



**Department of  
Civil Service**

# Merit System Guide for Managers

# **Merit System Guide for Managers**

## **Introduction**

As an executive staff member or manager, you will undoubtedly have responsibility for the selection or promotion of agency staff. How do you know where to start and/or what options are available to you in relation to establishing your agency's workforce? First, it is important to note that New York State public sector employment is built upon a merit system which is based upon the State Constitution and a foundation of Civil Service Law, Rules and Regulations. As will be discussed in greater detail, section 35 of the Civil Service Law divides State employment into the unclassified service and the classified service. For the most part, positions in State agencies are in the classified service of the State and fall within one of the four jurisdictional classes into which the classified service is divided: the competitive, non-competitive, exempt and labor class. How merit and fitness is determined and how appointments are made varies depending upon the jurisdictional classification of a position. It is important to note that where an employee serves at the pleasure of the appointing authority, such as with exempt class or non-competitive confidential policy-influencing positions, other control agencies and/or rules and procedures come into play, including the Division of the Budget (DOB) and/or the Center for Recruitment and Public Service. As discussed later, the establishment of and/or appointment to such positions requires consultation with these entities and their approval.

Through a question and answer format, this document highlights various tools which can help you establish and maintain your workforce, consistent with proper merit system principles. Please keep in mind that this general guide is not meant to be inclusive of all of the details and nuances of a system that is quite complex. In addition to reviewing this guide, it is strongly recommended that you meet with your agency human resources (HR) office to obtain a more comprehensive understanding of the various hiring tools that can be used in relation to the different jurisdictional classes. This is important to ensure that candidates for employment are thoroughly aware of their benefits and status. Each agency may have unique processes and agreements with the public employee unions. It is critical to discuss these differences with the HR office in your agency.

We hope that this document will serve as a useful general resource of information about the various hiring and selection options available to State agencies.

## **What is the basis for the merit system in New York State?**

Article V, section 6 of the State Constitution requires that appointments to the classified service of the State be "made according to merit and fitness to be ascertained, as far as practicable, by examination which, as far as practicable, shall be competitive...." This merit and fitness clause is the underlying principle for the appointment and promotion of employees in the classified service of the State. The Civil Service Law, Rules and Regulations implement this constitutional mandate.

## **Who administers the merit system in New York State?**

The Department of Civil Service and the State Civil Service Commission exercise authority over the classified service of the State. While many people make no distinction between the Department and Commission, each maintains its own independent identity and functions. General authority and responsibility for the administration of the Civil Service Law is vested in the Department. The Commission is vested with broad merit system oversight responsibilities for both State and local government.

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### Do State agency employees serve in the classified service of the State?

Generally, yes. 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
- The largest group, teachers and supervisory personnel in the public schools, the State University, and certain community colleges
- The remaining positions fall within the classified service and are divided into four distinct classes, namely:
  - Competitive class
  - Non-competitive class
  - Exempt class
  - Labor class

Together, they comprise the four jurisdictional classes of the classified service.

### Who determines the jurisdictional classification of a position?

By law, all positions in the classified service are automatically in the competitive class unless the State Civil Service Commission takes action to place them in the exempt, non-competitive, or labor class. Agencies may petition the Commission to place existing positions, new positions, within the exempt, non-competitive, or labor class. Upon a Commission determination that competitive examination is not practicable, positions are classified as other than competitive and can then be filled outside of the competitive examination process. Keep in mind that the jurisdictional classification review process generally takes a few months and requires justification by the HR office in your agency. Agencies requesting an expedited review should contact the Office of Commission Operations.

### Is the appointment process the same for each of the jurisdictional classes?

No. The Constitution requires appointments be made by competitive examination, to the extent practicable. In recognition that competitive examination may not always be practicable, the Legislature carved out a number of exceptions and created the four distinct jurisdictional classes, each having a separate yet equally valid test of merit and fitness. How merit and fitness is measured and how appointments are made, will depend upon the jurisdictional classification of the position. Only those positions in the competitive class are subject to competitive examination. The remaining three jurisdictional classes generally afford agencies broader powers of selection, subject to certain protocols, as discussed below.

### How is merit and fitness established in the different jurisdictional classes?

The majority of civil service positions are in the competitive class and merit and fitness is generally established by competitive examination of those candidates meeting minimum qualifications. Appointments to competitive class jobs are generally made from among the highest scoring candidates on appropriate eligible lists who are willing to accept appointment.

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The non-competitive class consists of those positions for which competitive examinations are not practicable. For positions in the non-competitive class, merit and fitness is ensured through such educational, experience, and other qualification requirements as may be fixed by the Department of Civil Service. Appointments may be made quickly to such positions by the appointing authority exercising its power of selection, subject to certain protocols as discussed below. The non-competitive class consists primarily of skilled trade positions.

It may also include certain positions of a high level administrative, scientific, or technical character involving a confidential relationship between the incumbent and appointing authority, or one which requires the performance of policy influencing functions. In such cases, the Civil Service Commission establishes such positions in the non-competitive class with a “phi” designation. These positions are commonly referred to as “phi-tagged,” “non-competitive phi,” or “NC-phi” and are set forth in the rules with the symbol “Φ.” Incumbents of non-competitive phi positions serve at the pleasure of the appointing authority. The non-competitive class also includes entry level positions normally filled by the competitive process but designated non-competitive for the purpose of hiring workers with disabilities under sections 55-b and veterans with disabilities 55-c of the Civil Service Law (see below for discussion on this topic).

Agencies also have the power of selection, subject to certain protocols discussed below, for exempt class positions. The difference between the exempt and non-competitive classes is that for positions in the exempt class, the appointing authority, rather than the Department of Civil Service, determines merit and fitness by setting any educational, experience or qualification requirements for the position and has the discretion to appoint from among those meeting those qualifications. The exempt class includes one secretary of each department, temporary state commission, or other State officer authorized by law to appoint a secretary; deputies authorized to act for department heads; and any other subordinate positions for which competitive or non-competitive examination is found to be not practicable.

Positions in the labor class involve unskilled labor, with no minimum qualifications, although applicants may be required to demonstrate their ability to do the job through qualifying (pass-fail) tests. There are no eligible lists for these jobs. The appointing authority has the discretion in making appointments to these positions without additional competitive tests of merit and fitness.

### **What role does the Director, Division of Classification and Compensation play in establishing a position?**

Unlike jurisdictional classification by the State Civil Service Commission, the Director, Division of Classification and Compensation makes determinations on position classification. This involves analyzing the duties of proposed jobs and determining the appropriate title and allocation of positions in the classified service of the State. An agency or appointing authority can submit a request to the Division of Classification and Compensation (C&C) to classify or reclassify a position to an existing title or propose a new title. Such positions may be permanent, temporary, or seasonal. If the title proposed is new, the agency or appointing authority must present justification for a particular salary grade. Establishment of a new title will require justification and may take several months to accomplish. Some classification actions have been decentralized to agencies and appointing authorities and may be streamlined or reviewed in a post audit process. Decisions on both position and jurisdictional classifications must occur before a position is established and an appointment is made. The role of the Director, Division of Classification and Compensation is further discussed below under various Salary Mechanisms.

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### **Do all positions in State agencies obtain tenure protection?**

No. Only those employees receiving permanent appointment in certain jurisdictional classes are entitled to tenure protection.

With certain exceptions, exempt class employees serve at the pleasure of the appointing authority and may be removed “at-will.” Therefore, they do not have tenure protection. As discussed above, incumbents of non-competitive phi positions also serve at the pleasure of the appointing authority, and, with certain exceptions, do not have tenure protection. The exceptions are for permanent exempt and non-competitive phi employees who are veterans or exempt volunteer firefighters, and who are not deputies. Recommendations or decisions to terminate staff should be reviewed by your HR office before any final decision is made.

In contrast, Civil Service Law section 75(1) grants tenure protection to permanent competitive class employees who have completed probation and to employees serving in non-competitive class positions which have not been designated phi, or the labor class provided that they have completed five years of continuous service in the non-competitive or labor class since last entry into State service. (This has been modified to one year of continuous service by certain negotiated contracts. Security contracts, however, do not have the one-year clause and incumbents in such non-competitive positions must complete five years of continuous service in accordance with Civil Service Law section 75). Collective bargaining agreements have also extended tenure to permanent labor class employees who have completed one year of continuous service in the classified service.

### **Do all employees serve probationary periods?**

Every permanent appointment to a position in the classified service, regardless of jurisdictional class, requires satisfactory completion of a probationary period (in some cases, the probationary period may be waived at the discretion of the appointing authority). Generally, a probationary employee cannot be removed prior to completion of the minimum probationary period (usually eight weeks), except under the disciplinary provisions of the Civil Service Law or the relevant negotiated contract. After the minimum probationary period, a probationer’s service may be terminated for unsatisfactory conduct or performance. The Rules of the Classified Service indicate that a probationer should be advised about his/her status and progress periodically during the probationary period. After the minimum probationary period, a probationer’s service may be terminated for unsatisfactory conduct or performance. The Civil Service Rules entitle a probationer who is to be terminated for unsatisfactory service to receive written notice at least one week prior to such termination; the probationer may request and receive an interview with the appointing authority or his or her representative.

However, since tenure is a right not conferred upon exempt or non-competitive phi employees, such individuals may be dismissed at any time.

### **There are tenured employees whom I would like to consider for certain positions outside of the competitive class, but they are reluctant to give up their tenure rights. What can I do?**

Pursuant to Rule 5.2(b) of the Rules for the Classified Service, you have the flexibility and discretion to grant an employee a “leave of absence,” for a variety of reasons for a period of up to two years, upon attestation that the leave is in the best interests of the State. Contrary to most traditional forms of leave, employees granted a leave in accordance with this rule often remain in active working status. This Rule permits an agency to protect the status of a permanent tenured employee upon appointment or promotion

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to a non-tenured position (exempt or non-competitive phi positions). Again, filling these positions must be subject to the protocols set forth by the Executive Chamber. By virtue of this leave, the employee will have a “hold item” and retain the right to return to the tenured position at a later date. Civil Service Commission approval must be obtained to extend the leave of absence for subsequent periods, not to exceed two years. You should consult with your HR office to submit leaves directly to the Commission. Subsequent to each monthly meeting, the Commission submits a report to State Operations reflecting each agency’s request, the titles to and from which an employee is on leave, and the action taken by the Commission.

### **Is appointment from an eligible list the only way to fill a competitive class position?**

No. The majority of classified positions are in the competitive class and filled from eligible list candidates who have passed competitive examinations. (You should consult with your HR Office to determine whether a reemployment eligible list, a promotion eligible list, or other lists must first be used.) In contemplation that competitive testing is not and should not be the sole mechanism for assessing merit and fitness, the Legislature crafted a variety of options to provide managerial flexibility in selecting qualified employees. This means that alternative appointment mechanisms, including transfers and reinstatements are available, and assuming that specific criteria are met, may be used in lieu of certain eligible lists. The flexibility afforded by alternative mechanisms is essential to the successful implementation of the merit system. Additionally, if there is no eligible list for the title in the location of the position, a provisional appointment may be made (see below for discussion on this topic). In order to qualify for a provisional appointment, a candidate must meet the minimum qualifications for the position.

### **There are many dedicated and skilled permanent employees currently working in my agency and other State agencies. What specific transfer options are available to provide lateral mobility and changes in career paths for these employees so that they do not have to begin at the entry-level?**

There may be a number of transfer possibilities to titles within your agency and between agencies, which will enable you to broaden the pool of candidates for certain positions. Transfer is defined as a permanent change in title or appointing authority, usually without further examination. Transfers between positions are consistent with the constitutional mandate of merit and fitness where similarity in essential tests, qualifications, or duties of positions renders it “impracticable” to require additional examination for appointment from one position to another. Transfers serve management’s interests by providing reasonable alternative sources of qualified eligibles, and employees’ interests by providing opportunities to change titles and/or relocate within their own agency or other agencies. A transfer is an equally valid method of filling a vacancy as an appointment from an eligible list. Your HR office can advise you when the conditions are met which allow for the following transfers:

- Section 52(6) of the Civil Service Law permits transfers between “administrative positions” as that term is specifically defined in that section of law. Such transfers are limited to two salary grades, or one “M” grade.
- Section 70(1) of the Civil Service Law provides that a competitive class position may be filled by transfer, as long as the essential tests or qualifications for the two positions are equivalent or similar. Salary grades of the positions must also be similar (two salary grades or one “M” grade).



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- Section 70(4) of the Civil Service Law allows transfer of a nominee who meets the examination minimum qualifications for the target position (these transfers are reserved to open-competitive situations). If the nominee hasn't passed a comparable examination, we will administer the exam to the nominee. As with all transfers, the salary grades of the positions must be similar (two salary grades or one "M" grade).

All transfer mechanisms require adherence to certain conditions and have certain limitations. The HR office in your agency should be contacted to determine if a transfer is appropriate.

You may also be able to provide opportunities for your lower level staff to "transition" into professional positions. Transition examinations provide qualified candidates an opportunity to compete in an examination for advancement from clerical/secretarial/para-professional positions to professional level jobs. Often, appointees must serve a traineeship before advancement to the journey level job. Our most widely used transition examination is the Public Administration Traineeship Transition (PATT) which permits advancement into administrative and program traineeships.

**There are also many talented and knowledgeable individuals who are currently employed outside the classified service of the State, whether in municipal government or the private sector. How can I bring these individuals into various skilled and managerial positions in my agency and extend them tenure protection?**

Subject to the protocols set forth by the Executive Chamber, you may make appointments to any vacant exempt or non-competitive phi positions or request the classification of new positions in the exempt or non-competitive class. As previously noted, employees in exempt and non-competitive phi positions serve at the pleasure of the appointing authority and do not acquire tenure protection, with certain exceptions for veterans and exempt volunteer firefighters. You should encourage such employees to take any and all examinations for which they are qualified for classified positions in the State service. If they are reachable on an eligible list, they may be appointed to a classified position within your agency and immediately granted a leave of absence as discussed above, to serve in the exempt or non-competitive phi position. As previously noted, this gives them a "hold" on the competitive class position to which they are eligible to return. Also keep in mind that exempt class or non-competitive phi employees may be appointed to any other exempt or non-competitive phi positions for which they qualify.

**I need to bring in my own administrative support staff as well as hire additional professional and executive staff who reflect my vision for the agency and in whom I have trust and confidence. How can I do that?**

As noted above, the exempt and non-competitive phi classifications afford greater flexibility in the appointment process. Each agency generally has exempt and/or non-competitive "phi" Administrative Assistant and Special Assistant. These positions can be filled to provide you with direct administrative support. Also, there may be additional exempt class and non-competitive phi deputy and counsel positions in each agency. Again, as with the administrative positions, subject to the aforementioned protocols, you may appoint any qualified individual to any existing exempt or non-competitive phi positions in your agency or request the classification of new positions. With appropriate justification and approval from C&C and the Civil Service Commission, agencies may establish additional exempt or non-competitive phi positions. The existing exempt and non-competitive class phi positions in each agency are listed in the appendices to the Civil Service Rules at 4 N.Y.C.R.R. As with employees from outside State service, you should also encourage such employees to take examinations for which they are qualified to obtain a "hold item" to which they will be eligible to return.

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### **Do I have the flexibility to reassign my employees between offices and locations to meet current workforce demands?**

Yes, with some caveats. It is a recognized management right to deploy and assign staff according to program needs. Reassignment is defined as the movement of an employee between organizational units or geographical locations with no change in title. An appointing authority has wide discretion in assigning and reassigning staff as long as it does not violate out-of-title work prohibitions or agency specific agreements with the public employee unions. Deployment of staff should be discussed with your HR office before any final decisions are made. While both transfers and reassignment involve the movement of current staff, reassignment refers to a change, without further examination of a permanent employee, from one position to a position in the same title under the jurisdiction of the same appointing authority. You have the flexibility to reassign employees to address workforce priorities in certain divisions in your agency or to specific geographic locations, consistent with the terms of any applicable negotiated agreement. Your HR staff can effect a NYSTEP transaction to change the geographic location of an employee or a position from one location to another. Such transactions are automatically approved by C&C (i.e., a “pass-through transaction”) and may require DOB approval. Note that an employee may refuse a reassignment to a location outside of the county in which they accepted employment. Depending on the status of the employee, certain steps may need to be taken. Your HR office can assist you in facilitating the reassignment and dealing with related issues.

### **I would like to promote staff to a position but there is no eligible list. Can I do this?**

You can make a non-competitive promotion under section 52(7) of the Civil Service Law to a competitive class position if there are fewer than three eligible candidates for promotion to a title. If there is no technical test component to the promotion examination for that title, the non-competitive examination consists solely of a review of minimum qualifications. If there is a technical test, the nominee must take and pass a specially arranged technical test to be eligible for the non-competitive promotion. You may also make a provisional appointment of any qualified candidate. In most large position classes, a provisional appointment will be your only option for appointments.

### **Exempt employees complain that they have temporary status. What does that mean?**

Section 41(2) of the Civil Service Law provides that upon the occurrence of a vacancy in any position in the exempt class, the Civil Service Commission shall study and evaluate the position and, within four months after the occurrence of the vacancy, determine whether the position is properly classified in the exempt class. Pending such determination, the position can only be filled on a temporary basis. Therefore, exempt class employees may only be appointed to an exempt class position on a temporary basis while the Commission conducts its statutory review of the position.

Regardless of status, permanent or temporary, employees in exempt class positions serve at the pleasure of the appointing authority, with the exception of certain veterans and exempt volunteer firefighters.

### **What are the different types of appointment status?**

There are generally three types of appointments that are authorized by the Civil Service Law, namely:

- permanent
- provisional
- temporary



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Permanent appointments may be made to any position, regardless of jurisdictional class. Exempt class and NC-phi employees do not obtain tenure, even upon receipt of a permanent appointment, except as discussed above. Permanent appointments to the competitive class can occur via appropriate lists, transfers, reinstatements, and non-competitive promotions. Permanent appointments can also be granted contingently in both the competitive and non-competitive class to positions which are being “held” by permanent incumbents.

These appointees might be displaced and placed on a preferred list if the permanent incumbent returns and there is no vacancy to accommodate the individual.

Provisional appointments are authorized by Civil Service Law section 65 when there is no “mandatory” eligible list (list containing the names of three or more people willing to accept appointment). Once a mandatory list is established, the provisional appointment must be revoked within sixty days. While provisional appointees are not subject to probationary terms, they are generally limited to a period of nine months (or until the establishment of an eligible list for the title), with no possibility of ripening into a permanent appointment. Further, these appointees are not entitled to tenure protection. However, they are a useful tool because they can be used as a “stop-gap” measure to allow for the appointment of a qualified person pending examination and establishment of a viable eligible list.

Temporary appointments are authorized for all jurisdictional classes under Civil Service Law section 64, generally for a period not exceeding three months. (For example, temporary appointments may be made pending the canvass of an eligible list and subsequent permanent appointment from such list; under certain emergency situations such as short term effects of a natural disaster; and pending Civil Service Commission action on certain requests, such as appointments under CSL section 55 b/c and to exempt class positions pending review of jurisdictional classification.) However, there are certain exceptions, such as backfilling where a permanent incumbent is on leave (rather than contingent permanent appointment); for appointments to positions not expected to be in existence for more than six months; for a period not to exceed one year when a planned reduction of workforce is imminent and a permanent appointee faces layoff; and in connection with “temporary project positions” in the competitive class, as discussed in further detail below. Temporary appointees are also not entitled to tenure protection.

### **I want to bring someone in to work on a special project. How do I do that?**

As noted above, section 64(3) of the Civil Service Law allows for temporary appointments without examination in exceptional cases. These are referred to as “temporary project positions.” Temporary project positions are established where the individual is to provide professional, scientific, technical or other expert services in a temporary position established to conduct a special study or project for a period not exceeding 18 months.

These appointments are authorized to competitive class positions where, because of the nature of the services to be rendered and the temporary or occasional nature of the services, it would be impracticable to hold an examination of any kind. To request such a position, your HR office needs to submit a justification letter which sets forth the nature of the project, the date by which the project is to be completed, what is expected to be completed and the time line for activities and deliverables, a duties description and an organizational chart to your agency’s C&C analyst. Where it can be justified because of the extension of the project, temporary project positions may be extended for an additional eighteen months. You should begin working on establishing and selecting candidates as soon as possible, since the coordination of various oversight entities may impact how quickly these positions are established.

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### **We'll have to set up a large number of positions as soon as possible to staff a new program. How does that get done?**

Your HR office should submit a justification letter, duties description and organizational chart to your respective C&C analyst, to classify new positions in your agency. Your HR office should also submit a request to the State Civil Service Commission for jurisdictional classification outside of the competitive class, if applicable, including a justification for your request. You should also advise Commission staff of your need for an expedited review. The process to establish positions can be lengthy, depending on the level and title of positions.

### **I have an employee who will be leaving in a few months. For succession planning purposes, I need to bring another person in now to work with that person and eventually replace him or her. How can I do that?**

C&C will generally create a temporary, duplicate position to allow for the smooth transition of staff, the transfer of critical knowledge or to maintain current levels of work. Such shadow positions may generally be created six months before the permanent incumbent is scheduled to retire or leave. To request a duplicate position, your HR office must submit a letter of justification, a duties description, and an organizational chart to your C&C analyst.

### **We are having recruitment difficulties for certain competitive positions in certain locations in the State. How can we improve our ability to recruit for these positions?**

There are a number of selection tools available to recruit temporary and permanent staff; some of these tools are specifically designed for situations where there are recruitment difficulties. (Your HR office should discuss recruitment difficulties with your assigned Staffing Services Representative.)

Continuous Recruitment Examinations may be used where there are shortages of qualified candidates. There is no "close of filing" date to file for the examination as there is for most competitive examinations. The Department of Civil Service, or the agency when it has been decentralized by the Department to the agency, collects applications continuously and tests candidates regularly. Successful candidates are added to the eligible list and typically have one to two years of eligibility on the list.

Open-End Examinations are a type of continuous recruitment examination. Open-end exams are appropriate where there is a short-term recruitment difficulty or where continuing vacancies are not anticipated (i.e., for a small-position class). Applications are accepted and tests administered for the term of the exam (typically one year) or until there are sufficient eligibles to satisfy recruitment needs.

Spot Recruitment Examinations are appropriate where there are hard-to-fill positions in a particular location/ region, but sufficient numbers of candidates in other areas. The resulting eligible list may be used only in the location/region as announced (though testing may be conducted Statewide).

Non-competitive open-competitive exams are authorized in certain circumstances under section 4.2(b) of the Rules for the Classified Service. These "4.2(b) exams" may be appropriate where an open-competitive examination has not resulted in a sufficient number of eligibles on an eligible list to fill the number of vacancies. Typically, an agency nominates candidates to whom the Department of Civil Service administers the test. Nominations are accepted within eight years of the date of the original examination. (There are certain policy limitations, i.e., a nominee may not have taken and failed the regular holding of the examination.)

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You also may be able to offer Reimbursement of Moving Expenses to prospective employees. The State Finance Law provides this reimbursement if there is a shortage of qualified candidates for a particular title. The Department of Civil Service must certify that a position is hard to fill in order for you to offer this benefit if the position is in the competitive class. DOB and/or the Governor's Appointments Office may provide a recommendation as to whether moving expenses are warranted for other jobs.

### **A number of valuable staff have recently retired. Is there any way to bring them back part-time without affecting their pensions?**

There are provisions in the State Retirement and Social Security Law (RSSL) governing the reemployment of retirees who are earning a pension from the State or a local retirement system. A request to reemploy a retiree must indicate that the retired person is duly qualified, competent and physically fit to perform the duties of the position in which he or she is to be employed; that there is need for his or her services; that there are not readily available for recruitment other qualified persons if he or she is to earn more than \$1,000; and that his or her employment is in the best interest of the government service.

Under section 212 of the RSSL, a retiree may be employed in the public service without diminution or suspension of his or her retirement allowance provided he or she does not earn more than \$35,000 in a calendar year. (Since this statutory amount may change, please contact your HR office for the most current information.) Such individual must file a statement with the retirement system from which he or she is receiving a retirement allowance, in accordance with such section. On or after the calendar year in which an individual attains age 65, there is no limit on earnings, even if he or she is returning to the same employer. An appointee must meet all qualifications for the position to which he or she is being appointed. If such retiree is to earn more than the \$35,000 threshold, a waiver pursuant to section 211 of the RSSL is required as described below.

Under section 211 of the RSSL, upon demonstrating satisfaction of the statutory criteria, agencies may rehire a retired person who may earn compensation in a public service position without effect on his or her status as a retiree and without suspension or diminution of his or her retirement allowance, upon approval by the Civil Service Commission, provided that the employer is not the same employer from which the person retired. For purposes of approvals under such section of law, New York State is considered to be one employer. If, however, the service is with the same employer from which the person retired, the post retirement earnings will be limited by the formula contained in RSSL section 211(1)(a). Therefore, retired State employees returning to their former agency or another State agency will be subject to a cap on his or her earnings. The retiree's retirement system will calculate the earning limitations. You should refer any questions regarding the calculation of earning limitations to the retiree's retirement system. It is important to note that retirees who do not receive approval under RSSL section 211 but who are otherwise eligible for appointment may still continue their government service by suspending their retirement benefits and rejoining the retirement system as active members.

### **There are also former employees who have resigned from State service, but who are now interested in returning. Is there a mechanism which will allow me to bring back these experienced individuals?**

Within one year of resignation, you can restore a former permanent employee to his or her previous position, or to a position to which he or she was eligible to transfer, without examination. Alternatively, you can reinstate individuals to any vacant position for which they were eligible to transfer at the time of resignation. In accordance with Rule 5.4 of the Rules of the Classified Service, reinstatements after one

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year must be approved by the State Civil Service Commission, upon demonstration of “good cause shown and where the interest of government would be served.” While reinstatements may be made even if there is an eligible list, they are not permitted where preferred or mandatory reemployment lists exist.

**There are many qualified individuals with both physical and mental disabilities whose services would be of great value to our workforce. Is there a program which would enable us to attract disabled workers and provide them with opportunities for advancement?**

The Workers with Disabilities Program may provide you with a pool of qualified candidates. Civil Service Law Section 55-b authorizes the Civil Service Commission to designate up to twelve hundred entry level competitive class positions to be filled by qualified persons with physical or mental disabilities. Section 55-c authorizes the Commission to designate up to five hundred entry level competitive titles to be filled by qualified disabled veterans or veterans with disabilities. Upon such a designation, the positions are classified in the non-competitive class. Because these positions are in the non-competitive class, nominees need not take a competitive examination or be reachable on an eligible list for appointment. However, candidates must meet the minimum qualifications established for the position. These positions automatically revert to the competitive class upon vacancy by the incumbent. Persons employed through either section are provided the same opportunity to take promotion examinations as provided to employees serving in the same titles in the competitive class. This program allows the agency additional flexibility in hiring.

**We have some large position classes at lower salary grades in the non-competitive (or labor) class. Are there any opportunities for advancement into the competitive class for employees in these positions?**

Section 52(11) of the Civil Service Law provides employees in non-competitive and/or labor class positions with the same opportunity to take promotion examinations as employees in competitive class positions. In this situation, the law requires that the promotion examination be held in conjunction with an open-competitive examination. However, there are a variety of factors to balance when determining whether examination under section 52(11) is warranted. For example, since the law requires the exhaustion of the resulting promotion list first, it is not always fiscally prudent to hold an open competitive examination where there is a potentially large promotion field of candidates. Therefore, the opportunity for examination under section 52(11) may not generally be available under these circumstances.

**I want to pay someone that I'm bringing in at a salary of \$X. The salary grade range for the title we are using does not go up to that amount.**

If the position is non-statutory, you may request a compensation adjustment from DOB. This allows for an increase in the dollar amount and/or salary range or equated salary range of the position. If the position is allocated to a grade, there is no mechanism for paying an employee a salary greater than the top of that range (i.e., the Job Rate). (See below regarding additional salary within a grade range).

**I need to increase the salary of a position. How do I do that?**

If the position is non-statutory, you may request a compensation adjustment from DOB. This allows for an increase in the dollar amount and/or salary range or equated salary range of the position. If the position is allocated to a grade, there is no mechanism for adjusting the salary of an existing employee within that range except for the normal performance advance increments received once per year.

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### **I have a very experienced candidate whom I would like to hire for a position. Can I pay him or her more than the hiring rate established for the position?**

Possibly. Under section 131(1a) of the Civil Service Law, an appointment above the minimum hiring salary is permitted in certain cases where the newly hired employee to the State service has training or experience in a field which substantially exceeds the minimum requirements necessary for appointment. However, the hiring salary may not exceed the job rate of the salary grade of the position to which the person is to be appointed. To request such an increase your HR office should submit a request to your C&C analyst, including evidence, such as a résumé or employment application, which demonstrates that the candidate possesses qualifications which substantially exceed the minimum qualifications for the position and that other candidates with such qualifications will not accept the position for the hiring rate. Requests may impact the salary of other staff; therefore, this option should be reviewed with your HR office prior to any offer of employment.

### **I have employees in a critical area working overtime. Can they receive overtime pay?**

Yes. Current State policy is that employees who are in positions allocated to Grade 22 or below are eligible to receive overtime pay. Positions allocated to Grade 23 or above are not overtime eligible. In extraordinary circumstances, you may request an overtime waiver from DOB to pay overtime to otherwise ineligible Grade 23 employees for a special project. For exempt positions, you must also submit a request to DOB.

**NOTE:** In certain circumstances the State may suspend the authorization of overtime.

### **I have an office in a downstate location for which it is difficult to hire and retain staff. How can I increase the salary for this location to increase my ability to recruit and retain staff?**

Section 130(4) of the Civil Service Law allows for the Director, Division of Classification and Compensation to provide for an increase in the minimum hiring salary of a class of positions (i.e., an “Increased Hiring Salary”) where it is determined that it is impracticable to recruit for positions in that title at the hiring rate of the salary grade to which the positions are allocated in one or all areas or locations of the State. To request such an Increased Hiring Salary, your HR office should send a request, including detailed information and documentation to your C&C analyst. This process can be lengthy and should not be viewed as a short-term solution. You must include the following information:

- Documentation of recruitment difficulty for the class
- Documentation of recruitment difficulty in a geographic area
- Documentation of recruitment efforts made by the agency
- Eligible list information (i.e., age of list, eligibles in the area)
- Vacancy and turnover data regarding the class
- Salaries offered for similar positions by other employers in the same location and geographic area

Also, section 130(7) of the Civil Service Law allows the Director, Division of Classification and Compensation to provide a “Geographic Pay Differential” to employees in one or more areas of the State, where private or other non-State employers in such areas pay substantially higher wage rates for a similar occupation. This Differential adds additional money on top of base salaries. To request a Geographic Pay Differential, your HR office should send a request, including detailed information and documentation to your C&C analyst. You must include the following information:

- Documentation of recruitment difficulty for the class



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- Documentation of recruitment difficulty in the geographic area
- Documentation of recruitment efforts made by the agency
- Eligible list information (i.e., age of list, eligible candidates in the area)
- Vacancy and turnover data regarding the class
- Salaries offered for similar positions by other employers in the same geographic area

You may also consider using Section 131(1a) of the Civil Service Law, which allows for appointment above the minimum hiring salary in certain cases for newly hired employees into the State service whose training or experience in a field substantially exceeds the minimum requirements necessary for appointment. (See discussion above).

### **My agency disagrees with a determination of the Director, Division of Classification and Compensation. Can we appeal that determination?**

Agencies may send requests, in writing, to the Director, Division of Classification and Compensation asking that the original determination be reconsidered. Such requests must be sent no later than 30 days after the initial determination has been received and should include new and/or additional material that support the classification action requested by your agency.

Should your request for reconsideration be denied by the Director, Division of Classification and Compensation, you may appeal such determination, no later than 60 days after the final determination has been received, to the Civil Service Commission under Civil Service Law section 120(2). Appeals to the Commission will be placed on the official calendar and you and members of your staff will be invited to appear before the Commission to present evidence in support of your request. The Director, Division of Classification and Compensation and his or her staff will also appear before the Commission to address any questions they may have regarding your appeal. Arrangements to appear before the Commission are made by Commission staff.

### **How do I remove an earmark placed on a position by C&C or the Civil Service Commission?**

Your HR office should submit a request, including a justification letter, duties description, and organizational chart to your respective C&C analyst or Commission staff via NYSTEP. Earmarks may be either continued, removed, or they may be temporarily stayed and then continued after a new incumbent is appointed to the position (i.e., a "Fill and Continue" action). Staff will review your submission and work with your HR staff to make a determination on the release of the earmark, or in the case of Commission earmarks, to request removal by the Commission. Keep in mind that the complexity and ultimate success of the removal request may vary depending upon why the earmark was placed in the initial instance. Requests to remove earmarks placed by DOB should also be directed by your HR office to your agency's line examiner at DOB.

### **How do I extend a temporary position that expires soon?**

Many temporary items, such as positions in clerical or program-specific titles, can be extended on the CC-X10 Temporary Position Extension form on NYSTEP. The extension of items on this form is automatically approved by C&C (i.e., a "pass-through" transaction") and requires DOB approval.

Project Assistant, Project Director, and/or Project Coordinator positions can be extended on NYSTEP by submitting a transaction (4R 13) requesting the extension. Your HR office should submit a justification letter, duties description, organization chart, and a revised/updated timeline of activities/deliverables to



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your respective C&C analyst. These extensions should be requested at least 30 days before the position is set to expire; this will give your C&C analyst sufficient time to review the request and take appropriate action. Agency delays in requesting a timely extension may cause adverse effects for the incumbent employee, such as receiving a late paycheck or having a paycheck withheld by the Office of the State Comptroller's Division of Payroll.

### **Why are some requests approved by DOB and others by Classification and Compensation?**

Typically, requests for new positions must be approved by both C&C and DOB. C&C, however, may allow for certain transactions to automatically "pass through" to DOB for their fiscal review and approval; typically, these are requests to move a position from one geographic area of the State to another; requests to extend temporary positions on the CC-X10 Temporary Position Extension form; and/or requests to establish entry-level positions such as Office Assistant 1, Grade 6.

### **Can an employee submit a request to reclassify his/her position directly to Civil Service?**

Yes. CSL Section 120 affords employees the opportunity to request the reclassification of their position by submitting an "Employee Application for Change in Title or Salary" Form (colloquially referred to as a CC-2E form) to the Director, Division of Classification and Compensation. Classification and Compensation staff will request that the agency HR office review the request and comment on its accuracy and any impact that approval might have on other positions in the agency.

### **I have confidential employees who are unionized. How do I make them M/C?**

The Public Employees Fair Employment Act (also known as the Taylor Law), provides that employees in certain positions are excluded from the right to belong to an employee organization for the purpose of negotiating terms and conditions of employment. Such employees are excluded when it is found that their position is either Managerial or Confidential as defined in Section 201.7(a) of the Civil Service Law. Employees meet the Managerial Designation criteria if they:

- Participate at the highest levels of your agency in the formulation of policy
- Participate in collective bargaining negotiations
- Play a major role in the administration of negotiated agreements
- Play a major role in personnel administration

Employees meet the Confidential Designation criteria only if they work in a confidential capacity to managerial individuals in the personnel or labor relations areas above and not to those who formulate policy. Such individuals must have regular access and exposure to information related to personnel matters and contract negotiations and administration.

The Bargaining Unit of a filled position can only be changed as a result of the formal challenge process occurring at the end of each State employee contract. Contact your HR office for additional guidance.

### **If I assign an employee to perform other duties, can they file a grievance?**

The Labor-Management agreements with all of the State's Labor Unions (e.g., CSEA, PEF, NYSCOPBA, etc.) give employees the right to grieve the performance of out-of-title work.

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If the nature of the employee's new assignment is within the scope of duties appropriate to the employee's title, then there is no out-of-title work. For example, an Office Assistant 1, G-6, assigned to open and distribute mail may be assigned to maintain inventory, maintenance, and/or other records for an agency. All of these tasks are described in the Classification Standard for Office Assistant 1, G-6. If an Office Assistant 1, G-6, were assigned to monitor the health of fish and provide treatments to fish at a DEC Fish Hatchery, then that would constitute out-of-title work as such an assignment would be appropriate to a Fish Culturist 1, G-11.

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### Glossary of Terms

**Abolition of Positions** – the abolition of positions is a prerequisite to the termination of permanent employees in the classified service for the reason of economy. (Attorney General's decision, 1976) Agencies may not layoff employees without abolishing positions.

**Acceptor** – an individual whose name appears on an eligible list and who is willing to accept an appointment.

**Agency Reduction Transfer List** – a mandatory list established prior to the date of layoff containing the names of employees in impacted titles at impacted locations ranked by seniority who are eligible for transfer to positions in other agencies in their current title and direct line lower level titles.

**Allocate** – to assign a salary grade in the salary schedule to a class of positions based on an evaluation of the relative worth of the work performed. To reallocate is to change the existing allocation of a class to a different salary grade in the schedule.

**Alternative Work Schedule** – work schedules which are other than the standard 5 day, 7 ½ or 40-hour week; such schedules are authorized by the Governor's Executive Order #68 and include such options as flextime, staggered hours, compressed workweek, and shared or part-time jobs.

**Annual Salary** – the salary for a particular person expressed as a set amount per year; an employee receives a portion of his or her annual salary each payroll period.

**Appeal** - an action against the Department of Civil Service or a challenge to a Department determination brought before the Civil Service Commission. Civil Service Commission decisions may be appealed in court under Article 78 of the Civil Practice Law and Rules.

**Appointing Authority** – an officer, commission or body that has the power to select and appoint applicants for employment.

**Appointment** – the act of naming a person to fill a position or office.

**Appointment Above the Minimum** – Section 131.1(a) of the Civil Service Law provides that the Director, Division of Classification and Compensation may authorize additional compensation, called an Appointment Above the Minimum (i.e., minimum is the statutory Hiring Rate of a salary grade), not to exceed the Job Rate of the salary grade of the title to which a person is to be appointed, when the training or experience of the appointee substantially exceeds requirements necessary for appointment.

**Attendance Rules** – the rules established by the Civil Service Commission pertaining to sick leave, vacation, time allowances and other conditions in employment, codified as the "Attendance Rules for Employees in New York State Departments and Institutions." Agreements negotiated pursuant to the Taylor Law may also contain leave provisions.

**Band Scoring** – a scoring technique which groups raw scores into a limited number of ranges within which all candidates are treated as tied, assigned the same final score and deemed equally reachable for appointment.

**Bargaining Unit** (also collective bargaining unit, negotiating unit) – employees grouped by the similarities or community of interest of the classes of positions in which they serve (e.g., security services,

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professional, scientific and technical, institutional services, etc.). Employees in a collective bargaining unit may be represented by an employee organization (union) recognized by the employer and the Public Employment Relations Board which shall negotiate with the public employer on the terms and conditions of employment.

**Base Salary** – an employee's annual salary before adjustments by the addition of inconvenience pay, geographic differential, etc.

**Basic Workweek** – under the Civil Service Law, the basic workweek is 40 hours. However, where a shorter workweek would not interfere with the proper performance of government functions, an appointing authority, subject to rules and regulations set forth by the Director of the Budget, may establish a basic workweek of not less than 37 ½ hours.

**Budget Director's Approval (BDA)** – a form confirming approval by the Director, Division of the Budget to fill exempt and certain non-competitive and competitive positions.

**Canvass** – an inquiry to learn whether people whose names appear on an eligible list would be interested in appointment to a particular position, title, and/or location if offered employment.

**Career Ladder** – a hierarchy of jobs having related and increasingly responsible or complex duties through which employees may advance by examination, experience and/or in-service training.

**Certification** – the names of people certified by the Civil Service Department as eligible for appointment to a specific position; a certification is normally valid for 60 days. Certifications differ from eligible lists. While an eligible list records the names of all candidates who qualify for appointment to the title class, a certification includes the names of people interested or eligible for an appointment to specific positions in the title class.

**Certification of Payroll** – the Civil Service Department's certification that all employees in the classified service are employed in accordance with law and rules; employees may not be paid without such certification.

**Civil Service Commission** – the three-member administrative panel, appointed by the Governor, that is responsible for establishing and promulgating rules, hearing appeals, and conducting investigations concerning employment in the classified service of the state and its civil divisions. The President of the Commission also serves as the head of the Department of Civil Service.

**Class of Positions** – positions sufficiently similar in respect to duties and responsibilities that the same title may be used to designate each position in a group, the same salary may be equitably applied, the same qualifications required, and the same examination used to select qualified employees. A Class may sometimes consist of one.

**Classification Standard** – a Classification Standard is a document that provides detailed information describing a class of positions. They are descriptive, not restrictive; their purpose being to portray for each class of positions the duties and responsibilities which, if present in an individual position, will cause the position to fall in that class.

**Classified Civil Service (Classified Service)** – those positions in the Civil Service of the State that are not in the Unclassified Civil Service (Unclassified Service). The Classified Civil Service (Classified Service) is divided into four Jurisdictional Classes: Competitive, Non-Competitive, Exempt, and Labor.

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**Classify** – to group positions (new and existing) according to the similarity of duties and responsibilities and assign a class title. Reclassify is to change the title of an existing position based on a change of duties and/or responsibilities.

**Competitive Jurisdictional Class** (Competitive Class) – the Jurisdictional Class under the Classified Civil Service (Classified Service) composed of positions for which it is practicable to determine the merit and fitness of applicants by competitive examination.

**Contingent Permanent** – a permanent appointment or promotion to a position left temporarily vacant by the leave of absence of the permanent incumbent of the position; such appointees have the same rights as permanent appointees; however, a contingent permanent employee may be displaced by the return of the permanent incumbent. (The term contingent permanent is not used in the Civil Service Law or Rules; rather, Rule 4.11 refers to “permanent appointments to encumbered positions.”)

**Continuous Recruitment** – a type of examination for which applications are accepted continuously, and the test itself is administered periodically; successful candidates are added to the eligible list for a specified period of time and in rank order without regard to the date of the addition of their names.

**Contract** (also collective bargaining agreement) – a written agreement between a public employer (for instance, New York State) and an employee organization, setting terms and conditions of employment on behalf of a specified group of employees for a period defined within the agreement. (See Bargaining Unit.)

**Decentralized Examinations** – a competitive examination for which all or part of the development, administration and scoring has been decentralized to the appointing authority that will make use of the resulting eligible list. The Department of Civil Service maintains authority and oversight over decentralized examinations held for positions in the State civil service.

**Department of Civil Service** – New York State's primary human resources (HR) management agency, responsible for the development and maintenance of statewide agency HR systems; the classification and allocation of State positions; and the recruitment and administration of selection procedures for State employment. The head of the Department is the President of the Civil Service Commission.

**Departmental Examination** – a promotion examination open only to employees of the department or agency in which the positions to be filled exist.

**Disciplinary Proceedings** – due process procedures for the removal of or other disciplinary action against an employee charged with incompetence or misconduct as set forth in Civil Service Law, other State law or in a negotiated agreement.

**Duties Description** (or Position Description) – a statement of the specific duties and responsibilities that make up a position.

**Earmark** – the term used when a position has been designated for restudy before refilling once the position becomes vacant. An earmark may be placed by C&C, the Civil Service Commission, or DOB.

**Eligible** – a candidate who has passed an examination, whose name is on an eligible list, and who may be appointed if reachable.

**Eligible List** – a list from which candidates for a competitive class position, ranked in order of their respective final examination ratings, may be appointed. (See REACHABLE, RULE OF THREE.)

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**Examination** – a formal selection process which includes minimum qualifications, tests, employment interviews and probationary periods; used to evaluate the qualifications and suitability of candidates for public employment. An examination for a competitive class position ranks candidates against each other. An examination for a non-competitive class position constitutes the assessment of a candidate's background and credentials against the established minimum qualifications.

**Examination Announcement** – a document issued to inform potential applicants of an upcoming competitive examination; the announcement contains but is not limited to the following information: the number and title of the examination, the date of the examination, filing information, minimum qualifications, type and scope of test(s), and salary or salary grade; it may also contain vacancy information and a duties description.

**Exempt Jurisdictional Class (Exempt Class)** – the Jurisdictional Class under the Classified Civil Service (Classified Service) of positions deemed impracticable to fill by tests of any kind. No minimum training and experience requirements are established for exempt positions.

**55-b and 55-c** – Sections of the Civil Service Law that permit the permanent appointment, without regard to eligible list standing, of a person determined by the Department of Civil Service to be a qualified disabled person. Vacant competitive class positions which would otherwise be filled by appointment from an open competitive eligible list can be jurisdictionally reclassified to the non-competitive class to permit appointment under 55-b or 55-c. There is a statutory limit to the number of positions that may be filled under these provisions.

**Full Time Equivalent (FTE)** – a term used to equate the service of an employee or the total number of employees to a full time position; (e.g., an employee who works 50% of the time would be counted as  $\frac{1}{2}$  FTE position; two part-time employees who each work 50% time would be counted as 1 FTE position).

**Geographic Pay Differential** – Section 130.7 of the Civil Service Law provides that the Director, Division of Classification and Compensation may authorize payment of additional compensation, called a Geographic Pay Differential, to State employees in one or more areas of the State when private or other non-State employers in such areas pay substantially higher wage rates for a similar occupation. All such determinations are subject to the approval of the Director, Division of the Budget.

**Hazardous Duty Differential** – Section 130.9 of the Civil Service Law provides that the Director, Division of Classification and Compensation may authorize payment of additional compensation, called a Hazardous Duty Pay Differential, to employees exposed to hazardous working conditions in certain locations and under specified criteria for "people-related hazards." All such determinations are subject to the approval of the Director, Division of the Budget.

**Hiring Rate** – the minimum salary for a specific salary grade as established by Section 130 of the Civil Service Law; the rate at which an employee is paid upon appointment.

**Incumbent** – a permanent employee currently serving in or on leave from a position; a permanent employee on leave from a position is said to encumber a position.

**Interdepartmental Examination** – a promotion examination open to qualified employees of all agencies. (See DEPARTMENTAL EXAMINATION.)

**Job Analysis** – the systematic study of a job to provide information which will enable examination planners to determine the knowledge, skills, abilities, and, in some cases, personal characteristics



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required for successful performance on the job; a detailed statement of work behaviors and other information relevant to the job.

**Job Description** – a written summary of the tasks, duties and responsibilities of an individual job.

**Job Rate** – established by Section 130 of the Civil Service Law as the maximum salary paid for a specific salary grade; an employee advances from the hiring rate to the job rate based on time in title and performance.

**Jurisdictional Classification** – designation by the Civil Service Commission of positions in the classified service in either the non-competitive, labor or exempt class; positions not so designated by the Commission are competitive class. Positions in the exempt or non-competitive classes must be specifically named in the Rules, which, in the State service, are subject to the approval of the Governor.

**Knowledge, Skills and Abilities (KSAs)** – the knowledge, skills and abilities required to perform a job. Knowledge is an understanding of facts or principles relating to a particular subject area; skill is the application of knowledge resulting from a development of basic abilities through formal training and practical experience; ability is capacity in a general area that may be utilized to develop detailed, specific skills.

**Labor Jurisdictional Class (Labor Class)** – the Jurisdictional Class under the Classified Civil Service (Classified Service) designated for positions for which competitive tests are impracticable because of the unskilled nature of the duties. Minimum qualifications for Labor Class positions other than the physical ability to perform the duties of the position are generally not established.

**Layoff** – another term not in the law; it is used whenever an employee is separated or loses status in his/her position as a result of the abolition or reduction of positions. For example, employees whose positions are not abolished but are “bumped” have been laid off.

**Layoff Unit** – separate units designated by the President of the Civil Service Commission, within which occurs the suspension or demotion of employees upon the abolition of positions; these units may represent an entire agency, separate institutions or facilities, geographic areas, etc.

**Leave of Absence** – a consideration granted employees which provides them the right to return to a position in their former title within a specified period of time; leaves are granted for such things as probationary service upon promotion or transfer, military service, jury duty, and pregnancy, childbirth, and child care; depending upon specific circumstances, leave may be mandatory or optional and may be either paid or unpaid.

**Location Compensation (Location Pay)** - referenced in most State employee contracts under the heading Locational Compensation. Most State employees generically use the term “Location Pay” to describe additional monies provided to employees who work in various counties. Technically, however, the term “Location Pay” is now only applicable to employees whose principal place of employment or whose official station in 1985/1988 was located in Monroe County, received location pay at that time, and such employees continue to work in that County. There are two other categories of negotiated locational compensation: the Downstate Adjustment and the Mid-Hudson Adjustment.

- **Downstate Adjustment** - referenced in most State employee contracts under the heading Location Pay or Downstate Adjustment. Eligible employees, whose principal place of employment or show official station is in New York City, Nassau, Rockland, Suffolk, or Westchester Counties, will receive a negotiated adjustment in addition to their basic annual salary.

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- **Mid-Hudson Adjustment** - referenced in most state employee contracts under the heading Location Pay or Downstate Adjustment. Eligible employees, whose principal place of employment or whose official station is in Orange, Dutchess, or Putnam Counties, will receive a negotiated adjustment in addition to their basic annual salary.

**Managerial or Confidential** – a designation of positions by the Public Employment Relations Board (PERB); such positions are excluded from membership in any, and may not be represented by, employee organizations for the purposes of collective bargaining.

**Merit and Fitness** – phrase summarizing the requirement in the State Constitution that appointments and promotions shall be made according to merit and fitness to be ascertained, as far as practicable, by competitive examination; Civil Service is, hence, called a “merit system.”

**Minimum Qualifications** – education, training, and/or experience requirements established to give reasonable assurance that all candidates certified for appointment can satisfactorily perform the essential duties of the position of appointment.

**Negotiating Unit** – 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 of their own choice; requires public employers to negotiate and enter into agreements with public employee organizations regarding their employees' terms and conditions of employment; and establishes a state agency to administer the Law – The Public Employment Relations Board (PERB). Positions are then placed in an appropriate Negotiating Unit based on the community of interest among job responsibilities.

**Non-Competitive Jurisdictional Class (Non-Competitive Class)** – the Jurisdictional Class under the Classified Civil Service (Classified Service) designating positions not in the Exempt or Labor Classes and for which it is found by the Civil Service Commission to be not practicable to ascertain the merit and fitness of applicants by competitive examination.

**NS (Non-Statutory)** – the administrative designation for salaries established by DOB pursuant to Section 44 of the State Finance Law for positions not allocated to a statutory salary grade.

**NYSTEP** – acronym for the New York State Electronic Personnel System which is the automated personnel and transaction processing system that allows State agencies to submit personnel transactions, and classification and compensation requests to the Department of Civil Service. The data maintained in NYSTEP is the State's official record of items and appointments in the Classified Service.

**Open-Competitive Examination** – examinations open to all qualified individuals both in and outside State service.

**Oral Test** – also known as “structured interview” in some jurisdictions. A formal portion of an examination in which, typically, candidates are asked to respond orally to hypothetical problems presented by examiners; the examiners evaluate the candidates' responses against an established set of objective standards.

**Other Statutory (OS)** – designates a salary which is established by a statute other than the Civil Service Law.

**Out-of-Title Work** – duties performed by an incumbent of a position which are not appropriate to the

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position class.

**Parenthetic** – a descriptive designation in parentheses following a common base title, to distinguish a specialty within a given field – i.e., Office Assistant 3 (Human Resources).

**Payroll Period** – a two-week work period, beginning on a Thursday and ending on a Wednesday, for which a State employee is paid for services. (There are two payroll cycles – the Administrative and the Institutional.)

**Performance Evaluation** – a process in which supervisors assess employees' job performance on the basis of agreed upon performance objectives of the job.

**Performance Test** – a test which requires candidates to demonstrate the skill to be measured (e.g., operation of a machine, typing, taking dictation, repairing an engine or assembling objects) under standardized conditions which permit the rating of candidates on a scale.

**Permanent Appointment** – an appointment made to a position in accordance with applicable laws, rules and regulations; a permanent appointment may provide rights and privileges, such as due process for dismissal, eligibility for promotion examinations, transfers, and future reinstatement and certain protections in the event of abolition of positions.

**Physical/Medical Standards** – standards that a successful candidate on an examination must meet prior to being appointed to the position he or she is eligible to fill. These standards are part of the examination and selection process and must be job related.

**Policy Influencing** (Managerial/Confidential) – a term used in the Taylor Law as descriptive of Managerial/Confidential employees; applies to employees who formulate policy, assist the employer directly in preparing for or conducting collective negotiations or play a major role (involving independent judgment) in administering labor agreements.

**Position** – an assigned group of duties and responsibilities, temporary or permanent, which is generally performed by one person in a title.

**Position Description** – detailed descriptions (also known as duties descriptions) for each title that provide information regarding the nature and purpose of the work, the organizational and supervisory relationships, and the basic duties and responsibilities.

**Preferred List** – an eligible list established as a result of a reduction in force, or where otherwise provided by law, which consists of the names of displaced employees ranked by seniority; a preferred list must be used before any other means of filling a position (except certain special military lists); the top acceptor on a preferred list must be appointed or the position left vacant ("Rule of One").

**Probationary Period** – the period of time commencing upon a permanent appointment during which an employee's performance on the job is assessed; the final step in the selection process.

**Promotion** – generally, in the competitive class, an appointment from a promotion eligible list to a higher-level position; in the non-competitive class, the appointment of an employee to a higher-grade position without competitive examination.

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**Promotion Examination** – an examination for a higher-level position open only to permanent State employees who are currently serving in or who have served in qualifying titles for periods of time specified in the minimum qualifications.

**Promotion Field** – the employees who meet the minimum qualifications to compete in a promotion examination.

**Promotion Unit** – subdivisions in State service designated and/or approved by the Department of Civil Service for the purpose of determining the order of certification of promotion eligible lists; generally promotion unit lists are certified before departmental lists which are certified before the general portion of interdepartmental lists; normally, each agency is a separate promotion unit; however, an agency may have more than one promotion unit.

**Provisional Appointment** – a non-permanent appointment to a competitive class position, which may be made when there is no appropriate or viable eligible list.

**Reachable** – the status of a person on an eligible list who ranks high enough to be legally appointed (i.e., one of the top three scoring candidates willing to accept the appointment). (See RULE OF THREE.)

**Reallocation** – to change the salary grade of a class with no change in title or duties or responsibilities. See allocation.

**Reclassify** – to change the title of an existing position based on a change of the duties and responsibilities. See Classify.

**Reduction In Force (RIF)** – actions necessitated by budgetary restraints which result in the abolition of positions and layoff of employees.

**Reinstatement** – based on his or her former status, the return of an employee following a leave without pay or the reappointment of an employee following layoff, termination because of a physical or mental disability, or resignation. Reinstatement after resignation is at the discretion of the appointing authority if effected within one year of separation; such as reinstatement following a separation of greater than one year requires Civil Service Commission approval.

**Reemployment Roster** – a mandatory list established as of the date of layoff containing the names of laid off employees for appointment to titles other than those for which they are eligible for reinstatement from a preferred list. These generally are titles in their former occupational fields determined to be appropriate by the Department of Civil Service. The names are certified in random order without regard to seniority, status as a probationer or layoff unit.

**Retention Rights** – the rights of one employee as compared to another to retain a position in a layoff. There are two factors which affect any employee's retention rights. First, appointment status in the title, and second, seniority. Permanent employees have rights, while employees in the same title and layoff unit who are serving provisionally or temporarily have none. Among permanent employees, those who are not on probation have greater rights than those on probation, and employees who are equal in terms of this variable are then ranked by seniority.

**Rule of One** – the legal provision that appointments must be made from a preferred list certification in strict seniority order. (See Certification.)

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**Rule of Three** – the legal provision that appointments must be made from among the three highest ranking candidates on an open-competitive or promotion eligible list who are willing to accept the position. (See Reachable; Certification.)

**Salary Grade** – the designation attached to a title that indicates a title's compensation in accordance to Section 130 of the Civil Service Law.

**Seasonal Position** – a position where the service is not needed throughout the year but recurs at the same time each succeeding year. A position must be specifically designated as seasonal upon classification.

**Section 211** – a section of the New York State Retirement and Social Security Law that provides for a retiree to earn more than the maximum under Section 212 when it is not practicable to fill the position with a qualified non-retiree and it is in the State's interest to do so. Requires Civil Service Commission approval.

**Section 212** – a section of the New York State Retirement and Social Security Law that established the maximum a retiree can earn without diminution of retirement allowance.

**Seniority** – generally, the time of an employee's permanent classified service. Seniority is used to determine order of layoff and ranking on preferred lists. Negotiated agreements between the State and employee organizations also contain various definitions of seniority which are used to determine job assignments, vacations, scheduling, etc.; such definitions should not be confused with seniority as defined above, or with the recording of vacation or personal leave anniversary dates pursuant to the Attendance Rules.

**Seniority Credits** – points added to test scores based on seniority granted to successful candidates on promotion examinations.

**Salary Differentials** – the Civil Service Law authorizes the Director, Division of Classification and Compensation to increase minimum State salaries under certain circumstances. The general purpose of Salary Differentials is to assist State agencies address recruitment and retention difficulties. Differentials include Increased Hiring Salaries, Shift Pay Differentials, Geographic Pay Differentials, Hazardous Duty Differentials, Safety Incentive Differentials, and Occupational Pay Differentials. The Director retains the statutory authority to reduce, increase, or terminate (i.e., rescind) differentials.

**Spoils System** – (from the phrase "to the victors belong the spoils of the enemy") A term coined in 1832 by New York Senator William L. Marcy to describe the practice by political parties of rewarding the party faithful with public jobs; party loyalty rather than job competence was the criterion for appointment. The civil service reform movement of the late 1800's led to adoption of the merit system of selection for public sector employment.

**Subject Matter Expert (SME)** – a person who has particular knowledge of a job or subject area; SMEs may assist in analyzing jobs, preparing test questions, examining candidates, etc.

**Taylor Law** – the Public Employees' Fair Employment Act, Article 14 of the Civil Service Law, enacted in 1967 to recognize the rights of public employees to representation by unions and to have organizations collectively bargain on the employees' behalf; obligates public employers to negotiate with recognized employee organizations on the terms and conditions of employment.

## Merit System Guide for Managers

**Temporary Appointment** – an appointment of limited duration, generally for less than six months, that does not confer the rights and privileges of permanent status to the employee.

**Temporary Project Appointment** – a temporary appointment to a position established for a special study or project, limited to a maximum duration of eighteen months; the appointee must render professional, scientific, technical, or other expert services.

**Terminate/Discharge** – to fire an employee; generally, permanent employees have due process rights afforded by statute and/or negotiated agreements and may be removed only for cause.

**Test** – a formal assessment of candidates' knowledge, skills, abilities and/or personal characteristics.

**Title** – the “label” used to officially designate a class. It is descriptive of the work performed and its relative cause.

**Title and Salary Plan** – the Title and Salary Plan is the complete listing of job titles in the Classified Civil Service (Classified Service). The Title and Salary Plan is arranged alphabetically by title for all Competitive, Non-Competitive, Exempt, and Labor Jurisdictional Class positions. The Title and Salary Plan contains title specific information listed in the following separate columns: Title Code; Jurisdictional Class (JC); Salary Grade (SG); Negotiating Unit (NU); Title Name; Classification Standard Number (STD No); Level; and Decentralization Status.

**Title Series** – a group of titles (two or more) that perform similar duties but at different levels of responsibility.

**Title Structure Change** – the change of the title of a class where there are no substantial changes in duties or responsibilities.

**Trainee Plan** – a formal employee development plan (which is required for the creation of a traineeship) approved by the Department of Civil Service and DOB, governing the appointment and advancement of employees in training status leading to permanent status.

**Traineeship** – a position to which an individual is appointed for a specified period of time to learn to do a job; if the traineeship is satisfactorily completed within the designated period of time, the individual is advanced to the next higher-level position without further examination.

**Training and Experience Evaluation (T&E)** – an unassembled test which evaluates the relevant training and/or experience of candidates and which ranks candidates for a position based on these criteria.

**Transfer** – the movement, usually without further examination, of a permanent employee from a competitive position under the jurisdiction of one appointing authority to a similar position with a different appointing authority, or to a position in a different title under the same appointing authority; a transfer may only be made to a position at the same or similar salary grade (currently no higher than two salary grade or one M-grade).

**Transfer, Administrative** – a transfer between “administrative” positions as defined in Section 52.6 of the Civil Service Law; administrative positions include those in law, personnel, budgeting, methods and procedures, management, records analysis and administrative analysis.

**Transfer, Regular** – a transfer (pursuant to Section 70.1 CSL) between titles determined by the Civil Service Department to be satisfactorily “similar.”



## Merit System Guide for Managers

**Transition Examination** – examinations which provide an opportunity not normally available through promotion examination for employees to move into other occupational fields or across organizational levels (e.g., allowing clerical employees to compete for paraprofessional titles or for entry into professional traineeships).

**Unclassified Civil Service** (Unclassified Service) – positions specified under Section 35 of the Civil Service Law. Examples are elected officials, appointees of the Governor or Legislature (including heads of Departments and legislative employees), and employees in professional positions in certain colleges whose principal functions are teaching or supervision of teaching in a public school, academy or college, or in the State University.

**Vacancy** – a position having no permanent incumbent and which may be filled by appointment.

**Veteran** – a member of the armed forces of the United States who served therein in time of war and who was honorably discharged or released under honorable circumstances for such services; or who served in a time of war and is in possession of a letter from the Division of Veterans' Services restoring access to state benefits pursuant to the Restoration of Honor Act.. Armed forces is defined as the Army, Navy, Marine Corps, Air Force and Coast Guard, including all components thereof, and the National Guard when in the service of the United States pursuant to call as provided by law on a full-time active duty basis, which does not include active duty for training purposes. Service must have been on a full-time basis other than active duty for training purposes. New York State law defines "time of war" as: World War II (December 4, 1941 – December 31, 1946), Korean War (June 27, 1950 – January 31, 1955), Vietnam War (February 28, 1961 – May 7, 1975), Persian Gulf Conflict (August 2, 1990 – the date upon which such hostilities end) and the armed forces expeditionary medal, Navy expeditionary medal or Marine Corp expeditionary medal for hostilities in Lebanon (June 1, 1983 – December 1, 1987), hostilities in Grenada (October 23, 1983 – November 21, 1983), hostilities in Panama (December 20, 1989 – January 31, 1990) or commissioned corps of the United States public health services (July 29, 1945 – September 2, 1945 and June 26, 1950 – July 3, 1952).

**Veteran's Credits** – points authorized by the State Constitution added to passing examination scores of veterans who are New York residents.

**Written Test** - a formal assessment which presents candidates with written questions or problems and/or requires candidates to give written answers or responses. Commonly used written test formats include multiple-choice questions, job simulation exercises, and constructed response or essay tests.



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