connection with an activity financed in whole or in part by federal loans or grants are subject to the Hatch Act, which is a federal law prohibiting them from engaging in certain political activities. Examples of prohibited activities are running as a partisan candidate for political office or using official authority for the purposes of interfering with or affecting the results of an election. Also prohibited is the coercion of public employees to make loans or contributions to a political party.

**5 USC § 1501-
1508**

However, the law does not prohibit an employee from taking part in, or contributing to, partisan political campaigns in their off-duty hours, expressing opinions, or displaying political badges or stickers in his/her private home or automobile. Any person who believes that he/she is covered by this Act should check its specific provisions before engaging in any political activities.

Strikes

CSL § 210

Strikes by public employees against the State or any public authority or local governmental jurisdiction, including a school district, are prohibited by Article 14 of the Civil Service Law, also known as the Taylor Law.

The statute presumes that an employee who fails to report for duty, is willfully absent from his/her position, stops work, or abstains in whole or in part from the full, faithful and proper performance of employment duties, has engaged in a strike. Under this broad definition, it would be possible to have a one-person strike, as concerted action by two or more employees is not necessary. The statute provides for the loss of two days' pay for each day the public employee is on strike.

The Ethics Law and Outside Activities

Dual Employment

CSR § 6.3 4 NYCRR 6.3

State employees holding positions in the classified service are prohibited from obtaining and holding any other paid State position, either on a full-time or part-time basis, without first obtaining the written consent of the head of their department or agency. This restriction on dual employment of classified service employees extends to second positions in all branches of State government (executive, legislative and judicial) and to the unclassified service. A willful violation of this rule is sufficient cause for disciplinary action, including removal.

POL § 73, 73-a, 74

In addition, outside activities of State officers and employees are regulated by provisions of the Public Officers Law relating to ethics. Depending on the amount to be earned, such persons must obtain the permission of their appointing authority and, in certain cases, the State Commission on Public Integrity before undertaking compensated outside activities.

Financial Disclosure

POL § 73-a 19NYCRR 932

State officers and employees who are designated as "policymakers" by their appointing authority, or who earn in excess of the job rate of SG-24, as set forth in Section 130(1)(9) of the Civil Service Law, or above and are not otherwise exempted, must file an Annual Statement of Financial Disclosure with the State Ethics Commission.

Additional Agency Restrictions

POL § 73

Even if an individual is not required to obtain such permission, outside employment must not place an employee in a situation incompatible with his or her State position, such as presenting a conflict of interest. Employees who wish to undertake outside activities should check to see whether the agency they work for places additional specific restrictions or prohibitions on such activities. As a general matter, it is expected that outside employment will be restricted to off-duty hours and will not mentally or physically impair the employee in performing the duties of the State position.

State officers and employees are restricted from certain business and professional activities, e.g., contracting with a State agency except pursuant to competitive bidding or accepting gifts of more than nominal value given to influence or reward official acts. Specific guidance regarding gifts of nominal value should be obtained from the Agency's Ethics Officer or the Commission on Public Integrity, which maintains a website at www.nyintegrity.org. Also, former State officers and employees may not appear before their former State agency after termination of service for two years on any matter, or before any State agency at any time after termination on a matter with which they were directly concerned and personally participated in while still in State service. In addition, political activities, and the receipt of honoraria and travel reimbursement are regulated by the Commission on Public Integrity, which also renders advisory opinions interpreting the Public Officers Law provisions addressing ethics and investigates violations.

19 NYCRR 930

Certification

No payroll may be approved or paid by any State fiscal officer unless and until the Department of Civil Service certifies to such officer that the persons to be paid are holding their positions in accordance with Civil Service Laws and Rules. Payment of an employee by a fiscal officer after the refusal of the Department to certify his/her employment constitutes a misdemeanor. Certifications are issued by the Department of Civil Service on a biweekly basis covering new appointments and changes in employees' status. Civil Service Law also requires that the Civil Service Department examine the payrolls of all departments, agencies and authorities at least annually, and authorizes the Department to conduct such an examination at any time.

**CSL § 100
§ 101**

It is the policy of the New York State Department of Civil Service to provide reasonable accommodation to ensure effective communication of information to individuals with disabilities. If you need an auxiliary aid or service to make this information available to you, please contact the Public Information Office at (518) 457-9375.

New York State Civil Service Commission

**Visit the New York State
Department of Civil Service website
www.cs.ny.gov**



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