

ARTICLE 17 - CLASSIFICATION

17.1 Classification Changes

A. When the California Department of Human Resources (CalHR) desires to establish a new classification and assigns it to Bargaining Unit 10 or intends to modify an existing one that is in Bargaining Unit 10, CalHR shall inform CAPS of the proposal during CalHR's preparatory stages of the proposal. CAPS may request to meet with CalHR regarding these classification proposals. Such meetings shall be for the purpose of informally discussing the classification proposal and for CAPS to provide input. Upon request, CalHR may furnish CAPS with drafts of the proposed classification specifications.

B. CalHR shall notify and submit to CAPS the final classification proposal at least 20 work days prior to the date State Personnel Board (SPB) is scheduled to adopt it.

C. If CAPS requests in writing within ten (10) work days of receipt of the notice, CalHR shall meet with CAPS to discuss the final proposal. If CAPS does not respond to the notice, or if CAPS does not meet within five (5) work days from the date of request, the classification proposal shall be deemed agreeable to CAPS and be placed on SPB's consent calendar.

D. CalHR shall meet-and-confer, if requested in writing within five (5) work days from the date SPB approved the classification change, regarding only the compensation provisions of the classification. CalHR shall respond to CAPS within ten (10) days of CAPS' written request to meet regarding the compensation provisions of any new classification. CalHR shall not implement the proposed or revised classification until CalHR and CAPS meet-and-confer regarding the compensation.

E. Neither the classification nor the compensation provisions shall be subject to the grievance and arbitration procedure in Article 9.

17.2 Out-of-Class Grievance Process

A. Definitions

1. "Working out-of-class" (a.k.a. "out-of-class work") is defined as performing, more than 50 percent of the time, the full range of duties and responsibilities allocated to an existing class and not allocated to the class in which the employee has a current, legal appointment.

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2. A "pre-arranged out-of-class assignment" is defined as the intentional assignment of out-of-class work to an employee by the employee's appointing power, department head or designee for a defined period of time of up to 120 days or, if approved by the Department of Personnel Administration, up to one year.

3. "Terminated out-of-class work or assignment" is defined as "working out-of-class" (as defined above) in which the out-of-class work or assignment has ceased either because the duties and responsibilities that created the out-of-class situation were removed, or the percentage of time spent performing the full range of duties and responsibilities fell below 50 percent, or the employee is no longer working in the position alleged to have created the out-of-class situation.

B. Pre-arranged Out-of-Class Assignments

Notwithstanding Government Code Sections 905.2, 19818.8, 19818.6, 19818.16, and 19823 an employee may be required to perform work other than that described in the specification for his/her classification for up to 120 consecutive calendar days during any 12-month period. An employee may be assigned to work out-of-class for more than 120 consecutive calendar days only with the approval of the Department of Personnel Administration (DPA). Out-of-class assignments shall not exceed one year.

1. Rate of Pay: If an appointing power, department head or designee requires an employee to work "out-of-class" in a higher classification for more than two consecutive weeks, the employee shall receive the rate of pay, pursuant to DPA Regulation 599.673, 599.674, or 599.676 that the employee would have received if appointed to the higher class for the entire duration of the assignment. The out of class compensation shall not be considered as part of the base pay in computing the promotional step in the higher class.

2. Rotation to Avoid Out-of-Class Pay: The State shall not rotate employees in and out of out-of-class assignments for the sole purpose of avoiding payment of an out-of-class compensation.

C. Out-of-Class Grievances

1. Exclusive Appeal Process: The grievance and arbitration procedure described in subsection E below shall be the exclusive means by which alleged out-of-class assignments shall be remedied, including requests for review by the Department of Personnel Administration referenced in Government Code Section 19818.16. Out-of-class grievances shall not be filed with the State Board of Control.

2. Out-of-Class Remedy: The grievance and arbitration

procedure described in subsection E shall be the exclusive means by which alleged out-of-class appeals shall be remedied, including those referenced in Government Code Sections 19818.6 and 19818.20.

3. Retroactive Pay: The only remedy that shall be available to grievants is retroactive pay for out-of-class work.

4. Back Pay Limited to One Year: A timely filed grievance concerning out-of-class work which is granted under this Article shall not be compensated retroactively for a period greater than one (1) year before the filing of the grievance.

5. Arbitrator Limitations: Arbitrators shall not have the authority to order reclassification (reallocation) of a grievant's position or discontinuance of out-of-class work assignments.

D. Grievance Procedure and Time Limits

1. Duty to File Timely Grievance: If an employee believes that he/she has been assigned out-of-class duties and responsibilities, he/she must file an out-of-class grievance no later than 60 days after the conclusion of the out-of-class duties/work. Any claim for back pay concerning the out-of-class work is waived if the employee fails to timely file the grievance as provided by this section. The grievance package shall include a completed CalHR 651 (Job Description Form).

2. Third Level Appeal: Out-of-class grievances shall be filed with a designated supervisor or manager identified by each department head as the third level of appeal in the usual grievance procedure found in Article 9.

3. Third Level Response: The person designated by the department head as the third level of appeal shall respond to the grievance in writing within 45 calendar days after receipt of the grievance.

4. Fourth Level Appeal: If the grievant is not satisfied with the decision rendered by the person designated by the department head at the third level of appeal, he/she may appeal the decision in writing within 21 calendar days after receipt to the Director of the Department of Personnel Administration.

5. Fourth Level Response: The Director of the Department of Personnel Administration or designee shall respond to the grievance in writing within 60 calendar days after receipt of the appealed grievance.

6. Arbitration Request: If the grievance is not resolved by the Department of Personnel Administration, the union shall have the right to submit the grievance to arbitration within 30 calendar days following receipt of the Department of Personnel Administration's decision.

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7. Arbitration Process: Article 9.12 "Formal grievance - Step 5" shall apply to out-of-class grievances except as otherwise provided in this section.

E. Arbitrator Award: The arbitrator's award regarding out-of-class grievances shall be final and binding on the parties. Said awards shall not be subject to challenge or review in any forum, administrative or judicial, except as provided in Code of Civil Procedure Section 1286.2 et seq.

ARTICLE 18 - PERMANENT INTERMITTENT APPOINTMENTS

18.1 Permanent Intermittent Appointments

A. An "intermittent" position or appointment is a position or appointment in which the employee is to work periodically or for a fluctuating portion of the fulltime work schedule. An intermittent employee may work up to 1,500 hours in any calendar year based upon SPB rule. The number of hours and schedule of work shall be determined based upon the operational needs of each department.

B. Each department may establish an exclusive pool of intermittent employees based upon operational need.

C. Each department will endeavor to provide intermittent employees reasonable advance notice of their work schedule.

D. Upon mutual agreement, a department head or designee may grant an intermittent employee a period of nonavailability not to exceed twelve (12) months during which the employee may not be given a waiver. The period of nonavailability may be revoked based on operational needs. An employee on nonavailable status who files for unemployment insurance benefits shall be immediately removed from such status.

E. An intermittent employee will become eligible for leave credits in the following manner:

1. Sick Leave. An intermittent employee in Bargaining Unit 10 will be eligible for eight (8) hours of sick leave credit with pay on the first day of the qualifying monthly pay period following completion of each period of 160 hours of paid employment. The hours in excess of 160 hours in a qualifying monthly pay period shall not be counted or accumulated. An intermittent employee shall not be removed from scheduled work hours because he/she is on sick leave.