

**NEW YORK STATE DEPARTMENT OF CIVIL SERVICE  
STATE PERSONNEL MANAGEMENT MANUAL  
Policy Bulletin #16-01**

**2200 Separations and Leaves**

**December 15, 2016**

**Leaves of Absence Without Pay**

**THIS POLICY BULLETIN REPLACES POLICY BULLETIN #98-02, issued December 29, 1998.  
PLEASE REMOVE POLICY BULLETIN #98-02 FROM YOUR SPMM AND DESTROY.**

This policy bulletin is intended to be a guide to agencies on the topic of leaves of absence without pay.

**Leaves of Absence Generally**

The purpose of any leave of absence without pay is to provide employees with their appropriate tenure protection, promotion rights, and layoff rights based upon the employee's status in that position. Employees may not have multiple simultaneous leaves from the same item/position. However, to completely preserve their rights, employees may be on leave from different positions in the same title, in the same or different jurisdictional classes.

Some types of leaves are termed "mandatory." Other leaves are termed "discretionary."

- **Mandatory leaves** must be granted as required by Civil Service Law or rule or negotiated agreement, or Federal law, or State policy.
- **Discretionary leaves** may be granted in accordance with Classified Service Rule 5.2.

**Usually a mandatory leave is granted when a permanent employee:**

- is promoted or transferred to a position in which the employee must serve a probationary period.
- in the competitive class is appointed in contingent permanent, temporary or provisional status to a position in the employee's agency.
- in the non-competitive or labor class is appointed in contingent permanent status to a position in the employee's agency.
- is absent for a reason specified in the Family & Medical Leave Act.
- is absent for reasons specified in the Military Law.
- is unable to perform the duties of the employee's position due to disability.

When an employee must be granted a leave in a situation governed both by a Civil Service law, or rule *and* a negotiated agreement, and the identified limitations or length of leave required are different, the employee **must** be given the leave terms which provide the employee with the most protection.

**Usually a discretionary leave is granted when a permanent employee who is not eligible for a mandatory leave:**

- requests a leave because the employee accepted an appointment to a position in a different jurisdictional class.
- requests a leave because the employee accepted an appointment in another agency in temporary or provisional status.
- requests a leave for educational, parenting, or other personal reasons.

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**Basic Principles of Discretionary Leaves**

1. A leave is discretionary if it is not mandatory.
2. Rule 5.2 permits an appointing authority to grant a discretionary leave for two years. At the end of this initial two years permission to extend such leave must be granted by the Civil Service Commission.
3. In some cases the courts have viewed a discretionary leave as being essentially a "contract" between an employee and his/her appointing authority. For the specified period the employee is entitled to be absent and, at the end of that period, to return. The terms of these contracts may only be changed by mutual consent, with the exception that employees on discretionary leave to serve in another position in the State service must be restored upon request.
4. A leave of absence does not prohibit the agency from dealing with the position in the normal course of business, e.g., filling the position, abolishing the position or assigning the position to a different location.
5. Employees may not be on mandatory leave and discretionary leave simultaneously from the same position.
6. Where an extension or further extension is not granted, the employee must return to the former position (i.e., title and status) and serve for six months before the agency may grant them a "new" discretionary leave, which does not require Commission approval.

**Rights to Return to a Hold Item**

Although for the sake of record-keeping a position (called a "hold item") is always identified, and usually the employee returns to it, management's right to assign and reassign staff among available positions overrides any right to a *specific* position, or even a location. The employee has the right to return to a position in their former title, jurisdictional class and appointment status.

When restoration to a hold occurs the agency designates the specific position. Agencies may change designated hold items and may reassign hold items to different locations at any time. However, some negotiated agreements may provide rights and limitations when employees return (for example see CSEA, I.S.U. Article 12). Further, agencies may not arbitrarily or capriciously reassign employees, nor do so punitively.

**An employee who refuses to return to a hold item** which was moved to a different geographic location (i.e., different county) is considered to have declined a reassignment, and is eligible for reemployment list status, but the employee is not eligible for bumping or retreat.

**An employee granted a mandatory leave while serving probation** may request restoration to a hold item prior to end of the leave, and the agency must restore the employee. This right to return is only provided under rule and contract to an employee granted mandatory leave while serving probation (Rule 4.5).

**An employee who has been temporarily or provisionally appointed** to another competitive class position, within the same agency, must be restored upon request (Rule 4.10).

**A contingent permanent employee** who is affected by the return of a prior permanent incumbent must be offered restoration with permanent status to the hold item required for this

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purpose by Rules 4.11 and 4.12 provided the employee was originally appointed to the hold item in permanent status. If however, the employee was originally appointed to the hold item in **contingent permanent** status, and the agency made subsequent contingent permanent appointments to the same position, a comparison of the seniority dates (seniority dates are determined in accord with §80, or §80-a of the CSL) of **all** the contingent permanent appointees is required. Only if the returning former contingent permanent employee is the most senior may the employee return. If the one prior permanent incumbent has already returned, the contingent permanent employee may not return, regardless of seniority.

**A contingent permanent employee who has completed probation** may not voluntarily return to a hold item in the absence of a return of incumbent. Complete policy information regarding contingent permanent appointments and leaves can be found at [SPMM 1810](#).

### **Non-competitive Class Appointments**

A non-competitive phi designation on an employee's current position or the position to which the employee is appointed has no effect on the leave policies herein. See [Advisory Memorandum #02-03](#) for more information.

Non-competitive class employees appointed pursuant to §55-b/c must be given a leave when appointed to ANY OTHER 55-b/c position. See [Advisory Memorandum #02-03](#) and [Policy Bulletin #11-01](#) for more information.

### **Exempt Class Appointments**

Exempt class employees may be granted a discretionary leave of absence. However, the employee should be informed that the leave does not give the employee the right to return or to hold the position for any period of time. The exempt class employee continues to serve at will, albeit while on leave.

### **Pending Commission Review**

Newly classified positions are competitive class positions until the Commission and Governor act to place them in another jurisdictional class (with the exception of titles the Commission has designated that "all" positions in the title are in a particular jurisdictional class, and, therefore a newly classified position is immediately placed in that jurisdictional class). After the Commission acts, the position is considered "pending non-competitive," "pending exempt," or "pending labor" as a shorthand way of keeping track of the status. But, in fact, the jurisdictional class does not change from competitive until the entire administrative process is complete and the resolution is filed with the Department of State. Therefore, a permanent competitive class employee appointed to such a pending position, or an incumbent whose position has been reclassified to a pending position, should be considered as having received an appointment to a competitive class position for the purposes of leave rights under the provisions of Rule 4.10.

When an exempt class position becomes vacant it is reviewed by the Commission. During the review period, only appointments in temporary status are permitted. A permanent competitive class or non-competitive class employee appointed on a temporary basis to such a position is not covered by Rule 4.10 or negotiated agreements and therefore any leave granted must be discretionary.

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**Summary of Mandatory Leaves of Absence by Type of Appointment**

Depending upon the type of appointment that a permanent employee receives, various negotiated agreements and the Civil Service rules may require a leave of absence be provided from the current position. The following tables summarize this department's interpretations of the various rules, laws and negotiated agreements which mandate a leave of absence be provided when certain appointments occur. The compilation of the tables is intended to provide a complete catalog of the conditions under which mandatory leaves are provided. It is recognized that there is an overlap between the various authorities under which leaves are mandated. Where such overlaps occur, the leave which provides the greatest benefit to the employee, either in terms of duration or limitations, should be applied.

The rules refer to specific sections of the Classified Service rules. The negotiated agreements can be found on the GOER website at [https://www.goer.ny.gov/Labor\\_Relations/Contracts/](https://www.goer.ny.gov/Labor_Relations/Contracts/).

**Promotion** is defined as:

- The appointment of a permanent competitive, non-competitive or labor class employee to a competitive class position via appointment from a promotion or transition list; OR
- The appointment of a permanent non-competitive or labor class employee to a higher grade position in the same jurisdictional classification.

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This department may update the tables on the online version of this Memorandum to reflect changes resulting from future negotiations or reinterpretation. When updated, the previous tables will be chronicled in the Staffing Division policy files.

**Tables last updated:** *August 7, 2018*

**1.) Permanent Appointment from an Open-Competitive Eligible List**

<b>Legal/Contractual Basis</b>	<b>Employees Covered</b>	<b>Duration of Leave</b>	<b>Limitations</b>
CSEA-ASU (02)	permanent* competitive, non-competitive	for the period of probation	none
CSEA-OSU (03)	permanent* competitive, non-competitive, labor	for the period of probation	none
CSEA-ISU (04)	permanent* competitive, non-competitive, labor	for the period of probation	none
PEF (05)	permanent* competitive & non-competitive	for the period of probation	none
Council 82-Security Supervisors (61/91)	permanent* competitive	for the period of probation	none
NYSCOPBA-Security Services (01/21)	permanent* competitive	for the period of probation	none
PBANYS-EnCon, Parks, SUNY Police (31)	permanent* competitive	for the period of probation	none
District Council 37-DHCR Rent Reg. Svcs. Unit (67)	permanent* competitive, non-competitive	for the period of probation	none
M/C employees (06)	permanent* competitive & non-competitive	for the period of probation	none
Rule 4.10 traineeship appointment	permanent competitive (including probationers)	for the period of probation	traineeship appointment within the same appointing authority

**\*NOTE: "permanent" is defined as having successfully completed probation.**

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**2.) Permanent Appointment to a Non-Competitive Class Position (including phi-tag positions)**

<b>Legal/Contractual Basis</b>	<b>Employees Covered</b>	<b>Duration of Leave</b>	<b>Limitations</b>
CSEA-ASU (02)	Permanent* competitive, non-competitive	for the period of probation or 52 weeks whichever is less	both positions within the same appointing authority
CSEA-OSU (03)	Permanent* competitive, non-competitive	for the period of probation	appointment must be to a higher SG position
CSEA-OSU (03)	Permanent* labor	for the period of probation	appointment must be to a higher SG position within the same appointing authority
CSEA-ISU (04)	Permanent* competitive, non-competitive, labor	for the period of probation	appointment must be to a higher SG position
PEF (05)	Permanent* competitive & non-competitive	for the period of probation	none
District Council 37 (67)	Permanent* competitive, non-competitive	for the period of probation or 52 weeks whichever is less	both positions within the same appointing authority
Rule 4.5(b)(2) & 4.5(e) [to be read together]	Permanent non-competitive (including probationers)	for the period of probation	appointment must be to a higher SG position

**\*NOTE: "permanent" is defined as having successfully completed probation for purposes of this coverage by the contracts.**

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**3.) Permanent Appointment to an Exempt Class Position**

<b>Legal/Contractual Basis</b>	<b>Employees Covered</b>	<b>Duration of Leave</b>	<b>Limitations</b>
PEF (05)	permanent* competitive & non-competitive	for the period of probation	none

**\*NOTE: "permanent" is defined as having successfully completed probation for purposes of this coverage by the contract.**

**4.) Permanent Promotion or Transfer to a Competitive Class Position**

<b>Legal/Contractual Basis</b>	<b>Employees Covered</b>	<b>Duration of Leave</b>	<b>Limitations</b>
Rule 4.5(d) & (e)  [to be read together]	permanent competitive & non-competitive* (including probationers)	for the period of probation	none

**\*NOTE: covers those non-competitive employees who are appointed from promotion lists when allowed to take promotion examinations pursuant to §52.11. Non-competitive class employees are not eligible for transfer.**

**5.) Contingent Permanent Appointment to a Competitive or Non-Competitive Class Position**

<b>Legal/Contractual Basis</b>	<b>Employees Covered</b>	<b>Duration of Leave</b>	<b>Limitations</b>
PEF (05)	permanent* competitive & non-competitive	for the period of probation	none
Rule 4.11(e)	permanent competitive & non-competitive (including probationers)	for the period of service in the contingent permanent position	both positions must be in the same appointing authority

**\*NOTE: "permanent" is defined as having successfully completed probation for purposes of this coverage by the contract.**

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**6.) Temporary or Provisional Appointment to a Competitive Class Position**

<b>Legal/Contractual Basis</b>	<b>Employees Covered</b>	<b>Duration of Leave</b>	<b>Limitations</b>
Rule 4.10	permanent competitive (including probationers)	for the period of temporary or provisional service	both positions within the same appointing authority*

**\*NOTE: Although they have separate appointing authorities, OMH and OPWDD are each considered one agency for the purposes of applying Rule 4.10.**