

Chapter 3

Categories of Government Service

Chapter Topics

Categories of Government Service	2
Unclassified Service	2
Classified Service	2
Jurisdictional Classification	3
Competitive Class	3
Non-competitive Class	3
Exempt Class	5
Labor Class	5
Resources	6
Negotiating Unit Assignments	7
Managerial Criteria	9
Confidential Criterion	10

Categories of Government Service

There are two broad categories of government service: the military service and the civilian service.

The NYS Military Law governs the military service. Employees covered under this statute include all employees, even civilians, who are employed by the Division of Military and Naval Affairs.

The NYS Civil Service Law defines the civilian or civil service as two separate groups of employees: the Unclassified Service and the Classified Service.

Unclassified Service

Section 35 of the Civil Service Law lists offices, positions and specific categories of positions that are in the Unclassified Service. In New York State agencies typically the only Unclassified Service positions are the department heads. In the State University system all positions in the professional service as determined by the Chancellor are in the Unclassified Service, such as Professor, Director of Admissions, Senior Counselor, Senior Staff Associate, Assistant Dean, and Academic Advisor.

The Division of Classification and Compensation does not have any authority over, or responsibility for, positions in the Unclassified Service. Such positions are not reviewed by the Division of Classification and Compensation or the Civil Service Commission and are not used as comparison positions when making classification, reclassification, or salary allocation determinations for Classified Service positions.

Classified Service

Section 40 of the Civil Service Law states that positions not in the Unclassified Service are in the Classified Service, and that such positions are divided into four classes or groups: the Competitive Class, the Non-competitive Class, the Exempt Class, and the Labor Class. The process of placing positions into these groups is referred to as **jurisdictional classification**. What distinguishes each jurisdictional class is the extent to which examination is practicable.

Jurisdictional Classification (JC)

The Civil Service Commission assigns State positions, other than competitive class positions, to a jurisdictional class. In order for a position to be placed outside of the competitive class an appointing authority must make a *written request to the Civil Service Commission* at the same time the request to create the new position is submitted to the Division of Classification and Compensation (see Chapter 6 of this manual, "Procedures," for details on how to submit these requests).

The jurisdictional classification of an item and/or a title indicates whether or not an appointing authority must use an eligible list to fill the item. For every title in the Title and Salary Plan the jurisdictional classification is listed in the column labeled "**JC.**" On NYSTEP reports and panels, the "JC" designation is also noted. Each class is coded as follows:

- 0 -- Competitive Class
- 1 -- Non-competitive Class
- 2 -- Exempt Class
- 3 -- Labor Class
- 4 -- Unclassified Service
- 5 -- "Other" (generally Military Law positions)
- 6 -- Pending Non-competitive
- 7 -- Pending Exempt
- 8 -- Pending Labor

Competitive Class (0)

Section 44 of the Civil Service Law states that "the competitive class shall include all positions for which it is practicable to determine the merit and fitness of applicants by competitive examination..."

No action is required to place a position in the competitive class. All Classified Service positions are in the competitive class unless otherwise designated by the Civil Service Commission.

Non-competitive Class (1)

Section 42.1 of the Civil Service Law stipulates that the non-competitive class will consist of those positions for which it is practicable to examine applicants as to their *qualifications*, but not practicable to conduct tests on a competitive basis. Generally, no written or oral tests are required for non-competitive class positions. If the position is in the non-competitive class, the appointing officer has freedom of selection provided the appointee meets the

educational, experience and other qualification requirements as may be fixed by the Department of Civil Service.

Generally this class consists of skilled trades positions, although it does include some positions of a higher level administrative, scientific or technical character, and positions involving a confidential relationship between the incumbent and the appointing officer.

The Civil Service Commission has authorized non-competitive jurisdictional classification for a large number of titles as listed in the "All State Departments and Agencies" section of Appendix 2 of the Rules for the Classified Service. These titles include Dental Assistants, Electricians, General Mechanics, Grounds Workers, and Hospital Attendants among others. These titles are listed in the Title and Salary Plan with the "JC" code of "1". This means that an item can be established in the non-competitive class without a formal request to the Civil Service Commission.

An appointing authority may request non-competitive jurisdictional classification for individual positions that would otherwise be classified in titles that are listed in the Title and Salary Plan as being in the competitive jurisdictional class (0). In these situations a formal request must be submitted to the Civil Service Commission requesting non-competitive class designation. Once the Civil Service Commission determines that placement in the non-competitive class is appropriate, the item(s) can be classified; however, such items are coded (6) as "pending non-competitive." The JC coding for the item(s) will be changed to (1), non-competitive, after the Civil Service Commission resolution so designating the position(s) has been approved by the Governor and filed with the Department of State. This process can take several months to complete. Until that time only temporary appointment(s) can be made to the item(s).

When the Commission determines that an item be placed in the non-competitive class, it also reviews it to determine whether or not it meets the statutory criteria of confidential or policy-making. If it does, the item is designated "phi" (ø) in the Rules for the Classified Service. Appointees of phi-designated items do not have tenure protection as stated in Section 75.1(c) of the Civil Service Law.

When individual positions are placed in the non-competitive class by action of the Civil Service Commission, Appendix 2 of the Rules for the Classified Service is amended. Each department has a separate listing of titles for which positions have been approved for non-competitive designation. If the title that is listed is not followed by a number in parentheses then that department may classify as many non-competitive class items without making a formal request to the Commission. If, however, the title is followed by a number in parentheses, that number indicates the total number of non-competitive class positions that

can be established without additional Commission action. If an agency needs more non-competitive class items classified in that title a formal request must be submitted to the Civil Service Commission at the same time that the request to classify the position is submitted to the Division of Classification and Compensation.

Exempt Class (2)

Section 41.1 of the Civil Service Law provides that the exempt class shall include "all other offices or positions for which the Civil Service Commission has determined it is not practicable to fill by competitive or non-competitive examination." If the position is in the exempt class the appointing officer may select any candidate because the appointee is not required by the Department of Civil Service to meet any educational, experience or other qualification requirements.

If an appointing authority determines that such broad discretion for appointment to a particular item is required, a formal request must be submitted to the Civil Service Commission at the same time that the request to create the item is submitted to the Division of Classification and Compensation. Once the Civil Service Commission determines that placement in the exempt class is appropriate, the item can be classified; however, such items are coded (7) as "pending exempt." The JC coding for the item will be changed to (2), exempt, after the Civil Service Commission resolution so designating the position has been approved by the Governor and filed with the Department of State. This process can take several months to complete. Until that time only a temporary appointment can be made to the item.

Positions authorized in the exempt class by action of the Civil Service Commission are listed in Appendix 1 of the Rules for the Classified Service. Each department has a separate listing of titles for which specific positions have been designated as being exempt. If the title that is listed is not followed by a number in parentheses then that department may establish *only one* position in that title. If, however, the title is followed by a number in parentheses, then that number of positions may be established in the exempt jurisdictional class without additional action by the Civil Service Commission.

Examples of exempt class positions include Counsel, Assistant Commissioner, and Executive Assistant. Within the State University system there are very few Classified Service positions authorized in the exempt class. Positions of Secretary and Confidential Aide have been authorized as exempt at the colleges, university centers and System Administration.

Labor Class (3)

Section 43 of the Civil Service Law defines the labor jurisdictional class as being comprised of all unskilled laborer positions, except those which can be examined for competitively. Qualifying tests may be required for appointment to labor class positions.

The addition of a title to the labor class does not require the approval of the Governor; therefore, once the Commission has determined that a title is appropriate for labor class designation, Appendix 3 of the Rules for the Classified Service is amended accordingly. There is no provision for limiting the number of labor class positions in a title. All labor class titles are listed in the Title and Salary Plan with a "JC" code of "3".

Examples include Maintenance Helper, Library Aide, Laborer, Cleaner, Security Services Aide, and Supply Assistant among others.

Resources

Our website contains multiple resources related to the Civil Service Commission, including the Appendices that list the titles in the Non-competitive, Exempt and Labor jurisdictional classes.

For additional information, see Section 0600, "Jurisdictional Classification," in the *State Personnel Management Manual*.

Negotiating Unit Assignments (NU)

Article 14 of the Civil Service Law, entitled the Public Employees' Fair Employment Act (also known as the Taylor Law), grants public employees the right to organize and to be represented by employee organizations. The statute also requires public employers to negotiate and enter into agreements with public employee organizations regarding the terms and conditions of employment. The Public Employment Relations Board (PERB) is the statutory agency responsible for administering the provisions of the Taylor Law.

Assignment of a title to a negotiating unit confers upon all employees of positions in that title certain rights as defined in the contractual agreements signed between Union officers (e.g., CSEA, PEF) and the Governor's Office of Employee Relations (GOER). Each employee union enters into collective negotiations with GOER every few years. These negotiations result in signed contracts that elaborate on the terms and conditions of employment for individuals in those bargaining units. Items that are negotiated include salary increases, provisions regarding out-of-title work, and employee health benefits, among others.

For the purposes of *position* classification, the negotiating unit assignment has been determined for all *existing titles*. The negotiating unit for every title in the Title and Salary Plan is listed in the column labeled "**NU**." On NYSTEP reports and panels, the "NU" designation is also noted.

If a *new title* is proposed, a negotiating unit assignment must be suggested by the appointing authority at the time the title is requested from the Division of Classification and Compensation. What follows are synopses of the criteria for the most common negotiating units for Classified Service titles. They should be reviewed when recommending a negotiating unit assignment. The number following each unit is the NU code as listed in the Title and Salary Plan and on NYSTEP. For additional information about the employee unions and other negotiating units, refer to the website of the NYS Governor's Office of Employee Relations at <http://www.goer.state.ny.us>.

Administrative Services Unit (ASU) (02)

The ASU is comprised primarily of office support staff and administrative personnel, e.g., Keyboard Specialists, Clerks, and Computer Operators. They are represented by the Civil Service Employees Association (CSEA).

Operational Services Unit (OSU) (03)

The OSU is comprised of craft workers, maintenance and repair personnel and machine operators, e.g., Maintenance Assistants, Cleaners, and Highway Maintenance Workers. They are represented by CSEA.

Institutional Services Unit (ISU) (04)

The ISU is comprised primarily of employees who are responsible for providing therapeutic and custodial care, e.g., Licensed Practical Nurses, Developmental Aides, and Food Service Workers. They are represented by CSEA.

Security Services Unit (SSU) (01)

The SSU includes security personnel (other than the State Police) and institution safety officers who have peace officer status in the Department of Correctional Services, e.g., Correction Officer, Correction Sergeant, and Institution Safety Officer. They are represented by the New York State Correctional Officers and Police Benevolent Association (NYSCOPBA).

Security Services Unit Non-Arbitration (SSUNA) (21)

The SSUNA includes security personnel and institution safety officers who are excluded from arbitration, e.g., Warrant and Transfer Officer, Safety and Security Officer, Security Services Assistant. They are represented by the New York State Correctional Officers and Police Benevolent Association (NYSCOPBA).

Security Supervisors Unit (SSPU) (61)

The SSPU is comprised of supervisory security personnel with peace or police officer status, e.g., Correction Lieutenant. They are represented by Council 82.

Security Supervisors Unit Non-Arbitration (SSPUNA) (91)

The SSPUNA is comprised of supervisory security personnel who are excluded from arbitration, e.g., Chief Safety and Security Officer, Chief Security Officer. They are represented by Council 82.

Agency Law Enforcement Services Unit (ALES) (31)

The ALES Unit includes personnel who have police or peace officer status, e.g., University Police Officer, Environmental Conservation Officer, and Park Police Officer. They are represented by Council 82.

Agency Law Enforcement Services Unit Non-Arbitration (ALESNA) (81)

The ALESNA Unit includes personnel who have police or peace officer duties and responsibilities but who are excluded from arbitration, e.g., Forest Ranger. They are represented by Council 82.

Professional, Scientific, and Technical Services Unit (PS&T) (05)

The PS&T unit is comprised primarily of professional and technical personnel. Professional experience, a license, or a degree is usually a prerequisite to being hired in most titles in this unit. It includes titles such as Attorney, Nurse, Accountant, and Social Worker. They are represented by the Public Employees Federation (PEF).

Managerial/Confidential Group (M/C) (06)

Section 201.7 of the Civil Service Law identifies several groups of employees who are not eligible to engage in collective negotiations with New York State and, as such, are not members of employee unions. One such group of employees are those whose positions have been designated “managerial” or “confidential” by the Public Employment Relations Board (PERB). The general criteria for the Managerial/Confidential (M/C) group include employees who formulate policy, assist directly in the conduct or preparation of collective negotiations, have a major role in personnel administration, or assist in a confidential capacity those employees who have employee relations responsibilities. Titles include Personnel Administrators, Labor Relations Representatives, and most exempt class titles.

The Public Employment Relations Board has followed the guidelines below for determining whether or not a title or a position is “managerial” or “confidential.”

Managerial Criteria:

- 1. Participation in the formulation of policy:** Formulating policy means having a direct and powerful influence at the highest level in determining the objectives of government or the agency and the means of achieving those objectives. Incumbents must participate regularly in the essential decision processes that result in policy proposals, selecting among options, and the decision to implement such policies. It does not extend to determining methods of operation that are merely of a technical nature.
- 2. Participation in collective negotiations:** Participation in collective negotiations requires direct involvement in or being a part of the preparation for negotiations, including the formulation of positions or proposals so as to be part of the decision-making process.
- 3. Major role in administration of negotiated agreements:** Major role in the administration of negotiated agreements means the responsibility to interpret the agreement both within and outside the grievance process, and includes only those whose authority in labor relations goes beyond traditional supervisory concerns. Supervisors who take part in first step grievance decisions do not meet this criterion if the decisions conform to policy or interpretations made at a higher level.
- 4. Major role in personnel administration:** Major role in personnel administration requires the exercise of independent judgment and cannot be clerical or routine in nature. Incumbents who, due solely to their supervisory responsibilities, are required to carry out personnel policies, do not meet this criterion.

Confidential Criterion: Positions work in a confidential capacity to managerial individuals in the personnel or labor relations areas described in items 2, 3, and 4 above and not to those who formulate policy (item 1). Such individuals must have regular access and exposure to information related to personnel matters and contract negotiations and administration.

On occasion an appointing authority may request that an individual *position* in a title that is assigned to a negotiating unit be designated Managerial/Confidential. At the time the position is requested from C&C, a justification for M/C designation must accompany the NYSTEP transaction. The justification must include an explanation of how the duties and responsibilities of the position meet the M/C criteria as described above (see Chapter 6 of this manual, "Procedures," for additional information).